

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8578 of 2017

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Prem Prakash, Son of Ajay Kumar Singh, resident of Mohalla Hatia, P.S. Sherghati,
District Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, State Election Commission, Bihar.
2. The District Election Officer, Cum District Magistrate, Gaya
3. The Election Officer Cum Deputy Collector, Land Reforms, Nagar Panchayat, Sherghari.
4. The State Election Commission (Nagar Palika), through the State Election Commissioner, 3rd Floor, Sone Bhawan, R. Block, Daroga Rai Path, Birchand Patel Path, Patna, Bihar.
5. Dinanath Pandey, Son of Late Uma Pandey, Resident of Mohalla Hatia, P.S. Sherghati, District Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s	: Mr. Sandeep Kumar, Advocate
For the State Election Commission	: Mr. Amit Shrivastava, Advocate Mr. Girish Pandey, Advocate
For the State	: Mr. Mithilesh Kumar Upadhyay, AC to GP-3

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 07-09-2017

Heard learned counsel for the petitioner; State and State
Election Commission.

2. In terms of the earlier order, the exercise as directed
has been completed by the authority and a counter affidavit has been
filed on behalf of respondents no. 2 and 3.

3. The main contention of the petitioner was that the
lottery was resorted to without there being any occasion for the same
as one vote counted in favour of the respondent no. 5 was not proper



as after a cross being marked against his name, it was also encircled. This persuaded the Court to direct for re-verification with regard to the ballots on which, after marking a cross, there was any other mark. This was in the background of the contention that, as per the statutory requirement, any extra marking is impermissible and the said ballot has to be rejected. The contention of learned counsel for the petitioner was that if the said crossed and encircled ballot is rejected, automatically, the petitioner would be the winner and there would be no occasion to go for any lottery. The exercise, as directed by the Court reveals that 20 valid votes had been cast and out of that, both the petitioner and the respondent no. 5 got 10 each and further that one of those votes of the petitioner as well as the respondent no. 5 had a cross mark which was encircled/enclosed by a rectangle. Thus, it is clear that even if the said two votes/ballots are held to be invalid and are required to be rejected, the same would result in both the petitioner and the respondent no. 5 getting nine votes each. This also will result in a tie and as per the statutory provision, lottery has to be resorted to, which has been done.

4. In view thereof, there is no occasion for this Court to interfere in the matter and accordingly, the writ petition stands disposed off.

5. It is made clear that the proper remedy after the



declaration of result is to go before the statutory forum and file election petition. However, in the peculiar facts and circumstances of the case and the categorical stand on behalf of the petitioner that one ballot had been encircled after putting a cross, the Court had gone in for this special exercise. The same shall neither be a precedent nor shall create any right in any person to move the writ Court after declaration of results relating to such election. It is further clarified that it shall be open to the petitioner to challenge the election of respondent no. 5, in accordance with law, before the statutory forum.

6. In view of the fact that the petitioner had moved the Court within two weeks of the result being declared, if an election petition is filed by him within two weeks from today, the same shall be considered and disposed off on merits.

(Ahsanuddin Amanullah, J)

P. Kumar

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