

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10819 of 2017

Deo Kumar Singh, Ex. Mukhiya, Bali Gram Panchayat P.S. Gaurichak, Son of late Indradeo Singh, resident of village Pachrukhiya, P.S. Gaurichak, District-Patna.
..... Petitioner/s

Versus

- 1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
- 2. Union of India through Secretary, Ministry of Law & Justice New Delhi.
- 3. Ministry of Home through its Secretary, Union of India, New Delhi.

..... Respondent/s

With

Civil Writ Jurisdiction Case No. 10820 of 2017

- 1. Saroj Yadav, son of Ram Shankar Yadav, R/o village- Keshopur, P.S. Barhara, District-Bhojpur, presently M.L.A., R J D Party.
- 2. Chandan Kumar, son of Arjun Ram, R/o village- P.O. Kharagi Tirari, District-Khagaria, present M L A R.J D Party.

..... Petitioner/s

Versus

- 1. The Union of India through the Secretary, Ministry of Home Affairs, Government of India.
- 2. The State of Bihar through the Principle Secretary to the Governor of Bihar.

..... Respondent/s

Appearance :

(In CWJC No.10819 of 2017)

For the Petitioner : Mr. Bhupendra Kumar, Advocate
Mr. Ebrahim Kabir, Advocate
Mrs. Shruti Sinha, Advocate
For the Union of India : Mr. S.D Sanjay (Addl. Soc. Gen.)
For the State : Mr. Lalit Kishore, Advocate General

(In CWJC No.10820 of 2017)

For the Petitioners : Mr. B. P. Pandey, Senior Advocate
Mr. Jagannath Singh, Advocate
For the State : Mr. Lalit Kishore, Advocate General
Mr. Ranjeet Kumar, AC to AG
Mr. Manish Dhari Singh, AC to AG
For the Union of India : Mr. S. D. Sanjay, Addl. S.G.
Mr Anshuman Singh, Advocate
For the Governor of Bihar : Mr. Y. V. Giri, Senior Advocate
Mr. R. K. Giri, Advocate
Mr. Bindhyachal Rai, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT



(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 31-07-2017

As the issues involved in both these petitions are identical and they relate to formation of the Government in the State of Bihar, we propose to deal with the matter and dispose them of by this common order.

In Civil Writ Jurisdiction Case No. 10819 of 2017, the petitioner claims to be an *Ex-Mukhia* of a Panchayat in District-Patna, who was imprisoned during emergency for 18 months, and says that he is disturbed by the political happenings in the State of Bihar, as certain events and action taken are contrary to the constitutional mandate, this writ petition has been filed and the only ground raised is that without calling the single largest party in the Legislative Assembly for proving its majority and without granting them an opportunity, a particular party/group has been invited to form the Government.

Similarly, in Civil Writ Jurisdiction Case No.10820 of 2017, petitioners claim to be the members of the Legislative Assembly, belonging to a political party/group, i.e. the single largest party in the Assembly, and it is their case that contrary to the law laid down by the Hon'ble Supreme Court in the case of **S. R. Bommai v. Union of India** [(1994) 3 SCC 1]; and **Rameshwar Prasad Versus v. The Union of India** [(2006) 2 SCC 1], without calling the political party with the largest number of elected members in the Legislative Assembly, the



party or group, which did not have the largest number or majority, has been called to form the Government. It is stated that without considering the request made by the leader of the petitioners' party, who had requested vide Annexure-1 on 27.07.2017 to His Excellency the Governor of Bihar to permit him to form the Government, the action taken for installing the Government without giving an opportunity to the single largest party in the Legislative Assembly is illegal and unconstitutional.

Respondents oppose the aforesaid contentions and say that now both the petitions have been rendered infructuous as a floor test in the Assembly has been conducted on 28th of July, 2017 and the party/group, which had staked its claim to form the Government, has won the floor test. It is argued that now, in these petitions, once the floor test has been conducted, no action or consideration is required to be given and they are rendered infructuous.

Learned counsel for the respondents also referred to Annexure-1 dated 27.07.2017 submitted by the leader of the Legislative Assembly, who claims to have the largest members, to say that the exact number or other particulars as per the claim have not been given in the said communication to show that they have the backing of the largest number of legislators and, now, once in the floor test conducted, it has been proved that they do not have the majority, it is stated that



interference into the matter is not called for.

However, learned counsel for the petitioners vehemently argued that as the single largest party was not granted opportunity by His Excellency the Governor of Bihar to form the Government, there is a constitutional violation in the matter and, therefore, interference should be made.

Even though learned counsel representing respondent No.2 (the Principal Secretary to the Governor of Bihar, Raj Bhawan, Patna) has filed a counter affidavit to show that majority of the numbers of the Assembly were supporting a particular political party, which was presented before His Excellency the Governor of Bihar and based on the same, His Excellency the Governor of Bihar granted them opportunity to form the Government. At this stage, we are not inclined to go into all these issues when a floor test has been conducted to determine the majority.

The contention of the learned counsel for the petitioners is that once the petitioners' party was the single largest party in the Assembly, they should have been invited to form the Government. In this regard, he invites our attention to para 124 of the judgment in the case of **S.R. Bommai** (supra). If we go through the observations made in para 124, we find that it has been observed in the aforesaid judgment that normally the party with the largest number of elected members



should be invited to form the Government and permitted to undertake a floor test. However, if go through the principles laid down by the Hon'ble Supreme Court in the case of **S.R. Bommai** (supra) itself, we find that the Hon'ble Supreme Court in the aforesaid case has laid down the principle that one of the main criteria approved by the Constitution for determining the majority or resolving such issues is a floor test in the Assembly. In this regard, the Hon'ble Supreme Court in paras 119 and 263 deals with the issue. In para 119, the Hon'ble Supreme Court holds that it is necessary to stress that in all cases, where the support of the Ministry is claimed to have been withdrawn by some legislators or the issue as to who holds the majority is to be determined, the one and the only constitutionally ordained forum for seeking openly and objectively the claims and counter claims is by conducting a floor test. In para 119, the principle has been crystallized by the Hon'ble Supreme Court in the following manner:-

“119. In this connection, it is necessary to stress that in all cases where the support to the Ministry is claimed to have been withdrawn by some legislators, the proper course for testing the strength of the Ministry is holding the test on the floor of the House. That alone is the constitutionally ordained forum for seeking openly and objectively the claims and counterclaims in that behalf. The assessment of the strength of the Ministry is not a matter of private opinion of any individual, be he the Governor or the President. It is capable of being demonstrated and ascertained publicly in the House. Hence when such



demonstration is possible, it is not open to bypass it and instead depend upon the subjective satisfaction of the Governor or the President. Such private assessment is an anathema to the democratic principle, apart from being open to serious objections of personal mala fides. It is possible that on some rare occasions, the floor-test may be impossible, although it is difficult to envisage such situation. Even assuming that there arises one, it should be obligatory on the Governor in such circumstances, to state in writing, the reasons for not holding the floor-test. The High Court was, therefore, wrong in holding that the floor-test was neither compulsory nor obligatory or that it was not a prerequisite to sending the report to the President recommending action under Article 356(1). Since we have already referred to the recommendations of the Sarkaria Commission in this connection, it is not necessary to repeat them here.”

(Emphasis supplied)

Thereafter, the same principle has been reiterated in the subsequent paragraphs, namely para 263 onwards.

In the present case, if we analyze the facts and circumstances in the backdrop of the aforesaid legal requirement, we find that after the issue in question went to His Excellency the Governor of Bihar, the floor test in question has been conducted on 28th of July, 2017 and in the floor test, the party or group which had been invited to form the Government by His Excellency the Governor of Bihar, has proved its majority. That being so, we need not go into any further issue in the matter, now, when, once the floor test within the assembly, which



is the sole test laid down under the Constitution and approved in the case of **S.R. Bommai** (supra), has been conducted and the party/ group staking its claim to form the Government, has proved its majority. Once, this is the factual position, we need not go into any further issue, except for referring to a decision, recently rendered by the Hon'ble Supreme Court in the case of **Chandrakant Kavlekar v. Union of India through its Secretary and another** [AIR 2107 SC 1435].

In the aforesaid case also, we find that an identical situation, as is existing in the present case, was before the Hon'ble Supreme Court. The party, which had the highest number of elected members, filed the petition in the Supreme Court and it was their complaint that without calling upon them to form the Government, the party with a lesser majority was called to the form the Government and the Hon'ble Supreme Court after evaluating identical situation held that the best way to determine the issue is to conduct the floor test and directed for conducting of a floor test. In the said case, i.e. **Chandrakant Kavlekar** (supra), the floor test was conducted at the instance of the Hon'ble Supreme Court, whereas, in the present cases before us, it is an admitted position that after the Governor had called the party/group to form the Government, they have proved their majority in the floor of the Assembly, and, therefore, that being the factual position, we see no reason to make any indulgence into the



matter as no materials are now before us to hold that the floor test is vitiated for reason whatsoever and, in fact, this is not even the case of the petitioners.

Accordingly, finding no ground, both the petitions stand dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.07.2017
Transmission Date	

