

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.2445 of 2016**

1. Braj Kishore Upadhyay, Son of late Laxman Upadhya, Resident of Village and Post Office and Gram Panchayat- Ahirauli, Police station -Buxar (Industrial Area), Block Buxar and District Buxar.
2. Radhika Devi, Wife of Guru Dayal Singh, Resident of Village - Maliaundha, Gram Panchayat- Unwad, Post Office, Block and Police Station- Itarhi, district Buxar..

.... .... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Panchayati Raj, Government of Bihar, Patna.
2. The State Election Commission through its Secretary, Son Bhawan, Bir Chand Patel Path, Patna.
3. The District Magistrate Buxar -cum- District Election Officer (Panchayat), Buxar.
4. The District Panchayat Officer, Buxar.
5. The Block Development Officer, Buxar, District- Buxar.
6. The Block Development Officer Itarhi, District Buxar.

.... .... Respondent/s

With

**Civil Writ Jurisdiction Case No. 3480 of 2016**

Sukhram Mahto, son of Sri Ram Sagar Mahto, resident of village- Barhara, P.O.- Amba, Gram Panchayat- Genharpur, P.S. and Block- Birpur, District- Begusarai.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Panchayati Raj, Government of Bihar, Patna.
2. The State Election Commission through its Secretary, Son Bhawan, Bir Chand Patel Path, Patna.
3. The District Magistrate, Buxar -cum- District Election Officer, Begusarai.
4. The District Panchayat Officer, Begusarai.
5. The Block Development Officer, Birpur, District- Begusarai.

.... .... Respondent/s

With

**Civil Writ Jurisdiction Case No. 3229 of 2016**

Baldeo Manjhi, Son of Late Moti Manjhi, resident of village, Post Office and Gram Panchayat - Gabbey, Police Station and Block - Sheikhpora, District – Sheikhpora.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Panchayati Raj, Government of Bihar, Patna.

2. The State Election Commission through its Secretary, Sone Bhawan, Birchand Patel Path, Patna
3. The District Magistrate Sheikhpura -cum- District Election Officer (Panchayat), Sheikhpura.
4. The District Panchayat Officer, Sheikhpura.
5. The Block Development Officer, Gabbey, District – Sheikhpura.

.... .... Respondent/s

With

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**Civil Writ Jurisdiction Case No. 3761 of 2016**

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1. Md. Qamruzzama Kuraisi, Son of Late Md. Taslim Kuraisi,
2. Md. Jamshed Kuraisi, Son of Late Lallu Kuraisi.

Both are residents of Village- Gouri, P.S. - Nanpur, District- Sitamarhi.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Special Secretary, Panchayati Raj Department, Bihar, Patna.
2. Bihar State Election Authority, Sone Bhawan, 3rd Floor, Birchand Patel Marg, Patna- 800001 through the Secretary.
3. Chief Election Officer, Bihar State Election Authority, Sone Bhawan, 3rd Floor Birchand Patel Marg, Patna- 800001.
4. Deputy Secretary, State Election Commission, Bihar, Patna.
5. District Magistrate -cum- District Election Officer (Panchayat), District- Sitamarhi.
6. Block Development Officer -cum- Returning Officer (Panchayat), Nanpur, District- Sitamarhi..
7. Goura Gram Panchayat, Nanpur, District- Sitamarhi through its Mukhiya.
8. Gouri Gram Panchayat, Nanpur, District- Sitamarhi through its Mukhiya.

.... .... Respondent/s

With

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**Civil Writ Jurisdiction Case No. 4013 of 2016**

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Lakhindra Prasad Singh, S/o Late Ram Pyare Singh, Resident of Village- Baksama, P.S. - Goraul, District - Vaishali.

.... .... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Vaishali at Hajipur.
2. The District Magistrate -cum- District Returning Officer (Panchayat), Vaishali at Hajipur.
3. The District Panchayat Raj Officer, Vaishali at Hajipur.
4. The Block Development Officer, Baksama, Vaishali at Hajipur.
5. The State Election Commission, Bihar, Patna through the Chief Election Commissioner.
6. The Secretary, State Election Commission, Bihar, Patna.

.... .... Respondent/s

with

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**Civil Writ Jurisdiction Case No. 3753 of 2016**

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Sunil Kumar, Son of Late Kishori Mandal, resident of Village- Balia Simar, Block-Mehsi, P.S.- Mehsi (Jale), District- Saharsa.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
3. The State Election Commission, Bihar through its Secretary.
4. The District Magistrate -cum- District Election Officer (Panchayat), Saharsa.
5. The District Panchayat Officer, Saharsa.
6. The Block Development Officer, Mehsi.

.... .... Respondent/s

With

**Civil Writ Jurisdiction Case No. 2683 of 2016**

=====

Sanjay Singh, S/o Sri Mahendra Singh, resident of village- Champachak, P.S.- Sangrampur (Tetia Bumber), District- Munger.

.... .... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Munger.
2. The District Magistrate -cum- District Returning Officer (Panchayat), Munger.
3. The District Panchayat Raj Officer, Munger.
4. The Block Development Officer, Tetia Bumber, P.S.- Sangrampur (Tetia Bumber), District-Munger.
5. The State Election Commission, Bihar, Patna through the Chief Election Commissioner.
6. The Secretary, State Election Commission, Bihar, Patna.

.... .... Respondent/s

With

**Civil Writ Jurisdiction Case No. 2733 of 2016**

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Dharmendra Kumar Singh, S/o Sri Ranjeet Prasad Singh, Resident of Village- Manjura (Within Gram Panchayat Raj Bhuna) P.S Sangrampur (Tetia Bumber) District Munger.

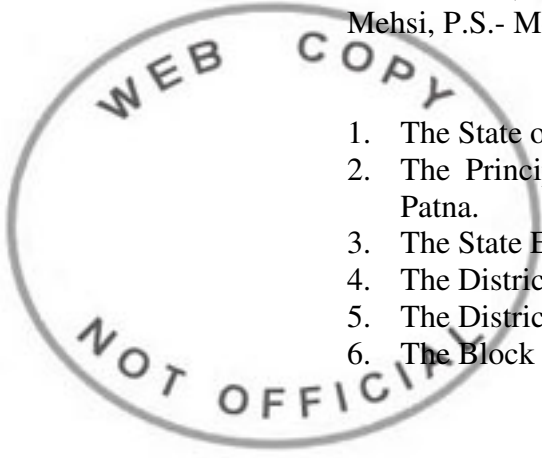
.... .... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Munger.
2. The District Magistrate -cum- District Returning Officer (Panchayat), Munger.
3. The District Panchayat Raj Officer, Munger.
4. The Block Development Officer, Tetia Bumber, P.S Sangrampur (Tetia Bumber), District- Munger.
5. The State Election Commission, Bihar Patna through the Chief Election Commissioner.
6. The Secretary, State Election Commission, Bihar, Patna.

.... .... Respondent/s

With



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**Civil Writ Jurisdiction Case No. 2902 of 2016**

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Jai Prakash Singh, S/o Sri Subodh Narayan Singh, resident of village - Chandaniya,  
P.S. - Sangrampur, District - Munger.

.... .... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Munger.
2. The District Magistrate -cum- District Returning Officer (Panchayat), Munger.
3. The District Panchayat Raj Officer, Munger.
4. The Block Development Officer, Sangrampur, P.S. Sangrampur, District-  
Munger.
5. The State Election Commission, Bihar, Patna through the Chief Election  
Commissioner.
6. The Secretary, State Election Commission, Bihar, Patna.

.... .... Respondent/s

With

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**Civil Writ Jurisdiction Case No. 2927 of 2016**

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Krishna Kumar, S/o Late Genda Paswan, resident of village - Dadri Jala, P.S.  
Sangrampur, District – Munger.

.... .... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Munger.
2. The District Magistrate cum District Returning Officer (Panchayat), Munger.
3. The District Panchayat Raj Officer, Munger.
4. The Block Development Officer, Sangrampur, P.S. Sangrampur, District-  
Munger.
5. The State Election Commission, Bihar, Patna through the Chief Election  
Commissioner.
6. The Secretary, State Election Commission, Bihar, Patna.

.... .... Respondent/s

With

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**Civil Writ Jurisdiction Case No. 4584 of 2016**

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Ravi Shankar Kumar Akela, Son of Sri Kameshwar Prasad, resident of village-  
Karpi, P.O.- Takya Karpi, Panchayat- Jamuawa, Block- Khizersarai, P.S.- Mahkar  
(Khizersarai), District- Gaya.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Panchayat Raj Department, Government of Bihar,  
Patna.
3. The State Election Commission, Bihar through its Chairman.
4. The Secretary, State Election Commission, Bihar.
5. The District Magistrate cum District Election Officer (Panchayat), Gaya.
6. The District Panchayat Raj Officer, Gaya.

7. The Block Development Officer, Khizersarai, Gaya.

.... .... Respondent/s

**Appearance :**

**(In CWJC No. 2445 of 2016)**

|                          |   |                                         |
|--------------------------|---|-----------------------------------------|
| For the Petitioner/s     | : | Mr. Sumit Kumar                         |
| For the Respondent-State | : | Mr. Amar Nath Deo, SC-26                |
| For the Respondent-SEC   | : | Mr. Sanjeev Nikesh<br>Mr. Girish Pandey |

**(In CWJC No. 3480 of 2016)**

|                          |   |                                         |
|--------------------------|---|-----------------------------------------|
| For the Petitioner/s     | : | Mr. Jitendra Kumar Roy                  |
| For the Respondent-State | : | Mr. Prasoon Sinha, GA- 2                |
| For the Respondent-SEC   | : | Mr. Sanjeev Nikesh<br>Mr. Girish Pandey |

**(In CWJC No. 3229 of 2016)**

|                          |   |                                         |
|--------------------------|---|-----------------------------------------|
| For the Petitioner/s     | : | Mr. Jitendra Kumar Roy                  |
| For the Respondent-State | : | Mr. U.S.S.Singh, GP-1                   |
| For the Respondent-SEC   | : | Mr. Sanjeev Nikesh<br>Mr. Girish Pandey |

**(In CWJC No. 3761 of 2016)**

|                          |   |                                           |
|--------------------------|---|-------------------------------------------|
| For the Petitioner/s     | : | Mr. Yogendra Mishra<br>Mr. Alok Kumar Jha |
| For the Respondent-State | : | Mr. R.R.K. Pandey, SC-29                  |
| For the Respondent-SEC   | : | Mr. Sanjeev Nikesh<br>Mr. Girish Pandey   |

**(In CWJC No. 4013 of 2016)**

|                          |   |                                         |
|--------------------------|---|-----------------------------------------|
| For the Petitioner/s     | : | Mr. Mukund Mohan Jha                    |
| For the Respondent-State | : | Mr. Md. Raisul Haque, SC-4              |
| For the Respondent-SEC   | : | Mr. Sanjeev Nikesh<br>Mr. Girish Pandey |

**(In CWJC No. 3753 of 2016)**

|                        |   |                                         |
|------------------------|---|-----------------------------------------|
| For the Petitioner/s   | : | Mr. Krishna Kant Singh                  |
| For the Respondent/s   | : | Mr. Yogendra Pd. Sinha, AAG-15          |
| For the Respondent-SEC | : | Mr. Sanjeev Nikesh<br>Mr. Girish Pandey |

**(In CWJC No. 2683 of 2016)**

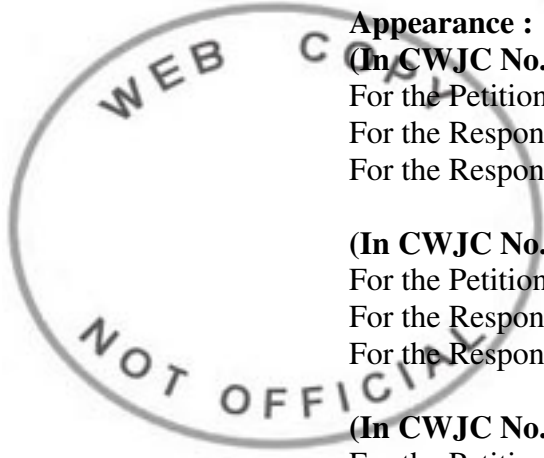
|                          |   |                                              |
|--------------------------|---|----------------------------------------------|
| For the Petitioner/s     | : | Mr. Subodh Kumar Jha<br>Mr. Pranav Kumar Jha |
| For the Respondent-State | : | Smt. Binita Singh, GP-31                     |
| For the Respondent-SEC   | : | Mr. Sanjeev Nikesh<br>Mr. Girish Pandey      |

**(In CWJC No. 2733 of 2016)**

|                          |   |                                              |
|--------------------------|---|----------------------------------------------|
| For the Petitioner/s     | : | Mr. Subodh Kumar Jha<br>Mr. Pranav Kumar Jha |
| For the Respondent-State | : | Mr. Kumar Priya Ranjan, SC-23                |
| For the Respondent-SEC   | : | Mr. Sanjeev Nikesh<br>Mr. Girish Pandey      |

**(In CWJC No. 2902 of 2016)**

|                          |   |                                              |
|--------------------------|---|----------------------------------------------|
| For the Petitioner/s     | : | Mr. Subodh Kumar Jha<br>Mr. Pranav Kumar Jha |
| For the Respondent-State | : | Mr. Kumar Alok, SC-8                         |
| For the Respondent-SEC   | : | Mr. Sanjeev Nikesh                           |



Mr. Girish Pandey

**(In CWJC No. 2927 of 2016)**

For the Petitioner/s : Mr. Subodh Kumar Jha  
Mr. Pranav Kumar Jha

For the Respondent-State : Mr. Raju Giri, GP-30

For the Respondent-SEC : Mr. Sanjeev Nikesh  
Mr. Girish Pandey

**(In CWJC No. 4584 of 2016)**

For the Petitioner/s : Mr. Krishna Kant Singh

For the Respondent-State : Mr. Arvind Ujjwal, SC-25

For the Respondent-SEC : Mr. Sanjeev Nikesh  
Mr. Girish Pandey

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**ORAL JUDGMENT**

**Date: 18-03-2016**

In each of this batch of writ petitions the grievance is common and that is that the State Election Commission as well as the State authorities including the District Magistrates concerned have not followed the legislative intendment underlying the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as ‘the Act of 2006’) read with the Bihar Panchayat Raj Rules, 2006 (hereinafter referred to as ‘the Rules’) as amended from time to time in so far as it relates to categorization of Panchayat as Scheduled Castes, Scheduled Tribes, Backward Classes and other categories. In substance it is the grievance of the petitioners herein that the rotational pattern followed by the respondents in categorization of the Panchayats is de hors ‘the Act of 2006’ as amended and ‘the Rules’ framed thereunder.

To demonstrate the commonness in the grievance raised by the petitioners in this batch of writ petitions I would

individually discuss the reliefs prayed in each of the writ petitions.

The petitioners in CWJC No.2445 of 2016 have prayed for quashing the reservation of the post of Mukhiya of Ahirauli Gram Panchayat under Buxar Block and Unwas Gram Panchayat under Itarhi Block in the district of Buxar in favour of Scheduled Caste and Backward Class respectively, inter alia, on grounds of being contrary to the second proviso to rule-11 of 'the Rules' as according to the petitioners, these posts should go to the General Category (Women) as per the provisions relating to rotation provided under 'the Act of 2006'.

The petitioner in CWJC No.3480 of 2016 prays for quashing the reservation of the post of Mukhiya, Genharpur Gram Panchayat under Birpur Block in the district of Begusarai in favour of Scheduled Caste as according to the petitioner, the post should be reserved as per the third proviso to rule 11(1) of 'the Rules'.

The petitioner in CWJC No.3229 of 2016 has prayed for a direction to the respondents to reserve the post of Mukhiya of Gabbey Gram Panchayat under Sheikhpura Block in the district of Sheikhpura in favour of Scheduled Caste, inter alia, on grounds that the categorization of the post as General (Women) is contrary to rule 11 of 'the Rules'.

The petitioner in CWJC No.3761 of 2016 has prayed



for quashing the notification whereby the post of Mukhiya in Gauri Territorial Constituency, Nanpur in the district of Sitamarhi is reserved for a Scheduled Caste candidate when the post should have been either unreserved or reserved for Backward Classes.

The petitioner in CWJC No.4013 of 2016 has prayed for issuance of a writ of certiorari for quashing the reservation of the post of Mukhiya, Gram Panchayat Raj Baksama, Block-Baksama in the district of Vaishali is made for Backward category instead of General category.

The petitioner in CWJC No.3753 of 2016 prays for a direction to the respondents not to reserve the post of Mukhiya, Gram Panchayat, Kundah under Mehshi Block in the district of Saharsa in favour of the Scheduled Caste category and to place it under General Category.

The petitioner in CWJC No.2683 of 2016 has prayed for quashing the notification dated 7.1.2016 in so far as the post of Mukhiya, Gram Panchayat Raj, Tetia under Tetia Bumber Block in the district of Munger is kept reserved for General Category (Women) instead of General Category (Men).

The petitioner in CWJC No.2733 of 2016 has prayed for quashing the notification dated 7.1.2016 in so far as it reserves the post of Mukhiya, Gram Paanchayat Raj, Bhuna under Tetia



Bumber Block in the district of Munger in favour of Scheduled Caste and to place it under the General Category.

The petitioner in CWJC No.2902 of 2016 has prayed for quashing of the notification dated 7.1.2016 issued by the District Magistrate, Munger –cum- Returning Officer, whereby the post of Mukhiya, Gram Panchayat Raj Jhikli, Block-Sangrampur in the district of Munger is reserved for Women (Scheduled Caste) when it should be put under the General Category.

The petitioner in CWJC No.2927 of 2016 has prayed for quashing the notification dated 7.1.2016, issued by the District Magistrate, Munger –cum- Returning Officer, in so far as it reserves the post of Mukhiya, Gram Panchayat, Dadri Jala, Block-Sangrampur in the district of Munger is reserved for Backward category when according to the petitioner, it should go to general category.

The petitioner in CWJC No.4584 of 2016 has prayed for quashing the notification in so far as it reserves the post of Mukhiya, Jamuawa Gram Panchayat under Khizersarai Block in the district of Gaya in favour Scheduled Caste (Women) and prays for de-reserving the same under General category.

As can be seen from the nature of grievance raised and the relief prayed by the writ petitioners that each one is aggrieved

by the categorization of territorial constituency and the foundation for the writ petitions lies on the interpretation of rules 9 and 11 of 'the Rules' read with the provisions of section 13 of 'the Act of 2006'.

Learned Counsel, Mr. Jitendra Kumar Roy, Mr. Yogendra Mishra, Mr. Subodh Kumar Jha, Mr. Krishna Kant Singh and Mr. Mukund Mohan Jha have appeared for the writ petitioners, the State is represented by their respective State Counsel and the State Election Commission (hereinafter referred to as the 'Commission') is represented by Mr. Sanjeev Nikesh and Mr. Girish Pandey.

With the consent of the parties these matters have been argued with a view to their final disposal at the stage of admission itself.

Counter affidavits have been filed by the State and the 'Commission' in CWJC No.2445 of 2016 and CWJC No.3761 of 2016 explaining the procedure followed by the State Election Commission for categorization of the territorial constituency and since the answer given would cover the other cases also hence the counter affidavits filed in these writ petitions are treated as a response to the other cases as well.

As I have already mentioned, the foundation for the

contest lies in the interpretation of rule 9 and 11 of 'the Rules' read along side section 13 of 'the Act of 2006' which inter alia, provides for the manner of reservation of seats in Gram Panchayat.

It would be necessary to mention here that it is after the initiation of the election process that 'the Rules' have been amended vide notification dated 26.2.2016 published in Bihar Gazette (Extraordinary) whereby rule 11 of 'the Rules' stands amended and has been given effect to with effect from 9.9.2009.

Mr. Roy, learned counsel appearing for the petitioners with particular reference to rule 11 submits that while the main provision provides for allotment of constituencies in different categories on rotational basis in descending order, the manner of categorization is provided under the provisos attached to the rule. Learned counsel with reference to the first proviso to rule-11 submits that whereas the allotment of constituency in the first election was to be made in the order, Scheduled Castes, Scheduled Tribes and others; the pattern in the second election was to be in order of Scheduled Tribes, Backward Classes, Others and Scheduled Castes and in the third election the allotment of constituencies is to be in order of Backward Classes, Others, Scheduled Castes and Scheduled Tribes.

Mr. Roy has next referred to section 13 of 'the Act of



2006' which was amended vide Amendment Act 10 of 2009 (hereinafter referred to as 'the Act of 2009') to provide that such categorization and the allotment of constituency would continue for two consecutive elections. According to Mr. Roy, after the enforcement of 'the Act of 2006', the first election to the Panchayats was held in the year 2006 by following the first proviso i.e. Scheduled Caste, Scheduled Tribe and others. He submits that since the amendment of 2009 which provided for continuation of this seriatim in two consecutive election was enforced in the meanwhile hence the election in 2011 was to maintain the same seriatim i.e. Scheduled Castes, Scheduled Tribes and Others. According to Mr. Roy, the present Panchayat Election 2016 should be treated as the second election and be held as per the statutory provisions of section 13 read with rule 11 of 'the Rules' by following the 2<sup>nd</sup> proviso i.e. by following the seriatim Scheduled Tribes, Backward Classes, Others and Scheduled Castes.

Alternatively it is the argument of Mr. Roy that even otherwise the present election should be treated as the second election to the Panchayats since after the enforcement of the amended provisions of section 13 of 'the Act of 2006' which came into force on 9.9.2009 and which provided for maintenance of seriatim in two consecutive elections and hence the seriatim followed in 2011 should

continue even in the present election. According to Mr. Roy, the attempt by the State Election Commission to deviate from this pattern would be contrary to the express provisions of 'the Act'.

Mr. Roy being critical of the decision present in paragraph 10 of the circular of the State Election Commission dated 17.12.2015 enclosed at Annexure-2 to CWJC No.2445 of 2016 has submitted that in view of the legal position so explained hereinabove, the conclusion arrived at by the State Election Commission that since the seriatim Scheduled Tribes, Others and Scheduled Castes was followed in the election held in the year 2006 as well as in 2011 which is as per the second proviso to rule 11 hence the 2016 election has to be held by allotment of constituency in seriatim Backward Classes, Others, Scheduled Castes and Scheduled Tribes, is on incorrect appreciation rather misinterpretation of the statutory provisions. According to Mr. Roy, the decision of the State Election Commission present at paragraph 10 of the Advisory issued on 17.12.2015 vide letter no.2144 is contrary to rule 11 of 'the Rules'.

Arguing on the 2016 amendment to 'the Rules' it was submitted that the amendment cannot be made retrospective rather can only have a prospective effect. According to Mr. Roy, it is the Rules of 2006 framed under 'the Act of 2006' which governed the

field until 9.9.2009 when amendments were introduced under the Amendment Act 10 of 2009 and the attempt by the State to rectify the error by modifying the seriatim followed in the election held in 2006 and 2011 retrospectively, is impermissible.

The argument of Mr. Roy has been seconded by Mr. Mishra and other counsels and who have practically echoed the same argument.

Responding to the argument of the writ petitioners and with reference to the counter affidavit(s) filed in the proceedings, it was submitted by Mr. Nikesh, learned counsel appearing for the State Election Commission that the legal position has not been correctly placed by learned counsel appearing for the petitioners. According to Mr. Nikesh, 'the Act of 2006' was preceded by the Bihar Panchayat Raj Act, 1993 (hereinafter referred to as 'the Act of 1993'). He submits that since after the enforcement of 'the Act of 1993' the first of the Panchayats election was held in the year 2001 and was regulated under the provisions of 'the Act of 1993' except for the elections to the post of Sarpanch and Panch. It is submitted that while during the tenure of the Panchayats constituted under 'the Act of 1993', that the 'Act of 1993' was repealed and replaced by 'the Act of 2006'. Mr. Nikesh next refers to the advisory issued by the State Election Commission on



19.1.2006 a copy of which is annexed as Annexure-R/1 to the counter affidavit filed in CWJC No.2445 of 2016 and with reference to paragraph 5 'ब' he submits that directions were issued that the Panchayat election to be held in 2006 would be treated as the second election and thus in view of the provisions of rule 11 of the Bihar Panchayat Raj Rules, 2006 the allotment of constituencies would be in the seriatim of Scheduled Tribes, Others and Scheduled Castes. He submits that this direction of the State Election Commission to follow the seriatim was put to question before this Court but was negated vide judgment reported in **2006 (2) PLJR 238 (Sanjay Kumar Verma Vs. The State of Bihar)** and **2007 (1) PLJR 447 [Rajendra Ram Vs. The State Election Commission (Panchayat)]**. According to Mr. Nikesh the elections to the Panchayats held in 2006 was the second election and hence guided by the second proviso to rule 11 of 'the Rules' and since in the meanwhile 'the Act of 2006' had been amended vide Amendment Act 10 of 2009 hence following the amendment to section 13 read with the explanation attached thereto that the pattern followed in the 2006 was also followed in 2011 as well. According to Mr. Nikesh, since the seriatim present in the second proviso to rule 11 has been followed in 2006 and 2011 Panchayat Elections hence the 2016 Panchayat election would be governed by

the third proviso to rule 11 of 'the Rules' which has a seriatim of Backward Classes, Others, Scheduled Castes and Scheduled Tribes.

Mr. Nikesh has next referred to the amendment introduced by the State Government in its Panchayati Raj Department vide Gazette Notification dated 26.2.2016 to submit that the confusion whatsoever prevailing in the minds of the petitioners stands resolved. It is submitted that the allotment of each of the constituencies has been by following the third proviso and have undergone multiple verifications. According to learned counsel the allotment of each constituency is in tune with the statutory requirements.

I have heard learned counsel for the parties and I have perused the records.

The issue is rather simple but has been made complex by taking recourse to the technicalities attached. In the entire gamut of argument it is nobody's case that the seriatim provided in the second proviso to rule 11 was not followed in the Panchayat Elections, 2006 as well as in the Panchayat Election, 2011. In fact none of the parties do dispute that the seriatim followed in these elections for allotment of constituency was Scheduled Tribes, Backward Classes, Others and Scheduled Castes. In my opinion an





unnecessary ghost has been created by the writ petitioners to question the allotment of constituency by the State Election Commission by taking recourse to the 3<sup>rd</sup> proviso attached to rule 11 'of the Rules' which has since been amended vide amendment dated 26.2.2016 published in the Bihar Gazette (Extraordinary) of the even date. When I say that the issue is simple with no riders attached, I say it with all consciousness in the backdrop of the legislative intendment and of the statutory provisions governing the field of Panchayat election.

It is uncontested that since after the enforcement of 'the Act of 1993', the first of the Panchayat election took place in 2001 except for the election to the post of Sarpanch and Panch as no election was held for Gram Kutchery. The 2001 election was guided under 'the Act of 1993' and the seriatim followed for allotment of constituency by the State Election Commission was, Scheduled Caste, Scheduled Tribe and Others which is not in dispute.

'The Act of 1993' was replaced by 'the Act of 2006' and which was in force when the next Panchayat election of 2006 was held.

I would here deem it necessary to refer to the repealing provision attached to 'the Act of 2006' as provided under section



171 of 'the Act of 2006' and which in Clause (e) provides that "Notwithstanding such repeal, anything done or any action taken in exercise of any power conferred by or under the said Act shall be deemed to have been done or taken in exercise of the powers conferred by or under this Act, as if this Act were in force on the day on which such things or action was done or taken."

Clause (g) of section 171 of 'the Act of 2006' further provides that "Notwithstanding such repeal all Rules made under the repealed Bihar Panchayat Raj Act, 1993 shall continue to be operative till replaced by fresh Rules made under this Act."

The 'Act of 2006' was preceded by the Bihar Panchayat Raj Ordinance 2006 (Bihar Ordinance 01 of 2006) and whereunder the Bihar Panchayat Election Rules, 2006 were framed. It is in view of the statutory provisions underlying the ordinance which was in force at the relevant time and 'the Rules' framed thereunder that an advisory was issued by the State Election Commission on 19.1.2006 placed at Annexure- R/1 to the counter affidavit whereby it was declared that the election of the Panchayats to be held in 2006 would be treated as the second election while the election to the Gram Kutchery would be treated as first election and thus in view of rule 11 of 'the Rules', the seriatim to be followed for allotment of constituency would be Scheduled Tribes,



Others and Scheduled Castes. The position is further clarified in paragraph 5 'ख' of the advisory in which it has been mentioned that 2006 Panchayat election would be the second election and allotment of constituency would be in seriatim Scheduled Tribes, Others and Scheduled Castes. The Panchayat election 2006 thus was held by following the allotment of constituency in the seriatim provided under the second proviso to rule 11 since this election was treated as the second election and rightly so for the first Panchayat election of 2001 had been held by following the seriatim present under the first proviso to 'the Rules' albeit under the 'Act of 1993' and the rules framed thereunder but in view of the express provision present in Section 171(e) and (g) of the 'Act of 2006', the action taken and the procedure followed, was saved.

It is after the 2006 election was held by allotment of constituency in the seriatim provided in the second proviso that vide Amendment Act 10 of 2009 section 13 was amended and which inter alia provided that the seriatim maintained for allotment of constituency should continue in two consecutive elections. It is following such amendment that the State Election Commission did not make any change in the seriatim followed for allotment of constituency even in the Panchayat election held in 2011 which was in tune with the seriatim followed in 2006 election i.e.



Scheduled Tribes, Others and Scheduled Castes. However since in view of the mandatory compulsion provided under section 13, this particular seriatim stood exhausted upon being adopted in 2006 and 2011 election, hence the 2016 election is being held by following the pattern for allotment of constituency as provided under the third proviso to rule 11 i.e. Backward Classes, Others, Scheduled Caste and Scheduled Tribe, which is completely in tune with the statutory provisions.

In view of the legal position which stands explained thus, I find no irregularity in the decision of the State Election Commission to hold the current Panchayat election by following the seriatim present in the third proviso to rule 11. In my opinion the amendment to rules vide notification dated 26.2.2016 is merely a clarification to this legal position.

For the reasons so discussed hereinabove I am not persuaded to grant indulgence to the prayer made in this batch of writ petitions for interfering with the procedure followed by the 'Commission' in the matter of allotment of territorial constituencies which I am satisfied to hold that it is in tune with the statutory provisions.

I may clarify here that my opinion in the present batch of writ petitions is on the larger issue regarding rotational pattern

followed by the 'Commission' for allotment of territorial constituencies by taking recourse to the third proviso attached to rule 11 of 'the Rules' and which according to me meets the statutory requirements. However any individual grievance arising on its applicability and whether the said pattern has been correctly applied for allotment of any territorial constituency, cannot be a subject matter of a writ proceedings and the aggrieved shall be at liberty to take recourse to the lawful remedy available to him/her under the relevant statutes.

These writ petitions are accordingly dismissed.

**(Jyoti Saran, J)**

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