

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11981 of 2018

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Sri Dinesh Yadav Son of Late Sri Prasad Yadav Resident of Village-Situaha
P.O.-Salkhua, P.S.-Salkhua, Distirct-Saharsha.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Department of Cooperation, Government of Bihar, New Secretariat, Patna.
2. The Bihar State Election Authority, 32, Harding Road, Patna through its Chief Election Officer.
3. The Chief Election Officer Bihar State Election Authority, Patna Bihar.
4. The Registrar Cooperative Societies, Bihar, Patna New Secretariat, Patna.
5. The Deputy Registrar Cane Cooperative Societies, Bihar, Patna.
6. The Block Development Officer Cum Election officer, Block-Salkhua, District-Saharsha.
7. Arun Kumar Singh, Son of Nageshwar Singh @ Nago Singh, Resident of Village- Kachaut, P.O.-Salkhua P.S.-Salkhua, Block - Salkhua, District-Sharsha.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amit Shrivastava, Adv. Mr. Girish Pandey, Adv. Mr. Chandan Priyadarshi, Adv.
For the State	:	Mr. Syed Iqbal Ahmad -SC-20
For the Election Authority:		Mr. Mukesh Kumar, Adv.
For the Private Respondent:		Mr. Arun Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 08-07-2019 Although the matter is listed under the heading 'For Orders (On Petitions)', learned counsel for the parties have argued the matter for final disposal.

Heard learned counsel for the parties.

Petitioner, in this case, is aggrieved by and dissatisfied with the order dated 25.04.2018/29.05.2018 passed in Election Dispute Case No.234 of 2017 by the Deputy



Registrar (Cane), Cooperative Societies, Bihar, Patna by which he has been pleased to direct the District Cooperative Officer, Saharsa-cum-District Deputy Election Officer (Cooperative Societies) to inspect the sealed box containing the used ballot papers in presence of the election-petitioner and opposite party nos.2, 4, 5 and 6 and to submit a report in a sealed cover with information as to whether on the ballot papers used in the election of Chairman of Salkhua Byapar Mandal Cooperative Society Ltd. on 17.10.2017 there are ballot papers having the signature/mark and further in case there are ballot papers on which no signature (mark) is present then how many votes through such ballot papers are there in favour of the applicant. It is further ordered that after the inspection, the Block Development Officer, Salkhua shall ensure that the ballot box is sealed in accordance with law and be kept in secured place. The dispute case was thereafter fixed on 27.06.2018 for further hearing.

Mr. Amit Srivastava, learned counsel representing the petitioner submits that petitioner is the returned candidate. The respondent no.7 had contested the election but he was defeated by seven votes, thereafter it seems that he had submitted Annexure-1 to the election petition which is a letter addressed to



the Election Officer-cum-Block Development Officer, Byapar Mandal Cooperative Society Ltd. Salkhua to demonstrate that he had raised an objection prior to the holding of the election and casting of votes alleging that the election officer was asking the voters to put their signature on the ballot paper which was breaching the secrecy of the votes.

In Annexure- '1' he has further alleged that the ballot papers used by the Election Officer was not containing the seal of the society which was a must. Learned counsel submits that Annexure- '1' to the election petition is not an admitted document and the fact remains that at the time of counting of votes the election petitioner had not raised any objection before the election officer, therefore while considering the election petition, the Deputy Registrar (Cane), Cooperative Societies is not justified in directing the District Cooperative Officer to conduct an inspection of the ballot papers. Learned counsel has also relied upon a judgment of the Hon'ble Supreme Court in the case of **Chandrika Prasad Yadav Vs. The State of Bihar and others** reported in **AIR 2004 SC 2036** to submit that in the said case the Hon'ble Supreme Court has held that if no sufficient explanation was furnished by the election petitioner as to why the statutory remedy provided under Rule 79(2) of the



Bihar Panchayat Election Rules requesting for recounting was not availed, the Election Tribunal may consider the same as one of the factors for accepting or rejecting the prayer for recounting.

Learned counsel submits that in the present case the private respondent had not submitted any application before the Returning Officer for recounting of votes on any ground and therefore in absence of any explanation as to why such request was not made for recounting at an appropriate time and in accordance with rule the election-petition was not fit to be entertained. Learned counsel however admits that so far as the Bihar District Cooperative Society Rules, 1959 (hereinafter referred to as the 'Rules of 1959') is concerned, there is no provision at pari-materia with Rule 79 of the Bihar Panchayat Raj Rules. It is however submitted that such a provision is provided by way of instruction. Learned counsel submits that the Bihar State Election Authority has issued instructions in exercise of its power under Rule 7 of the Bihar State Election Authority Rules, 2008 and the procedures wherein the guidelines for recounting by the Election Officer is duly provided. Mr. Srivastava has also submitted that there is no material in the election petition so as to warrant any interference



with the election petition.

On the other hand, Mr. Arun Kumar, learned counsel representing the election-petitioner and the respondent no.7 submits that his case in the election petition is totally different from what is being presented before this Court by the petitioner. It is submitted that the fact alleged by the petitioner in various paragraphs of the election petition particularly in paragraph 10 and 18 are not being seriously contested by the petitioner inasmuch as it would appear that in his written statement filed before the State Election Authority he has not specifically denied the facts alleged that the election officer had been asking the voters to put their signature on the ballot papers and was pressurizing them to put their signature and further that the respondent no.4-petitioner being a musclemán the voters having put their signature on the ballot papers casted their votes in favour of petitioner.

It is submitted that in terms of Rule 21 U of the Rules of 1959 a ballot paper is liable to be rejected if it bears any signature to identify the voters. Learned counsel has relied upon sub-rule (2)(i) of Rule 21U of the Rules of 1959. It is his submission that his case is not that of a case for recounting of the votes rather he is looking for setting aside the election on the



ground of violation of a mandatory provision of law which would render the election null and void irrespective of the fact whether the private respondent had made any request for recounting or not at the time of counting of votes. It is submitted that at this stage by the impugned order the Deputy Registrar (Cane) has only directed the District Cooperative Officer, Saharsa-cum-District Deputy Election Officer (Cooperative Societies) to conduct an inspection of the ballot papers. The impugned order at this stage is not interfering with the election of the petitioner and his present position.

It is submitted that Section 12 of the Bihar State Election Authority Act, 2008 prescribes the grounds on which an election may be challenged. One of the grounds may be that the result of the election, in so far as it concerns the returned candidate has been materially affected by improper reception, refusal or rejection of any vote or reception of any vote which is void. It is submitted that in course of inspection once it is found that the ballot papers were got signed and had disclosed the identity of the voters, it would amount to improper acceptance/reception of a vote which would otherwise be liable to be rejected in terms of sub-rule (2)(i) of Rule 21U of the Rules of 1959. Learned counsel therefore submits that the plea



which is being taken by learned counsel for the petitioner with regard to Annexure- '1' to the election petition cannot be adjudicated by this Court at this stage in its writ jurisdiction and as the impugned order is only for inspection of the ballot papers, in the given facts and circumstances and the materials available on the record particularly the pleadings of the respondent-petitioner no fault may be found with the same.

Having heard learned counsel for the parties and on perusal of the records, this Court finds that in the election petition the present respondent had set-out certain facts alleging that the election officer was pressurizing the voters to put their signature on the ballot papers. He has further alleged that the respondent no.4 is a musclemán and because of the signatures on the ballot papers it was open to see during the counting of votes that who has casted votes in favour of whom. The Deputy Registrar (Cane) who is considering the election dispute has after going through the pleadings and the relevant provisions particularly Rule 21U of the Rules of 1959 and Section 12 of the Bihar State Election Authority Act, 2008 came to a conclusion that at this stage it would be just and proper to direct an inspection of the ballot papers by the District Cooperative Officer, Saharsa in presence of the parties. At this stage the



petitioner is not affected as it is not interfering with his election and no final order has been passed till date.

Learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in the case of Chandrika Prasad Yadav wherein the issue which came for consideration before the Hon'ble Supreme Court was as to the extent of jurisdiction of the election tribunal to direct recounting of votes. That was a case under the Bihar Panchayat Election Rules, Bihar Panchayat Raj Act and the rules framed thereunder. Rule 79 of the Bihar Panchayat Raj Rules came for consideration in the said case and considering the said Rule 79 of the Bihar Panchayat Election Rules, 1995 which was then in force the Hon'ble Supreme Court found that in a given case an application for recounting either before announcement of the result or thereafter would be maintainable. It was held that once an application under the said Rule is filed the returning officer who is enjoined statutorily duty to entertain such an application would make an enquiry in terms of sub-rule (2) of Rule 79 either accepting in whole or in part such or rejecting the same for which he is required to assign sufficient or cogent reasons. The Hon'ble Supreme Court observed that ordinarily, it is expected that the statutory remedies provided for shall be



availed of, but after dealing with the previous case laws the Hon'ble Supreme Court refused to interfere with the judgment of the Hon'ble High Court setting-aside the judgment and order dated 06.04.2002 passed by the learned Election Tribunal. It is to be noted that in the said case the election tribunal had earlier passed the order dated 20.10.2001 by which the tribunal directed inspection and recounting of ballot papers and being aggrieved by that order a writ petition was filed but that was withdrawn. Therefore, it is evident to this Court that what had fallen for consideration before the Hon'ble High Court in the case of Chandrika Prasad Yadav(supra) was the final judgment and order of the election tribunal passed in the election petition and not an order of the present nature, therefore, the plea taken by learned counsel for the petitioner based on the judgment of the Chandrika Prasad Yadav (supra) is not acceptable to this Court.

In the facts of the present case, this Court finds no reason to exercise its extra-ordinary writ jurisdiction which is also in the nature of a discretionary relief to be granted in an appropriate case. As stated above, presently the Deputy Registrar (Cane) has only directed for conducting an inspection of the ballot papers in presence of the parties and certain



information. The petitioner will have liberty to contest the matter on its own merit. Even otherwise, the impugned order is not affecting the petitioner in any way at this stage.

The writ application has thus no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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