

(2006) 02 PAT CK 0071
In the Patna High Court
Case No : CWJC No. 1316 of 2004

Chaturbhuja Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-02-2006

Acts Referred:

Bihar Panchayat Election Rules, 1995 — Rule 76(2), 79

Citation : (2006) 2 PLJR 167

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : Indu Shekhar Pd. Sinha, Shashi Nath Jha, Ujjwal Kr. Sinha, Kumar Malendu and Brajesh Kumar, Kumar Brajendra Nath, Sanjeev Nikesh, for the Appellant; P.K. Sinha for the State, M/s Prabhas Ranjan and Ashok Kr. Prasad, for the Respondent

Judgement

Barin Ghosh, J.—Sub-rule (2) of Rule 76 of the Bihar Panchayat Election Rules, 1995 provides that on completion of the counting of votes the Returning Officer or the Officer authorized by him will record the result of counting candidatewise in Form No. 19 in the case of member of the Gram Panchayat/ the Panch of the Gram Kutcherri and in Form No. 20 in the case of Mukhiya/the Sarpanch/ Member of the Panchayat Samiti/ Zila Parishad. At the same time Rule 79 of the said Rules authorize recounting of votes. It says that the candidate or in his absence his Election Agent or Counting Agent may file written application to the Returning Officer or the Officer authorized by him for recounting of votes stating therein grounds for the same. It further provides that the Returning Officer or the Officer authorized by him may fully or partially accept the application or may reject the same. It also provides that if the Returning Officer or the officer authorized by him accepts fully or partially the application for recounting then he will get the ballot papers recounted and amend the result of counting in the Form prescribed in sub-rule (2) of Rule 76 and declare the result. It then says that thereafter no application for recounting will be accepted. Rule 81 of the said Rules provides that the Returning Officer or the Officer authorized after recording

the particulars of the election result shall, for the Member of the Gram Panchayat/ the Panch of Gram Kutcherri/Mukhiya/Sarpanch/Members of the Panchayat Samiti/Zila Parishad, as the case may be, declare the candidate elected who had secured the maximum number of valid votes and shall certify the same in the same Form. It further provides that the copy of Form No. 21 duly signed will be sent each to the District Election Officer and through him to the Commission and to the Director of Gram Panchayat Raj. Rule 82 of the said Rules provides that the Returning Officer after declaration of the election result, grant election certificate in Form No. 22 to the candidate so elected. These provisions make it abundantly clear that on completion of the counting the result of the counting shall be recorded in the prescribed Form. If any one is dissatisfied with the counting he is authorized to make an application seeking recounting. If recounting is allowed and recounting results in some other result, the same shall be appropriately recorded in the prescribed form by amending the same, and then the result will be declared. It, therefore, suggests that when the counting is complete, the person aggrieved by the counting is entitled to make his grievance in relation thereto known and seek recounting, but not thereafter. The recounting may or may not be allowed, but if allowed and if upon such recounting the result varies, such varied result should be incorporated in the prescribed Form by amending the same. Therefore, when the counting is done every one knows what is the result of the counting. Thereafter, when the recounting is directed and the same takes place every one knows what is the result of the recounting. Once that is done the result is declared. In the instant case, there is no dispute that counting was done on 14th May, 2001. It is the contention of the election petitioner that on 14th May, 2001 itself he expressed his grievance as regards counting and duly made request in writing to the Returning Officer for recounting of the ballots. Admittedly, no recounting was made. Before the Election Tribunal the Returning Officer was examined. He denied that any written request for recounting was made by the election petitioner. The writing upon which the election petitioner was seeking to rely did not contain any acknowledgment by the Returning Officer. Admittedly, on 15th May, 2001 the election petitioner sought recounting by a FAX message addressed to the appropriate authority. Admittedly, in this FAX message it had not been mentioned by the election petitioner that on 14th May, 2001 he had requested the Returning Officer in writing for recounting giving reasons for such recounting but the Returning Officer refused his request. On 16th May, 2001 once again the election petitioner applied for recounting. Admittedly, it was held out to the election petitioner that the said application of the petitioner is under consideration. Without letting the election petitioner know as to how his request made on 16th May, 2001 for recounting has been dealt with, on 17th May, 2001 the certificate of election was granted. That suggests that the application for recounting as made by the election petitioner on 16th May, 2001 was, in fact, rejected.

2. The Election Tribunal has, by the impugned order, directed recounting of the ballots. The question is whether in the background of the case the Election

Tribunal had jurisdiction to direct such recounting. It has now been held by the Hon"ble Supreme Court that if a person has not applied for recounting at the time of counting of the ballots by exercising his right as granted by Rule 79 of the said Rules, he later on cannot turn around and ask for recounting even before the Election Tribunal. The only question, therefore, in the background of the admitted fact that the counting took place on 14th May, 2001, whether the election petitioner did submit an application in writing with the Returning Officer requesting him to recount. While the election petitioner relied upon that written request before the Election Tribunal which, as aforesaid, was not acknowledged by the Returning Officer, the Returning Officer straightway denied having received any such application. In such circumstances, it was well within the competence of the Election Tribunal to hold by giving reasons that, in fact, the said written application dated 14th May, 2001 was submitted by the election petitioner with the Returning Officer. However, the learned Tribunal did not say so. The election petitioner in these proceedings is seeking to rely upon a FAX relating to a request for recounting also said to have been made on 14th May, 2001 but, however, that was not brought to the notice of Election Tribunal. The learned counsel for the election petitioner contended that the same was brought to the notice of the learned Tribunal and the learned Tribunal referred to the same by mentioning the same as an Annexure. That may be so but then the Election Tribunal has not come to the conclusion that, in fact, on 14th May, 2001 any such FAX message was sent by the election petitioner ventilating his grievances as regards counting or making a request on 14th May, 2001 for recounting. In such circumstances, the Election Tribunal made a jurisdictional error in directing recounting of the Notes. The impugned order directing recounting of the votes is, thus, quashed and the application is, accordingly, disposed of.