
(1995) 01 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 208 of 1995 (R)

Ashok Srivastava and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-01-1995

Acts Referred:

Citation : (1995) 01 PAT CK 0016

Final Decision : Dismissed

Judgement

S.K. Chattopadhyaya, J.—Heard Mr. Rajendra Prasad Singh, learned senior Advocate appearing on behalf of the Petitioners and Mr. M.Y. Eqbal, learned G.A. appearing on behalf of the State. With their consent, all these three writ applications involving common questions of law, were heard together and are being disposed of by this common judgment at the time of admission stage itself.

2. In C.W.J.C. No. 208 of 1995 (R), Petitioners have challenged the order dated 24.1.1995 passed by the Respondent No. 2, the Returning Officer, by reason of which the nominations submitted by the Petitioners have been rejected. The impugned order have been annexed as Annexure 3 series. Petitioners for the purpose of contesting the ensuing election to the State Legislature filed their nomination papers in the office of the Respondent No. 2 on 23.1.1995 after obtaining necessary permission from their employer to contest the election. By a Tetter dated 18.1.1995 the authority of Bokaro Steel Plant granted permission to the Petitioner No. 1 for contesting the election. The Respondent No. 2 rejected the nomination papers of the Petitioner Nos. 1 to 4 on the ground that the candidates are the managing agents of the Bokaro Steel Limited and as such, they are disqualified for contesting the election in view of Section 10 of the Representation of the People Act, 1951 (hereinafter referred to as the "Act"). Nomination of Petitioner No. 5 has been rejected on the ground that the Petitioner No. 5 did not submit the certified copies of the relevant portions of the 279 Bokaro Assembly Constituency, when admittedly he was an elector in 279 Bokaro Assembly Constituency.

3. In CWJC No. 211/95(R), the Petitioner has prayed for quashing of the order of the Respondent No. 3, the Returning Officer, dated 24.1.1995 by reason of which the nomination paper submitted by the Petitioner has been rejected on the ground that the Petitioner is not the member of scheduled tribe. This order has been annexed as Annexure 1 to the writ petition. The Petitioner filed his nomination paper annexing the caste certificate granted by the District Welfare Officer, Singhbhum (West), Chaibasa. The Returning Officer, on the basis of entry made in the Khatian, has come to the conclusion that the Petitioner is a "Gaur" by caste and as such, he does not come in the category of scheduled tribe.

4. In CWJC No. 214/95 (R), the Petitioners have prayed for a direction on the Respondent No. 2, the Returning Officer, to allot symbol and permit the Petitioners to contest the election. The Petitioners, in terms of programmed schedule for holding election, filed their nomination papers at about 11.30 A.M. on 23.1.1995 before the Respondent No. 2, the last date for filing the nomination papers. Due to some miscreants, who entered into the office of the Returning Officer at 1 P.M. to take forms and left the place at 3.10 P.M. there was some delay in between 1 P.M. to 3.10 P.M. and as such, the Petitioners submitted their nomination forms by or within 3 P.M. on 24.1.1995, it is alleged that the Petitioners were informed that nomination papers submitted by them were rejected on the ground of delay. However, no such order has been annexed with this application.

5. Mr. Singh, learned Counsel appearing on behalf of the Petitioners submits that the rejection of the nomination papers of the Petitioners of CWJC No. 208/95 (R) is totally illegal inasmuch as none of the Petitioners Nos. 1 to 4 are the agents of B.S.L. Referring to various sections of the Companies Act, Mr. Singh further submits that in any view of these provisions the Petitioner Nos. 1 to 4 cannot be treated as agents of B.S.L. and as such, rejection of their candidature is totally illegal and without jurisdiction. Referring to supplementary affidavit it is submitted that the Returning Officer has discriminated between one candidate and Ors. in the same constituency and as such, the order of Returning Officer is vitiated in law. Challenging the order of the Returning Officer in rejecting the nomination paper of the Petitioner in CWJC No. 211/95 (R) on the ground that he is not the member of the schedule tribe, Mr. Singh submits that without giving any importance to the caste certificate submitted by the Petitioner, the Returning Officer has wrongly taken the view that the Petitioner is "Gour" by caste. Relying on the Khatian, this action, it is alleged, is totally contrary to law. Similarly he submits that rejection of nomination papers of the Petitioners of CWJC No. 214/95(R) on the ground of delay in filing the nomination papers is also perverse inasmuch as the Returning Officer should have accepted the nomination papers which were filed by or within 3 P.M. due to the reasons which was beyond their control.

6. Mr. Singh submits that in view of the provisions as laid down under Article 329 of the Constitution, the Petitioners cannot pray for an interim order from this

Court for stalling the election but certainly the Petitioners can ask for a direction to the effect that the nomination papers should be accepted by the respective Returning Officers and the Petitioners should be allowed to contest the election. He further lays emphasis on the fact that in the present facts and circumstances where the Returning Officer has rejected the nomination papers of the candidates of different political parties except that of the ruling party which reveals the intention of the Returning Officer, this Court should exercise its jurisdiction under Article 226 of the Constitution.

7. Mr. Eqbal, on the other hand, has vehemently challenged the maintainability of the writ applications on the ground that when the process of election has already started, the High Court is debarred from exercising its writ jurisdiction. He further submits that if the Petitioners are aggrieved, they can move the Election Tribunal after the election is over. In support of his contention, he has relied on the decision of the Supreme Court in the case of S.T. Muthusami Vs. K. Natarajan and Others, .

8. In reply to the argument of Mr. Eqbal, Mr. Singh while trying to distinguish the decision of S.T. Muthusami (supra), has urged that in the; present case the Petitioners are not asking for up-setting the time schedule fixed for holding the election but only pray that their nominations should be declared to be valid and deemed to have been accepted by the Returning Officer. In this connection, he has placed reliance in the case of Krishna Ballabh Prasad Singh Vs. Sub-Divisional Officer, Hilsa-Cum-Returning Officer and Others, and the decision of the Supreme Court in the same volume at page 65.

9. Basing his argument, on the aforesaid decisions, Mr. Singh submits that in the aforesaid reported decisions the Supreme Court as well as this Court held that as the election had already concluded, the writ court will not exercise its jurisdiction, but in the present case the facts are different. By rejecting the nomination papers of the Petitioners on frivolous grounds, the Returning Officer has deprived the Petitioners from exercising their rights as guaranteed under the Constitution. In such view of the matter, Mr. Singh lastly contends that the writ court is well within its jurisdiction to direct the Returning Officer to accept the nomination papers of the respective Petitioners as valid and allow them to contest the election.

10. Before proceeding to examine the merits of the argument addressed on behalf of the parties, it will be useful to note that the right to vote or to stand as a candidate for election is neither a fundamental nor a civil right.

11. In the case of N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, and in the case of Jagan Nath Vs. Jaswant Singh and Others, , their Lordships of the Supreme Court have explained the nature of the right to elect, the right to be elected and the right to dispute an election and the scheme of the constitutional and statutory provisions in relation to these rights.

12. in this context, one can usefully refer to the various provisions contained in

the Constitution relating to the elections. Part XV of the Constitution contains such provisions. Article 329 which is also in Part XV of the Constitution contemplates as follows:

Bar to interference by courts in electoral matters. Notwithstanding anything in this Constitution-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328, shall not be called in question in any court;

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

13. From the aforesaid provision, it is clear that Clause (b) of Article 329 starts with a non-obstinate clause which provides that notwithstanding anything contained in the Constitution, no election to either House of Parliament or to either House of the Legislature of State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature. Similarly Section 80 of the said Act states that no election shall be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act.

14. In the case of Election Commission of India Vs. Shivaji and Others, , the meaning of the word "election" has been explained by their Lordships in the following words:

The word "election" has by long usage in connection with the process of selection of proper representatives in democratic institutions acquired both a wide and a narrow meaning. In the narrow sense it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling, or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected and it is in this wide sense that the word is used in Part XV of the Constitution in which Article 329(b) occurs.

15. Further, in the case of S.T. Muthusami Vs. K. Natarajan and Others, , their Lordships after discussing various decisions had laid down that as a matter of general principle the interference with an election process between the commencement of such process and the stage of declaration of result by a court would not ordinarily be proper and Article 329(b) of the Constitution had the effect of taking away the jurisdiction under Article 226 of the Constitution also in respect of the disputes arising out of election during the said period.

16. The question of maintainability of the writ jurisdiction in election matter can be viewed within Anr. angle. By an amendment of 1966, the jurisdiction was

transferred to the High Court, sitting as a statutory tribunal, with appeal to the Supreme Court u/s 116A of the Act. No appeal lies from single judge to a Division Bench. Since the High Court itself has been made the Election Tribunal, in my opinion, the High Court's jurisdiction under Articles 226 and 227 of the Constitution in the election matter has to exist and the only remedy apart from any statutory appeal against the decision of the High Court, as election tribunal, is by special leave to the Supreme Court, to appeal under Article 136. There are catena of decisions of the Apex Court to the effect that it is not proper for the High Court to interfere with an election process at an intermediate stage after commencement of the election process and before the declaration of the result of the election held for the purpose of filling a vacancy.

In this context, I may refer only some of the. decisions namely, N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, and S.T. Muthusami Vs. K. Natarajan and Others, .

17. The argument of Mr. Singh that the facts of the present writ applications are unique in its nature and as such, this Court can exercise its writ jurisdiction, in my considered opinion, is devoid of any merit. No authority has been placed before me by Mr. Singh to show that in such circumstances, the High Court can exercise its jurisdiction even in the teeth of bar provided under Article 329(b) of the Constitution. On the other hand, if the Petitioners are aggrieved, they can very well invoke the jurisdiction of the Election Tribunal as established under the aforesaid Act.

18. Before parting, I may usefully, in this context, reproduce the observations of their Lordships of the Supreme Court in the case of Election Commission of India Vs. Shivaji and Others, , which is as follows:

The success of democracy is dependent upon the co-operation of the Legislature, the "Executive, the Judiciary, the Election Commission, the Press, the Political Parties and above all the citizenry and each of them discharging the duties assigned to it. Every member of the body politic should play his legitimate role for the success of the democracy. Some times the success of democracy also depends upon the observance of restraint on the part of the constitutional functionaries.

19. Having given anxious consideration to the facts and circumstances of these cases as well as the authoritative pronouncements, I am of the opinion, that no relief can be granted to the Petitioners under Article 226 of the Constitution.

20. In the result, all these three writ petitions are dismissed but without any costs.