

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.745 of 2015

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Tara Jawi Daudi, wife of Asfar Eqbal Daudi, resident of village- Daud Nagar, P.O. Baluka Ram, P.S. Vaishali, District - Vaishali at Hajipur.

.... Petitioner/s

Versus

1. The State Election Commission (Panchayat), through the State Election Commissioner, Sone Bhawan, Birchand Patel Path, Patna.
2. The State Election Commissioner, the State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
3. The District Election Officer, Vaishali at Hajipur, District- Vaishali at Hajipur.
4. The Returning Officer (Panchayat), Vaishali Block, District Vaishali at Hajipur.
5. Sunita Devi, wife of Arun Kumar Sah, resident of village- Nawada, P.O. Daud Nagar, P.S. Vaishali, District - Vaishali at Hajipur.
6. Krishna Kumari Sinha, wife of Kapil Deo Prasad, resident of village & P.O. Daud Nagar, P.S. Vaishali, District Vaishali at Hajipur.
7. Priyadarshini Kumari, wife of Mritunjay Kumar, resident of village - Nawada, P.O. Daud Nagar, P.S. Vaishali, District - Vaishali at Hajipur.
8. Mamta Devi, Wife of Anil Kumar, resident of village - Nawada, P.O. Daud Nagar, P.S. Vaishali, District - Vaishali at Hajipur.
9. Waheeda Praveen, wife of Zulfikar Ali Haider, Resident of village - Nawada, P.O. Daud Nagar, P.S. Vaishali, District - Vaishali at Hajipur.
10. Samila Khatoon, wife of Samsul, resident of village - Parmanandpur, P.O. Daud Nagar, P.S. Vaishali, District - Vaishali at Hajipur.

.... Respondent/s

With

Civil Writ Jurisdiction Case No.1891 of 2015

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Sunita Devi, wife of Arun Kumar Sah, resident of Village- Nawada, P.O. - Daud Nagar, P.S- Vaishali, District- Vaishali at Hajipur.

.... Petitioner/s

Versus

1. The State Election Commission (Panchayat), Patel Path, Patna, through the State Election Commissioner, Sone Bhawan, Birchand Patel Path, Patna.
2. The District Election Officer, Vaishali at Hajipur.
3. The Returning (Panchayat), Vaishali Block, Vaishali at Hajipur.
4. Tara Jawi Daudi, wife of Astar Eqbal Daudi, resident of Village- Daud Nagar, P.O- Baluka Ram, P.S- Vaishali, District- Vaishali at Hajipur.

.... Respondent/s

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Appearance :

(In CWJC No.745 of 2015)

For the Petitioner/s	:	Mr. S.B.K. Manglam Mr. Chandan Ms. Kumari Ranjana Bharti
For the Respondent-SEC	:	Mr. Amit Shrivastava Mr. Girish Pandey

(In CWJC No.1891 of 2015)

For the Petitioner/s : Dr. Uma Shankar Pd., Sr. Adv. with
Ms.Aparna Bharti
Mr. Lalbabu Keshari
For the Respondent-SEC : Mr. Amit Shrivastava
Mr. Girish Pandey

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL ORDER

7 03-09-2015

Since both the matters arise out of the same proceedings hence with the consent of the parties they have been heard together and are being disposed of by this common order.

Heard Mr. S.B.K. Manglam, learned counsel appearing for the petitioner in CWJC No.745 of 2015 and Dr. Uma Shankar Prasad, learned senior counsel appearing for the petitioner in CWJC No.1891 of 2015.

The petitioners in the two writ petitions are contestants of the post of Mukhiya, Gram Panchayat, Daud Nagar in the district of Vaishali in the election held in the year 2011. The petitioner in CWJC No.745 of 2015 had earlier moved this Court in CWJC No.13953 of 2013 challenging the order whereby the election petition preferred by the said petitioner bearing Election Petition No.14 of 2011/14 of 2013 had been dismissed alleging illegalities in the counting of ballots by the Returning Officer. The writ petition was allowed by the order dated 18.4.2014. The judgment and order of the Election Tribunal –cum- 2nd Munsif, Vaishali at Hajipur in Election

Petition No.14 of 2011/14 of 2013 was set aside and the matter was remitted to the Election Tribunal to recount the votes polled and pass appropriate orders.

The private respondent no.5 who is petitioner in the other writ petition being aggrieved by the order of the Writ Court preferred a Letters Patent Appeal giving rise to LPA no.712 of 2014 and which was dismissed vide order passed on 23.9.2014. Pursuant to the order of this Court the recount took place and the result is impugned in the two writ petitions whereunder each of the two candidates were found to have secured equal number of valid votes at 1073. Both the writ petitioners are again complaining of irregularities in the recounting and each has their own reasons for the same.

Whereas it is contended by Mr. Manglam, learned counsel appearing for the petitioner in CWJC No.745 of 2015 with reference to the recount at Booth no.92 available at page 107 of the pleadings in CWJC No.745 of 2015 that two votes of the private respondents even after being found invalid were yet recounted, Mr. Prasad, learned senior counsel appearing for the private respondent no.5 in the first writ petition and the writ petitioner in the second writ petition has defended the action but yet questions the decision on grounds that one vote of the private

respondent was incorrectly reduced to bring her at par with the writ petitioner in CWJC No.745 of 2015.

I have heard learned counsel for the parties and perused the records. I have found no illegalities in the exercise taken by the Election Tribunal requiring interference except that he had not taken the proceedings to its logical conclusion.

Although objection was raised by Mr. Manglam regarding recount at booth no.92 with reference to Page no.107 of the pleadings in CWJC No.745 of 2015 which in fact draws in favour of the private respondent inasmuch as the two votes of the private respondent which according to Mr. Manglam were held invalid is not a correct position rather the Presiding Officer having noticed the complaint and the objection did not find it sufficient enough to declare it invalid and I shall go with the opinion of the Presiding Officer for it reflects no arbitrariness. The impugned order is well discussed and has taken note of the recount at each booth regarding which complaint was made, to declare the two contestants at par. The only mistake that the Election Tribunal has done is to stop the process one stage earlier. The Election Tribunal having found that both the writ petitioners herein had secured equal number of votes he had to look for an answer under the provisions of the Bihar Panchayat



Raj Act, 2006 (hereinafter referred to as ‘the Act’) as well as the Bihar Panchayat Election Rules, 2006 (hereinafter referred to as ‘the Rules’) to resolve the deadlock but I find that he has abdicated his responsibility and instead of giving a finding on the contest he has asked the District Magistrate and the District Election Officer, Vaishali to proceed in accordance with law. In my opinion the Election Tribunal has not completed the exercise in its entirety for once the contestants were found to have secured equality number of votes at 1073 each, the Election Tribunal should have proceeded to declare the result by taking recourse to the procedure available under Rule 80 of ‘the Rules’ which runs as follows:

“80. Equality of votes:- If after the completion of the counting of votes two or more candidates secure equal number of votes which may be the maximum, the Returning Officer shall draw a lot among such candidates and the candidate in whose favour the lot is drawn, shall deemed to be that he/she has secured an additional vote and the Returning Officer will declare the result of the counting of votes accordingly.”

Although the statutory provisions relates to the stage where the matter is pending before the Returning Officer but considering that in the present case the recount has been undertaken by the Election Tribunal under the orders of this Court, the equality in votes would also have to be resolved by

recourse to the statutory provisions of Rule 80 of 'the Rules' which as well would be applicable in the present situation.

In the circumstances, the two writ petitions are disposed of with a direction to the 2nd Munsif –cum- Election Tribunal, Vaishali at Hajipur to take the Election Petition No.14 of 2011/14 of 2013 to its logical conclusion and complete the exercise by taking recourse to the provisions of Rule-80 of 'the Rules' and declare the result accordingly in accordance with law and in presence of the contesting parties within two weeks from the date of receipt/production of a copy of this order.

(Jyoti Saran, J)

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