

A FULENA SINGH
v.
VIJAY KUMAR SINHA & ORS.
(Civil Appeal No. 719 of 2009)

B FEBRUARY 5, 2009

**[LOKESHWAR SINGH PANTA AND B. SUDERSHAN
REDDY, JJ.]**

C *Conduct of Election Rules, 1961 – r. 93(1)(dd) – Application during pendency of election petition – For inspection of registers of voters in Form 17A – For substantiating the allegations made in the election petition – Allowed by trial court – On appeal, held: Inspection of election papers cannot be permitted for the purpose of making a*
D *roving inquiry in order to fish out materials and to derive support for one's own case – Inspection allowed without assigning any reasons – Hence application remitted to trial court for consideration alongwith the main petition.*

E **Respondent filed election petition against the appellant (returned candidate) alleging that double voting was done by the relatives and supporters of the appellant. In order to substantiate his allegations, respondent filed an application under r. 93(1)(dd) of Conduct of Election Rules, 1961 seeking inspection of the packets containing**
F **registers of voters in Form 17A. Trial Court allowed the application. Hence, the present appeal.**

Allowing the appeal, the Court

G **HELD: 1. Rule 93 of Conduct of Election Rules, 1961, mandates that election papers mentioned in the said Rule shall not be opened and their contents shall not be inspected by, or produced before, any person or authority except under the orders of a competent court.**

Inspection of election papers mentioned in detail in Rule 93 (a) to (e) is not a matter of course. Inspection of those papers cannot be ordered and parties cannot be permitted to inspect the same for the purposes of making a roving enquiry in order to fish out the materials and to derive support for one's own case. A clear case is required to be made out for ordering the production and inspection of election papers by the parties. [Para 10] [753-E-G-H; 754-A-C]

2. It is true that the election petitioner adduced evidence on his behalf by examining seven witnesses. The trial judge observed that all the witnesses "have supported the allegation of double voting at more than one booth by relations and supporters of respondent no. 1. Some of the witnesses have specifically given the names of such voters whose names appear in voter's list at more than one place." That is all the discussion about the evidence and material available on record. Trial judge did not assign any reason whatsoever in support of his conclusion permitting the parties to inspect the registers of voters in Form 17A and allowed the application as a matter of course. Such laconic and unreasoned order which may have a serious bearing on the questions that arise for consideration in the main election petition which is still awaiting trial and disposal, cannot be sustained. [Para 11] [753-H; 754-A-C]

3. The grant or refusal of the prayer in the election petition to a large extent depends upon the decision as to whether parties have to be permitted to inspect the registers in Form 17A. It would be appropriate to decide the main election petition in order to finally resolve the lis between the parties. Hence, the application filed by the first respondent/election petitioner is remitted to trial court for the consideration of the trial court along with the election petition. [Paras 12 and 13] [754-F-G-H]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 719
of 2009.

From the Judgment & Order dated 15.09.08 of the High
Court of Judicature at Patna (Election Tribunal) in Election
B Petition No. 1/2006.

Vikas Singh, Yunus Malik, Ravi Kishore, Amrita Narayana,
M. Sarada for the Appellants.

C Ravi Shankar Prasad, Abhay Prakash, Himanshu Shekhar
for the Respondents.

The Judgment for the Court was delivered by

B. SUDERSHAN REDDY, J. 1. Leave granted.

D 2. This appeal is directed against the interlocutory order
dated 15.9.2008 passed in Election Petition No.1 of 2006 by
the High Court of Judicature at Patna (Election Tribunal)
wherein the High Court allowed the application filed by the
respondent under Rule 93 (1) (dd) of the Conduct of Election
E Rules, 1961 (hereinafter referred to as "the Rules"). The High
Court vide the impugned order permitted the parties to inspect
registers 17A; prepared under the said Rule.

3. Brief facts leading to this appeal may have to be noticed
F before we proceed to consider the validity and correctness of
the impugned order. The first respondent herein filed Election
Petition No.1 of 2006 challenging the election of the appellant
herein on various grounds. The case of the first respondent/
petitioner is that he was defeated in the elections held in the
G month of October-November, 2005 to the Bihar Legislative
Assembly from 172, Lakhisarai Assembly Constituency by a
narrow margin of 82 votes only on account of several
irregularities and illegalities alleged to have been committed
by the appellant and his election agent together with his workers
H

and supporters. The precise allegation, so far as we are concerned in the present appeal, relates to enrollment of voters in more than one place in the Assembly Constituency. It is alleged that the family members of the appellant are enrolled as voters from three places in the constituency and the appellant himself is enrolled as a voter in more than one place.

4. It is alleged that the election of the appellant may have to be declared void "on the solitary ground that there are large number of voters roughly about 600 were enrolled as voters from more than one place and majority of such voters have voted twice in favour of respondent no. 1. In this regard, it is curious to indicate that there are 250 persons of family of respondent no. 1 including the gotias (agantes) and co-villagers who were supporters of respondent no. 1 have voted twice from both the places in favour of respondent no. 1. Thus, 250 persons who are family members as well as agents and co-villagers and the supporters of respondent no. 1 and enrolled in more than two places in voter list in the same constituency and they have cast votes at both the places and as such 500 void votes have been counted in favour of respondent no. 1 and if such void votes are deleted by simple arithmetical calculations, respondent no. 1 has secured less number of votes than the petitioner and therefore on this ground alone the election of respondent no. 1 is not only fit to be set aside but on the other hand the election petitioner is entitled to declare election in place of respondent no. 1 by securing the majority votes than the respondent no. 1." The details of enrollment of some such voters stated to have been enrolled in more than one place in the said constituency are mentioned in annexure 4 to the election petition.

5. The appellant herein filed a detailed written statement inter alia denying the averments made and allegations levelled in the election petition.

6. In order to prove his case the respondent no. 1 herein adduced evidence on his behalf and the matter is coming up for the evidence of the appellant/respondent. It is at this stage

A the first respondent herein filed an application under Rule 93
(1) (dd) of the Rules seeking inspection of the packets
containing registers of voters in Form 17A; in the said
application it is stated that inspection of the registers of voters
in Form 17A is required for the purposes of substantiating the
B allegations of double voting by the relations and supporters of
the appellant.

7. The appellant herein in his objection resisting the prayer
for inspection of the registers inter alia submitted that
inspection of the said documents if permitted at this stage may
amount to making a roving enquiry in order to fish out the
C materials. Such inspection, if any, can be permitted only after
consideration of evidence of both the parties.

8. The learned trial judge after referring to the pleadings
D and decisions of this Court allowed the application and
accordingly permitted the parties to inspect the registers of
voters in Form 17A.

Hence, this appeal.

E 9. Shri Vikas Singh, learned senior counsel appearing on
behalf of the appellant submitted that the High Court has
committed a serious error in ordering inspection of Registers
of voters in Form 17A, which contains identity of voters and this
inspection at this stage may have a serious bearing on the trial
F of the election petition where the appellant is yet to lead
evidence. The learned senior counsel further submitted that
orders permitting inspection of any election paper mentioned
in Rule 93 of the said Rules cannot be granted as a matter of
course unless a cast iron is made out for such inspection. It was
G further submitted that secrecy of ballot is an important
consideration that should always weigh with the Court. Learned
senior counsel submitted that the evidence made available by
the first respondent is not sufficient for ordering any such
inspection. Lastly, it was contended that the learned trial judge
H ordered the application without recording any reason

whatsoever and therefore the impugned order is liable to be set aside on that ground alone. Shri Ravi Shankar Prasad, learned senior counsel relying on the pleadings in the election petition and as well as the evidence submitted that the respondent/election petitioner made out a clear case for ordering inspection of the said registers. Learned senior counsel also contended that registers of voters in Form 17A do not enjoy the same immunity as that of other papers mentioned in (a) to (d) and (e) of Rule 93 of said Rules. It was further submitted that purity of elections is equally an important consideration that has to be borne in mind and the courts are required to balance both the principles namely secrecy of ballot and the purity of elections. Shri Prasad made an attempt to contend that no detailed reasons as such are required to be recorded by the learned trial judge for the purpose of disposal of the interlocutory application.

We have carefully considered the rival submissions and perused the material available on record.

10. Rule 93 of the said Rules mandates that election papers mentioned in the said Rule shall not be opened and their contents shall not be inspected by, or produced before, any person or authority except under the orders of a competent court. It is fairly well-settled and needs no restatement at our hands that inspection of election papers mentioned in detail in Rule 93 (a) to (e) is not a matter of course. Inspection of those papers cannot be ordered and parties cannot be permitted to inspect the same for the purposes of making a roving enquiry in order to fish out the materials and to derive support one's own case. It is equally well settled that a clear case is required to be made out for ordering the production and inspection of election papers by the parties.

11. It is true that the election petitioner adduced evidence on his behalf by examining seven witnesses. The learned trial judge observed that all the witnesses "have supported the allegation of double voting at more than one booth by relations

A and supporters of respondent no. 1. Some of the witnesses
have specifically given the names of such voters whose names
appear in voter's list at more than one place." That is all the
discussion about the evidence and material available on
record. Learned trial judge did not assign any reason
B whatsoever in support of his conclusion permitting the parties
to inspect the registers of voters in Form 17A. The learned trial
judge allowed the application as a matter of course. We find it
very difficult to sustain such laconic and unreasoned order which
C may have a serious bearing on the questions that arise for
consideration in the main election petition which is still awaiting
trial and disposal.

12. We do not propose to minutely examine the nature of
evidence and express our opinion as to whether any case at
all is made out for permitting the parties to inspect the packets
D containing registers of voters in Form 17A; for such an exercise
on our part may cause unintended prejudice to either of the
parties in the main Election Petition which is still awaiting
adjudication. Be it noted the prayer in the Election Petition is
to set aside the election of the appellant and declare the
E respondent/election petitioner to have been duly elected from
172, Lakhisarai Assembly Constituency after scrutiny,
inspection and recounting of ballot papers. Similar is the prayer
in the application disposed of by the learned trial judge resulting
in passing of the impugned order. The grant or refusal of the
F prayer in the election petition to a large extent depends upon
the decision as to whether parties have to be permitted to
inspect the registers in Form 17A. It would be appropriate to
decide the main election petition in order to finally resolve the
lis between the parties.

G 13. For the aforesaid reasons, we set aside the impugned
order and remit the application filed by the first respondent/
election petitioner for the consideration of the trial court along
with the election petition. Interests of justice requires
expeditious disposal of the election petition since the same is
H

awaiting its adjudication ever since 2006. The appellant as well as the respondents assure the court that they shall not make any unreasonable request seeking postponement of the trial of the election petition. The appellant herein undertakes to lead his evidence and complete the same expeditiously.

14. We therefore request the learned trial judge to dispose of the election petition and as well as the application filed by the respondent/election petitioner within a period of four months from today. The learned trial Judge shall dispose of election petition and as well as application uninfluenced by any of the observations made in this order since we have not expressed any opinion whatsoever on the merits of the case.

15. Appeal is accordingly by allowed, with no order as to costs.

K.K.T.

Appeal allowed.