

(1966) 10 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1041 of 1965

Ayodhya Saran Rai

APPELLANT

Vs

Balram Singh and Others

RESPONDENT

Date of Decision : 03-10-1966

Acts Referred:

Bihar Panchayat Election Rules, 1959 — Rule 21(5), 72, 73

Citation : AIR 1968 Patna 60

Hon'ble Judges : S.N.P. Singh, J;N.L. Untwalia, J

Bench : Division Bench

Advocate : Kanhaiya Prasad Verma and Kamla Kant Prasad, for the Appellant;
B.D. Singh, A.S.C., for the Respondent

Final Decision : Dismissed

Judgement

1. Elections were held in Betha Manpur Gram Panchayat in the district of Muzaffarpur on the 28th of March 1965. In the said election were elected opposite party No. 7 Abdul Latif, No. 9 Md. Waris, No. 11 Abdul Gafoor and No. 14 Ram-chalitar Thakur as four panchas and opposite parties 8, 10, 12 and 13 -- Ramjan Sail, Md. Shoaib Alam, Islam Ansari and Ram-brichh Singh respectively as members of the Executive Committee. In the election held on 23rd of April, 1965 the petitioner was elected to the office of the Mukhiya of the Gram Panchayat aforesaid and opposite party No. 5 Motiur Rahman was elected as the Sarpanch. Opposite party No. 15 was a candidate for being elected to the office of the Sarpanch. He lost in the election.

He (Opposite party No. 15) along with opposite party No. 16 who is a voter filed an election petition under the Bihar Panchayat Election Rules, 1959 hereinafter called the Rules, challenging the entire election by impleading not only the petitioner and opposite party No. 5 who were elected to the two offices in the election held on 23-4-65 but also the other eight opposite parties who were elected as panchas and members of the Executive Committee. But in the prayer portion of the election petition, a copy of which is annexure A to this application,

the petitioners (opposite parties 15 and 16) prayed "to declare the election of the entire Gram Panchayat Batha Manpur held on 23-4-65 void illegal, invalid" Reading the petition as a whole, it is abundantly clear that opposite parties 15 and 16, by a single petition, challenged the election of only two office-bearers, namely, petitioner and opposite party No. 5 who were respectively elected as Mukhiya and sarpanch in the election held on 23-4-65 and not the election of any of the office-bearers elected in the election held on 28-3-65.

2. The petitioner asked the Election Tribunal to dismiss the election petition on two preliminary grounds (i) that the election petition is not properly verified and (ii) that the requirement of Rule 73 of the Rules has not been complied with. The Election Tribunal has overruled both the objections. The petitioner has obtained a rule from this Court under Articles 226 and 227 of the Constitution against the opposite parties to, show cause why the order of the Election Tribunal refusing to dismiss the election petition in limine should not be set aside. Nobody on behalf of the opposite parties who were elected to the various offices has appeared to oppose this application. The learned Additional Standing Counsel has appeared on behalf of the State of Bihar.

3. The point that the election petition ought to have been dismissed on the ground of defective verification has not been pressed before us. We, therefore, need not discuss that point.

4. The point of non-compliance with the requirement of Rule 73 of the Rules has been argued before us in a slightly different form. Before the Election Tribunal, as it appears from the impugned order dated 13-9-65, the argument was that two treasury chalangans showing deposits of two amounts of ten rupees each ought to have been filed and since only one treasury chalan showing a deposit of Rs 10 was filed, the application was defective. Mr. K. P. Verma in support of the rule has submitted before us that one election petition challenging the election of two office bearers was not maintainable, and that being so, it ought to have been dismissed in limine.

5. It must be stated at the outset that the point presented in the court below with reference to the provisions of Rule 73 and the one presented before us are more or less allied and interconnected. The answer to the former will depend upon the answer to the latter. The question, however, is as to whether learned counsel is right in his submission that one election petition challenging the election of the two office bearers is not maintainable; if not, what is the consequence of it.

6. Sub-rule (6) of Rule 21 of the Rules to which our attention was drawn by Mr. Verma provides-

"Election to the office of the Mukhiya, Sarpanch, Panch, Member of the Executive Committee, as the case may be, shall be deemed to be different elections for the purposes of this rule."

In terms, this sub-rule does not say that the election to the office of the various office bearers of the Gram Panchayat shall be deemed to be different elections for the purposes of the Rules; it confines it to Rule 21 only. This sub rule, therefore, does not help him.

7. On going through the various provisions of the relevant rules, namely, Rules 72, 73, 74, 79, 81, 82, 83, 90 and 92 to which our attention was drawn, we are inclined to think that it would be more reasonable and convenient to insist that by one election petition election of only one office-bearer should be challenged. Elections in various Gram Panchayats, as in the instant case also, are held not infrequently on different dates. There would be a lot of confusion and inconvenience, and the point as to limitation may also arise if it is held that by one election petition the whole of the election can be challenged even though held on different dates. In that event, a petitioner who has come up to challenge the whole election within the time allowed by Rule 72 counting it from the declaration of the result of the later election, may say that he is within time in regard to his challenge of the earlier election.

Of course, in this case we are not called upon to decide as to whether one election petition challenging the election to the various offices of the Gram Panchayat held on two different dates will be maintainable or not. But in regard to the election held on the same date also, there may be difficulties and complications if elections to the various offices are allowed to be challenged by one single petition. As for example, if the petitioner, in addition to calling in question the election of a returned candidate, claims a declaration that he himself or any other candidate has been duly elected, he obviously cannot do so in regard to the election of more than one office. His petition in the context of the facts and the relief which he would seek has got to be confined to the challenge of election of one office-bearer by one petition.

Similarly, Sub-rule (2) of Rule 72 saying that "an election petition against a returned candidate shall be presented to the Election Tribunal". . . does indicate that one election petition should be presented against one returned candidate and challenging the election of only one returned candidate, and the use of the expression "the returned candidate" in Rule 83 also leads to that indication. But there are no phrases or words in the Rules to exclude the general principle that a singular includes the plural. And, applying that principle, we do not find any cogent or compelling reason in the language of any of the Rules, referred to above, to justify the taking of the view that one election petition challenging the election of more than one office-bearer is not maintainable. As a matter of practice, we have come across cases where such a procedure has been followed. No case was cited at the Bar to show that such a procedure was either deprecated or held to be illegal. In that view of the matter, in absence of any cogent or compelling reasons, we do not feel persuaded to upset the prevalent practice and to say that one election petition challenging the election of more than one office-bearer is illegal or not maintainable.

Of course, we are not called upon to decide, in that view of the matter, as to what would have been the consequence of taking such a view. We may, however, indicate that the consequence very likely would have been to ask the petitioner in the election petition to elect and to confine his relief for challenging the election of one officer-bearer only; the result, necessarily, would not have been the dismissal of the election petition in limine. Yet, in absence of clear words in the Rules to enable us to take the view as urged on behalf of the petitioner before us, we do not think that we shall be justified in putting opposite parties 15 and 16, the petitioners in the election petition, to terms and in directing them to confine their petition to the challenge of the election of one office-bearer only either the mukhiya or the sarpanch. We would, however, suggest to the State Government to examine this matter and make the Rules clear on this point as they may think fit and proper.

8. In the result, the application fails and is dismissed, the rule is discharged. We shall make no order as to cost. Let a copy of this judgment be sent to the State Government. As requested by learned Additional Standing Counsel, let the copy be handed over to him for being forwarded to the State Government for necessary action.