

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1611 of 2018

In

Civil Writ Jurisdiction Case No.11385 of 2017

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Beauty Patel, wife of Sri Shivdani Patel, Resident of Village-Rasalpur, P.O.-
Ekchari, P.S.-Rasalpur, District-Bhagalpur

... .. Appellant/s

Versus

1. Indira Devi, wife of Sri Mahendra Mandal, Resident of Village-Rasalpur, P.S.-Rasalpur, District-Bhagalpur, at present Mukhiya of Gram Panchayat Ekchari, District-Bhagalpur
2. The State of Bihar through the District Magistrate, Bhagalpur-cum-the District Election Officer, (Gram Panchayat) Bhagalpur
3. The Block Development Officer-cum-the Returning Officer, Block Kahalgaon, District-Bhagalpur
4. The Assistant Returning Officer, Gram Panchayat Election 2016, Gram Panchayat Ekchari namely Anil Kumar Singh posted as the Block Agriculture Officer, Pirpainty
5. The Presiding Officer, the Gram Panchayat Election 2016, the Gram Panchayat Ekchari (Code No. 06)
6. Anjani Devi, wife of Sri Jitendra Yadav, Resident of Village-Bholsar, P.O.-Ekchari, P.S.-Rasalpur, District-Bhagalpur
7. Nutan Sharma, wife of Sri Umesh Mandal, Resident of Village-Ekchari, P.S. Rasalpur, District-Bhagalpur

... .. Respondent/s

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Appearance :

For the Appellant : Mr. Mirtyunjay Kumar Mishra, Advocate
For the Respondents : Mr. Harendra Prasad Singh, Advocate
Mr. Santosh Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-03-2019

This is a Letters Patent Appeal questioning the correctness of the judgment of the learned single Judge dated 3rd October, 2018 in C.W.J.C. No.11385 of 2017, whereby the learned



single Judge has allowed the writ petition of the respondent and has quashed the order of recounting passed by learned Munsif on 19th of July, 2017 in relation to the election of the office of Mukhiya of Gram Panchayat Ekchari, Block-Kahalgaon, District-Bhagalpur.

2. We had heard Shri Mirtyunjay Kumar Mishra, learned counsel for the appellant yesterday (11.03.2019) and had passed the following order:

“Heard Shri Mrityunjay Kumar Mishra, learned counsel for the appellant Beauty Patel and Shri Harendra Prasad Singh, learned counsel for the respondent Indira Devi.

This appeal arises out of a dispute with regard to the election of a *mukhiya* where the election of the respondent Indira Devi, who was declared successful, came to be challenged by the appellant Beauty Patel on several grounds, more particularly on the ground of illegal rejection of 438 ballot papers.

The facts are that the village in question is stated to have 8889 voters, out of whom 6304 voters are said to have cast their votes. Out of these votes, 438 were declared as invalid, whereafter out of the remaining 5866 valid votes that were counted, Indira Devi is said to have polled 2022 votes whereas Beauty Patel, the appellant, is said to have polled 1979 votes. Thus, the appellant lost the elections by 43 votes.

The appellant challenged the election of the respondent-petitioner contending that the votes which have been wrongly rejected ought to have been counted



in favour of the appellant, inasmuch as, the rejection was unfounded and even otherwise there were some votes which were cast without the signature of the Presiding Officer and there were some votes in which there was an over lapping of the signatures and thumb impressions of the voters as well as the seal of the Presiding Officer. Such votes were wrongly counted in favour of Indira Devi and this, therefore, has materially affected the results of the election. The election petition, copy whereof has been filed as Annexure-1 to the writ petition, in paragraphs 7, 9, 11 and 12 raises the aforesaid objections.

The evidence was led and apart from the election petitioner, three other persons deposed in her favour. The two other contesting candidates also filed their written statements and the witnesses on behalf of the State were also examined.

The prayer for recounting has been allowed by the learned Munsif who heard the election petition by issuing a direction that the 438 rejected ballots would be counted first and if on the basis of counting of these votes the election petitioner is found to have secured the highest votes, she will be declared elected as against Indira Devi.

If on the basis of such recount no change in the election results are found, then the ballot papers of 7 booths as indicated in the order shall be counted, and on the basis of votes secured by each candidate, the results shall be declared in favour of such a candidate who secures the highest votes.

This order came to be assailed before this Court in the writ petition giving rise to the present controversy by Indira Devi contending that the Court has firstly not recorded any satisfaction with regard to the alleged discrepancies pointed out in the absence of any specific allegation in the



election petition, and the opinion expressed is only based on the statement of fact and the deposition made on behalf of the election petitioner that was equally vague and without specifying any allegation.

Consequently, the contention raised by the respondent was that such allegation being vague, the learned Munsif could not have directed to make a fishing and roving enquiry about the 438 ballot papers. It was also alleged that no *prima facie* satisfaction was even expressed as to why inspection was necessary and the Court also did not even attempt to get a sample inspection made before ordering recounting.

It was also contended before the learned Single Judge that not only were the ingredients of recounting missing, but the learned Munsif also carved out a new case by issuing a direction, namely, the second direction of the counting of votes in respect of 7 booths for declaration of results. This was therefore, a purely imaginative exercise and consequently not in accordance with the law and explained by the Apex Court in several cases, that too even without deciding the other issues framed by the Court.

The matter was dealt with in detail by the learned Single Judge and the writ petition has been allowed on the ground that the directions issued by the learned Munsif were not in conformity with law and the plea raised by the writ petitioner was accepted.

This appeal has, therefore, been preferred questioning the correctness of the judgment of the learned Single Judge on the ground that the election petitioner and three other witnesses, namely, the 4 witnesses, in support of the election petition had made material statements of facts which do not appear to have been appreciated by the learned Single Judge and therefore, the allegations



were specific and after having recorded a *prima facie* satisfaction that a recount was ordered.

Learned counsel for the appellant prays that the matter be taken up tomorrow to enable him to conclude his arguments.

Put up tomorrow, i.e., 12.03.2019.”

3. Shri Mishra commenced his arguments by inviting the attention of the Court to the contents of the counter affidavit filed by the appellant before the writ Court, particularly paragraph 5 thereof, to urge that the request for recount had been made at the time of the counting of the votes and a complaint had also been lodged. He submits that timely action had been taken by the appellant and the authorities were fully informed of the same, yet no action was taken and this was also taken as a ground in the election petition.

4. The second argument advanced by the appellant is on the strength of paragraph 10 of the same counter affidavit where an allegation has been made that the video footage of the videography conducted during the counting could have substantiated the allegations with regard to the irregularities committed during counting that resulted in a wrong rejection of 438 votes. He has also relied on the judgment of the Apex Court in the case of **Sohan Lal vs. Babu Gandhi**, reported in (2003) 1 SCC 108 (Paragraph 14).



5. We have also heard Shri Harendra Prasad Singh, learned counsel for the respondent-petitioner as well as the learned counsel for the State of Bihar.

6. The facts having been narrated in the order quoted above, we now proceed to examine the contentions raised and the findings recorded by the learned Munsif as well as by the learned single Judge.

7. At the outset, we may place on record that the argument of Shri Mishra on the issue of the evidence relating to videography and the outcome thereof was stated in the counter affidavit in paragraph 10 before the writ Court, but such an allegation does not exist in any of the paragraphs of the election petition, a copy whereof is Annexure 1 to the writ petition. In the absence of any such allegation in the election petition itself, this issue cannot be either raised or even be examined by us.

8. The question that we had posed yesterday in our order dated 11th March, 2019 relating to the findings recorded by the learned Munsif, we find that the learned Munsif did not record the specific material on the basis whereof he was satisfied about the material available for carrying out a recounting. Secondly, the statements of facts in the election petition were not specific and the deposition of the four witnesses in support of the election



petition also does not contain any such material specifying the nature of the alleged irregularity or illegality in the counting of the votes. The allegations are general to the effect that 438 votes had been wrongly rejected. As to in what manner were the votes wrongly excluded, the election petition itself recites that since there were 16 counting tables and there were only two counting Agents of the appellant, therefore, it was not possible to manage the supervision of all the tables. Thus, on this very disclosure in the election petition and in the absence of any material indicating the specifics regarding the illegality in the counting of the votes or the rejection thereof, a mere bald allegation that 438 votes were wrongly rejected would not be a sufficient ground for interference. The learned Munsif appears to have overlooked the proposition of law as held in several cases, including the indication given in paragraph 15 of the judgment in the case of **Bhabhi Vs. Sheo Govind** [(1976) 1 SCC 687], that has been followed later on in a large number of decisions. The said paragraph is extracted herein under:

“15. Thus on a close and careful consideration of the various authorities of this Court from time to time it is manifest that the following conditions are imperative before a court can grant inspection, or for that matter sample inspection, of the ballot papers:

(1) That it is important to maintain the secrecy of the ballot which is



sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations;

(2) That before inspection is allowed, the allegations made against the elected candidate must be clear and specific and must be supported by adequate statements of material facts;

(3) The Court must be prima facie satisfied on the materials produced before the Court regarding the truth of the allegations made for a recount;

(4) That the Court must come to the conclusion that in order to grant prayer for inspection it is necessary and imperative to do full justice between the parties;

(5) That the discretion conferred on the Court should not be exercised in such a way so as to enable the applicant to indulge in a roving inquiry with a view to fish materials for declaring the election to be void; and

(6) That on the special facts of a given case sample inspection may be ordered to lend further assurance to the prima facie satisfaction of the Court regarding the truth of the allegations made for a recount, and not for the purpose of fishing out materials.”

If all these circumstances enter into the mind of the Judge and he is satisfied that these conditions are fulfilled in a given case, the exercise of the discretion would undoubtedly be proper.”

9. The learned single Judge, therefore, in our opinion, was fully justified in reversing the order of the learned Munsif as



the same was not in conformity with the dictate of law, as indicated herein above.

10. We, therefore, do not find any merit in this appeal, which is, accordingly, dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

PNM

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