

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6611 of 2016

- =====
1. Post Graduate Teachers Association through its President Sunil Kumar Singh Resident of Quarter No. A - 1 Magadh University Campus, P.S. - Magadh University, District - Gaya.
 2. Sunil Kumar Singh Son of Late Shyam Bihari Singh Resident of Quarter No. A -1 Magadh University Campus, P.S. - Magadh University, District - Gaya, President of Post Graduate Teachers' Association Magadh University Bodh Gaya.
 3. Piyush Kamal Sinha Son of Sri Lakshman Prasad Sinha Resident of House of Anjani Kumar Sharma, Road No. 2 Saketpuri, P.S. - Rampur, District - Gaya, General Secretary of Post Graduate Teachers Association, Magadh University, Bodh Gaya.

.... Petitioner/s

Versus

1. The State Election Commission , through its Commissioner, Bihar, Patna.
2. The State Election Commissioner, Bihar, Patna.
3. The District Election Officer-cum-District Magistrate, Gaya.
4. The Magadh University through its Registrar.
5. The Vice Chancellor Magadh University, Bodh Gaya.
6. The Registrar Magadh University, Bodh Gaya.

.... Respondent/s

with

=====

Civil Writ Jurisdiction Case No. 6758 of 2016

=====

1. Surendra Jung Bhadur Son of Late Narayan Jung Bahadur R/o New Colony, Pakri Ara, P.S.- Nawada, District- Bhojpur at Ara.
2. Subhash Chandra Thakur Son of Late Awadhesh Kumar Thakur R/o Mahaveer Tole Ara, P.S. Nawada, District Bhojpur at Ara.
3. Ashok Kumar Srivastava Son of Shri T.N. Srivastava, R/o Mission Road, Pakri Ara, P.S. Nawada, District- Bhojpur at Ara.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Panchayati Raj, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Panchayati Raj, Govt. of Bihar, Patna.
3. Bihar State Election Commission through its Commissioner, Bihar, Patna.
4. Commissioner, Bihar State Election Commission, Bihar, Patna.
5. District Election Officer (Panchayat)-cum-District Magistrate, Bhojpur at Ara.

.... Respondent/s

with

=====

Civil Writ Jurisdiction Case No. 7205 of 2016

=====

1. Kisan College Teacher's Association through its President Dasarth Prasad Yadav, Resident of Sohrai, P.S.-Sohrai, District-Nalanda
2. Dasarth Prasad Yadav, son of late Banarsi Prasad Yadav, Resident of Mohalla-Sohrai, P.S.-Sohrai, District-Nalanda. President of Kisan College Teacher's Association, Nalanda
3. Abdhendra Kumar Singh, Son of late Ram Chandra Prasad Singh, Resident of Village+ P.O.-Tungi, P.S- Deep Nagar, District-Nalanda, General Secretary of Kisan College Teachers Association, Nalanda

.... Petitioner/s

Versus

1. The State Election Commission through its Commissioner, Bihar, Patna
2. The State Election Commissioner, Bihar, Patna
3. The District Election Officer-cum-District Magistrate, Nalanda, Bihar Sharif
4. The Magadh University through its Registrar
5. The Vice-Chancellor Magadh University, Bodh Gaya
6. The Registrar Magadh University, Bodh Gaya
7. The Principal Kisan College, Sohrai, Nalanda Bihar Sharif

.... Respondent/s

=====

Appearance :

(In CWJC No. 6611 of 2016)

For the Petitioner/s : Mr. Yugal Kishore, Sr. Advocate
Mr. Virendra Prasad, Advocate
Mrs. Nutal Sahay, Advocate

For the University : Mr. Vipin Kumar, Advocate

For the Respondent/s : Mr. Girijish Kumar

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

(In CWJC No. 6758 of 2016)

For the Petitioner/s : Mr. Lalan Kumar

For the Respondent/s : Mr. Uma Shankar, GP-4
Mr. Karandeep Kumar, GP-4

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

(In CWJC No. 7205 of 2016)

For the Petitioner/s : Mr. Virendra Prasad

For the Respondent/s : Mr. Girijish Kumar

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

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 22-04-2016

Counter affidavit has been filed in C.W.J.C. No. 6611
of 2016 after being served on the counsel for the petitioner. Let it be
kept on record.

Heard Mr. Yugal Kishore, learned Senior Counsel for the petitioners in C.W.J.C. No. 6611 of 2016 and C.W.J.C. No. 7205 of 2016, Mr. Lalan Kumar, learned counsel for the petitioners in C.W.J.C. No. 6758 of 2016, learned counsel for the State in the respective writ petitions and learned counsel for the State Election Commission.

The Post Graduate Teachers' Association and the Kisan College Teachers' Association are before this Court questioning the deployment of the teachers as patrolling Magistrates in ensuing Panchayat Election 2016. In the third writ petition it is the officers and staffs of the Gramin Bank in the district of Bhojpur, who are making identical complaint. Whereas the foundation for the grievance raised by the teachers rests on bench decision of this Court in a case arising from C.W.J.C. No. 5524 of 2006 (Gaya College Teachers Association & Anr. Vs. State of Bihar) and analogous cases, when by an interim order, a similar deployment was stayed by the Bench, however, the issue raised could not be adjudicated on merits since the election process was complete during the pendency of the writ petitions. The writ petitions were thus disposed of as having become infructuous. It is relying upon the observations of this Court in the order passed in the case of Gaya College Teachers Association (supra) that the present writ petitions were filed and this Court taking note of the observations restrained the District

Magistrate, Gaya who happens to be the District Election Officer (Panchayat) from taking any coercive measures against any of the teachers. The third writ petition is filed by the officers and staffs of the Gramin Bank and since it raises identical issue hence it has been heard analogous.

A counter affidavit has been filed by the State Election Commission and it is with reference to the amendments incorporated vide Amendment Act 10 of 2009 in the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act'), explained that Section 125 of 'the Act' vests powers with the State Election Commission of requisitioning officers and staffs during the election for carrying out the election process. The category of staff who can be requisitioned stands discussed in sub-section (9) incorporated vide Amendment Act 10 of 2009 and which reads as follows:-

“125 (9) Staff of certain authorities to be made available for election work:-

- (a) The authorities specified in clause (b) shall, when so requested by the District Election Officer (Panchayat), make available to any returning officer such staff as may be necessary for the performance of any duties in connection with an election. Duties related with polling, counting of votes, maintenance of law and order, patrolling and magistracy etc. shall be deemed to be included under election duty.

(b) The following shall be the authorities for the purposes of clause (a) namely:-

- (i) Every local authority;
- (ii) a Government company as defined in Section 617 of the Companies Act 1956 (1 of 1956);
- (iii) any other institution, concern or undertaking which is established by or under a Central, Provincial or State Act or which is controlled, or financed wholly or substantially by funds provided, directly or indirectly, by the Central Government or a State Government.”

Mr. Yugal Kishore, learned senior counsel appearing for the two Teachers Association and others submits that the guidelines issued by the State Election Commission annexed at Annexure-R/4 itself demonstrates that the requisitioning of the teachers is to be avoided as far as possible and the reason is that such posting would affect the academic schedule of the university. On the other hand it is the argument of Mr. Lalan Kumar appearing for the bank employees that such requisition affects the operation of the bank which is an essential service.

Mr. Amit Srivastava, counsel for the Commission, has with reference to the statutory provision, submitted that extensive powers have been vested in the Commission for requisitioning of staffs for conducting the election and it is acting within the parameters so prescribed that the requisitioning has taken place



which suffers no infirmity whatsoever. He submits that the observations of this Court earlier made was at a stage when 'the Act' had not been amended and in fact the amendment was tested when a similar grievance was raised by the officers and staffs of the Gramin Bank in a matter arising from C.W.J.C. No. 6615 of 2011 (Arvind Kumar Sinha & others Vs. The State of Bihar & Ors.) and the bench upheld the action of the Commission in requisitioning its staffs for holding the election in reference to the Amending Act No. 10 of 2009 incorporating sub-section (9) in Section 125 of 'the Act'. It is thus submitted that the action of the Commission is within the jurisdiction.

I have heard learned counsel for the parties and perused the records. Although initially, this Court did issue restraint order to grant interim protection to the Teachers Association in light of the order passed in the case of Gaya College Association (supra) but the attention of this Court at the relevant time was neither invited to the amendments incorporated in 'the Act' nor the Bench decision of this Court rendered in the case of **Arvind Kumar Sinha** (supra) dealing with the identical issue was on records of the proceedings. It is not in dispute that the legislature has been conscious to vest sufficient powers in the Commission to permit them to take all possible steps as required for smooth conduct of election including powers for requisitioning the staff.

In the circumstances discussed, the issues raised in the writ petitions require no indulgence for the action of the Commission is safeguarded under Section 125(9) of 'the Act'. It is next canvassed by Mr. Yugal Kishore that some of the requisitioned staff are near their retirement while there are others who are physically incapacitated to undergo the rigours of a patrolling duty. In my opinion these are individual issues and can be taken up by the person concerned before the District Magistrate–cum-District Election Officer concerned and he shall take note of the issue raised and pass appropriate orders. However, not being persuaded to interfere with the requisition ordered by the Commission as contested in these writ petitions, the writ petitions are accordingly disposed of.

The interim order passed on 11.04.2016 in C.W.J.C. No. 6611 of 2016 stands vacated.

(Jyoti Saran, J)

ajaypd./-

U			
---	--	--	--