

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.237 of 2022

1. Santosh Kumar S/o Rajeshwar Prasad Singh Resident of Village- Jagdishpur Dharamu, Gram Panchayat Raj Jagdishpur Dharmu, P.S.- Paroo, District- Muzaffarpur.
2. Jaganath Paswan S/o Bunilal Paswan Resident of Village- Jagdishpur Dharamu, Gram Panchayat Raj Jagdishpur Dharmu, P.S.- Paroo, District- Muzaffarpur.
3. Rekha Devi W/o Amrendra Kumar Resident of Village- Jagdishpur Dharamu, Gram Panchayat Raj Jagdishpur Dharmu, P.S.- Paroo, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary Panchayati Department, Government of Bihar, Patna.
3. The State Election Commission (Panchayat) 3rd Floor, Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
4. The State Election Commissioner The State Election Commission (Panchayat), 3rd Floor, Sone Bhawan, Birchand Patel Path, Patna.
5. The Secretary The State Election Commission (Panchayat), 3rd Floor, Sone Bhawan, Birchand Patel Path, Patna.
6. The District Magistrate-cum- District Election Officer (Panchayat) Muzaffarpur, District- Muzaffarpur.
7. The Block Development Officer, Paroo-cum- Returning Officer Panchayat Election, 2021, Gram Panchayat Raj, Jagdishpur Dharmu, Post and P.S.- Block- Paroo, District- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Shashi Bhushan Singh, Advocate
For the Respondent/s : Mr.Prabhat Kumar Verma (Aag3)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 13-01-2022

Heard learned counsel for the parties.

Petitioners have prayed for the following relief(s):-

- (I) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent State Election Commission to call for the

C.C. TV. Footage with respect to counting of votes of Gram Panchayat Raj Jagdishpur Dharmu , Nirvachan Constituency No. 29 with respect to the post of Ward Member and Mukhiya of Gram Panchayat Raj Jagdishpur Dharmu from the respondent no. 6 and 7 and pass necessary orders in exercise of its power under Section 123 of the Bihar Panchayat Raj Act, 2006, if after the scrutiny of C.C. TV. Footage of counting it is found that no counting in the above mentioned constituency had taken place in the presence of the candidates or their Counting Agents particularly petitioner no.3 , yet the result of election was declared and certificate of election was issued in favour of a candidate contesting the election.

- (II) 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 .

(III) For issuance of an appropriate writ in the nature of MANDAMUS , commanding and directing the Respondent State Election Commission to countermand the election in the above mentioned constituency, if after the scrutiny of C.C. TV. Footage of the process of counting , it is found that there was no counting of votes in the above mentioned Constituency in the presence of the candidates or their Counting Agents particularly petitioner no.3 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 said constituency.

(IV) For Issuance of an appropriate writ in the nature of

MANDAMUS, commanding and directing the Respondent nos. 1 to 5 to take action against the erring Officers entrusted with the task of counting of above mentioned constituency if after scrutiny of C.C. TV. Footage of the process of counting, it comes to the light that the result of election was declared without counting of votes in presence of the candidates or their Counting Agents particularly petitioner no.3 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.

- V) For issuance of any other appropriate writ/writs ,order/ orders, direction/directions for which the writ petitioners would be found entitled under the facts and circumstances of the case.

After the matter was heard for some time, learned counsel for the petitioners, under instructions, states that

petitioners shall be content if a direction is issued to the authority concerned, i.e., respondent **no.4, The State Election Commissioner, the State Election Commission (Panchayat), 3rd Floor, Sone Bhawan, Birchand Patel Path, Patna** or any of the statutory authority to consider and decide the representation which the petitioners shall be filing within a period of four weeks from today for redressal of the grievance(s).

Learned counsel for the respondents states that if such a representation is filed by the petitioners, the authority concerned shall consider and dispose it of expeditiously and preferably within a period of four months from the date of its filing along with a copy of this order.

Statement accepted and taken on record.

As such, petition stands disposed of in the following terms:-

(a) Petitioners shall approach the authority concerned within a period of four weeks from today by filing a representation for redressal of the grievance(s);

(b) The authority concerned shall consider and dispose it of expeditiously by a reasoned and speaking order preferably within a period of four months from the

date of its filing along with a copy of this order;

(c) Needless to add, while considering such representation, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties;

(d) Equally, liberty is reserved to the petitioners to take recourse to such alternative remedies as are otherwise available in accordance with law;

(e) We are hopeful that as and when petitioners take recourse to such remedies, as are otherwise available in law, before the appropriate forum, the same shall be dealt with, in accordance with law and with reasonable dispatch;

(f) Liberty reserved to the petitioners to approach the Court, if the need so arises subsequently on the same and subsequent cause of action;

(g) Liberty also reserved to the petitioners to make a mention for listing of the petition on priority basis. As and when any such mention is made, Registry shall take steps for listing the petition at the earliest.

(h) We have not expressed any opinion on merits.

All issues are left open;

(i) The proceedings, during the time of current Pandemic- Covid-19 shall be conducted through digital mode, unless the parties otherwise mutually agree to meet in person i.e. physical mode;

The petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.01.2022
Transmission Date	NA