

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19888 of 2021

=====

Uday Prakash Chaudhari Son of Late Hari Chaudhary, Ward No. 11,
Panchgava, Police Station - Semra, District - West Champaran.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. The State Election Commission, (Panchayat), 3rd Floor, Sone Bhavan, Birchand Patel Path, Patna, through State Election Commissioner.
3. The State Election Commissioner, State Election Commission (Panchayat), 3rd Floor, Sone Bhavan, Birchand Patel Path, Patna.
4. The Secretary, the State Election Commission, (Panchayat), 3rd Floor, Sone Bhavan, Birchand Patel Path, Patna.
5. The District Magistrate - Cum - District Election Officer, (Panchayat), West Champaran, District - West Champaran.
6. The Sub Divisional Officer - Cum - Sub Divisional Election Officer, Bagaha, District - West Champaran.
7. The Block Development Officer - Cum - Election Officer, Bagaha - 2, District - West Champaran.
8. Bharat Kumar Gupta, Son of Mahanth Sah, Resident of Village - Bahuarwa, Police Station - Laukariya, District - West Champaran.

... .. Respondents

=====

Appearance :

For the Petitioner	:	Mr. Baxi S.R.P. Sinha, Sr. Advocate Mr. Zainul Abedin, Advocate
For the Respondents	:	Mr. Kameshwar Pd. Gupta (GP-10) Mr. Satya Vrat, AC to GP-10

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

2 10-12-2021 This matter has been taken up for hearing online
because of COVID-19 pandemic restrictions.

Following are the reliefs which the petitioner is



seeking in the present writ application :-

“(i) For issuance of a writ in the nature of Mandamus directing the respondents to cancel the election of Mukhiya of Gram Panchayat Raj Bakuli-Panchgava, Block Bagaha-2 in the District of West Champaran;

(ii) For issuance of a writ in the nature of Mandamus directing the respondents to recount the votes of Panchayati Raj Bakuli-Panchgava, District West Champaran.

(iii) For issuance of a writ in the nature of Mandamus directing the official respondents to declare the election of Respondent No. 8 as null and void because he has been elected as Mukhiya of Gram Panchayat Raj, Bakuli Panchgava in utter violation of rules and regulations of Panchayati Raj Act;

(iv) For issuance of a writ in the nature of Mandamus directing the respondents to produce the CCTV Footage and other records of Panchayati Raj Election of Gram Panchayat Raj Bakuli-Panchgava;

(v) For issuance of a writ in the nature of Mandamus commanding and directing the respondent State Election Commission to call for the C.C.T.V. Footage with respect to counting of votes of Bagaha, District West Champaran Territorial Constituency with respect to the Post of Mukhiya



of Gram Panchayat Raj, Bakuli Panchgava and with respect to the post of Mukhiya of Gram Panchayat Raj Bakuli Panchgava from respondent no. 8 and pass necessary orders in exercise of its power under Section 123 of the Bihar Panchayat Raj Act 2006, if after no scrutiny of C.C.T.V. Footage of counting it is found that no counting in the above mentioned constituency had taken place in the presence of the candidate of his Counting Agent, yet the result of election was declared and certificate of election was issued in favour of a candidate contesting of election.

(vi) For a declaration that if the result of an election has to be declared only after the counting of votes in the manner prescribed under the relevant Rules and the instructions issued by the State Election Commission, any declaration of result without counting of votes in the manner prescribed is not a declaration in the eye of law and, therefore, such declarations of result cannot be sustained.

(vii) For issuance of a writ in the nature of Mandamus commanding and directing the Respondent State Election Commission to countermand the election in the aforementioned constituency, if after the scrutiny of C.C.T.V. Footage of the process of counting, it is found that there was



no counting of votes in the abovementioned constituency the presence of the candidate or his in Counting Agent and go for fresh poll in accordance with law but only after bringing suitable amendments under Bihar Panchayat Election Rules, 2006 regarding appointment of sufficient number of Counting Agents for keeping watch on the process of counting proportionate to the Counting Tables, so declared for counting of votes in a particular territorial constituency.

(viii) For issuance of a writ in the nature of Mandamus commanding and directing the Respondent nos. 1 to 4 to take action against the erring Officers entrusted with the task of counting of abovementioned constituency, if after scrutiny of C.C.T.V. Footage of the process of counting, it comes to his light that the result of election was declared without counting of votes in presence of the candidate or his Counting Agent in violation of the provisions of the Bihar Panchayat Election Rules, 2006 and the detail instructions issued by the State Election Commission through its Hand Book for instruction regarding counting, 2021, soft copy whereof was sent to all the District Election Officers (Panchayat) -cum- District Magistrate, Bihar vide letter no. 3285 dated 25.08.2021."

In our considered opinion, the dispute, as raised in the



present writ application, cannot be gone into by this Court, which is primarily an election dispute.

Mr. Baxi S.R.P. Sinha, learned Senior Counsel appearing on behalf of the petitioner has drawn our attention to a Division Bench order of this Court dated 16.11.2021, passed in CWJC No. 18945 of 2021, which has been brought on record by way of Annexure-11 to the writ application, to contend that in his case also similar order may be passed.

We have carefully perused the order of this Court dated 16.11.2021, passed in CWJC No. 18945 of 2021. In our considered opinion, no such order is required in the present case. The petitioner shall be at liberty to file election petition, if so advised.

Application stands disposed of accordingly.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

Rajesh/-

U			
---	--	--	--

