

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9627 of 2016

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1. Siya Devi, wife of Shri Binod Paswan, resident of village-Raghunathpur, P.S. Turkauliya, District-East Champaran
 2. Kiran Devi, wife of Shri Bali Manjhi, resident of village-Raghunathpur Bhalua, P.S.-Turkauliya, District-East Champaran

.... Petitioner/s

Versus

1. The State of Bihar
2. The State Election Commission, Sone Bhawan, Patna
3. The District Magistrate, East Champaran, Motihari, District Returning Officer
4. The Block Development Officer cum Returning Officer, Turkauliya, Panchayat Samiti 2016 Election

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 9476 of 2016

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1. Santosh Sah, son of Shri Shambhu Sha, resident of village-Raghunathpur, P.S. Turkaulia, District-East Champaran
2. Shaym Kishore Chaudhary, son of Ram Chaudhary, resident of village-Raghunathpur Bhalua, P.S.-Turkauliya, District-East Champaran

.... Petitioner/s

Versus

1. The State of Bihar through Secretary Election Commission Bihar, Patna
2. The State Election Commission, Sone Bhawan, Patna
3. The District Magistrate, East Champaran, Motihari, District-Retuning Officer
4. The Block Development Officer cum Returning Officer, Turkauliya, Panchayat Samiti, 2016 Election

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 9849 of 2016

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1. Tauhid Alam son of Anwar Ali resident of Village- Kalyanpur, P.S. Kalyanpur, District East Champaran
2. Sanjeev Pandey son of Kashi Nath Pandey resident of Village- Kalyanpur, P.S. Kalyanpur, District East Champaran

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Panchayat Raj, Government of Bihar, Patna.
2. State Election Commissioner, Bihar, Patna.

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3. State Election Commissioner, State Election Commission, Bihar, Patna.
 4. District Election Officer (Panchayat)-cum- District Magistrate, East Champaran, at Motihari
 5. District Panchayati Raj Officer, East Champaran at Motihari
 6. Returning Officer-cum-Block Development Officer, Kalyanpur, District- East Champaran.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 9944 of 2016

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1. Rita Devi, wife of Vijay Kumar Singh, resident of Village: Kalyanpur Tola Alaula, P.S: Kalyanpur, District: East Champaran, Motihari.
2. Urmila Devi, wife of Sanjay Kumar Singh, resident of Village: Kalyanpur Tola Tulsipatti, P.S: Kalyanpur, District: East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Panchayat Raj, Government of Bihar, Patna.
2. State Election Commission, Bihar, Patna
3. State Election Commissioner, State Election Commission, Bihar, Patna.
4. District Election Officer (Panchayat)-cum-District Magistrate, East Champaran, at Motihari.
5. District Panchayati Raj Officer, East Champaran, at Motihari.
6. Returning Officer-cum-Block Development Officer, Kalyanpur, District: East Champaran.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 9210 of 2016

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Veena Devi, wife of Sri Chandra Shekhar Jha, resident of village-Hardwar, Block-Ghanshyampur, P.S.-Ghanshaympur, P.S. Ghanshyampur, District-Darbahnga

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayat Raj, Department, Government of Bihar, Vikas Bhawan, New Secretariat, Patna, Bihar
2. The Secretary, State Election Commission, Bihar, Patna
3. The District Magistrate cum District Election Officer (Panchayat), Darbhanga
4. The Block Development Officer cum Block Election Officer (Panchayat), Ghanshyampur Block, Darbhanga
5. The District Panchayati Rja Officer, Darbhanga

6. Hashan Imam, S/o Mazid Rahman, resident of village-Brahmpura, P.O. Brahmpura Maswasi, P.S. Ghanshyampur, District-Darbhangha

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 9848 of 2016

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Durga Nand Jha Son of Late Brajeshwar Jha, resident of Village- Gonaun, Police Station- Ghanshyampur, District- Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Panchayat Raj, Government of Bihar, Patna.
2. The State Election Commission, Bihar, Patna through its Secretary.
3. The Secretary, Bihar State Election Commission, Patna.
4. The District Election Officer (Panchayat)-cum-District Officer, Darbhanga.
5. The Election Officer-cum-Block Development Officer, Ghanshyampur Block, District- Darbhanga.
6. The Sub Divisional Officer, Biraul, District- Darbhanga.
7. The District Panchayat Raj Officer, Darbhanga.

.... Respondent/s

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Appearance:

(In CWJC No.9627 of 2016)

For the Petitioner/s	:	Mr. Yogesh Chandra Verma, Sr. Advocate Mr. Anuj Kumar, Advocate
For the Respondent/s	:	Mr. Gautam Bose- AAG-8
For the State E.C.	:	Mr. Amit Shrivastava, Sr. Advocate Mr. Sanjeev Nikesh, Advocate

(In CWJC No.9476 of 2016)

For the Petitioner/s	:	Mr. Yogesh Chandra Verma, Sr. Advocate Mr. Anuj Kumar, Advocate
For the Respondent/s	:	Mr. Gautam Bose- AAG-8
For the State E.C.	:	Mr. Amit Shrivastava, Sr. Advocate Mr. Sanjeev Nikesh, Advocate

(In CWJC No.9849 of 2016)

For the Petitioner/s	:	Mr. Raghwanand, Advocate
For the Respondent/s	:	Mr. Nasim Yahya, GP-13
For the State E.C.	:	Mr. Amit Shrivastava, Sr. Advocate Mr. Sanjeev Nikesh, Advocate

(In CWJC No.9944 of 2016)

For the Petitioner/s	:	Mr. Raghwanand, Advocate
For the Respondent/s	:	Mr. Anjani Kumar, AAG-6



For the State E.C. : Mr. Amit Shrivastava, Sr. Advocate
Mr. Sanjeev Nikesh, Advocate

(In CWJC No.9210 of 2016)

For the Petitioner/s : Mr. Ambuj Nayan Chaubey, Advocate
For the Respondent/s : Mr. Ashok Kumar Kesari, AAG-11
For the State E.C. : Mr. Amit Shrivastava, Sr. Advocate
Mr. Sanjeev Nikesh, Advocate

(In CWJC No.9848 of 2016)

For the Petitioner/s : Mr. Abhay Kumar Thakur, Advocate
For the Respondent/s : Mr. Manindra Kishore Singh, SC-6
For the State E.C. : Mr. Amit Shrivastava, Sr. Advocate
Mr. Sanjeev Nikesh, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 30-06-2016

In each of the six writ petitions the petitioners are aggrieved by the alteration in the constitution of the respective constituencies as also by the decision of the State Election Commission to countermand the election and to direct for fresh polling.

The petitioner in CWJC No. 9627 of 2016 is aggrieved by the decision of the State Election Commission to countermand the election held in the Territorial Constituency No. 16 (South) of the Turkaulia Panchayat Samiti *inter alia* on grounds that Ward No. 8 was wrongly included in the publication made under Rule 8(1) read with Rule 8(4) of the Bihar Panchayat Election Rules, 2006 (hereinafter referred to as the 'Rule') framed under Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act') showing the said

ward against territorial constituency no. 15 when in fact it fell in territorial constituency no. 16.

The petitioner in CWJC No. 9476 of 2016 for the same reasons question the countermand and re-election to the Territorial Constituency No. 15 (North) Turkaulia Panchayat Samiti. The decision of the State Election Commission dated 25.5.2016 is placed at Annexure-R/2 to the counter affidavit filed in the proceedings and whereunder the fresh elections are to take place tomorrow i.e. **01.07.2016**.

The petitioner in CWJC No. 9849 of 2016 is aggrieved by the decision of the State Election Commission to hold fresh elections in Panchayat Samiti, Kalyanpur, Territorial Constituency no. 11 on similar grounds. It is the stand of the State Election Commission that due to inadvertent error the constitution of Territorial Constituency no. 11 as notified in the publication issued under Rule 8(1) and 8(4) of 'the Rules', was shown to consist of ward no. 9 to 16 when in fact it should be ward no. 7 to 13. The other writ petition bearing CWJC No. 9944 of 2016 questions the same exercise in relation to Territorial Constituency no. 10 of the said Panchayat Samiti.

CWJC No. 9210 of 2016 has been filed by the petitioner being aggrieved by a similar decision of the State Election



Commission to go for fresh elections while countermanding the election held *inter alia* on grounds that ward no. 7 of territorial constituency no. 9 under Panchayat Samiti Brahampur, District-Darbhanga was illegally included in Territorial Constituency no. 10 when in fact it should have remained with Territorial Constituency no. 9.

Insofar CWJC No. 9848 of 2016 is concerned, the petitioner is aggrieved by the decision of the State Election Commission to go for fresh election insofar as territorial constituency no. 6, 9, 10, 15 and 16 under Panchayat Samiti Ghanshyampur, District-Darbhanga is concerned *inter alia* on grounds of alteration of the areas of the constituency concerned.

Counter affidavits have been filed by the Election Commission in each of the cases and the stand of the Commission is that while in the rest of the writ petitions it is due to inadvertent error that some of the wards got included in different Territorial Constituency and thus area of the Territorial Constituencies was required to be put in order which though did not affect the reservation roster but yet required a fresh exercise, insofar as CWJC No. 9848 of 2016 is concerned, the alteration in the area and the exercise undertaken to correct the same has also resulted in change in the reservation roster.



Exhaustive arguments were advanced by Mr. Yogesh Chandra Verma, learned senior counsel appearing for the petitioner in CWJC No. 9627 of 2016 and CWJC No. 9476 of 2016, Mr. Raghawanand in CWJC No. 9849 of 2016 and CWJC No. 9944 of 2016, Mr. Ambuj Nayan Chaubey in CWJC No. 9210 of 2016 and Mr. Abhay Kumar Thakur in CWJC No. 9848 of 2016 questioning the decision of the Commission to go in for fresh exercise *inter alia* on grounds that the Bihar Panchayat Raj Act, 2006 and the Bihar Panchayat Election Rules, 2006 framed thereunder did not vest any such jurisdiction in the Commission to interfere with an election already held and although the power is there to countermand but it is only within the parameters set forth in the Election Rules underlying Rule 50, 70 and 71 of the Rules.

It is the submission of learned counsel for the petitioner(s) that in the present case since it is on account of mere inclusion of wards in different Territorial Constituency for which no protest was made by any voter, this error cannot be a ground for countermanding the election and the decision of the Election Commission to hold fresh election is illegal and contrary to the express provisions underlying the Act and the Rules framed thereunder. Another argument which is advanced by Mr. Raghawanand is that although fresh exercise is being undertaken by



the Commission on grounds that the wards in a particular territorial constituency due to inadvertent action of the Commission got added incorrectly in other territorial constituency and which requires a fresh notification in Form-1 under Rule 8(1) & 8(4) of the Rules by notifying the Territorial Constituency in its modified form but even while exercising such powers the Commission has failed to invite objections as mandated under Rule 8(2) of 'the Rules'. It is submitted that the publication under Rule 8(1) is not an empty formality rather a draft notification has to be published in the Panchayat concerned in the manner provided inviting objections which is to be filed within 14 days of the publication of the draft publication and which is to be disposed of by the District Magistrate. It is argued that it is only when this exercise is complete that the District Magistrate is required to finally publish the final publication in Form-1 which is to be published in the office of the Gram Panchayat and the Block insofar as the Gram Panchayat and Panchayat Samiti are concerned and in the office of the Block, the Sub Divisional Magistrate and the District Magistrate in the case of Zila Parishad. It is submitted that the obligation does not stop here rather the same also has to be published in the District Gazette as mandated in Rule 8(4) of 'the Rules'. It is the argument of Mr. Raghawanand that this exercise remains incomplete.

Mr. Sanjeev Nikesh on seeking oral instruction from the Commission admits to these irregularities.

The arguments advanced by learned counsel questioning the power of the Commission to countermand an election and to hold fresh elections is only taken to be rejected in view of the statutory prescription underlying Rule 50, 70 and 71 of 'the Rules'

I am unable to uphold the arguments advanced by the learned counsel for the petitioners questioning the jurisdiction of the Commission to countermand an election in view of the statutory prescriptions present as well as the circumstances accompanying such exercise. The nature of the irregularities which has occurred in the present case where the area of the territorial constituency so notified earlier was undisputedly not correct, such illegality went to the root of the matter and had to be removed by the Commission even if it required a countermand of the elections held. In fact in the admitted circumstances existing where the area of the territorial constituency in question suffered illegality, any interference with the steps taken by the Commission to correct the error and to direct them to continue with the illegal constitution of the territorial constituency as argued, would be perpetuating an illegality.

The supervisory power vested in the Commission to regulate elections is well discussed in 'the Act' and it is the duty of



the Commission to ensure that the elections are held in observance of the statutory requirements and the first step towards which is the correct notification of the territorial constituency. In the present case, there is an error in the publication of the territorial constituency itself which is the foundation and in fact a gateway to holding an election. It is this error which is sought to be corrected by the Commission and which exercise is supported by the statutory provisions.

In my opinion, Rule 71 of the Rules provides ample power in the Commission to countermand the poll and hold fresh elections for any 'sufficient cause' and the cause discussed hereinabove cannot be more appropriate. The arguments advanced are thus rejected on this issue.

The conclusion above does not end the problems for the commission in view of the apparent discrepancy which has occurred in the exercise so undertaken by them as admitted by learned counsel appearing on their behalf regarding non publication of the modified territorial electoral constituencies in question in the manner prescribed in Rule 8 of 'the Rules'. The lapse is admitted and in view of the mandate present, I am unable to uphold the decision of the Commission to hold the elections to the constituency in question tomorrow i.e. **01.07.2016** for until such time that the corrected Form-1 in respect of the territorial constituency in question are published in

the manner provided under Rule 8 of the Rules, objections invited and disposed of by the District Magistrate and the publication is finally made under Rule 8(4) in the manner provided, the Commission cannot go ahead with the Election.

Let the Commission move afresh for holding the elections in question but in accordance with law and after completion of legal formalities.

Since the election is stated to be held tomorrow i.e. 01.7.2016 and the Commission is represented by Mr. Amit Shrivastava as well as Mr. Sanjeev Nikesh they would appropriately instruct the Commission today itself.

The writ petitions are allowed.

(Jyoti Saran, J)

S.Sb/-

NAFR	
CAV DATE	
Uploading Date	09.07.2016
Transmission Date	