

(2019) 12 PAT CK 0003

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 23889 Of 2019

Rajendra Prasad Yadav

APPELLANT

Vs

State Of Bihar Through The District Magistrate And Ors

RESPONDENT

Date of Decision : 03-12-2019

Acts Referred:

Bihar Panchayat Raj Act, 2006 — Section 139

Citation : (2020) 1 PLJR 541

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : S.B.K. Mangalam, Ashok Kumar Gupta, Amit Shrivastava, Sanjeev Nikesh, Nand Kumar Sagar, Prashant Sinha, Md. Modassir Shams, Md. Sufian

Final Decision : Dismissed

Judgement

1. Heard Mr. S. B. K. Mangalam, learned counsel for the petitioner; learned AC to GP 10 for the State; Mr. Sanjeev Nikesh, learned counsel for the State Election Commission and Mr. Prashant Sinha, learned counsel for the respondent no. 7, who has suo motu appeared.

2. The petitioner has moved the Court for the following reliefs:

" (I) For issuance of an appropriate writ in the nature of CERTIORAI for quashing the judgment and order dated 18.11.2019 passed by the learned Munsif 1st Madhepura in Election Petition No. 2 of 2016, whereby and where under the learned 1st Munsif, Madhepura has pleased to pass an order of recounting of votes for the post of Mukhiya of Gram Panchyat Raj, Maura Jharkaha on the ground that cutting and overwriting are apparent in some of the statutory forms which was prepared for declaration of result by the Returning Officer but without any finding as to whether the cutting and overwriting are sufficient to materially affect the result of election.

(II) For a declaration that in view of the legal postions settled by this Hon'ble Court as also to the Hon'ble Supreme Court in catena of cases and the residuity of

the election law in India that an order of recounting cannot be passed on the vague allegations, the impugned judgment cannot be sustained in the eye of law for the reason that:

(a) While passing the impugned judgment, the learned 1st Munsif has neither considered the evidence available on record nor he has considered the position of law in this regard as contemplated under Section 139 of the Bihar Panchayat Raj Act, 2006;

(b) The impugned judgment and order has since not decided any other issue before directing for recounting of votes, the impugned judgment cannot be sustained in the eye of law.

(III) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case."

3. The petitioner is the elected Mukhiya of Gram Panchayat Raj Maura Jharkaha under block Shankarpur in the district of Madhepura. The candidate who came second, i.e., the respondent no. 7, being aggrieved by the result declaring the petitioner to have won by 10 votes filed Election Petition No. 2 of 2016 before the Munsif. In the same, by the order impugned, a direction has been issued for recounting of the ballots.

4. Learned counsel for the petitioner submitted that the order directing for recounting is a serious order which should not be passed casually. It was submitted that the Court has started with the judgment of the Hon'ble Supreme Court in Chandrika Prasad Yadav v. State of Bihar reported as (2004) 6 SCC 331. It was submitted that he has gone into the issue based on the allegations made in the election petition by the respondent no. 7 without giving his own finding as to why the matter required recounting of ballots. Learned counsel submitted that even with regard to the discrepancies which have been noted by him, there were explanations which would have come by examination of witnesses and only after that the Court could have formed an opinion as to whether such exercise of recounting of ballots was required. Learned counsel submitted that the Court is required to independently give a finding as to why recounting of the ballots is required and on mere saying of the complainant such exercise should not be resorted to. Learned counsel submitted that for the discrepancies there are valid reasons which have been explained by the official respondents who have filed their written statement in the Court below. It was submitted that if the Court had framed issues for deciding then on each issue he had to give a cogent finding and then only he could have ordered for recount of the ballots, which, in the present case has not been followed. Learned counsel further submitted that the Court has not taken note of the submissions made on behalf of various parties at the time of arguments.

5. Learned counsel for the State submitted that the authorities had not committed any mistake.

6. Learned counsel for the State Election Commission submitted that the matter has been decided now by a Division Bench of this Court in *Beauty Patel vs. Indira Devi* reported as 2019 (2) PLJR 903, the relevant being at paragraph no. 8. He submitted that in a case where allegation was of wrong rejection, the order for recounting of ballots could not be passed in a casual manner and certain principles have been laid down which are not fulfilled in the present case.

7. Learned counsel for the respondent no. 7, who is the main contestant, submitted that the petitioner has been declared to be elected by the authorities after violating all settled principles of law and in fact, when the counting was on and upon conclusion of the same, he had won the election by 15 votes but when the result was declared he was shown to have lost by 10 votes. It was submitted that even the application for recounting of votes in all 18 booths of the Gram Panchayat were not acceded by the authorities and only recounting was done on two booths. However, it was submitted that even after recounting, the official records of the same, as reflected from the data sheet on which the details are recorded, shows manipulation and overwriting, which clearly indicate that the authenticity and reliability of the figures is doubtful. It was submitted that in the present case, after the petitioner had lost the election, the Returning Officer was not providing him with copies of documents required for him to file election petition for which he had moved the State Election Commission and the Returning Officer was imposed fine of Rs. 500/- per day against which he had moved this Court in CWJC No. 13753 of 2016 which was dismissed on 24.11.2016. Learned counsel submitted that the respondent no. 7 had also moved the Court in CWJC No. 5744 of 2018 for a direction to the Munsif to dispose off the election petition expeditiously in which by order dated 03.04.2019, a direction was issued to conclude the proceeding within four months. It was submitted that despite that, the matter is still pending and more than three years out of the five years of the tenure has already elapsed. Learned counsel submitted that the discussion in the order is clearly based on the guidelines of the Hon'ble Supreme Court in *Chandrika Prasad Yadav (supra)* and the Court has discussed each and every issue and has given reasons, inasmuch as, the official documents which were before the Court, when compared with the allegations, made the Court to record that prima facie the discrepancies were enough to justify recounting of ballots. Learned counsel submitted that the Hon'ble Supreme Court in *N. Narayanan v. S. Semmalai* reported as AIR 1980 SC 206, at paragraph no. 26, after considering the earlier judgments of the Hon'ble Supreme Court on the issue, has given three categories which would justify a recount of the ballot papers. It was submitted that all the three parameters, i.e., (i) the election petition containing adequate statement of all the material facts on which the allegations of irregularity or illegality in counting of the ballot papers are founded; (ii) on the basis of evidence adduced such allegations are prima facie established affording a good ground for believing that there has been a mistake in counting; and (iii) the Court trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute

and to do complete and effectual justice between the parties, has been fully met by the Court below. It was submitted that when before the Court the original records were there which were compared to the specific stand taken by the respondent no. 7 that there was manipulation in the statutory forms relating to the number of votes polled by the candidates, and the Court finding substance in the contention, was fully justified in directing for recounting of the ballots.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present writ application.

9. From perusal of the election petition filed by the respondent no. 7 itself it would be obvious that besides making allegations of malpractice against the authorities, he had specifically stated about discrepancies also on various booths and the manner in which the recounting was done. Further, there being a specific averment that while counting inside, the respondent no. 7 had won by 15 votes and only when it came to giving certificate in his favour, the same showed that the petitioner had won by 10 votes. In the finding by the Court, sufficient number of votes have not been reconciled in the statutory forms, which may change the result. It was submitted that ultimately in a democracy, the will of the people has to be reflected, and thus, it is the original piece of evidence, i.e., the exact franchise exercised by an elector, which should be scrutinized for finding out the truth. It is not in dispute that the exercise should not be casual and the secrecy of the ballots should be maintained, but the basic question which has to be addressed is whether the Court while directing for such exercise is satisfied that such exercise is imperative and whether such satisfaction of the Court is based on materials which justify such conclusion. In the present case, the Court below has given specific instances which are numerous in number and which clearly show that there has been cutting and overwriting in filling up of the forms 20 Part (1) and 20 Part (2), by the officer concerned. Further, when the same relates to only the petitioner and no other candidate, it would also raise bona fide doubt as to how only with regard to one particular candidate, the cutting and overwriting were required at many places in both the forms and that too, with regard to numerous booths. Once such fact stands admitted on the basis of the original documents which were available before the Court and which have been perused by the Court and has been duly noted in the order impugned, in the opinion of this Court also, the natural order would be to direct for recounting of the ballots. Thus, the Court below, in the facts and circumstances of the present case, is justified in ordering for such recounting. The Court, on perusal of the materials and pleadings on record, especially the order impugned, finds that the discussions are elaborate and the reasoning is well considered.

10. Coming to the decision relied upon by learned counsel for the State Election Commission, in *Beauty Patel (supra)*, the Court finds that it has no application in the present facts and circumstances of the case, for the simple reason, that it related to rejection of certain number of votes by the authority concerned, which

has no similarity to the facts of the instant case. On the other hand, the Court finds that the judgment of the Hon'ble Supreme Court in N. Narayanan (supra), at paragraph no. 26, has finally laid down three parameters as a check-list for ordering a recount of ballots, which are fully satisfied in the present case. The Court deems it appropriate to reproduce the same:

"26 Finally, the entire case law on the subject regarding the circumstances under which recount could be ordered was fully summarised and categorised by this Court in the case of Bhabhi v. Sheo Govind 1976 Supp SCR 202 to which one of us (Fazal Ali, J.) was a party and which may be extracted thus: "The Court would be justified in ordering a recount of the ballot papers only where;

(1) the election petition contains an adequate statement of all the material facts on which the allegations of irregularity or illegality in counting of the ballot papers are founded;

(2) On the basis of evidence adduced such allegations are prima facie established, affording a good ground for believing that there has been a mistake in counting; and

(3) The court trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties."

11. Thus, considering the matter, both on the principles laid down by the Hon'ble Supreme Court in Chandrika Prasad Yadav (supra) as well as N. Narayanan (supra), the three conditions set by the Hon'ble Supreme Court for justifying the order for recounting of ballots is clearly fulfilled in the present case.

12. For reasons aforesaid, the application stands dismissed.