

**Nikesh Kumar Vs. the State of Bihar and ors.**

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**Court :** Patna

**Decided On :** Oct-10-2006

**Judge :** S.N. Hussain, J.

**Acts :** Bihar Panchayat Raj Act, 2006 - Sections 38, 137, 138 and 140; Bihar Panchayat Election Rules, 1995 - Rules 50, 70 and 71; Bihar Panchayat Election Rules, 2006 - Rules 9, 16, 17 and 18; [Constitution of India](#) - Article 226, 243O and 329

**Appeal No. :** C.W.J.C. No. 6763 of 2006

**Appellant :** Nikesh Kumar

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

**Advocate for Def. :** Ram Bilash Mahto, AAG-8 and Kumar Malendu, JC to AAG-8

**Advocate for Pet/Ap. :** Yogesh Chandra Verma, Sr. Adv. and Arbind Kumar, Adv. in CWJC No. 6763/06, Uday Pratap Singh No. 1, Adv. in CWJC No. 6946/06, Vivekanand Singh, Adv. in CWJC No. 7086/06 and Deepak Kumar, Adv. in CWJ

**Disposition :** Petition dismissed

**Judgement :**

S.N. Hussain

1. Heard learned Counsel for the petitioners, learned Counsel for the State of Bihar and learned Counsel for the Bihar State Election Commission. All the aforesaid cases are against the same order and the points involved in all of them are also the same, hence they are taken up together.

2. All these four cases have been filed for quashing order of the Bihar State Election Commission (hereinafter referred to as 'the Commission' for the sake of brevity) communicated by letter dated 03.06.2006 issued under the signature of the Secretary of the Commission cancelling the elections of Panchayat Samiti Beldaur Prakhand (District- Khagaria) with respect to Election Area Nos. 7, 10, 13, 16 and 21 holding that counting of votes for those areas will not be held, whereas counting of votes for other areas would be held as per the fixed schedule on 09.06.2006 and also for directing the authorities concerned to hold counting of votes for those areas of the Panchayat Samiti for which elections were held on 27.05.2006.

3. Petitioner of CWJC No. 6763 of 2006 is concerned with Area No. 16 Kurban Gram Panchayat; petitioner of CWJC No. 6946 of 2006 is concerned with Area No. 13 Bobin Gram Panchayat; petitioner of CWJC No. 7086 of 2006 is concerned with Area No. 7 Bela Nawad Gram Panchayat; whereas petitioner of CWJC No. 7185 of 2006 is concerned with Area No. 10 Dumri Gram Panchayat.

4. Learned Counsel for the petitioners have submitted that elections in all the Gram Panchayat Areas of Panchayat Samiti Beldaur Prakhand were held on 27.05.2006 and counting of votes were to be held on 09.06.2006, but in the meantime, just about six days before the counting, the impugned order was passed on 03.06.2006 cancelling the elections.

5. Learned Counsel for the petitioners submitted that the Commission has got no power to pass such orders after the polling is over up to the declaration of result. He relies upon a decision of this Court in case of Bholu Prasad Sao v. The Election Commission, Bihar, Patna and Ors. reported in 2002(3) PLJR 485 in which it has been held that polling can be stopped during course of polling in a booth as per the provision of Rules 50, 70 and 71 of the Bihar Panchayat Election Rules, 1995, but after the polling is over, the Commission has got no authority to

interfere with the completion of the election process.

6. Learned Counsel for the petitioners further stated that Rules 9, 16, 17 and 18 of the Bihar Panchayat Election Rules, 2006 provide that constituencies will be reserved for Scheduled Castes, Scheduled Tribes and their women candidates by the Commission which would be published in the gazette after recommendation of the Collector and approval of the Commission and when such process has been completed, there was no occasion for the respondents to pass the impugned order.

7. Learned Counsel for the petitioners also averred that after the polling, valuable right has accrued to the candidates and hence before taking any such decision, the Commission should have informed such candidates and only after hearing them, the Commission could have taken any decision, but without adopting the said procedure, the Commission has clearly violated the Rule of natural justice although such highly responsible constitutional authorities are not expected to play hide and seek in such manner and hence such arbitrary orders/steps beyond the powers given by the statute cannot be allowed to stand.

8. Learned Counsel appearing for the petitioner in CWJC No. 6946 of 2006 added some extra points to the aforesaid arguments and submitted that Section 38 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act' for the sake of brevity) specifically provided reservation of seats for Scheduled Castes, Scheduled Tribes and Backward Classes and also for women and according to the said scheme constituency No. 13 was allotted to Backward Class on 31.1.2006 (Annexure-1), but by the impugned order dated 03.06.2006, it was altered for General Women after the polling was over. He further states that no irregularity was found in Constituency No. 13, which is apparent from the letter of the Commission dated 31.05.2006 (Annexure-4) itself, in which no mention of Constituency No. 13 has been made. He further relied upon a decision of the Apex Court in case of *Buddula Krishnaiah and Anr. v. State Election Commissioner, A.P. and Ors.* reported in : [1996]3SCR687 , in which it was held that once an election process has been set in motion, though the High Court may entertain or may have already entertained a writ petition, it would not be justified in interfering

with the election process giving direction to the election officer to stall the proceedings or to conduct the election process afresh, in particular when election has already been held. Hence, in such circumstances, the Commission also should not have taken any such step.

9. On the other hand, learned Counsel for the respondent-Commission submitted that election means the process of election starting from the date of notification till the declaration of results during which period only the Commission has power to take necessary steps and pass orders. He also relies upon a decision of Division Bench of this Court in case of Sahdeo Yadav alias Sahdeo Pd. Yadav v. The Election Commissioner and Ors. reported in 2004(1) PLJR 278, which considered the question as to whether the decision taken by the Commission to cancel the election and to hold re-poll is amenable to writ jurisdiction in view of the settled law, namely the decision of the Apex Court in case of Mohinder Singh Gill v. Chief Election Commissioner, reported in : [1978]2SCR272 , and held that the conclusion is, therefore, irresistible that the jurisdiction under Article 226 cannot consider the correctness, legality or otherwise of the direction for cancellation integrated with re-poll because prima-facie purpose of such re-poll was to restore a detailed poll process and to complete it through the salvatory effort of a re-poll and hence the writ application challenging the cancellation coupled with re-poll amounts to calling in question a step in election and is, therefore, barred by Article 329(b). It was also held in the aforesaid decision that the Election Commission has vast power to pass orders during the process of election and, thus, the decision taken by the Commission in the present case for postponing the counting and for holding a fresh poll was not amenable to writ jurisdiction in view of clear bar created by Article 243O(b) of the Constitution and Section 140 of the Act.

10. Learned Counsel for the respondent-Commission further stated that some irregularities were detected in population figures of Panchayat Samiti territorial constituencies of Beldaur Prakhanda of Khagaria district due to which population figures different from what had been published finally in Form 1 were wrongly taken into consideration for reservation of the concerned constituencies and consequently the reservation situation in those constituencies had changed and the election process had been vitiated and hence as soon as the Commission

came to know about the said irregularities it was its duty to cancel the polling and direct re-polling after removal of those irregularities.

11. Learned Counsel for the respondent-Commission also relied upon several decisions of the Hon'ble Apex Court including the case of Mohindra Singh Gill (supra) as well as another decision in case of Election Commission of India v. Shivaji and Ors. reported in : [1988]1SCR878 , in which it upheld the decision of the High Court in writ case that it had no jurisdiction to interfere with the process of election and held that subsequently the High Court grievously erred in entertaining the review petition against the said order.

12. Considering the aforesaid facts and circumstances of the case as well as the arguments of the parties and also after appreciating the various case laws cited by the parties, it is quite apparent that the impugned order had been passed by the authority concerned after the polling was over and before the counting of votes had started. Hence, considering the decisions of the Apex Court in Cases of Election Commission of India (supra) and also Mohindra Singh Gill (supra), as well as the decision of the Division Bench of this Court in case of Sahdeo Yadav alias Sahdeo Pd. Yadav (supra), it is quite apparent that this Court as per its jurisdiction under Article 226 of the Constitution cannot consider the correctness, legality or otherwise of the direction for cancellation integrated with re-poll because prima-facie purpose of such re-poll was to restore a detailed poll process and to complete it through the salvatory effort of a re-poll.

13. Even the decision of the Hon'ble Apex Court in case of Buddula Krishnaiah (supra), relied upon by the petitioners, does not support their contentions, rather it was specifically held therein that once an election process has been set in motion the High Court would not be justified in interfering with the election process giving directions to the authorities concerned either to stall the proceeding or to conduct the election process. Such disputes are covered by an election dispute for which remedy is available at law for redressal in which the questions of validity of any such order or step or violation of any statute or rule can be subsequently examined and decided by the authority prescribed under the Act.

14. Thus, the impugned order passed by the respondents in all the four cases mentioned above for postponing the counting and holding a fresh poll is not amenable to the writ jurisdiction of this Court in view of the bar created by Article 243O(b) of the [Constitution of India](#) as well as Sections 137 and 138 of the Act.

15. As a result, all these writ petitions are dismissed and the Commission is directed to proceed in accordance with law and hold fresh poll immediately as per its decision taken in the impugned order.

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