

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19153 of 2024

1. Doli Devi Wife of Ranjeet Kumar, Resident of Govind Bara, P.O. and P.S. - Phenhara, District - East Champaran, Bihar- 845430.
2. Shiv Kumar Singh, Son of Late Ramadhar Singh, Resident of village and P.O. - Ijor Bara, P.S. - Phenhara, District- East Champaran at Motihari.
3. Lakhindra Mahto, Son of Late Ramekbal Mahto, Resident of Village and P.O. - Mankarwa, P.S. - Phenhara, District- East Champaran at Motihari.
4. Chandani Singh, Wife of Sri Santosh Kumar Singh, Resident of village- Kalupakar, P.O. - Kalupakar, P.S. - Phenhara, District- East Champaran at Motihari.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, Patna.
3. The State Election Commission (Panchayat) through the Secretary, Beer Chand Patel Path, Sone Bhawan, Patna, Bihar - 800001.
4. The District Magistrate, East Champaran at Motihari.
5. The District Panchayat Raj Officer, East Champaran at Motihari.
6. The Block Development Officer-Cum-Executive Officer, Block - Phenhara, District - East Champaran.
7. Sri Radheshyam Singh, Son of Late Raj Mangal Singh, Resident of village- Ibrahimpur Parsauni, P.O. - Ibrahimpur Parsauni, P.S.- Phenhara, District - East Champaran at Motihari, Presently Pramukh of the Phenhara, Block Panchayat Samiti. Respondent No. - 7 is the Pramukh.
8. Smt. Maya Devi, Wife of Sri Kishori Sah, Resident of Village- Rupauli, P.O. - Kumharara, P.S.- Phenhara, District - East Champaran at Motihari. Respondent No. 8 is the elected member of the Block Panchayat Samiti, Phenhara through the Block Development Officer- Cum-Executive Officer, Block Panchayat Samiti, Phenhara, P.O. and P.S. - Phenhara, District- East Champaran.
9. Sri Sanjay Sahani, Son of Late Munni Sahani, Resident of Village- Khanpipra, P.O. - Mathurapur, P.S. - Phenhara, District - East Champaran at Motihari. Respondent No. 9 is the elected member of the Block Panchayat Samiti, Phenhara through the Block Development Officer- Cum-Executive Officer, Block Panchayat Samiti, Phenhara, P.O. and P.S. - Phenhara, District- East Champaran.
10. Sri Bablu Kumar Singh, Son of Rajeshwar Prasad Singh, Resident of village and P.O. - Phenhara, P.S. - Phenhara, District- East Champaran at Motihari. Respondent No. 10 is the elected member of the Block Panchayat Samiti, Phenhara through the Block Development Officer- Cum-Executive Officer, Block Panchayat Samiti, Phenhara, P.O. and P.S. - Phenhara, District- East Champaran.



11. Sri Sonu Ram, Son of Late Laxman Ram, Resident of Village and P.O. - Mathurapur, P.S.- Phenhara, District - East Champaran at Motihari. Respondent No. 11 is the elected member of the Block Panchayat Samiti, Phenhara through the Block Development Officer- Cum-Executive Officer, Block Panchayat Samiti, Phenhara, P.O. and P.S. - Phenhara, District- East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S B K Mangalam with Mr. Vikash Kumar Singh, Advocates
For the State	:	Ms. Binita Singh, SC 28
For the SEC	:	Mr. Ravi Ranjan, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 19-12-2024

Heard Mr. S. B. K. Mangalam, learned Advocate for the petitioners and Ms. Binita Singh, learned Standing Counsel- 28 for the State. Mr. Ravi Ranjan, learned Advocate appears for the State Election Commission.

2. The petitioners are aggrieved with the order dated 27.11.2024, contained in Memo No. 502, passed by the respondent no. 4, whereby the respondent no. 4 was pleased to declare all the votes marked in the ballot paper as “correct” being prejudiced by his order dated 21.09.2024 contained in Memo No. 392(ka).

3. Mr. Mangalam, learned Advocate for the petitioners vehemently contended that the impugned order is in complete defiance of the order passed by this Court dated 29.10.2024 in C.W.J.C. No. 16681 of 2024, whereby this Court remanded the



matter to the District Magistrate, East Champaran, Motihari with a direction to pass a detailed order describing each and every ballot papers and marks thereon, with a further direction that the identity of the voter should not be disclosed.

4. Referring to the impugned order, learned Advocate for the petitioners contended that this time again similar mistake has been done and the District Magistrate, East Champaran, Motihari has only said that cross “x” marks have been found on all the ballots, which is contrary to mandate of this Court and an oblique move of the concerned respondent.

5. Mr. Mangalam, learned Advocate for the petitioners drawing the attention of this Court to Rules 95 and 96 of the Bihar Panchayat Election Rules, 2006 vehemently contended that the procedure of poll has been duly provided under Rule 95 with a clear prescription that each member shall be given a ballot paper separately on which he/she shall mark his/her vote by putting secretly a cross (x) mark against the name of a candidate.

6. Rule 96 talks about the invalid votes, which reads as follows:

“96. Invalid Votes- A ballot paper shall be treated as invalid if:-

(a) it bears the signature of a



member or there is any such visible word which may lead to the identification of the voter; or

(b) the cross (x) mark has been made against the name of more than one candidate; or

(c) The mark has been made in such a manner that it can not be ascertained as to which candidate the vote has been cast; or

(d) no cross mark has been made on it; or

(e) it does not bear the signature of the Presiding Officer.”

7. It is the contention of the petitioners that the vote is fit to be declared as a valid if there is no other visible words or sign, which may lead to identification of a voters; putting of plus “+” marks on a ballot clearly makes the vote invalid.

8. Attention of this Court has also been drawn to the decision rendered by the Apex Court in the case ***Kuldeep Kumar vs. Union Territory of Chandigarh & Ors.*** reported in ***(2024) 3 SCC 526*** which highlighted the significant importance of the fairness in election and mandated a duty cast upon the election authority to conduct free, fair and impartial election. Further reliance has also been placed on a decision rendered by the learned co-ordinate Bench of this Court in the case of



Shobhna Kumari vs. The State of Bihar & Ors. in CWJC No. 13287 of 2024 wherein the Court in order to give quietus to the litigation has called for the ballot paper.

9. Referring thereto, he also prays before this Court that if the ballot papers shall be produced before this Court, the entire dispute shall be resolved.

10. The request of the petitioners has been confronted by the learned Advocate for the State and submission has been made that pursuant to the direction of this Court, the ballots have been examined in presence of all the members of the Panchayat Samiti, and the entire episode was duly videographed. After having satisfied, the District Magistrate has given a finding that all the ballots contain cross “x” marks.

11. Drawing the attention of this Court to the order passed by this Court in C.W.J.C. No. 2506 of 2024, learned Advocate for the State has submitted that earlier the petitioner no.1 had approached before this Court with identical grievance that at the time of voting one of the members put the sign of ‘+’ instead of ‘x’, which is mandatory. Taking note of the grievance, only for satisfaction of the petitioner, the Court has directed that she may prefer a representation before the District Magistrate, East Champaran, Motihari, who shall look into the matter and



do the needful.

12. In pursuant thereto, the petitioner preferred a proper representation and thereafter the order has been passed contained in Memo No. 392(ka) dated 21.09.2024. Copy of which is marked as Annexure-P/5.

13. Admittedly in the afore-noted impugned order, the identification of the voters have been disclosed and, as such, the petitioner no.1 being aggrieved, again approached before this Court in CWJC No 16681 of 2024. The learned Court on being found that the description of each and every ballot papers containing marks over there has not been dealt with, again remitted the matter to the District Magistrate, East Champaran, Motihari with a direction to pass a detailed order describing each and every ballot papers and marks thereon.

14. In pursuant to the order aforementioned, the District Magistrate has directed for appearance of all the members of the Panchayat Samiti and thereafter in presence of all the members, the sealed ballot box was opened and it has been found that all the ballots contain cross “x” marks.

15. In the aforesaid premise, learned Advocate for the State submits that since all the ballot papers were twice examined by the District Magistrate and no infirmity has been



found, thus no further examination of ballot is required.

16. This Court has anxiously heard the learned Advocate for the parties and also perused the materials available on record.

17. Admittedly the special meeting for consideration of No Confidence Motion against the petitioner no.1 was convened on 18.01.2024 on requisition dated 04.01.2024. No Confidence Motion brought against the petitioner no.1 was passed. Five votes were polled in favour of no confidence and four votes against the motion, which fact was duly recorded in the proceeding of special meeting dated 18.01.2024.

18. Twice the ballot was duly examined in pursuant to the order of this Court in presence of all the members by the District Magistrate-cum-District Election Officer, East Champaran. In the earlier round of litigation in CWJC No. 2506 of 2024, the petitioner no.1 had expressly conceded that she only wants to get herself satisfied whether the votes polled against her were proper manner or not. In the aforesaid premise, this Court taking note of the fact that there is no rules/guidelines, but only for the satisfaction of the petitioner directed the District Magistrate to look into the matter and do the needful.



19. There is neither any allegation of malpractice by candidate nor against the Presiding Officer. None of the candidate admitted the position of putting '+' marks in place of 'x' marks. In compliance with the order of this Court, passed in subsequent writ petition, now fresh examination of ballot was done and videographed and it has been found all the ballot contains 'x' marks.

20. Moreover, the reliance of the petitioners on a decision of the Hon'ble Supreme Court in the case of **Kuldeep Kumar** (supra) was passed to do complete justice and to ensure that process of electoral democracy is not thwarted by subterfuges on the part of the electoral misconduct by the Presiding Officer himself, in treating the votes invalid as a result of the mark which were put by him. The video footage leaves no manner of doubt that the Presiding Officer, while initialling the ballot papers placed an ink mark on the lower half of eight ballot papers, all of which were cast in favour of Kuldeep Kumar. However, in the case in hand, the facts are quite distinguishable and no such irregularity is either alleged or found. All the ballots were examined in presence of all the members of Panchayat Samiti and found only marks thereon. Hence in the opinion of this Court, there must be given quietus to the dispute, all the more, the petitioner no. 1 was holding the post



at the will of the people.

21. Accordingly, the writ petition stands dismissed.

(Harish Kumar, J)

Anjani/-

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CAV DATE	
Uploading Date	23.12.2024
Transmission Date	

