

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.5023 of 2017**

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Mithilesh Kumar, Son of Sri Lakshman Prasad, Resident of Ward No. 11, Surouaha Colony, Koilwar, P.O. and P.S.- Koilwar, District - Bhojpur at Ara, presently Ward Councilor, Nagar Panchayat Koilwar from Ward No. 1, P.O. and P.S.- Koilwar, District - Bhojpur at Ara

.... .... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna
2. The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner,
3. The State Election Commissioner, the State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna
4. The Joint Election Commissioner, the State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna
5. The Secretary, the State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna
6. The District Election Officer (Municipality), Bhojpur at Ara, District -Bhojpur at Ara
7. The Executive Officer, Nagar Panchayat, Koilwar, P.O. and P.S.- Koilwar, District - Bhojpur at Ara

.... .... Respondents

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**Appearance :**

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|--------------------------|---|----------------------------------------------------------------|
| For the Petitioner/s     | : | Mr. S.B.K. Mangalam, Advocate<br>Mrs. Anita Kumari, Advocate   |
| For the Respondent-SEC   | : | Mr. Amit Shrivastava, Advocate<br>Mr. Sanjeev Nikesh, Advocate |
| For the Respondent-State | : | Mr. Zaki Haider, AC to SC-9                                    |

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

**ORAL JUDGMENT**

**Date: 11-12-2017**



This writ petition has been filed by the petitioner for the following reliefs:-

- (I) For issuance of an appropriate writ in the nature of certiorari for quashing the Form-6 (List of Wards) published under the authority of Respondent no.6 under Rule -29(1) of the Bihar Municipal Election Rules, 2007 on the ground that while preparing aforesaid list, the Respondent Authorities have miserably failed to comply the direction of State Election Commission issued under letter no.4100 dated 19.12.2006 on apportionment of population amongst different Wards of a Municipality which still holds good as also for quashing of all subsequent action taken by the Respondent Authorities for holding Municipal Election, 2017 in Koilwar Nagar Panchayat including their decision published in Form-10 whereby and where under the Respondent Authorities have decided the reservation status of different Wards of the aforesaid Municipality.
- (II) For a declaration that if in exercise of its power under Article- 243-K read with Article 243-ZA of the Constitution and the provisions of the Bihar Municipal Election Rules, 2007, the State Election Commission has issued a guideline on constitution of Wards, the guideline so issued by the State Election Commission would not only bind local Authorities connected with



conduct of election rather it would also bind the State Election Commission and if any decision is taken or a Ward is constituted in complete disregard to the guidelines issued, it would be nullity and no election can be held for constitution of Municipalities based upon such illegal exercise.

- (III) For issuance of an appropriate writ in the nature of mandamus, commanding and directing the Respondent Authorities to undertake exercise of constitution of Wards in accordance with the guidelines issued by the State Election Commission and only thereafter to hold the election for constitution of Koilwar Nagar Panchayat in accordance with law.
- (IV) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petition would be found entitled under the facts and circumstances of the case.

2. It is submitted by Mr. S.B.K. Mangalam, learned counsel for the petitioner that in exercise of its power under Article 243K read with 243ZA of the Constitution of India, the State Election Commission (for short 'the Commission') issued an order vide its letter no.4100 dated 19.12.2006 regarding constitution of Wards for the General Municipal Election, 2007. According to the instruction issued by the Commission, proper attention was directed



to be given while dividing the Municipality in different Wards. The requirement was that there was equal population in every Ward as far as practicable. However, considering the practical difficulty in demarcating different Wards, the Commission directed that if the population of the concerned Municipality is upto 1,50,000/-, there should be a variation of 500 plus and minus to the average population of the Wards on the total population of the Municipality. It has been submitted that the instruction issued by the Commission in its supervisory jurisdiction is binding for the authorities as well as it is binding for commission also, unless it is recalled, rescinded or modified by a subsequent letter. He contended that in view of the aforesaid letter dated 19.12.2006, the constitution of Wards for Koilwar Nagar Panchayat cannot be sustained in the eye of law and, therefore, it is fit to be set aside. He contended that since the respondents have proceeded to decide the reservation status of different Wards of Koilwar Nagar Panchayat and they have published Form-10, disclosing the reservation status of different wards, the said exercise is based on illegal constitution of the Wards and is fit to be set aside.

3. Referring to counter affidavit filed on behalf of respondents no.2 to 5, Mr. Amit Shrivastava, learned counsel appearing for the State Election Commission submitted that the writ



petition is not maintainable on the ground of bar contained under Article 243ZG of the Constitution of India read with Section 478 of the Bihar Municipal Act, 2007. He submitted that the reliefs prayed for by the petitioner on the basis of letter dated 19.12.2006, which is for creation of wards for the 2007 election has got nothing to do with the issue raised by the petitioner. The said letter has no relevance at all in the 2017 Municipal Election. He submitted that in view of Section 12 of the Bihar Municipal Act, 2007 and Rule 34 of the Bihar Municipal Election Rules, the Commission vide its letter no.6837 dated 13.10.2016 as contained in Annexure-R/1 to the counter affidavit directed to all Divisional Commissioner/all District Magistrates-cum-District Election Officers (Municipality) for reservation of Ward for Scheduled Castes and Scheduled Tribes etc. because in the last election seats were reserved in rotation of Scheduled Castes and others Scheduled Tribes. He submitted that there is no infirmity at all in the said instruction of the Commission dated 13.10.2016, which has not been challenged by the petitioner.

4. In reply, learned counsel for the petitioner submitted that the instruction dated 13.10.2016 issued by the Commission is equally bad in law and the same also deserves to be quashed by this Court.

5. I have heard learned counsel for the parties and



perused the record.

6. In sum and substance, the grievance of the petitioner is that the Commission has not followed the legislative enactment underlying the Bihar Panchayat Raj Act, 2006 read with Bihar Panchayat Raj Rules, 2006 as amended from time to time in so far as it relates to categorization of panchayat of Scheduled Castes and Scheduled Tribes, Backward Classes and other categories. In substance, the grievance of the petitioner that the rotational pattern in categorization of the panchayat is *de hors* the Act of Bihar Panchayat Raj Act, 2006 as amended under the rules framed thereunder.

7. The preliminary objection raised by the learned counsel appearing for the respondents no.2 to 5 regarding maintainability of the writ petition on ground of bar contained under Articles 243ZG of the Constitution of India read with Section 478 of Bihar Municipal Act, 2007 goes to the root of the instant writ petition.

8. Article 243ZG of the Constitution of India 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”.

9. Section 478 of the Bihar Municipal Act, 2007 reads as under:-

**“478. Bar to interference by Courts in electoral matters.-** Notwithstanding anything contained in this Act-

- (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 the prescribed authority under this Act”.

10. A reading of sub-section (b) of Article 243ZG of the Constitution of India would show that election to any Panchayat cannot be called in question except by an election petition presented



to such authorities and in such manner as is provided for by or under any law made by the legislature of the State.

11. Further, a reading of Section 478(b) of the Bihar Municipal Act, 2007 would show that no election to any Municipality shall be called in question except by an election petition presented to the prescribed authority under the Act.

12. In the present writ petition, there is no challenge to the result of the election. Any order passed by this Court in the present writ petition would result into upsetting the ratio of reservation of seats in other panchayats where also the election process is complete.

13. It is an admitted fact that notification for general election to the public bodies of the local authority in the State of Bihar was published on 19.04.2017 and elections were held pursuant to the said notification on 21<sup>st</sup> May, 2017. The results of the election were also declared soon thereafter.

14. At this stage, once the elections are over and the results have already been declared, it would not be proper for this Court to enter into the dispute raised in the present writ petition in view of the provisions prescribed under Article 243ZG of the of the Constitution of India and Section 478 of the Bihar Municipal Act, 2007 as also the law laid down by Hon'ble Supreme Court in



**Harnek Singh vs. Charanjit Singh & Ors. [(2005) 8 SCC 383]**  
and by this Court in **Raju Prasad Mehta vs. State of Bihar [(2017) 2 PLJR 970]**.

15. The writ petition, being devoid of any merit, is dismissed.

**(Ashwani Kumar Singh, J.)**

Sanjeet/-

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