

**CIVIL WRIT JURISDICTION CASE No.7192 OF 2006**

**In the matter of an application under Article 226 of the  
Constitution of India.**

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**MEENA DEVI & ANR ----- Appellants**

**Versus**

**THE STATE OF BIHAR & ORS----- Respondents**

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**For the Petitioners: Mr.Ashutosh Ranjan Pandey and  
Mr. Anshuman, Advocates.**

**For State-Respondent : Mr. Manoj Kumar Singh  
JC to AAG-8.**

**For the Election Commission: Mr K.B. Nath with  
Mr. Sanjeev Nikesh, Advocates.**

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**P R E S E N T**

**THE HON'BLE MR. JUSTICE BARIN GHOSH**

**AND**

**THE HON'BLE MR. JUSTICE C.M.PRASAD**

**Barin Ghosh and  
C.M. Prasad, JJ.-**

**Heard learned counsel for the parties.**

**The subject matter of this writ petition on facts is identical to those of two writ petitions which having been allowed, appeals were preferred and the said appeals have been allowed. The said appeals were registered as LPAs No. 164/2008 & 165/2008 which have been disposed of by a Division Bench of this Court on 29<sup>th</sup> July, 2008 and, accordingly, in relation to the subject matter of the writ petition touching the facts culminating in filing of the writ petition are not separately dealt with but concluded on the reasons furnished by the Division Bench in its order passed on 29<sup>th</sup> July, 2008 in LPAs No. 164/2008 & 165/2008.**

**In the present writ petition in addition to what has been stated above, the writ petitioner challenged the vires of Rule**

**75(1)(g) of the Bihar Panchayat Election Rules, 2006. According to the petitioner, by seeking to require a voter to mark a ballot only by the seal to be provided by the Election Commission, as provided in Rule 75(1)(g) of the said Rules, the democratic set up, being the mandate of the Constitution, has been interfered with. On facts, it was contended that the seals provided for marking the ballots were so defective that in a few ballots although the seals reflected the correct images thereof but in remaining it did not and, in consequence thereof, if the ballots are rejected in terms of the said Rules, for the ballots did not contain the correct image of the seals while marking the same, the same will constitute preventing the voters from exercising their right of choosing their representative.**

**The submissions of the learned counsel for the petitioner, as above, would make it amply clear that the Rule is being challenged in view of alleged failure on the part of the Election Commission in supplying appropriate seal. For such failure on the part of the Election Commission, even if true, the Rule will not become bad. In a democracy in order to ascertain the wishes of the electorate, the standard practice is to obtain their wishes through the medium of ballots to be marked by the electorate through a device to be supplied by the Election Commission in order to ensure fairness in election. The same has only been provided or incorporated in Rule 75(1)(g) of the said Rules. If the**

Election Authority has failed to discharge their obligations in supplying such a tool to ensure marking of ballots in the same fashion, it is a failure on the part of the Election Authority to discharge their obligations in terms of the said Rule but that would not make the Rule bad, which is founded on the age old policy, as depicted above. Failure on the part of the Election Commission in discharging its statutory obligation of holding a free and fair election is an election dispute and can be sorted out through the Election Tribunal.

In the circumstances, we find no reason to declare the said Rule ultra vires, as has been prayed for in the writ petition and, accordingly, the writ petition is dismissed without any order as to costs.

( Barin Ghosh, J. )

( Chandra Mohan Prasad, J. )

Patna High Court.  
The 31<sup>st</sup> July, 2008.  
NAFR  
DK