

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9227 of 2016

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1. Deventi Devi, W/o Shri Devendra Yadav, resident of village + P.O. Bokane Kala, P.S. Patahi, District - East Champaran.
 2. Chandra Bhushan Yadav, S/o Late Rajendra Rai, resident of village + P.O. Kodaria, P.S. Patahi, District - East Champaran.
 3. Krishna Kumari, W/o Shri Nirbhay Chandravanshi, resident of village + P.O. Mirzapur, P.S. Patahi, District - East Champaran.
 4. Lakhindra Sahni, S/o Shri Kuldip Sahai, resident of village + P.O. Gonahi, P.S. Patahi, District - East Champaran.
 5. Shanti Devi, W/o Nandlal Sah, resident of village - Gamhariaya, P.O. Narayanpur, P.S. Patahi, District - East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Panchayati Raj, Govt. of Bihar, Patna.
2. The District Magistrate -cum- District Election officer (Panchayat), East Champaran, Motihari.
3. The District Panchayat Raj officer, East Champaran, Motihari.
4. The Block Development officer - cum - Returning Officer, Block - Patahi, District East Champaran.
5. The State Election Commission represented through its Secretary, State Election Commission, Bihar, Sone Bhawan, 3rd Veer Chand Patel, Path, Patna 800001.
6. The Commissioner, the State Election Commission, Bihar, Sone Bhawan, 3rd Veer Chand Patel, Path, Patna 800001.
7. The Secretary, the State Election Commission, Bihar, Sone Bhawan, 3rd Veer Chand Patel, Path, Patna 800001.

.... Respondent/s

With

Civil Writ Jurisdiction Case No. 9194 of 2016

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Umesh Kumar Kamesh, S/o Sri Fagu Yadav, R/o Vill- Lagunia P.O.- Mirjawa, PS Triveniganj, District- Supaul.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Govt. of Bihar, Patna.
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Principal Secretary Department of Panchayati Raj, Bihar Patna.
4. The District Magistrate cum District Election Officer (Panchayat) Supaul, at Supaul.
5. The District Panchayat Raj Officer, Supaul at Supaul.
6. The Block Development officer -cum- Election Officer, Triveniganj Block-Triveniganj.
7. The Secretary State Election Commission Bihar Patna.

.... Respondent/s

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Appearance :

(In CWJC No. 9227 of 2016)

For the Petitioner/s : Mr. Shri Prakash Srivastava

For the Respondent/s : Mr. Prasoon Sinha, G.A.-2

For the State E.C. : Mr. Sanjeev Nikesh

(In CWJC No. 9194 of 2016)

For the Petitioner/s : Mr. Amresh Kumar Sinha

Mr. Shashi Bhushan Singh

Mr. Ram Tujabh Singh

For the Respondent/s : Mr. P.K. Verma, A.A.G.-5

For the State E.C. : Mr. Sanjeev Nikesh

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 27-06-2016

Heard Mr. S.P. Srivastava, learned counsel appearing for the petitioners, learned counsel for the State and Mr. Sanjeev Nikesh learned counsel appearing for the State Election Commission.

Re: CWJC No. 9227 of 2016

The petitioner prays for issuance of writ in the nature of certiorari for quashing the letter dated 1.6.2016 of the State Election Commission impugned at Annexure-2 insofar as the State Election Commission has countermanded elections in Territorial Constituency Nos.5, 8, 13, 19, 20 and 21 of Panchayat Samiti, Patahi on gathering information regarding infirmities found in the categorization of the territorial constituency nos.5, 8 and 20 which in turn has a cascading effect on the remaining constituencies detailed above requiring a fresh notification under Form-1 and 2. A similar infirmity has been found in so far as Panchayat Samiti, Kalyanpur is concerned however the present contest is restricted to the decision taken by the Commission in so far as the Panchayat Samiti, Patahi is concerned.

The election to this constituency took place on 28.2.2016

and the counting was due on 2.6.2016 but before it could take place that the decision impugned in the writ petition has been taken by the Commission. The said decision is followed by a fresh election schedule, which again is dated 1.6.2016 and is impugned at Annexure-3 to the writ petition wherein fresh elections are scheduled on 1.7.2016.

Re: **CWJC No.9194 of 2016**

In so far as CWJC No.9194 of 2016 is concerned, petitioner in the said case has again questioned the decision of the State Election Commission dated 22.5.2016 impugned at Annexure-4 whereby on a similar infirmity found in the constitution of territorial constituency nos.18 and 19 falling within Panchayat Samiti, Triveniganj in the district of Supaul that the decision has been taken by the Commission to cancel the election held in respect of territorial constituency nos.18 and 19 on 18.5.2016 and for its fresh election on 27.6.2016 i.e. today.

It is in consideration of the urgency of the matter that it has been taken up for consideration and with the consent of the parties the writ petition is being finally disposed of at the stage of admission itself.

A counter affidavit has been filed on behalf of the Commission justifying the impugned action.

Mr. Srivastava, learned counsel for the petitioner has questioned the action of the Commission *inter alia* on grounds that it



is *de hors* the provision underlying the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act') and the Bihar Panchayat Election Rules, 2006 (hereinafter referred to as 'the Rules') framed thereunder. It is the argument of Mr. Srivastava that the circumstances mandating a countermand of any election held and completed, stands explained in Rules-50, 70 and 71 of 'the Rules' and any exercise of jurisdiction by the Commission has to be within the parameters described thereunder. According to Mr. Srivastava whereas Rule-50 permits a countermand of a poll in circumstances where any candidate expires during the course of election, rule- 70 permits the Presiding Officer to adjourn a poll in any abnormal situation and with reference to rule-71 it is argued that no doubt a power is vested in the Commission to countermand a poll but such exercise is only upon receiving a report in this regard from the Presiding Officer. It is the argument of learned counsel that it is only in the circumstances expressed in the provision that a countermand can be directed and in no other circumstance. It is the argument of Mr. Srivastava that a mere impression of the Commission regarding infirmity in the categorization or the constitution of the constituencies is no circumstance necessitating a countermand of a poll validly held because 'the Rule' does not permit the Commission to countermand in such circumstance. According to Mr. Srivastava once the polling has ended then it is only within the circumstances explained in Rules-50, 70 and 71 that the Commission can exercise

its jurisdiction on receiving any report in this regard and since the infirmity is attached to the constitution of the territorial constituency, this is not one of the circumstance explained in the statutory rules. According to Mr. Srivastava, the power has been abused.

Learned counsel responding to the stand taken by the Commission in their counter affidavit in which reliance is placed on a Division Bench judgment of this Court since reported in **2004(1) PLJR 278 (Sahdeo Yadav vs. Election Commission)**, it is submitted that the dispute was different for in the said case the election symbol itself had been altered wanting an interference by the Commission and which action of the Commission has been upheld by the Division Bench. He submits that in the present case the exercise is resting on a unilateral decision of the Election Commission.

Learned counsel has also relied upon a judgment of the Supreme Court reported in **AIR 1984 SC 921 (A.C. Jose vs. Sivan Pillai)** to advance the argument that the Election Commission cannot be permitted to act as an extra constitutional authority and has to act within the constitutional framework.

Per Contra it is the argument of learned counsel for the State Election Commission that since an inherent defect was discovered in the constitution of the constituencies concerned which affected the very foundation of the exercise, that a decision to countermand and

hold fresh elections has been taken in relation to the wards in question in so far as the Panchayat Samiti, Patahi in the district of East Champaran and in territorial constituency nos.18 and 19 under Panchayat Samiti, Triveniganj in the district of Supaul is concerned.

Mr. Nikesh has relied upon the decision of this Court reported in **2006(4) PLJR 377 (Nikesh Kumar vs. The State of Bihar)** to submit that the same situation arose in the said case and when a co-ordinate Bench of this Court taking note of the opinion expressed in the case of **Sahdeo Yadav** (supra) as well as the opinion of the Apex Court in the case of **Mohinder Singh Gill & Anr. Vs. the Chief Election Commissioner** since reported in **AIR 1978 SC 851** has upheld the powers of the Commission to exercise such jurisdiction. He submits that the decision of this Court rendered in the case of **Nikesh Kumar** (supra) continues to govern the field and has attained finality.

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

Section-123 of 'the Act' read with rule 116 of 'the Rules' vests exclusive power of superintendence, direction and control in the Commission to conduct the Panchayat Election right from the stage of notifying territorial constituencies, its categorization, preparation of voters list, marking polling stations and taking all decisions and steps for holding a free and fair election.

There is absolutely no dispute as to the powers of



superintendence and control vested in the Commission to hold panchayat elections. The dispute is whether the Commission is amply empowered to countermand the election for the reasons assigned in the impugned letter dated 1.6.2016 and 22.5.2016 put to challenge in the two writ petitions. In my opinion in view of the position settled in the judgment of **Nikesh Kumar** (supra) and the provision underlying Rules-50, 70 and 71 of 'the Rules', no infirmity can be found in the exercise. The judgment passed by the Supreme Court in the case of **A.C. Jose** (supra) which is the backbone for the contest herein, does not in any manner make any shift from the legal position so settled by this Court. I deem it necessary to mention here that whereas the issue in dispute in the case of **Nikesh Kumar** (supra) is the same as the contest at hand and the bench upheld the powers of the Commission to countermand in such circumstance, on the other hand the issue in the case of **A.C. Jose** (supra) was whether the Commission exercising powers of superintendence and control could act beyond the statutory mandate but which is not the situation present in the two cases.

The power exercised by the Commission was upheld by this Court under rule-71 of 'the Rules' which amongst other circumstances vests jurisdiction in the Commission to countermand an election for any 'sufficient cause' and in my opinion there cannot be a better case of 'sufficient cause' where the election process followed by the Commission was not found to be in conformity with

the statutory prescriptions underlying rule-3 to 11 of 'the Rules'. The argument of Mr. Srivastava that the exercise is *de hors* the powers conferred, is thus rejected.

In fact, the moment it comes to the knowledge of the Election Commission that the territorial constituencies have not been constituted and/or categorized as per the mandate of law, then the Commission cannot act as a mute spectator to the irregularity rather is amply empowered to take all steps to correct the error by countermanding the election held and for restoring the election process. It is neither canvassed by Mr. Srivastava that the reasons assigned by the Commission for re-initiating the process after setting aside the election is a perverse decision nor it is their case that no re-constitution/re-categorisation is warranted.

For the reasons so discussed, I am not persuaded to interfere with the decision of the Election Commission to countermand the elections (s) put in question in the two writ petitions which are accordingly disposed of.

(Jyoti Saran, J)

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