

(2006) 04 PAT CK 0019

In the Patna High Court

Case No : CWJC No's. 4108 and 4615 of 2006

Babita Devi

APPELLANT

Vs

The State of Bihar and Others
 Sarita Devi Vs The
State Election Commission and Others

RESPONDENT

Date of Decision : 20-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 243K, 324

Citation : (2006) 2 PLJR 483

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : Mritunjay Pd. Singh 2 in 4108, M/s Uday Chand Prasad and Binod Kr. Sinha in 4859, for the Appellant; K.B. Nath for the Election Commission (in 4108 and 4859) and Mr. GP 3 for the State, for the Respondent

Judgement

Shiva Kirti Singh, J.—All these writ petitions are being disposed of by a common order at the stage of admission because of a preliminary objection raised by learned counsel appearing for State Election Commission (hereinafter referred to as "the Commission"). The common preliminary objection is to the effect that after issuance of notification by the State Election Commission dated 25.2.2006 in exercise of power u/s 140 of the Bihar Panchayat Raj Ordinance, this court should not interfere in the election process by issuing order or direction at the instance of writ petitioners whose grievances are of similar nature that their nomination paper has been improperly or illegally rejected by the respective returning Officers. Learned counsel for the Commission has submitted that power available to the Commission under Article 243-K of the Constitution of India is similar in nature as the power available to the Election Commission of India under Article 324 of the Constitution of India and therefore if the elections are notified this court should restrain its hand in such matters in view of law laid down by the Supreme Court in various judgments, the latest being in the case of Election Commission of India Through Secretary Vs. Ashok Kumar and Others, . He also placed reliance upon Election Commission of India Vs. Shivaji and

Others, and a judgment of this court in the case of Om Prakash Tiwari and Others Vs. The Election Commission . Learned counsel appearing for the writ petitioners, on the other hand, submitted that the Constitutional power of this court under Articles 226 and 227 of the Constitution of India will always be available to deal with grave violation of law and injustice and such power can be exercised in appropriate cases even after an election has been notified by the Commission. By way of instance, reliance was placed upon a judgment of a Single Judge reported in Sri Chand Prasad and Others Vs. The State of Bihar and Others, . However, no useful purpose will be served by discussing that judgment because the same is overruled by a Division Bench in the judgment reported in The State Election Commissioner Vs. State of Bihar and Others . The Division Bench in paragraph-14 of the report relied upon judgment of the Supreme Court in the case of Election Commission of India Through Secretary Vs. Ashok Kumar and Others, and quoted paragraph-32 of that judgment and on that basis held in paragraphs 1 that "once the process of election has started, any interference by the Court under Article 226 of the Constitution with the process of election on the ground of breach of statutory provision in preparation of voter list is not permissible in law. If this will be allowed to be done, the same will delay the election, in other words, it will interrupt and obstruct the process of election. Such question has to be postponed till the election is over".

2. In fact, paragraph-32 of the Judgment of the Supreme Court in the case of Election Commission of India vs. Ashok Kumar (supra) is itself sufficient to accept the preliminary objection raised by learned counsel for the Commission. Sub-paragraph-1 of paragraph 32 makes it clear that the Apex Court wanted to clarify that the term election has to be widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result. If the election or such steps or proceedings are called in question and the questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completion of proceedings in elections.

3. In fairness to learned counsel for the petitioners it is deemed necessary to mention that they had placed reliance upon a Division Bench Judgment of this Court in the case of Rama Ballabh Singh Keshan Vs. State of Bihar and Others, . That judgment of Division Bench was considered in the case of Om Prakash Tiwari vs. Election Commission (supra) and the view taken in that judgment that if there was non-application of mind in rejecting the nomination paper then this court may interfere, was not accepted by learned Single Judge because it was rendered without noticing the law laid down in the earlier judgment in the case of State Election Commission vs. State of Bihar (supra) by a Division Bench of this Court. It was also mentioned that the judgment in the case of Rama Ballabh Singh Keshari vs. State of Bihar & Ors., was not in line with judgments of the Supreme Court. Following the judgment of the Supreme Court in the case of Election Commission of India vs. Ashok Kumar (supra) and the Division Bench

Judgment of this court in the case of State Election Commission vs. State of Bihar. This court finds that preliminary objection raised by learned counsel for the Commission that the remedy through writ petition cannot be made available to the petitioners when the election process has already been notified and it is not concluded is correct. These writ petitions are dismissed on preliminary objection raised by the learned counsel for the Commission.

4. It is made clear that this court has not applied its mind to the merits of individual cases of the writ petitioners and this order shall not affect, in any manner, the merit of their claims if they approach the Commission by raising the grievances which they have raised before this court. In that even Commission will be free to decide the claims of the petitioners in accordance with law and its own guidelines governing such matters. The Commission will be the best Judge to decide whether entertaining claims of the petitioners at this stage will interfere with the election or not. If without interfering with the election process or postponing it the Commission can redress the grievances required to be redressed then the same should be done by the Commission without delay.

5. It goes without saying that if petitioners are aggrieved by the outcome of the concerned election, they would be at liberty to avail judicial remedy through appropriate proceedings in accordance with law. Let a copy of this order be given to learned counsel appearing for the State Election Commission.