

**Devender Yadav Vs. the State of Bihar and ors.**

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**Court :** Patna

**Decided On :** Sep-22-2004

**Judge :** Chandramauli Kr. Prasad, J.

**Acts :** Bihar Panchayat Raj Act, 1993 - Sections 140

**Appeal No. :** CWJC No. 2133 of 2003

**Appellant :** Devender Yadav

**Respondent :** The State of Bihar and ors.

**Advocate for Def. :** Mahesh Prasad, GP III and Dharendra Kumar (Munna), JC to GP III

**Advocate for Pet/Ap. :** Ram Balak Mahto, Sr. Adv. and Ajay, Adv.K.B. Nath and Jyoti Shankar, Advs.

**Disposition :** Application dismissed

**Judgement :**

**Chandramauli Kr. Prasad, J.**

1. This application has been filed for issuance of a writ in the nature of certiorari for quashing the judgment dated 14th of February 2003 passed by the Munsif, 2nd Gaya in election petition No. 3 of 2001 (Annexure-1) whereby it had set aside the

election of the petitioner as Mukhiya of Dehuri Gram Panchayat. By the impugned judgment, the learned Munsif has further directed the District Magistrate-cum-District Election Officer, Gaya for holding a fresh election.

2. Shorn of unnecessary details facts giving rise to the present application are that petitioner Devendra Yadav, hereinafter referred to as the returned candidate, as also respondent No. 5 Md. Anwar Hussain, hereinafter referred to as the election petitioner, were candidates for election to the post of Mukhiya of Dehuri Gram Panchayat in the district of Gaya. In the said election Devendra Yadav was declared elected. The election petitioner challenged his election by filing an election petition under Section 140 of the Bihar Panchayat Raj Act, 1993 inter alia alleging that the returned candidate had collected arms, musclemen and anti-social elements to terrorise the voters of booth Nos. 14, 15, 16 and 17. It was further alleged that on account of large scale violence at the aforesaid booths, the Presiding Officer reported the matter to the Returning Officer and gave report which led to registration of Atri PS Case No. 49 of 2001. It was further alleged that on account of large scale violence re-polling took, place on booth Nos. 15 and 16 but no re-polling was ordered at booth Nos. 14 and 17. It was further alleged that booth Nos. 14, 15, 16 and 17 were located at one place i.e. Elementary School, Dehuri and violence having taken place at all the booths, action of the Election Authority not to hold repoll at booth Nos. 14 and 17 was illegal which had materially affected the result of the election and accordingly, prayer was made to countermand the election.

3. The returned candidate filed written statement and denied all the allegations levelled by the petitioner and pleaded that no violence had taken place at booth Nos. 14, 15, 16 and 17 and the election was held in the peaceful manner. Plea of the returned candidates further was that on the day of election at booth Nos. 15 and 16, disturbance was created by the men of the election petitioner which led to registration of criminal case and accordingly, repoll was held on those booths on 11.5.2001. It was further alleged that at booth Nos. 15 and 16 total votes polled were 210 and 197 respectively. At booth No. 15 returned candidate got 160 votes and the election petitioner got five votes. At booth No. 16, 67 votes were cast in favour of the returned candidate whereas the election petitioner got 81 votes. The

returned candidate denied all the allegation levelled by the election petitioner and, accordingly, prayed for dismissal of the election petition.

4. On the basis of the pleading of the parties the learned Munsif framed various issues which included the following issues :--

'(iv) Whether any violence, corrupt and illegal practice was adopted by opposite party.

(v) Whether the election of opposite party as Mukhiya of Dehuri Gram Panchayat is fit to be set aside.'

5. The party led evidence before the learned Munsif and the learned Munsif on appreciation of evidence held that fire, violence and bombing took place at alt four booths, namely, booth Nos. 14 to 17 but the order of re-election was only ordered at two booths, namely, booth Nos. 14 and 17. It accordingly observed that election held at booth Nos. 14 and 17 was not free and fair and accordingly set aside the election of the returned candidate and directed for holding a fresh election.

6. Mr. Ram Balak Mahto, Senior Advocate appearing on behalf of the petitioner i.e. returned candidate submits that violence at the polling stations is an election offence but in the absence of any evidence that booths were captured, the learned Munsif ought not to have set aside the election of the returned candidate. In support of his submission he has placed reliance on a large number of authorities of the Supreme Court in the case of Harish Chandra v. Triloki Singh, AIR 1957 SC 444, N.C. Zeliang v. Aju Newmai, AIR 1981 SC 8, Daulat Ram v. Anand Sharma, AIR 1984 SC 621 and Surinder Singh v. Hardial Singh, AIR 1985 SC 89.

7. Mr. Mahesh Prasad, Government Pleader No. III, however, appearing on behalf of the State submits that the very assumption of the returned candidate that booths were not captured is unfounded on facts and hence the learned Munsif did not err in setting aside the election.

8. Having considered the rival submission I do not have the slightest hesitation in accepting the broad submission of Mr. Mahto that an election offence near the polling booths itself shall not render the result of the election to be void but in case

it is found that polling had not taken place in free and fair manner at polling booths and the number of voters at those booths are such which may materially affect the result of the election, the result of the election is vitiated. Here in the present case the learned Munsif had found that booth Nos. 14 and 17 were located at one place and the musclemen of the returned candidate indulged in violence and resorted to firing and bombing and ballot boxes were also looted. From the evidence on record the learned Munsif further gathered that polling at booth Nos. 14, 15, 16 and 17 started peacefully but later on violence took place and Polling Authority of all the four booths had fled away with the election material to save their lives. It also observed that number of ballot papers without stamp were found in the ballot boxes of booth Nos. 14 and 17 which were counted. The learned Munsif went on to observe that when all the four booths were located at one place and violence having taken place on those booths the decision for repoll at booth Nos. 15 and 16 only ought not to have been taken. The aforesaid finding has been recorded on appreciation of evidence which does not call for interference by this Court in exercise of its writ jurisdiction. As the learned Munsif had found that large scale violence had taken place at booth Nos. 14 and 17 and the election held at those booths was not free and fair, it did not err in setting aside the election of the returned candidate.

9. Mr. Mahto then submits that even if the finding of the learned Munsif that free and fair election was not held at booth Nos. 14 and 17, is accepted same materially did not affect the result of the election and, as such, the learned Munsif ought not to have set aside the election of the returned candidate. He emphasises that the percentage of votes polled at other polling booths if taken, into consideration and in case such percentage of votes are ignored, the result of the election would not have materially affected. This ingenious argument of Mr. Mahto deserves to be rejected outright. It is not in dispute that the returned candidate has been declared to have been elected on the ground that he had secured 742 valid votes whereas the election petitioner had secured only 394 votes i.e. by a margin of 340 votes. Election petitioner had secured 126 votes at booth No. 47 and 151 at booth No. 17 i.e. altogether 277 votes. It is further not in dispute that the total number of voters at booth Nos. 14 and 17 were 300 and 402 respectively i.e. total of 702 votes and in case the polling at those booths were held peacefully, and 702

voters were allowed to vote peacefully same would have materially affected the result of the election and, as such, the submission made by Mr. Mahto deserves to be rejected.

10. Mr. Mahto lastly submits that the learned Munsif on its own finding ought not to have directed for holding fresh election at the entire booths but should have directed for holding of repoll only at booth Nos. 14 and 17. I find substance in the submission of Mr. Mahto. The learned Munsif had found that violence had taken place at booth Nos. 14 and 17 and the poll held at those booths were not free and fair and in that view of the matter, I am not of the opinion that the learned Munsif erred in directing for holding the election on all the booths afresh.

11. Accordingly, I find and hold that the learned Munsif rightly set aside the election of the returned candidate but erred in directing for holding fresh election for the office of the Mukhiya of Dehuri Gram Panchayat in the district of Gaya on all the booths. Hence I direct the State Election Commission to hold the election for the office of the Mukhiya of Dehuri Gram Panchayat at booth Nos. 14 and 17 and thereafter declare the result of the election.

12. In the result, the application is dismissed with the aforesaid modification in the order. There shall be no order as to cost. Application dismissed.

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