

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 8405 of 2017

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1. Surendra Kumar, Son of Late Ram Bahadur Mahto, resident of Mohalla-Bakhtiyarpur Purani Bazar, P.S. - Bakhtiyarpur, District - Patna.
 2. Arbind Kumar, Son of Late Lala Sao, resident of Mohalla - Bakhtiyarpur Bazar, P.S. - Bakhtiyarpur, District - Patna.
 3. Gaurav Anand, Son of Sri Sachidanand Singh, resident of Mohalla-Bakhtiyarpur Bazar, P.S. - Bakhtiyarpur, District - Patna.
 4. Dilip Kumar, Son of Late Jagdish Prasad, resident of Mohalla- Bakhtiyarpur, Bazar, P.S. Bakhtiyarpur, District- Patna.

.... Petitioner/s

Versus

1. The State Election Commission, Bihar through the Chief Election Commissioner, Bihar, Patna, Sone Bhawan, Birchand Patel Path, Patna.
2. The State of Bihar through the District Magistrate-cum-District Election Officer (Nagar Palika), Bakhtiyarpur, District - Patna.
3. The Secretary, State Election Commission, Bihar, Patna.
4. The Returning Officer (Nagar Palika)-cum-Sub-Divisional Officer, Barh, District - Patna.
5. Smt. Shyama wife of Sri Awadhesh Kumar Singh, resident of Mohalla-Bakhtiyarpur Bazar (Behind of Post Office), P.S.- Bakhtiyarpur, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vipin Kumar, Advocate
For the SEC	:	Mr. Amit Shrivastava and Mr. Sanjeev Nikesh, Advocates
For the State	:	Mr. Yogendra Prasad Sinha, A.A.G. 7 Mr. Rakesh Ambastha, A.C. to A.A.G. 7
For the Respondent No. 5	:	Mr. Purushottam Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 18-09-2017

Heard learned counsel for the petitioners; State; State
Election Commission and the respondent no. 5.

2. In terms of the exercise directed by the Court in its
order dated 11.09.2017, a sealed report has been submitted by Mr.
Amit Shrivastava, learned counsel in which the following statement
has been made:



“At 6.10 P.M. on 16.09.2017 the C.D. sent in stapled cover was opened in the presence of Mr. Sanjeev Nikesh, Advocate and Mr. Girish Pandey, Advocate in my chamber.

The E.V.M. of Ward No. 8 has been video graphed at the start of the said C.D. The said recording clearly shows that the EVM for Ward No. 8 has been taken out from a blue box after breaking the seal.”

3. The anxiety of the Court was as to whether when admittedly, the petitioners were not present at the initial stage when the EVM machine was opened for counting, there was any video footage to show that a sealed machine was brought and opened in full public view. The report indicates that the EVM for Ward No. 8 was brought in a blue box, with its seal intact, which was duly opened and then the authorities proceeded with counting of the votes. Thus, in view of the fact relating to the EVM machine being sealed, prior to it being opened clearly reflected from the video recording, followed by there being recounting in the presence of the petitioners/their representatives, including others connected with such exercise, in the considered opinion of the Court, no further enquiry is required for the purpose of the present writ application, as the Court would not go into any disputed questions of fact, even if the petitioners raised the same moreso, when *prima facie*, from the video recording, it transpires that a sealed EVM was opened and votes counted which was followed by recounting, in the presence of



the petitioners and others. Certain coloured photographs have also been produced before the Court, which are taken on record, and their black and white copies are also part of the counter affidavit filed on behalf of the State Election Commission, which indicates that the Supervising Authority of Ward No. 8 was present while the process of unsealing of a blue box in which the EVM machine had been kept was undertaken and one of the photographs shows an agent of respondent no. 5 being present. In the counter affidavit, the persons have also been marked by giving identifying captions to them.

4. Learned counsel for the petitioners submitted that he ought to be given a chance to go through the C.D./video recording so as to ascertain whether the same is correct or not.

5. Having considered the matter, though the petitioners may, if they so desire, obtain an authenticated copy of the video recording, but in view of the fact that Mr. Amit Shrivastava, learned counsel acting at the behest of the Court, has given a report to indicate that the seal of the box in which the EVM machine was kept, was opened publicly, which, as per the report, is apparent from viewing of the C.D. of such video recording, the Court does not find that any purpose shall be served by keeping the writ petition pending as, in any view of the matter, when there is a dispute on facts, the writ Court would not be the appropriate forum where such issue can



be thrashed out. Accordingly, the writ petition stands disposed off.

6. However, if the petitioners so desire, may make an application for the authenticated/official/certified copy of the video recording, before the Returning Officer (respondent no. 4), who shall provide the same within two working days of the request being made. On the basis of what may transpire or what the petitioners may make out from such video recording, they shall be at liberty to pursue the matter before the appropriate forum, in accordance with law.

7. The interim order dated 20.06.2017, passed in the case restraining the administration of oath of the respondent no. 5 stands vacated.

8. The original report/C.D. received from the authorities concerned be returned to them by Mr. Amit Shrivastava, learned counsel.

(Ahsanuddin Amanullah, J.)

P. Kumar

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