

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9011 of 2024

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Kumari Anita D/o Hari Prasad Mehta, R/o. 169 Sangam Cinema, R.K. Puram,
Sect 7, South West Delhi, R.K. Puram Sect-5, Delhi- 110022

... .. Petitioner

Versus

1. The Election Commission of India Through its Director, Nirvachan Sadan,
Ashoka Road, New Delhi- 110001.
2. The Chief Electoral Officer, Bihar, 7, Sardar Patel Marg, Patna- 800015.
3. The District Election Officer, Munger, Munger District, Bihar.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Aljo K Joseph, Advocate
	:	Mr. Kumar Nikhil, Advocate
For the ECI	:	Mr. Siddhartha Prasad, Advocate
	:	Mr. Om Prakash Kumar, Advocate
For the State	:	Mr. Nadim Seraj, Advocate
	:	Mr. Vikash Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 03-06-2024 At the outset, when this Court was moved as Civil Application and Motion Bench during vacation for notifying the matter, after hearing for a while about the subject matter of the writ application, I informed learned counsel for the petitioner, Mr. Aljo K Joseph that in fact my village would be falling within the Munger Lok Sabha Constituency, therefore, I would not like to hear the matter as it may be construed otherwise but Mr. Aljo K Joseph, learned counsel for the petitioner has insisted saying that the matter involves only question of law and there would be no conflict of interest, therefore, in view of the urgency, the matter be heard by this



Court.

2. In view of the above submissions, this Court has taken up the matter for consideration for interim relief, if any, as it is also submitted that if it is not heard today, it will become infructuous tomorrow.

3. Heard Mr. Aljo K Joseph, learned counsel assisted by Mr. Kumar Nikhil, learned counsel for the petitioner, Mr. Nadim Seraj, learned GP-5 for the State as well as Mr. Om Prakash Kumar, A.C. to Mr. Siddharth Prasad, learned counsel for the Election Commission of India.

4. Mr. Ashok Priyadarshi, the Deputy Chief Electoral Officer, Bihar is present physically in the Court. The District Magistrate, Munger as well as District Magistrate, Lakhisarai are present online. The matter has been heard in hybrid mode.

5. This writ application has been filed praying for the following reliefs:-

“(i) For issuance of an appropriate writ, order or direction in the nature of mandamus or any other writ, order or direction under article 226 of Constitution of India *inter alia* declaring: the Election Commission of India to conduct re-polling in the booths No. 33 to 60, 200, 201, 202, 205, 207, 208, 209, 210, 211, 212, 213, 219, 221, 222, 223, 224, 225, 226, 227, 228, 229, 232, 233, 234, 235, 236 Mokama Vidhan Sabha Constituency, Booth No. 236, 237, 238, 265, 266, 349, 392, Lakhisarai Assembly Constituency and Booth



No. 157 & 179 Suryagarha assembly constituency.

(ii) For issuance of an appropriate writ directing the Respondent No. 1 to remove the Ld. D.M./D.E.O., Sri Avaneesh Kumar Singh (District Election Officer) Munger parliament constituency (28) Bihar from all administrative responsibilities.

(iii) For issuance of an appropriate writ directing the Respondent authorities to supply copies of the 17-C forms in terms of the Rule 93 of Conduct of Election Rules, 1961.

(iv) Direct the respondent no. 1 to ensure the free and fair election and counting is conducted in the Munger Parliament constituency (28) Bihar.

(v) For any other relief or reliefs which the petitioner may be found entitled to in the facts and circumstances of the case.

(iv) Cost of the litigation throughout.”

6. At the outset, Mr. Aljo K Joseph, learned counsel for the petitioner submits that since the prayer in paragraph 1 (i) would involve some disputed question of facts, therefore, at this stage, he would not be pressing for the said relief.

7. Learned counsel submits that so far as relief nos. (ii), (iii) and (iv) are concerned, he would be looking for some interim relief with reference to those prayers only.

8. As regards the prayer no. (ii), learned counsel for the petitioner submits that the prayer for removal of the District Magistrate/District Election Officer Sri. Avaneesh Kumar Singh is concerned, there is no personal allegation against him and that is why he is not made a party respondent by name in



the writ application. Learned counsel has further taken this Court through the statements made in paragraph '9' of the writ application to submit that the petitioner has lost her confidence in the District Election Officer, Munger because despite there being multiple complaints made by the petitioner with regard to the several occurrences which took place on different polling booths wherein a class of voters were not allowed to cast their vote, the District Election Officer did not take any action rather he reported to the Chief Election Officer, Bihar that the entire election was conducted peacefully. For this reason, the petitioner has drawn an inference that serious manipulations had occurred with the complicity of the local administration and despite widespread instances of booth capturing and rigging at various locations, no effective actions were taken. Learned counsel for the petitioner has thus indicated collusion between the administration and JDU candidate.

9. So far as the prayer no. (ii) is concerned, this Court finds that the statements made in paragraph '9' of the writ application are not very specific, as recorded hereinabove, there is no allegation of bias, personal malice against the District Election Officer and the statement in paragraph '9' of the writ application are more by way of inferences drawn by



the petitioner. Allegation of collusion between the administration and the JDU Candidate would be a disputed question of fact and this Court, at this stage, in absence of any clinching and irresistible material on the record would not take a view so as to direct respondent no. 1 to remove the District Election Officer of Munger Parliamentary Constituency from all administrative responsibilities. The prayer for removal of the District Magistrate/District Election Officer, Munger Parliamentary Constituency is, thus, refused.

10. So far as prayer no. (iii) is concerned, the submission of learned counsel for the petitioner is that Rule 93 of the Conduct of Election Rules, 1961 (hereinafter referred to as the 'Rules of 1961') is an open ended provision and a candidate has an independent right to get a copy of Form 17-C by depositing appropriate fee in terms of Rule 93 of the Rules of 1961.

11. In course of argument, Mr. Joseph, learned counsel has, however, extended his submissions and went on to submit that the agents of the petitioner at different polling booths of Munger Parliamentary Constituency have not been made available Form 17-C at the end of the election hour. Learned counsel has taken this Court through Rule 49-S of the



Rules of 1961 to submit that sub-rule (1) and sub-rule (2) of Rule 49-S are mandatory in nature and the Presiding Officer would be obliged to furnish to every polling agent at the close of the poll a true copy of the entries made in Form 17-C after obtaining a receipt from the said polling agent therefor and shall attest it as a true copy. It has been submitted that at some of the polling booths, Form 17-C were made available but in large number of the polling booths, the said Form 17-C were not handed over to the polling agents of the petitioner.

12. Learned counsel for the petitioner, however, very soon realized in course of his submission that he has not laid the foundation of facts in the writ application to demonstrate that at any point of time, either the polling agents of the concerned booth or the candidate had made any complaint to the District Election Officer regarding non-supply of Form 17-C at the end of the polling hour. Mr. Joseph has admitted at the Bar that so far as the writ application and the Annexure attached thereto are concerned, there is no categorical statement in this regard and there is not even a statement to the effect that in which booth or at how many booths of the Munger Parliamentary Constituency the Form 17-C were not made available. Having sensed the difficulty in pursuing with



the extended argument, Mr. Joseph, learned counsel for the petitioner has submitted that his main contention is based on an interpretation of Rule 93 of the Rules of 1961 because he is invoking his independent right to obtain Form 17-C which is available to him under Rule 93 of the Rules of 1961. Learned counsel submits at the fag end of his submissions that he would be contented if this Court directs the District Election Officer to make available a copy of Form 17-C in accordance with Rule 93 of the Rules of 1961.

13. Contesting the aforementioned submissions of Mr. Joseph, learned counsel for the petitioner, Mr. Nadim Seraj, learned GP-5 submits that so far as the extended argument of learned counsel for the petitioner with regard to non-supply of Form 17-C to the polling agents is concerned, the same has no basis to stand. The polling came to an end on 13.05.2024 at 6:00 pm, neither on the said date nor thereafter till 26.05.2024 any complaint was made either by any polling agent or by the candidate saying Form 17-C was not made available to them. It is pointed out that on 27.05.2024, the petitioner, who is the candidate herself, submitted an application which is Annexure P-11 to the writ application in which she requested for making available copies of Form 17-C of all booths in terms of Rule 93



of the Rules of 1961. In this application submitted to the District Election Officer, Munger (Annexure P-11) she has not even whispered that Form 17-C were not made available to her polling agents.

14. Mr. Seraj has taken this Court through Article 329(b) of the Constitution of India and it has been argued on the strength of the judgment of the Hon'ble Supreme Court in the case of *Mohinder Singh Gill vs. Chief Election Commissioner, New Delhi and Ors.* reported in (1978) 1 SCC 405 that Article 329(b) is a blanket ban of litigative challenges to the electoral steps being taken by the Election Commission and its officers. The submission is that in such circumstance the writ application is not entertainable when the counting of votes would be going to take place only tomorrow from 8:00 am.

15. Learned counsel further submits that so far as the applicability of Rule 93 of the Rules of 1961 is concerned, that issue is not required to be gone into at this stage. It is submitted that Rule 93 does not envisage a situation like the present one where the EVM machine and all the relevant documents including Form 17-C are kept in the strong room which is under seal and is likely to be opened tomorrow only at the time of counting. At this stage, the District Magistrate, Munger who



is the District Election Officer of the Parliamentary Constituency, Munger has also sought permission to mention that in fact when the strong room would be opened tomorrow and the counting will start, at that very time Form 17-C (Part 1 information) would be available and the representative of the candidate would be in a position to look into the same.

16. Mr. Joseph, learned counsel for the petitioner having understood the submissions made by the District Election Officer, Munger has expressed his satisfaction and submits that in such circumstance, for the present, this Court may not go into the issue of applicability of Rule 93 of the Rules of 1961 and it may be left open for academic discussions later on. In that view of the matter, no interim order is required to be passed by this Court as regards prayer no. (iii).

17. In view of what has been recorded hereinabove, in the opinion of this Court, so far as prayer no. (iii) is concerned, this has remained only significant for academic discussions and this Court may consider this issue at an appropriate time after the parties shall exchange their respective affidavits.

18. This Court further finds that in view of what has finally transpired as recorded hereinabove, no order is required



to be passed with regard to prayer no. (iv) and there is no gainsaying that the importance of free and fair election has always been taken as a backbone of the democracy and for the present, there is nothing on the record to take a view that the authorities concerned shall not conduct the election in free and fair manner.

19. As prayed by learned counsel for the State as well as the Election Commission of India, the matter is adjourned for twelve weeks to enable them to file their respective counter-affidavits on the issue of Rule 93 of the Rules of 1961.

(Rajeev Ranjan Prasad, J)

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