
(1991) 11 PAT CK 0020
In the Patna High Court
Case No : C.W.J.C. No. 8198 of 1991

Purnanand Turbey

APPELLANT

Vs

Chief Election Commisioner and Others

RESPONDENT

Date of Decision : 22-11-1991

Acts Referred:

Representation of the People Act, 1951 — Section 58A

Citation : (1992) 1 PLJR 129

Hon'ble Judges : S.K. Singh, J;N. Pandey, J

Bench : Division Bench

Judgement

1. Heard learned Counsel for the Petitioner and Mr. R.S. Roy, Standing Counsel I for Respondent No. 3 as also the Union of India.

2. In this petition, a prayer has been made for a direction to the Respondent Nos. 1 and 2, namely, the Chief Election Commissioner and the Election Commission, to countermand the entire election of 43, Gaya Parliamentary Constituency, polling whereof was held on 16.11.1991, and also to direct for holding a fresh election as there has been large number of booth capturing, massive rigging, intimidation and terrors on account of which it was not possible for the real voters to cast their votes.

3. Different instances of booth capturing and rigging have been, mentioned in the petition. It has also been stated in the petition that the Returning Officer (Respondent No. 3) of the Gaya Parliamentary Constituency, noticing the irregularities mentioned above, submitted a report before the Chief Election Commissioner, recommending therein for re-poll of 65 polling booths in the Gaya Parliamentary Constituency. The Election Commission considered the report of the Returning Officer along with other materials available before him and, after being satisfied; ordered re-polling of the 252 booths of that constituency, is per the schedule, re-polling in the aforementioned booths is going on today.

4. It is stated that the Election Commissioner, after noticing that there has been

large number of bungling and booth capturing etc. should have countermanded the entire election of the Gaya Parliamentary Constituency instead of ordering re-poll in 252 booths.

5. learned Counsel for the Petitioner, on the basis of the facts and circumstances mentioned above, has prayed for a direction to the Election Commissioner to perform his duty enjoined upon him under the provisioning Section 58A of the Representation of the People Act, 1951 (hereinafter referred to as the "Act").

6. From a bare reference to the facts stated above as also the averments made in the writ petition, it appears that the Election Commissioner has himself decided to order for re-poll of the aforesaid 252 Booths and accordingly, order was issued. Therefore, it cannot be said that he has not performed his duties under the provisions of Section 58A of the Act. The only question remains to be considered is whether the Election Commission should have countermanded the entire election of the Constituency or to order re-poll to the extent he has done. In our view, it depends upon the materials which are available before the Election Commissioner. No material has been brought before this Court on the basis of which it can be held that the Election Commissioner has not performed his duties enjoined upon him under the provisions of Section 58A of the Act.

7. However, in paragraphs 36 and 54 of the writ petition reference has been made with respect to certain complaints having been made to the Election Commissioner. Therefore, in the facts and circumstances mentioned above, the Petitioner, if so advised, may raise all these grievances before the Election Commissioner who, it is expected, shall consider the matter and dispose of in accordance with Law.

8. With the aforesaid observations, this application is disposed of.