

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9156 of 2017

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1. Krishna Prasad Yadav, Son of Late Rama Nand Rai, Resident of Mohalla-Bara Telpa, P.S. Chapra Town, District- Chapra (Saran).
 2. Awadesh Kumar, Son of Late Parmeshwar Dayal Gupta, Resident of Mohalla-Katra Baradari, P.S. Bhagwan Bazar, District- Chapra (Saran).

.... Petitioners

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna.
2. The Chief Election Commissioner, Bihar State Election Commission, Patna.
3. The Commissioner, Saran Division, Chapra.
4. The District Magistrate-cum-District Election Officer, Chapra.
5. The District Panchayat Raj Officer, Saran at Chapra.
6. The S.D.O., Sadar-cum-Election Officer, Chapra Nagar Nigam, Chapra.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dr. Alok Kumar Sinha, Advocate
For the State : Mr. Sunil Kumar Mandal, SC-3
Mr. Bipin Kumar, AC to SC-3
For respondent no. 2 : Mr. Amit Srivastava, Advocate
Mr. Sanjeev Nikesh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 06-12-2017

In the present writ petition, the petitioner has prayed for issuance of appropriate writ of mandamus to the respondent-authorities to follow guidelines and directions of the Election Commission in constitution of wards in accordance with the population and demarcation of boundary and then only follow the



reservation roster for wards under general category, scheduled castes, backward class mahila and general category mahila depending upon the population of wards, especially in ward nos. 15 and 42 in which the population of general category is more than others. The further prayer of the petitioner is to stay the notification till anomalies in the constitution of wards are cured.

2. At the outset, learned counsel appearing for the State Election Commission has raised an objection regarding maintainability of the writ petition in the light of Article 243 ZG of the Constitution of India. He contended that the general election to the public bodies in the local authorities in the State of Bihar has already been held on 06.08.2017 and the result has been published on 08.08.2017. He contended that when the election process is already over, indulgence in such matter in a writ petition under Article 226 of the Constitution of India is not permissible. In this regard, he has placed reliance on a decision of this Court in **Raju Prasad Mehta vs. the State of Bihar through the Chief Secretary & Ors., [2017 (2) PLJR 970]**.

3. On the other hand, learned counsel for the petitioners submitted that since the writ petition was filed prior to commencement of the election, the objection raised regarding maintainability of the writ petition is not sustainable. He submitted



that now, Nagar Parishad Chapra has become Nagar Nigam Chapra and, accordingly, reconstruction of old wards into new wards process started for the purpose of election to be held in the year 2017. He contended that a notification in this regard was issued for the purpose of election of Nagar Nigam, Chapra. The area was declared by the district authorities and published on various date, i.e. 20.02.2017, 20.03.2017 and 03.05.2017 on the notice board upon which several objections were made before the authorities regarding population of wards, demarcation of area and roaster of reservation categories, which were ignored by the authorities. He contended that the petitioners and several other people of the wards of Chapra Nagar Nigam moved before the State Election Commission and submitted their objections against the anomalies in constitution of wards in accordance with uniform population of each ward. He contended that according to demarcation of 2012, ward nos. 15 and 42 were earlier under general categories, but by manipulation of the respondents, the population of other backward classes was incorporated into these wards and they were declared as backward class and backward class women category whereas the population of general category is much more than other castes. He contended that as the grievances raised by the petitioners were not redressed by the authorities, the petitioners were left with no option but to seek their remedy by way of filing the



writ petition before this Court.

4. I have heard learned counsel for the parties and perused the record.

5. Article 243 ZG of the Constitution reads as under :-

"243ZG. Bar to interference by courts in electoral matters.- Notwithstanding anything in this Constitution,-

(a) The validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243 ZA shall not be called in question in any court;

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State".

6. It would be manifest from the counter-affidavit filed on behalf of State Election Commission that gazette notification of the constitution of ward was published in the district gazette on 29.05.2017, but the same has not been challenged by the petitioners in the present writ petition, which was filed on 04.07.2017. Moreover, there is no dispute to the fact that the election of local bodies of Chapra Municipal Corporation has already been held on



06.08.2017 and the result of the election has already been published on 08.08.2017.

7. In **Raju Prasad Mehta vs. the State of Bihar** (Supra), a notification issued by the State Election Commission whereby certain processes had been initiated for reservation of seats in various wards for scheduled castes and scheduled tribes, backward class female candidates, etc., was called in question by filing a writ petition in the nature of public interest litigation. A Division Bench of this Court after hearing the parties, vide order dated 26.04.2017, held in the said case as under :-

“The general election to the public bodies in the local authorities in the State of Bihar has been notified by the Election Commission for the year 2017 and the **election process has already commenced and, therefore, at this stage when the election process has already commenced, indulgence into the matter in a writ petition under Article 226 of the Constitution is not permissible. The petitioner has to challenge the reservation and allocation of seats after the elections are over by resorting to the remedy of election petition available under the statute.**

At this stage, we are not inclined to interfere into the matter because the process of election is over and the notification issued by His



Excellency the Governor of State of Bihar on 19.04.2017 and in view of the law laid down by the Supreme Court in the case of Harnek Singh vs. Charanjit Singh (2005) 8 SCC 383.”
(emphasis mine)

8. The facts of the present case are almost identical to that of the facts in the case of **Raju Prasad Mehta vs. the State of Bihar** (Supra). Hence, this case is squarely covered by the aforesaid decision of the Division Bench. Since the election has already been held and the result has been declared, indulgence by this Court in exercise of power under Article 226 of the Constitution of India is not permissible. If so advised, the petitioners may seek remedy by resorting to the remedy of election petition under the statute.
9. With the aforesaid observation, the writ petition is dismissed as not maintainable.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
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