

Suresh Kumar and ors. Etc. Etc. Vs. the State of Bihar and ors. Etc. Etc.

Suresh Kumar and ors. Etc. Etc. Vs. the State of Bihar and ors. Etc. Etc.

SooperKanoon Citation : sooperkanoon.com/135497

Court : Patna

Decided On : Jul-14-2006

Judge : S.N. Hussain, J.

Acts : Bihar Panchayat Raj Act, 2006 - Sections 137, 137(1), 137(2), 138, 139 and 139(1); [Constitution of India](#) - Articles 226 and 243-O; Bihar Panchayat Election Rules, 2006 - Rules 75(1), 106 and 116

Appeal No. : C.W.J.C. 7128, 7138, 7140, 7163, 7166, 7167, 7171, 7175, 7178, 7179, 7180, 7181, 7182, 7187, 7189,

Appellant : Suresh Kumar and ors. Etc. Etc.

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

Judgement :

S.N. Hussain, J.

1. A common question is involved in all these writ cases, which are heard and taken up for decision together, as to whether the ballot papers marked with only the wooden portion of the instrument (commonly called a stamp) were rightly rejected by the authorities concerned while counting the votes cast by the voters in the elections held for various posts under the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act' for the sake of brevity) recently in the year 2006.

2. Admittedly the wooden stamps with rubber Swastik marks on the ends were supplied by the State Election Commission (hereinafter referred to as 'the Commission' for the sake of brevity) to all the booths for the use of voters for marking the ballots, but at many booths the rubber containing Swastik mark got detached and the Polling Officers of such booths allowed the voters to use the wooden portion of the said stamps for marking their ballots. However, the Commission having been satisfied that the rubber marks got detached from the wooden portions due to substandard materials used by the supplier, got criminal case lodged against the supplier company.

3. The grievance of the petitioners is that although, the voters and the candidates raised their objections immediately before the authorities concerned and also sent their grievances through FAX to the authorities of the Commission stating the entire fact, and although the Presiding Officers of the booths allowed the voters to cast their votes by marking their ballots with the wooden portions of the stamp assuring that their votes on such ballot papers would be considered to be valid, but no heed was paid to it by the Commission, which sat over the matter until the counting was over and instead of itself taking a firm and final decision in the matter and giving directions to all the authorities concerned as per its power under Rule 116 of the Bihar Panchayat Election Rules, 2006 (hereinafter referred to as 'the Rules' for the sake of brevity) which would have uniformly been applicable to the entire State, left it to be decided by the Returning Officers of the areas concerned, who indiscriminately treated such an important matter, some of whom accepted such ballots and some of whom rejected such ballots, due to which they were not considered while counting the votes. It is also the grievance of the petitioners that due to non-counting of such ballots the entire scenario changed in many of the constituencies where the margin of success was much less than the ballots rejected on the aforesaid ground which vitiated the results and created an unprecedented situation of utmost concern for the democratic fibre of the entire country.

4. On the other hand the learned Advocate General appearing on behalf of the State of Bihar and its authorities as well as the learned Counsel for the Commission and its authorities argued that election processes in all the

constituencies concerned are over and the results have already been declared and hence now only the prescribed authorities in a properly filed election petition can decide such matters in accordance with Article 243O(b) of the [Constitution of India](#) as well as Sections 137(1), 138(b) and 139 (1)(d) (iii) of the Act and no order can be passed by this Court under its writ jurisdiction as has been held in two recent Division Bench judgments of this Court dated 06.07.2006 and 26.06.2006 passed in CWJC No. 7746 of 2006 (Brajbhushan Singh and Ors. v. The State of Bihar and Ors.) and CWJC No. 7130 of 2006 (Ashok Yadav and Ors. v. Union of India and Ors.) respectively.

5. The petitioners' counsel in their reply controverted the aforesaid assertions of the learned Counsel for the respondents and submitted that there is no constitutional bar in the hearing of these writ petitions by this Court as no provision of constitution curtails power of the High Court under Article 226 of the [Constitution of India](#) and furthermore Articles 243o or 329(b) are normal constitutional provisions under ideal situations, but the constitutional authorities acting in chaotic situation and in absolutely perverse and arbitrary manner violating the constitutional provision infringing such an important right of the citizens are extraordinary situations in which special power of the High Court under Article 226 of the [Constitution of India](#) has to be exercised. They further submitted that even if alternative remedy is available to the petitioners, this Court has interfered where fundamental rights are infringed and where questions of enforcement of fundamental rights are involved.

6. This aspect of the matter has already been settled by the Hon'ble Apex Court in a catena of decisions in which it has been held that once an election process has been set in motion, though the High Court may entertain or may have entertained a writ petition, it would not be justified in interfering with the election process giving direction to the authorities concerned to stall the proceedings or to conduct the election process including the counting of votes afresh, in particular when election has already been held in which the voters were allegedly prevented to exercise their franchise, as that dispute is covered by an election dispute and remedy is thus available at law for redressal and the High Court would not be justified in issuing directions to stall the election process or to alter the same. In the said

circumstances, Division Bench of this Court has passed orders in two writ cases mentioned above holding that 'since the elections for the Panchayats in the State of Bihar have already been conducted and results have been declared and an alternative statutory redressal for such grievance having been provided in Rule 106 of the Bihar Panchayat Election Rules, 2006, apart from constitutional specific provision, we are not inclined to entertain the petition.

7. Furthermore, Rule 75(1)(chh) of the Rules prescribes that ballot papers in the ballot box will be rejected if the mark put thereon is by an instrument other than the instrument provided, but in the instant cases, the marks put on the ballot papers are not by any other instrument rather they are by the same instrument provided by the Commission, although the rubber marks were detached. Hence, the Commission should have come out with a specific stand with respect to the matter and if they have not yet taken any stand thereon, it is high time that they realise the gravity of the situation and take a final decision in respect thereof without any further delay so that such matters can be validly and uniformly decided by the authorities concerned.

8. In any view of the matter, Section 137 of the Act and Rule 106 of the Rules specifically provide that no election shall be called in question except by an election petition as prescribed under the said Section and Rule whereas Section 139 of the Act provides the grounds for declaring election to be void in which Sub-section (1)(d)(iii) provides that if the result of the election in so far as it concerns a returned candidate has been materially affected by improper reception, refusal or rejection of any vote, which is void, the prescribed authority shall declare the election of the returned candidate to be void. In the aforesaid circumstances, the grievance of the petitioners mentioned above as well as other grievances can very well be redressed under the said provisions of law as the authorities provided under the said provisions are fully competent to decide such matters in accordance with law after considering the pleadings and evidence of the parties as well as specific provisions of law including case laws.

9. Moreover another objection of the petitioners is that the matter in issue cannot be decided without impleading the Commission and its authorities, but Section

137(2) of the Act provides that parties respondents in an election petition will only be the returned candidates and any other candidate against whom allegations of any corrupt practice are made in the petition. In my view, the aforesaid Section provides that the candidates mentioned above have to be impleaded but impleadment of any other necessary parties including the Commission and its authorities are not barred under the said provisions. Hence if there is any unavoidable necessity of adding any other party to the election petition, it can be very well allowed in the facts and circumstances of the case so that full and final picture may come out before the authorities deciding such petition.

10. In the aforesaid facts and circumstances, these writ petitions cannot be allowed and hence they are hereby disposed of with a liberty to the petitioners to move before the authorities concerned in accordance with the provisions of law.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com