

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4442 of 2016

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Ramesh Prasad Yadav, Son of late Jaglal Rai resident of Village-Lodipur, PO-Chirand, PS- Doriganj District Saran at Chapra, presently Mukhiya of Gram Panchayat Raj, Maharajganj Block- Chapra Sadar, Distict- Saran at Chapra.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Pachayati Raj Department, Government of Bihar Patna.
2. The Director, Pachayati Raj Department, Government of Bihar Patna.
3. The District Magistrate -cum- District Election Officer, Saran at Chapra.
4. The District Panchayat Raj Officer, Saran at Chapra District Chapra.
5. The Block Development Officer, Chapra Sadar Chapra, District Saran Chapra.

..... **Respondent 1st Set.**

6. The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
7. The State Election Commissioner, the State Election Commission (Panchayat) Sone Bhawan, Birchand Patel Path, Patna.
8. The Secretary, the State Election Commission (Panchayat Sone Bhawan, Birchand Patel Path, Patna

.... Respondent/s

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Appearance:

For the Petitioner/s	:	Mr. S.B.K. Manglam, Advocate Mr. Ravi Ranjan, Advocate Ms. Anita Kumari, Advocate
For the Respondent/s	:	Mr. N.H. Khan, SC-18 Mr. Md. Irshad, A.C. to SC-18
For the Sate E.C.	:	Mr. Amt Shrivastava, Advocate Mr. Sanjeev Nikesh, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

C.A.V. JUDGMENT

Date: 10-05-2016

The petitioner prays for issuance of a writ in the nature of certiorari for quashing the list published in Form-3 prescribed under the Bihar Panchayat Election Rules (hereinafter referred to as the 'Rules') framed under Section 146 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the 'Act') which provides for reservation to different territorial constituencies for the post of Mukhiya under Sadar Block-Chapra insofar as it relates to the

reservation of the post of Mukhiya Gram Panchayat Raj Maharajganj (Territorial Constituency No. 13) which stands reserved for Scheduled Caste (women) in the on going 2016 Panchayat elections.

The grievance of the petitioner is that even though the population at village Panapur, Thana No. 9 falling under Territorial Constituency No. 13 is 'Nil' and that there is no population residing in this village yet on the directives of the State Election Commission that the District Magistrate, Saran at Chapra has modified the nil figure and as a consequence the total population in village Panapur has been shown as 2716 with 402 persons falling under the Scheduled Caste category. According to the petitioner this exercise has been carried out merely to alter the status of the constituency as a reserved constituency although factually no population of such kind exists in this village. The modification done is impugned at Annexure-2 to the writ petition and which has irked the petitioner to file the present writ petition.

Mr. S.B.K. Manglam has appeared for the petitioner, Mr. N.H. Khan, learned Standing Counsel No. 18 has appeared for the State and Mr. Amit Shrivastava along with Mr. Sanjeev Nikesh appear for the State Election Commission.

Mr. Manglam, learned counsel for the petitioner with reference to the block-wise population details issued by the State



Election Commission as per 2001 census enclosed at Annexure-4 has submitted that village Panapur records a 'Nil' population. He also refers to Annexure-5 which contains similar details. With reference to Annexure-6 which is an extract of the Census report, and Annexure-7 which is an extract of Economic Survey report he submits that the village is termed **Bechiragi** and records a 'Nil' population with no house existing. It is on the strength of the factual details present at Annexures 4 to 7 that Mr. Manglam reverts to Annexure-2 to submit that the modification to the 'Nil' population of village Panapur, is without any basis. It is the argument of Mr. Manglam that neither any population exists at village Panapur nor any polling booth has been fixed despite the modified figure and even in the voter list so placed on record through the supplementary affidavit filed, there is not a single voter from village Panapur. Mr. Manglam has referred to paragraph-6 of the counter affidavit filed on behalf of the District Magistrate to submit that even the District Magistrate has admitted that village Panapur is **Bechiragi**. According to Mr. Manglam where the respondent authorities have themselves admitted that no population exists at village Panapur then the reliance by the Commission on the Census figures of 2011 would be an absurdity and contrary to the factual position and consequently the categorization done by the State Election Commission would not



give a correct reflection. According to Mr. Manglam the respondents are not consistent in their response for whereas in the case of one **Shankar Prasad vs. The State of Bihar** arising from CWJC No. 4196 of 2016 although the Census figure of a village gave a higher population but the said figure was modified by the Commission *inter alia* on grounds that since a portion of the said village fell in a different Panchayat hence the population of such portion of the said village which fell in a different Panchayat, was deleted from the population figure of the village concerned and added in the population figure of the adjacent Panchayat in which the portion was included. According to Mr. Manglam the State Election Commission cannot be allowed to approbate and reprobate nor can be permitted to have a shifting stand. It is the argument of Mr. Manglam that the residents of Territorial Constituency No. 13 have also been prejudiced since they have been denied a right of objection to the modification in the population. According to learned counsel since the original publication reflected a 'Nil' population as is manifest from Annexure-2 hence no objection was raised but once the statutory authority concerned decided to modify the figure of village Panapur then they should have invited objections against the proposed modification which has not been carried out. Mr. Manglam has referred to the report of the team constituted by the



District Magistrate, Saran present at Annexure- 'Q' which is dated 26.3.2016 to submit that the team so constituted has also reported a 'Nil' population for village Panapur. According to Mr. Manglam in the admitted circumstances so discussed, the addition of 2716 population against village Panapur simply resting on the 2011 Census as well as the addition 402 voters in the Scheduled Caste category has made all the difference in the categorization of the constituency taking away the right vested in the petitioner to contest the election for had these modifications not been carried out then the constituency would have been unreserved and open for all.

It is the argument of Mr. Manglam with reference to the provision of Rule 8(1) that a disposal of objection is not a mechanical exercise rather it requires an application of mind and has to be carried out with reference to the fact situation prevailing. It is also the argument of Mr. Manglam that although the District Magistrate has mentioned in paragraph-6 that objection was invited to the 'Nil' population on 20.4.2015 and although a copy of the notice has been enclosed at Annexure-I to the counter affidavit but the accompanying population details as mandated under Rule 8(1) in Form-1 against which objection were invited, has not been enclosed. He submits that even at the stage of modification of the population of village Panapur pursuant to the directives of the

Commission, no objections were invited from the villagers.

According to Mr. Manglam the modification has been done with a motive to exaggerate the strength of the reserved category population so as to reserve the constituency.

The argument of Mr. Manglam has been contested by Mr. Amit Shrivastava appearing for the Commission as well as Mr. Khan appearing for the State.

The arguments of learned counsel for the State Election Commission and the State rests behind the statutory provisions of 'the Act' and 'the Rules' framed thereunder. Learned counsel for the respondents while admitting to the fact that village- Panapur is '*Bechiragi*' have submitted that since it is the preceding Census i.e. the 2011 Census, which is the basis for constitution of territorial constituencies and since under the 2011 Census the population of Panapur was shown as 2716 with 402 persons coming under scheduled caste category but had been shown as 'Nil' in the draft publication published under rule 8(1) of 'the Rules' on 20.4.2015, hence in view of the statutory provisions and the guidelines issued by the State Election Commission, the figures were duly modified on 3.8.2015. It is stated that since no objection came to this modification, hence it was published in the District Gazette on 17.8.2015 and has attained finality. The respondent-State as well as the State Election Commission thus while admitting to the factual

position existing regarding 'Nil' population in village- Panapur have submitted that since 'the Act' recognizes the population recorded in the previous Census which in the present case would be the 2011 Census hence the authorities have acted accordingly.

The arguments of the learned counsel for the State and the State Election Commission has been responded to by Mr. Manglam, learned counsel appearing for the petitioner who submits that the stand taken by the authorities is not sustainable. While questioning that any such publication was made public by the authorities after modification of the population of village- Panapur it is argued that the petitioner is the sitting Mukhiya of the Gram Panchayat and thus would have been in the know of any such publication. According to Mr. Manglam, an artificial population is sought to be generated while relying upon the 2011 Census when as per the own report of the District Magistrate, there is no population in the said village. The stand taken by the respondents has also been questioned by Mr. Manglam on grounds of having differential approach. According to him, whereas in the case of **Shankar Prasad** (supra) the State Election Commission themselves have modified the population of the village as per the factual position existing by giving an explanation to the exercise that since a portion of the said village fell in a different Panchayat and hence the modification was carried out. According to Mr.

Manglam it is not that in every case the Election Commission is blindly accepting the population of the village as per the 2011 Census and though they have justified the modification so carried out in the case of **Shankar Prasad** (supra) but they are not ready to carry out the same exercise in the present context where admittedly a 'Nil' population exists in village- Panapur.

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

The facts are not in dispute and are admitted. Under the orders of this Court that a counter affidavit has been filed by the District Magistrate, Saran and who admits to a 'Nil' population in village- Panapur. The issue is whether this admission is by itself sufficient to set aside the modified publication dated 3.8.2015 as published in the District Gazette on 17.8.2015 or the action complained off is saved under the statutory provisions.

To appreciate the rival contentions advanced by the parties it would be appropriate to refer to some of the relevant provisions of 'the Act' governing the issue, in context with the election to the post of Mukhiya of a Gram Panchayat.

Section 2(ac) defines '**Population**' to mean and include the population as ascertained at the last preceding Census of which the relevant figures have been published. Meaning thereby the Census figures of 2011 for the present election.



Section 12 of ‘the Act’ provides for ‘**composition of Gram Panchayat**’ and sub-section (2) thereof vests jurisdiction in the District Magistrate to divide the area of the Gram Panchayat under the direction, control and supervision of the State Election Commission into territorial constituencies in accordance with ‘the Rules’ as prescribed and in such manner that the population of each constituency as far as practicable be the same throughout the Panchayat area.

The prescription is provided under ‘the Rules’ and rule 3 thereof enumerates the ‘points to be considered in the constitution of territorial constituencies’ in reference to the statutory provisions governing the Gram Panchayat, Panchayat Samiti, the Zila Parishad and the Gram Katchahry. Rule 3(2) inter alia, provides that each territorial constituency in so far as the Gram Panchayat is concerned should as far as practicable be identical in physical extent and have a population of 500 or close to that.

Rule 8 provides for ‘**publication of list of territorial electoral constituencies**’ in the office of Gram Panchayat and Block in so far as a Gram Panchayat and Panchayat Samiti respectively are concerned and in the case of Zila Parishad it has to be published in the Block office, the office of the Sub-Divisional Magistrate as well as the District Magistrate in Form-I.



Rule 8(2) affords a right to any person aggrieved by such publication to file his objection in writing before the District Magistrate within fourteen days of the publication and which has to be disposed of by the District Magistrate after recording his decision and which shall be final. After disposal of the objection the final territorial list is to be published in the district gazette.

The statutory provisions referred to above prescribe a procedure to be followed by the District Magistrate concerned under the direction, control and supervision of the State Election Commission to constitute territorial constituencies in so far as a Gram Panchayat, is concerned. Similar provision exists for Panchayat Samiti and Zila Parishad. The constitution of the territorial constituencies as per section 12 of 'the Act' read with rule 3 of 'the Rules' is to be done while maintaining a population of 500 or close to that in each territorial constituency and for arriving at such categorisation the District Magistrate is required to bear in mind the population of the area concerned as reflected in the preceding census which in the present case would be the 2011 Census.

It is under the direction of this Court that the District Magistrate, Saran himself has filed a counter affidavit and has fairly accepted that there is 'Nil' population existing in village-Panapaur. However, he has explained the modification in reference



to the statutory provisions and the guidelines issued by the State Election Commission in this regard. The District Magistrate in paragraph 6 of his counter affidavit has stated that initially the territorial constituency village-wise population was published in Form-1 on 20.4.2015 under rule 8(1) of 'the Rules' with 'Zero' population figure for village- Panapur. He submits that objections were invited vide notice dated 20.4.2015 present at Annexure-I to the supplementary counter affidavit. On objections being raised by Mr. Manglam that although the notice present at Annexure-I does invite objection to the population of territorial constituency but the draft publication in Form-1 is not on record that the District Magistrate has forwarded the same vide his letter dated 21.4.2016 and which has been maintained on records of the proceedings. The territorial constituency present at item no.13 of Form-1 gives 'Nil' population to village- Panapur which also carries a remarks '*Bechiragi*'.

It is stated that after final publication of population figure in Form-1 the details were checked at the level of the State Election Commission and when the District Panchayat Raj Officer, Saran along with other officers of other Panchayats were summoned along with the relevant documents since according to the Commission, there were errors occurring in the final publication. A copy of such letter of the State Election



Commission dated 15.6.2015 is present at Annexure-J. It is stated that the State Election Commission having found the error in final population figures issued direction to rectify the same and directed to produce the same after rectification vide letter dated 25.6.2015 present at Annexure-K. It is stated that necessary corrections were made in the population figures as per 2011 Census and the District Magistrate vide letter dated 29.7.2015 informed the State Election Commission that village- Panapur is a '*Bechiragi*' and although as per Census data of 2011, it carries population of 2,716 but this population has not been entered in Form-1. The State Election Commission vide letter dated 22.7.2015 directed the District Magistrate –cum- District Election Officer in the State to publish the territorial constituencies as per the population present in 2011 Census by 3.8.2015 and published the same in the District Gazette on 17.8.2015 after making appropriate corrections . It is stated that it is on the directives so issued by the State Election Commission that the population figure of village Panapur was accordingly modified on 3.8.2015 and published for information to the general public, a copy of which is present at Annexure- 'O' and finally published in the District Gazette on 17.8.2015. A copy of the District Gazette dated 17.8.2015 and final publication of the territorial constituency block-wise as well as of the Gram Panchayat, Maharajganj Territorial Constituency No.13, has been

handed over by the learned counsel appearing for the Commission and confirms to the final publication. The District Magistrate, Saran has enclosed an enquiry report in respect of village- Panapur at Annexure- 'Q' which certifies that there is no residential structure in village Panapur nor there is any population.

As I have stated at the outset that there is no contest on the factual position rather the contest is:

- (a) Whether the procedure followed by the District Magistrate in modifying the population of the village is in tune with the statutory provisions;
- (b) Whether the petitioner has been denied opportunity to object to the modification; and
- (c) Whether his objection would bear any consequence to the Gazette Publication under Rule 8(4) in disposal thereof under rule 8(2) of 'the Rules'.

In my opinion considering that the categorisation of territorial constituencies of a Gram Panchayat, Panchayat Samiti, Zila Parishad and Gram Katchahry is dependant upon the population figure of previous Census which in the present case would be 2011 Census then even if the factual position regarding a 'Nil' population at village Panapur is admitted by the respondents yet neither the District Magistrate, Saran nor the State Election Commission would have any jurisdiction to interfere with the

population figures as reflected in the 2011 Census.

The issue in contest in the case of **Shankar Prasad** (supra) and the stand of the respondents therein would not in any manner alter the situation herein for even in the said case there was no modification in the population figure of village concerned which was maintained as per 2011 Census rather since the said village was divided between two Panchayats that it is the population figures of the Panchayat concerned which was accordingly modified. Such is not the case here. In fact an error was committed by the District Magistrate, Saran while issuing the draft publication of Territorial Constituency No.13 to show a 'Nil' population against village Panapur on 20.4.2015 which though in tune with the factual position but was contrary to the statutory provisions underlying section 12 of 'the Act' and rule 3 of 'the Rules' read along side section 2(ac) of 'the Act'. It is this error which was corrected under the direction of the State Election Commission and the argument of Mr. Manglam that there has been an undue interference by the State Election Commission on this aspect is unsustainable in the backdrop of the statutory provisions which amply vests the Commission with supervisory control over the District Magistrate in matters of constitution of territorial constituency. It is following the correctional exercise that the modified publication took place on 3.8.2015 which was finally



published in the District Gazette on 17.8.2015. The argument of Mr. Manglam that this modification creates an artificial population may not be entirely correct because as per the draft publication made on 20.4.2015, the total population of Gram Panchayat, Maharajganj which is Territorial Constituency No.13 was reflected as 11,313 of whom 1785 was the population of people coming under the scheduled caste category. This population figure is on the basis of 'Nil' population at Village- Panapur. The 2011 census showed a population of 2,716 at village- Panapur which on addition to the draft population figures would result in a total population figure of 14,029. Similarly the census figure of the scheduled caste category in village- Panapur is 402 and when added to the draft population figure of 1,785, the total figure comes to 2,187. The final population of Gram Panchayat, Maharajganj Territorial Constituency No.13 under rule 8 of 'the Rules' is on record of the proceedings vide Annexure- R/4 to the affidavit of the Commission but since it did not bear the signature of the authorities that a signed copy has been produced by counsel for the Commission which confirms to the total population figures of 14,029 which is the collective population of 14 territorial constituencies constituting Gram Panchayat Maharajganj with a scheduled caste population of 2,187. This publication under rule 8(1) of 'the Rules' of the territorial constituency constituting Gram

Panchayat, Maharajganj explains the distribution of the population.

The argument of Mr. Manglam that the exercise of modification is without opportunity to the general public to raise objection may be correct but in my opinion considering that the District Magistrate and the State Election Commission are bound by the procedure provided under 'the Act' and the rules framed, even an objection in this regard would not have resulted in an outcome other than which is on record of the proceedings because it entirely rests on the 2011 census figures.

In so far as the scope of disposal of objections under rule 8(2) of 'the Rules' is concerned I would do no better than to reproduce the relevant extract of the observations made in the case of **Shankar Prasad** (supra) which answers the issue raised by Mr. Manglam as regarding the scope of exercise under rule 8(2) of 'the Rules' in the matter of disposal of objections:

"Rule-8 of 'the Rules' provides for inviting objections on the territorial constituencies and disposal thereof before it is finally published in Form-1. Even though 'the Act' and 'the Rules' framed thereunder does provide that the figure for a village would be the same as per the census of 2011 but this stipulation does not preclude the authorities connected with preparation of the list to carry out such modifications in the population figure of the Panchayats accordingly in case a portion of a village concerned falls in another Panchayat as has happened in the present case. The categorization of a territorial constituency mechanically on the census figures would give an absurd result for even when a portion of a village is not a part of the Panchayat yet its population would have to be included for the purpose

for categorization of Panchayats which is not the legislative intent of ‘the Act’ and ‘the Rules’ framed thereunder. In fact it is to cater to such eventuality that rule 8 has been provided for making alteration in the population of the Panchayat accordingly as and when an occasion would so arise.”

The bottom line is that the District Magistrate and the State Election Commission are bound by the statutory provisions and have to act within the parameters so provided under ‘the Act’ and the rules so framed, in the matter of categorization of territorial constituency in reference to the population of that area which has to be done strictly in accordance with the population figure present in the preceding Census which in the present case would be Census figure of 2011.

For the reasons so discussed, I am not persuaded by the argument of Mr. Manglam to interfere with the exercise undertaken by the statutory authorities which fully confirms to the statutory requirements.

The writ petition is accordingly dismissed.

(Jyoti Saran, J)

S.Sb/S.K.Pathak

AFR/NAFR	
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