

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4196 of 2016

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Shankar Prasad, Son of Sri Ganga Ram Raut, Resident of Village and P.O. Fataki,
P.S. - Madhepur, District - Madhubani.

.... 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 Director, Panchayati Raj Department, Government of Bihar, Patna.
4. The District Magistrate -cum- District Election Officer, Madhubani, District - Madhubani.
5. The District Panchayat Raj Officer, Madhubani, District - Madhubani.
6. The Block Development Officer, Madhepur, District - Madhubani.
7. The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
8. The State Election Commissioner, the State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
9. 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
For the Respondent-State : Mr. Sanjay Kr. Singh, AC to AAG-12
For the Respondent-SEC : Mr. Amit Shrivastava
Mr. Sanjeev Nikesh

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 13-04-2016

A supplementary counter affidavit has been filed by
the State Election Commission. Let it be kept on record.

The petitioner has prayed for issuance of a writ in the
nature of certiorari for quashing the list published in Form-3 of the
Bihar Panchayat Election Rules, 2006 (hereinafter referred to as
'the Rules') framed under the Bihar Panchayat Raj Act, 2006
(hereinafter referred to as 'the Act'), whereby the post of Mukhiya



of Gram Panchayat Raj, Banki (Territorial Constituency No.12) has been reserved for Backward Classes. The petitioner also seeks a mandamus for initiating a suitable action against the respondent nos.4 to 6 for manipulating the population of Gram Panchayat Raj, Banki and Gram Panchayat Raj, Bhith Bhagwanpur with an intention to reserve the post of Mukhia at Gram Panchayat Raj, Banki.

Mr. S.B.K. Manglam has appeared for the petitioner, the State is represented by Mr. Sanjay Kumar Singh, learned Assisting Counsel to Additional Advocate General No.12 and Mr. Amit Shrivastava along with Mr. Sanjeev Nikesh has appeared for the State Election Commission.

Mr. Manglam advocating the case of the petitioner has referred to Annexure-4 to submit that the population of Gram Panchayat Raj, Bhith Bhagwanpur has been mentioned 12,647 and which information was provided by the Block Development Officer –cum- Public Information Officer through his letter dated 24.2.2016 present at Annexure-3/1. He next refers to Annexure-2/1 to submit that this list was published under the signature of the District Magistrate, Madhubani and other officers and the total population as printed in the list shows the population of 12,647 which is in tune with Annexure-4 but stands modified to read as



10,649. He next refers to Annexure-5 which is an information provided by the Block Development Officer –cum- Public Information Officer vide his letter dated 24.2.2016 placed at Annexure-3 as regarding the population of Gram Panchayat Raj, Banki which collectively comes to 9,948 and matches the printed figures present at Annexure-2 and has been modified to read as 11,946. He submits that in view of the stipulations present in ‘the Act’ and ‘the Rules’ framed thereunder whereas it is the census population of 2011 which would be the basis for categorization, the State Election Commission as well as the respondent nos.4 to 6 have no business to modify the figures present at Annexure 2 and 2/1 which is an exercise wholly without jurisdiction and contrary to the statutory stipulations. According to Mr. Manglam, this exercise has been carried out merely to ensure a reservation of post of Mukhiya of Gram Panchayat Raj, Banki.

The learned State Counsel has contested the arguments of Mr. Manglam to submit that the exercise carried out is only a rectification of error. According to learned counsel, one Diwakar Prasad Yadav had earlier come before this Court in CWJC No.1858 of 2016 complaining of irregularities in the population in respect of the constituency in question and this Court taking note of the counter affidavit filed by the State Election

Commission reporting removal of discrepancy disposed of the writ petition.

A counter affidavit as well as supplementary counter affidavit has been filed by the State Election Commission explaining the circumstances which has led to the modification in the population as is manifest from Annexures 2 and 2/1 which is the foundation for the grievance raised in this writ petition. Learned counsel for the State Election Commission has explained the exercise in reference to the statement made in the supplementary counter affidavit. With reference to Annexure-R/3 to the supplementary counter affidavit it is stated that this list under Form-II was published under the Bihar Panchayat Raj Act, 1993 (hereinafter referred to as the 'Act of 1993') under section 11 thereof which is *pari materia* to the present Act. Referring to Gazette Publication No.314 it is stated that Gram Panchayat Raj, Bhith Bhagwanpur had been constituted comprising of:

- (a) Village- Banki bearing Thana No.277 having population of 4,633;
- (b) Village- Az Rakbe Sidhi Tazpur bearing Thana No.276 having a population of 748; and
- (c) Part of Village Bhith Bhagwanpur comprising of Babu Jivan and Bindeshwar Mushari Tola having

population of 1129.

The total population of this Panchayat is 6510.

He next refers to the Gazete Publication No.315 to submit that a Panchayat by the name of Bhith Bhagwanpur South was constituted comprising of village- Bhith Bhagwanpur having population of 7217. It is stated that even prior to 2001 Panchayat election that the name of Gram Panchayat Raj, Bhith Bhagwanpur and Gram Panchayat Raj, Bhith Bhagwanpur South were changed to Gram Panchayat Raj, Banki and Gram Panchayat Raj, Bhith Bhagwanpur respectively. It is stated that as per the census of 2011, the population of village- Banki is 5,558, the population of village- Az Rakbe Sidhi Tajpur is 4,390 and the population of village- Bhith Bhagwanpur is 12,647 as is manifest from Annexure-R/4. It is explained that during the course of reservation it was detected that the population figure of Gram Panchayat Raj, Banki and Gram Panchayat Raj, Bhith Bhagwanpur has been printed incorrectly because the population of that part of village Bhith Bhagwanpur which now stands included in the Gram Panchayat Raj, Banki was not excluded from the list and as a reason whereas the population of Gram Panchayat Raj, Bhith Bhagwanpur as printed in Annexure-2/1 reflected a higher figure and was inclusive of population which now forms part of Gram Panchayat Raj, Banki and on the other

hand the population of Gram Panchayat Raj, Banki was shown lower than the actual figure since that part of the population had not been included.

It is submitted that it is this discrepancy when noticed was rectified on 17.8.2015 vide Gazette no.4 and the District Panchayat Raj Officer vide letter dated 8.4.2016 present at Annexure-R/5 reported the matter to the State Election Commission. It is thus sought to be explained that there is absolutely no illegality in the categorization of the Panchayats as canvassed by learned counsel for the petitioner.

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

Although it is the argument of Mr. Manglam while espousing the cause of the petitioner that there has been interpolation as regarding the population of Gram Panchayat Raj, Banki and Gram Panchayat Raj, Bhith Bhagwanpur and which is not in tune with the census figures and since Annexures- 2 and 2/1 read along side the information present at Annexures, 4, 5, and 5/1 and does not explain the reasons for modification but the supplementary counter affidavit filed on behalf of the State Election Commission gives an explanation to the dispute. The State Election Commission while accepting the population of



village- Bhith Bhagwanpur, village-Banki and village- Az Rakbe Sidhi Tajpur to be in tune with the census population have well explained the reasons for modification of the same in the list present at Annexures 2 and 2/1. The reasons for reduction of 1998 persons from the population of Gram Panchayat Raj, Bhith Bhagwanpur and its addition in the population of Gram Panchayat Raj, Banki stands explained in the supplementary counter affidavit read alongside the figures explained in Annexure-A to the counter affidavit of the State. It is explained that such part of village- Bhith Bhagwanpur which stands included in Gram Panchayat Raj, Banki as per the constitution of the Panchayat present at Annexure-R/3 has a population of 1998 and which population had been excluded from the population of Gram Panchayat Raj, Banki and mechanically included in the population of Gram Panchayat Raj, Bhith Bhagwanpur as per census but since it did not reflect the correct position of the Panchayats hence while disposing of the objections received under rule 8 of 'the Rules', the error was rectified and reported to this Court when a similar issue was raised in CWJC No.1858 of 2016 which writ petition was disposed of taking note of the corrections carried out.

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.

It has been sufficiently demonstrated by the respondents that there has been no interference with the census population of village Bhith Bhagwanpur which continues to be 12,647 as per the census figure of 2011 save and except that 1998 persons of the said village now form a part of Gram Panchayat Raj, Banki and which figure has been deleted from Gram Panchayat

Raj, Bhith Bhagwanpur to be included in Gram Panchayat Raj, Banki.

Although the petitioner did succeed in creating a flutter but was only for a short moment and has been put at rest by the explanation advanced by the Commission in the supplementary counter affidavit read along side the counter affidavit earlier filed on their behalf as well as by the State.

No cause of indulgence is made out and in the circumstances explained, the writ petition is disposed of.

(Jyoti Saran, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	