

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12620 of 2016

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Bam Shankar Yadav, son of late Nanu Lal Yadav, resident of Tiri, Ward No.4, P.S.-
Sour Bazar, District- Saharsa

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Panchayati Raj,
2. District Magistrate, Saharsa,
3. District Panchayat Raj Officer, District- Saharsa,
4. Sub-Divisional Magistrate, Saharsa,
5. Block Development Officer, Sour Bazar, Saharsa,
6. Chief Election Commissioner, the Bihar Sate Election Commission, Patna.

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Suman Kumar Jha, Advocate
For the Respondent Nos.1-5 : Mr. Prabhat Kumar Verma-AAG3
For the Respondent No.6 : Mr. Amit Srivastava, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

&

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

CAV

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 15-09-2016

With the help of this writ application made under Article 226 of the Constitution of India, in the form of public interest litigation, the petitioner, who is a resident of village Tiri, in the district of Saharsa, seeks issuance of appropriate writ setting aside and quashing the elections of the Tiri Gram Panchayat held on 02.05.2016, the challenge to the election, in question, being based on electoral roll, which was prepared and, on the basis whereof, elections to the said Panchayat were held.

2. In substance, the grievance of the petitioner is that

the electorates of the district of Madhepura had been included in the electoral roll, which is against the law and, therefore, entire election is bad in law and deserves to be interfered with.

3. Before proceeding further, we may point out that the petitioner had earlier filed a writ petition, which gave rise to CWJC No.3538 of 2016, and by an interim order, dated 18.03.2016, passed therein, the Court had directed that the result of the elections, which may be held pursuant to the impugned notification, shall be subject to the outcome of the writ petition and/or such further or other order or orders as may be passed in the writ petition.

4. After the election was over, the writ petitioner withdrew his writ petition and, therefore, by order, dated 11.07.2016, the writ petition was disposed off as withdrawn. It is thereafter that the present public interest litigation has been filed with the grievance as indicated above.

5. We have heard Mr. Suman Kumar Jha, learned counsel appearing for the petitioner, and Mr. Prabhat Kumar Verma, learned Additional Advocate General, for the respondent No.1 to 5. We have also heard Mr. Amit Srivastava, learned counsel appearing for the respondent No.6.

6. For determining the scheme of constitution, formation or delimitation of a Gram Panchayat, the provisions, stand, admittedly, embodied in Section 11, which, being relevant, is

reproduced below:

“11. Declaration of Gram Panchayat Area —

(1) Subject to the general or special orders of the Government, **the District Magistrate may, by notification in the District Gazette, declare any local area comprising a village or a group of contiguous villages or part thereof to be a Gram Panchayat area with a population within its territory as nearly as seven thousand.**

Provided that the District Magistrate may, after consultation with the Gram Panchayat concerned, by a notification, at any time, include within or exclude from any Gram Panchayat area any village or part thereof and alter the name of the Gram Panchayat.

(2) **If the State Election Commission, suo motu or on receipt of a written representation from an aggrieved person, is of the opinion that there is sufficient reason for doing so, may review the legality and propriety of any Gram Panchayat declared under sub-section (1) and may call for the relevant records for this purpose, and subject to the provisions of this Act, may pass such order which the Commission deems fit and proper.**

Provided that after the notification of the date of Panchayat election by the Governor under Section 124 of the Act, the Commission shall not consider any such new case.

(3) **Every Gram Panchayat shall be a body corporate by the name of its Gram Panchayat and shall have perpetual succession and a common seal and subject to such restrictions as are imposed by or under this Act or any other enactment, shall be vested with the capacity of**

suing or being sued in its corporate name, of acquiring, holding and transferring property, movable or immovable, whether without or within the limits of the area over which it has authority, or entering into contracts and of doing all things necessary, proper and expedient for the purpose for which it is constituted.”

(Emphasis is supplied)

7. From a bare reading of Section 11, it clearly transpires that it is the District Magistrate, who may, by notification in the District Gazette, declare any local area comprising a village or a group of contiguous villages or part thereof to be a Gram Panchayat area with a population within its territory as nearly as seven thousand. The proviso to Section 11 (1) further lays down that the District Magistrate may, after consultation with the Gram Panchayat concerned, by a notification, at any time, include within or exclude from any Gram Panchayat area any village or part thereof and alter the name of the Gram Panchayat.

8. Sub Section (1) of Section 11 makes it clear that if the State Election Commission, either *suo motu* or on receipt of a written representation from an aggrieved person, is of the opinion that there is sufficient reason for doing so, may review the legality and propriety of any Gram Panchayat declared under sub-section (1) and may call for the relevant records for this purpose and, subject to the provisions of this Act, may pass such order, which the

Commission deems fit and proper.

9. Thus, sub Section (1) of Section 11 shows that a person aggrieved by the decision of a District Magistrate passed in exercise of power under Section 11(1) of the Bihar Panchayat Raj Act, 2006, can make a representation, as an aggrieved person, to the State Election Commission, which has the power to do undo the wrong, if any, done by the District Magistrate.

10. In the case at hand, therefore, there was remedy available to the petitioner or persons, whose interest he claims to be advancing, to make requisite representation to the State Election Commission.

11. There is no pleading in the present writ petition that any such representation, as indicated above, was made. Having failed to take recourse to the statutory provision, which were available to him, the petitioner or persons, similarly situated as the petitioner, cannot, now, raise the issue by means of public interest litigation.

12. In other words, as the petitioner has failed to take recourse to the statutory provisions, which were available to him, for remedy of his grievance or for grievance of persons, who may be similarly situated, it would not be appropriate, on the part of this Court, to, now, interfere with the result of the election by way of public interest litigation. This apart, the question as to whether



electorates of Mithai village of Madhepura district have been included in the electoral roll of Tiri Gram Panchayat, in the district of Sahara, or not, is a question of fact and since this fact has not been admitted, the determination of the question as to whether any electorate of Mithai village of Madhepura district has or has not been included, in the electoral roll of the Tiri Gram Panchayat of Saharsa district, becomes a disputed question of fact and such a disputed question of fact cannot be decided in a public interest litigation, such as the present one, inasmuch as the process for determination of such a question would require recording of evidence, which would not be a proper course for this Court to adopt in a case of present nature.

13. It is rightly submitted by Mr. Jha, learned counsel for the petitioner, that the exercise of power, under Article 226 of the Constitution of India, is permissible if action of an authority impugned is an action without jurisdiction.

14. In the case at hand, there is no dispute that the District Magistrate does have power to declare any local area comprising a village or a group of contiguous villages or part thereof to be a Gram Panchayat area with a population within its territory as nearly as seven thousand and include within or exclude from any Gram Panchayat area any village or part thereof and alter the name of the Gram Panchayat, at any time, by a notification after consultation with the Gram Panchayat concerned, subject to the



general or special order of the Government. If this power has not been exercised correctly, it cannot become an order without jurisdiction, though such an action may be in breach of law or illegal. A wrong order passed or a wrong decision is taken, in exercise of jurisdiction, cannot be regarded as an order/decision without jurisdiction.

15. To put it differently, an order, which is illegal, need not necessarily be without jurisdiction. An order can be termed as an order being without jurisdiction only when the order is passed by a person, who has no jurisdiction to pass the same.

16. In the case at hand, the responsibility to make declaration, in respect of a Gram Panchayat, is of the District Magistrate and it is he, who exercised this jurisdiction in the case at hand. If the exercise of jurisdiction, as indicated hereinbefore, was made under the law, it cannot be challenged as an act or action without jurisdiction, but can be challenged as an action bad in law. There is subtle, but firm distinction between two, namely, (i) an order passed without jurisdiction and (ii) an order, which has been passed in exercise of jurisdiction, but bad in law.

17. It is, thus, clear that the petitioner has not been able to make out any case calling for interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

18. This writ petition, therefore, fails and is dismissed accordingly.

19. However, there shall be no order as to costs.

(I. A. Ansari, CJ)

Chakradhari Sharan Singh, J: I agree.

(Chakradhari Sharan Singh, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	29.08.2016
Uploading Date	19.09.2016
Transmission Date	