

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22642 of 2013

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Saroj Devi, Wife of Sanjay Kumar, Resident of Village- Dhodhi, P.O.-Bela Varis,
P.S.- Goh, District-Aurangabad (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar through the District Returning Officer -cum- District Magistrate, Aurangabad.
2. The Returning Officer, Goh, Chandan Mandal, Deputy Collector, Aurangabad.
3. The Assistant Returning Officer -cum- B.D.O., Haspura, District-Aurangabad.
4. Shri Mahendra Choudhary, Assistant Engineer -cum- Observer of Counting, Daudnagar, Aurangabad.
5. Shri Arbind Das, B.O. Block Officer, Goh (Aurangabad) all list of Counting District-Aurangabad.
6. Shri Binod Kumar, son of Sri Nawal Singh, Resident of Village-Malhad, P.O.-Malhad, P.S.-Goh, District-Aurangabad.
7. Smt. Archana Devi, Wife of Sri Navin Singh, Resident of Village- Malhad, P.O.-Malhad, P.S.-Goh, District-Aurangabad.
8. Sir Anil Kumar, Son of Sri Kamta Singh, Resident of Village- Malhad, P.O.-Malhad, P.S.-Goh, District-Aurangabad.
9. Sri Ayodhya Singh, Son of Rajaram Singh, Resident of Village- Malhad, P.O.-Malhad, P.S.-Goh, District-Aurangabad.
10. Sri Ashok Kumar, Son of Sri Ram Krit Yadav, Resident of Village-Saw Bigha Tola, Malhad, P.O.-Malhad, PS.-Goh, District-Aurangabad.
11. Sri Kaushal Sharma, son of Sri Tribhuwan Singh, Resident of Village- Gangti, P.O.- Malhad, District- Aurangabad.
12. Sri Barkatullah, Son of Kaluullah, Resident of Village-Bela, P.O.-Bela Varis, P.S.-Goh, District - Aurangabad.
13. Sri Braj Kishore Singh, Son of Late Badri Singh, Resident of Village- Malhad, P.S.-Goh, District- Aurangabad.
14. Sri Mohan Kumar, Son of Sri Ram Lakhnan Yadav, Resident of Village- Kanhaia Bigha Tolo, Malhad, P.O.- Malhad, P.S.-Goh, District- Aurangabad.
15. Sri Rabindra Sharma, Son of Sri Bhuwan Sharma, Resident of Village- Malhad, P.S.-Goh, District-Aurangabad.
16. Sri Rajendra Prasad Singh, Son of Sri Ram Depp Singh, Resident of Village- Dhodhi, P.O.-Bela Varis, P.S.-Goh, District-Aurangabad.
17. Sri Ram Lakshmad Yadav, son of Sri Ram Swaroop Yadav, Resident of Village- Chapra, P.O.-Bela Varis, P.S.-Goh, District-Aurangabad.
18. Sri Lala Yadav, Son of Sri Ghuj Yadav, Resident of Village- Bela, P.O.-Bela Varis, P.S.-Goh, District-Aurangabad.
19. Sri Birju Mahto, Son of Sri Lakshuman Mahto, Resident of Village- Malhad, P.S.-Goh, District-Aurangabad.
20. Sri Shankar Yadav, Son of Rajroop Yadav, Resident of Village- Chapra, P.O.-Bela, P.S.-Goh, District-Aurangabad.
21. Sri Shiv Shankar Yadav, son of Late Rambhaju Yadav, Resident of Village- Chapra, P.O.-Bela Varis, P.S.-Goh, District-Aurangabad.
22. Sri Satyanand Mahto, Son of Sri Ramdas Mahto, Resident of Village- Malhad, P.O.-Malhad, P.S.-Goh, District-Aurangabad.
23. Sri Surendra Sharma, Son of Sri Ramchandra Sharma, Resident of Village- Chapra, P.O.-Bela Varis, P.S.-Goh, District-Aurangabad.
24. Sri Surendra Yadav, Son of Nanhak Yadav, Resident of Village-Chapra, P.O.-Bela Varis P.S.-Goh, District-Aurangabad.

25. Sri Surendra Kumar Mishra, Son of Sri Ganeshanand Mishra, Resident of Village-Malhad, P.S.-Goh, District-Aurangabad.
26. Sri Deo Nandan Paswan, Son of Late Baburam Paswan, Resident of Village-Bela, P.O.-Bela Varis, P.S.-Goh, District-Aurangabad.
27. Sri Ram Pukar Mehta, Son of Sri Shital Mahto, Resident of Village- Malhad, P.O.-Malhad, P.S.-Goh, District-Aurangabad.
28. The State Election Commission, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Hemendra Prasad Singh, Sr. Adv. with Mr. M.K. Upadhyay Mr. Pranav Kumar
For the Respondent-State	:	Mr. Arvind Kumar, AC to SC-28
For the Respondent-SEC	:	Mr. Amit Shrivastava Mr. Sanjeev Nikesh
For the Respondent No.6	:	Mr. Siya Ram Sahi Mr. Santosh Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 08-01-2016

Heard Mr. Hemendra Prasad Singh, learned senior counsel appearing on behalf of the petitioner, learned counsel for the State, learned counsel appearing for the State Election Commission and Mr. Siya Ram Sahi, learned counsel appearing for the private respondent no.6.

The petitioner is aggrieved by the judgment and order dated 31.8.2013 passed by the learned Munsif –cum- Election Tribunal, Sub-Divisional Court, Daudnagar in the district of Aurangabad in Election Petition (Case) No.16 of 2011, whereby the election petition has been dismissed.

The facts of the case briefly stated is that the petitioner along with respondent no.6 and some others filed nomination to contest the election to the post of Mukhiya, Gram Panchayat Raj,



Malhad in the district of Aurangabad. The election was held on 20.4.2011. The counting was held on 2.6.2011 in which according to the petitioner, she secured 300 votes as against 297 votes secured by the private respondent no.6. An application was filed by the respondent no.6 seeking a recount of the votes at Booth Nos.237 and 238. A recount was carried out on all the booths on 3.6.2011 and in the recount while the vote count of the petitioner at Booth no.229 was found 1 less to bring the total count at 299 votes but a recount of the private respondent no.6 at Booth no.230 showed an increase of 3 votes which took his count to 300. The respondent no.6 was declared returned candidate. The petitioner being aggrieved filed the election case which was dismissed and being aggrieved the petitioner is before this Court.

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

The only ground raised by Mr. Singh, learned senior counsel appearing for the petitioner to question the entire process of recount is that the application filed by the respondent no.6 seeking recount being bereft of grounds, was not worthy of being acted upon and that the State Election Commission on a mere asking has gone for a roving enquiry to upset the result. Even though learned counsel has objected to the process of recount and has canvassed the issues of holding a roving enquiry, but neither the pleadings in the election



case or the evidence led would indicate any illegalities resulting. No doubt the application present at Annexure-1 to the writ petition stated to have been filed by the respondent no.6 seeking a recount is bereft of reason and in view of the statutory stipulations present at rule 79(1) of the Bihar Panchayat Election Rules, 2006 (hereinafter referred to as 'the Rules') the Returning Officer would have been within his jurisdiction not to act thereupon but then Mr. Sanjeev Nikesh, learned counsel appearing for the State Election Commission has made reference to a circular whereby the State Election Commission has directed that if the difference of result is of 9 votes then the Returning Officer would be within his jurisdiction to carry out a recount upon a request made by any contesting candidate. The circular of the State Election Commission so referred by Mr. Nikesh is dated 24.5.2011.

Mr. Singh endeavoured to argue that the circular of the State Election Commission cannot override the statutory prescription provided under section 79(1) of 'the Rules'. Mr. Singh is absolutely correct and an application for recount under 'the Rules' has to be accompanied with grounds and in case any such application for recount is rejected by the Returning Officer on this ground, it cannot be faulted with but the case at hand is otherwise and in the present case the Returning Officer following the direction of the State Election Commission has acted on the prayer of recount. In my

opinion this exercise cannot give any cause of action to the petitioner to question the process of recount specially when the recount has taken place in her presence and the reduction of her vote as well as enhancement of the vote count of the private respondent is not marred by any illegality. In that view of the matter where there is no document to reflect any infirmity in the reduction of the vote of the petitioner or the enhancement of vote in favour of the private respondent, any endeavour by Mr. Singh to seek another count at this stage indeed would be a case of holding roving enquiry. Not being satisfied with the submission of learned counsel this Court is not persuaded to interfere with the opinion recorded by the Election Tribunal and with the judgment and order impugned.

The writ petition is disposed of.

(Jyoti Saran, J)

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