

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8846 of 2016

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Arjun Manjhi, son of Late Bhuneshwar Manjhi, Resident of Village- Banshkatwa, P.O. Gurupa, P.S.- Fatehpur, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate -cum- District Election Officer (Panchayat), Gaya, District- Gaya.
2. The District Magistrate -cum- District Election Officer (Panchayat), Gaya, District- Gaya.
3. The Block Development Officer -cum- Returning Officer (Panchayat Election), Fatehpur Block, District- Gaya.
4. The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
5. The State Election Commissioner, the State Election Commission (Panchayat), Sone Bhawan, Birchand Patel, Patna.
6. The Secretary, the State Election Commission (Panchayat), Sone Bhawan, Birchand Patel, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.B.K. Manglam
For the Respondent-State	:	Mr. Prabhat Kumar Singh, SC-12 Mr. Sanjeet Kumar, AC to SC-12
For the Respondent-SEC	:	Mr. Amit Shrivastava Mr. Sanjeev Nikesh

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-05-2016

Heard Mr. S.B.K. Manglam, learned counsel appearing for the petitioner, Mr. Sanjeet Kumar, learned Assisting Counsel to Standing Counsel No.12 for the State and Mr. Amit Shrivastava who appears for the State Election Commission along with Mr. Sanjeev Nikesh.

The petitioners prays for a direction to the authorities of the State Election Commission as well as the District Magistrate, Gaya who happens to be the District Election Officer to reconsider their decision regarding the shifting of Booth Nos.256 and 257, Gram Panchayat Raj, Kathautia Kewal under Fatehpur Block in the

district of Gaya from its original location Primary School, Patwas (East part) and Primary School, Patwas (West part) respectively, to the Upgraded Middle School, Alakhdiha.

The grievance of the petitioner stands noted in the order passed on 18.5.2016 and primarily rests on the approval granted by the State Election Commission to the proposal of the District Election Officer –cum- District Magistrate present at Annexure-2 whereunder it was decided to establish the polling booth in question at the Primary School, Patwas.

Mr. Manglam, learned counsel appearing for the petitioner has submitted that even when a final decision has been taken as regarding the situs of booth yet on the request made by the Block Panchayat Raj Officer, Fatehpur placed at Annexure-4 expressing apprehension on disturbance in the polling by the movement of extremists, that a recommendation was made by the Block Development Officer and whereafter the District Magistrate has decided to shift the place of the polling booth to another place. According to Mr. Manglam, apart from the fact that the authorities should not have shifted the booth once it was finalized, even the distance is more than the prescribed distance under the guidelines.

The argument of Mr. Manglam has been contested by the learned State Counsel as well as Mr. Shrivastava, learned counsel appearing for the State Election Commission and who on instruction received from the District Magistrate, Gaya have



informed that such decision was taken in extraordinary circumstances in view of the report received regarding the probable disturbance by the extremists. It is stated that it is for the safety of the voters that such decision has been taken and although earlier it was decided to establish the booth at the Primary School, Patwas but in the circumstances discussed and apprehending violence that in the best interest of the voters a decision is taken to shift the booth. Learned counsel has relied upon Clause 4(3) (क) of the circular issued by the State Election Commission dated 15.12.2015 placed at Annexure-1 to submit that a power to relax the conditions is present and the ultimate discretion has been vested in the District Election Officer (Panchayat) to take a call on this.

Mr. Manglam while responding to the argument has produced a copy of the report of the Thana Incharge addressed to the Senior Superintendent of Police, to submit that the distance is more than the prescribed distance.

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

Rule 26 of the Bihar Panchayat Election Rules, 2006 (hereinafter referred to as 'the Rules') framed under the Bihar Panchayat Raj Act, 2006, vests exclusive discretion in the District Election Officer to determine the situs and to select the polling station with due approval of the State Election Commission. It is

not in dispute that such decision has been taken by the District Election Officer as approved by the State Election Commission present at Annexure-2 for establishing the booth at Primary School, Patwas. The decision is dated 16.2.2016 and it is thereafter that the matter has been considered in the light of the report given by the Block Panchayat Raj Officer and the recommendation of the Block Development Officer that the District Magistrate –cum- District Election Officer, Gaya in the larger public interest has decided to shift the polling booth to the Upgraded Middle School, Alakhdiha in its Eastern and Western part respectively.

In the circumstances so explained in the letter of the District Magistrate –cum- District Election Officer, Gaya addressed to the State Election Commission which forms the basis for shifting of polling booth coupled with the discretionary jurisdiction vested in the District Election Officer under rule 26 of ‘the Rules’ as well as the power of relaxation present at Clause 4(3) (क) of the guidelines I am not persuaded to interfere with the decision with the District Magistrate –cum- District Election Officer as stands approved by the State Election Commission, for he is best suited to take a decision in this respect.

The writ petition stands disposed of.

(Jyoti Saran, J)

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AFR	
CAV DATE	
Uploading Date	24-05-2016
Transmission Date	