

Punit Mukhiya Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jul-04-2003

Judge : Ravi S. Dhavan, C.J. and R.N. Prasad, J.

Acts : Bihar Panchayat Raj Rules, 1995 - Rule 79

Appeal No. : C.W.J.C. No. 6936 of 2001

Appellant : Punit Mukhiya

Respondent : The State of Bihar and ors.

Advocate for Pet/Ap. : Raghu Nath Singh, Adv.

Prior history : Ravi S. Dhawan, C.J. and R.N. Prasad, J. 1. There are two aspects of the matter. The first issue is as to whether there should have been recounting or not. This aspect is not before this Court. 2. The second issue is as to whether Rule 79 of the Bihar Panchayat Raj Rules, 1995 be declared as ultra vires. Merely because the Returning Officer may not have recorded his reasons is no ground to declare the rule ultra vires. The petitioner may have a case provided he makes It out one that a certio

Judgement :

Ravi S. Dhawan, C.J. and R.N. Prasad, J.

1. There are two aspects of the matter. The first issue is as to whether there should have been recounting or not. This aspect is not before this Court.
2. The second issue is as to whether Rule 79 of the Bihar Panchayat Raj Rules, 1995 be declared as ultra vires. Merely because the Returning Officer may not have recorded his reasons is no ground to declare the rule ultra vires. The petitioner may have a case provided he makes it out one that a certiorari be issued for examining whether in terms of Rule 79 the Returning Officer has recorded his reasons or not. Depending on the record whether reasons are recorded or not, the Court will examine the order of the Returning Officer. The fact that reasons may not be recorded is no ground to declare the rule ultra vires.
3. In the circumstances, there is no good ground that Rule 79 aforesaid be declared as ultra vires.

The matter which survives in the petition is whether the order of the Returning Officer under the rule is good, or bad. This matter in the normal course will be before the learned Single Judge.

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