

(1971) 04 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 944 of 1970

Bado Sao and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-04-1971

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1972 Patna 69

Hon'ble Judges : S. Wasiuddin, J

Bench : Single Bench

Advocate : Ramesh Chandra Singh and Asok Kumar Sinha, for the Appellant;
Tara Kant Jha, Standing Counsel II and Sidheshwar Singh, for the Respondent

Final Decision : Dismissed

Judgement

S. Wasiuddin, J.—This is an application under Articles 226 and 227 of the Constitution of India for setting aside the entire election of Pratappur Gram Panchayat, Halsi Block in the district of Monghyr.

2. The aforesaid Gram Panchayat was established in 1954 vide Notification No. P/EI-1032/54-2203 G. P. dated the 25th of March 1954 published in the Bihar Gazette on the 26th of May, 1954. A copy of this notification is Annexure 2 of the reply to the counteraffidavit filed by the petitioners. Now according to this notification Pratappur Gram Panchayat constituted of four villages viz. Pratappur, Kamaitha, Lahuara, and Khuriari. There are forty-three petitioners in this present writ petition and petitioners 1 to 18 are residents of village Khuriari and the remaining petitioners that is Nos. 19 to 43 are residents of village Lahuara. According to these petitioners they were also entitled to vote in the election of the Gram Panchayat and the number of voters in village Lahuara was 319 and in village Khuriari was 531. The opposite parties in the case are those who have been elected and also those who are the sitting office holders of the Gram Panchayat

3. The contention of the petitioners is that on 20-4-1970 which was the date fixed for polling when these petitioners wanted to vote, then they were not allowed to do so, as it was said that these two villages, viz Khuriari and Lahuara are not parts of this Gram Panchayat and have been excluded from this Gram Panchayat. The petitioners were thus denied the right to exercise their franchise and in such circumstance, the entire election should be set aside because there was no such notification excluding these two villages and even if there was any notification the notification is bad because of the non-compliance of the relevant provisions of the Bihar Panchayat Raj Act 1947 (Bihar Act XXI of 1959). It may be also mentioned here that there are other points also which have been raised in the petition concerning the election, but those points have not been pressed and the main ground of attack is that there was a denial of the right to vote to the petitioners.

4. A counter-affidavit was filed on behalf of opposite party No. 4 and also by the State of Bihar in which it was contended that there had been a notification in the year 1966 and by virtue of this there has been an alteration in the constitution of the Gram Panchayat and those two villages have been excluded from the jurisdiction of the Pratappur Gram Panchayat. It may be also mentioned here that subsequently in the reply to the counter-affidavit the petitioners do not dispute that there was a notification in the year 1966 excluding these two villages from this Gram Panchayat, but the notification has been challenged firstly on the ground that it was bad on account of the non-compliance of the provisions of Section 3 of the Bihar Panchayat Raj Act, 1947 and specially of Sub-section (3) of Section 3 of the Act. Secondly, it was contended that the notification never became operative and came into effect because the voters' list included the voters of these two villages also for the Gram Panchayat of Partappur and that the collection of rent was also still being made from these two villages by the Partappur Gram Panchayat. Thirdly it was contended that the petitioners have been deprived of the right to exercise their franchise by the exclusion of these two villages and by the non-inclusion of these two villages in any other Gram Panchayat. It Was also submitted that considering the margin of differences in the election in the number of votes and the substantial strength of the voters of these two villages if the voters of these two villages had been allowed to participate in the election then the results would have been quite different.

5. Now as far as the first contention is concerned, before I proceed to discuss the relevant notification. I may refer here to the relevant provisions of the Bihar Panchayat Raj Act, which hereinafter would be mentioned as "the Act". Chapter II of the Act deals with the establishment and constitution of Gram Panchayat. Section 3 deals with the establishment of a Gram Panchayat and the relevant provisions of this section particularly Subsection (3) are important. Section 3 of the Act runs as follows:--

"3. Establishment of a Gram Panchayat--(1) For every village or parts of every

village the Government may by notification, establish a Gram Panchayat :

Provided that the Government may, if it thinks fit establish one Gram Panchayat for a group of contiguous villages or more than one Gram Panchayat in a big village consisting of several Tolas.

(2) The Government shall specify the name and the local limits of the jurisdiction of Gram Panchayat in the notification mentioned in Sub-section (1).

(3) The Government may, by notification in the Official Gazette, alter the local limits of the jurisdiction of any Gram Panchayat by including therein or excluding therefrom any village or part of village and also alter the name of such Gram Panchayat:

Provided that before making any alteration in the local limits of the jurisdiction of any Gram Panchayat the Government shall in the prescribed manner ascertain the views of the people of the area affected by such alteration.

(4) Upon the issue of a notification under Sub-section (3) the Gram Panchayat shall be deemed to have been established under Sub-section (1) with its local limits so altered.

(5) When any village or part of any village is included under Sub-section (3) within the local limits of the jurisdiction of a Gram Panchayat, any notification or order made and anything done or any action taken under the provisions of this Act or the rules made thereunder, in respect of the Gram Panchayat before such inclusion, shall so far as may be, apply to the village or part of a village so included."

It will appear, therefore, that under Sub-section (1) of Section 3 of the Act, the Government is duly empowered and authorised to establish a Gram Panchayat by notification. Sub-section (1) of Section 3 of the Act clearly deals with the case of the establishment of a new Gram Panchayat. I have already pointed above that in this present case a Gram Panchayat had been established by the notification in the year 1954. The two villages have been excluded from Partappur Gram Panchayat and, therefore, there can be no doubt that this would be a case where there was an alteration in the local limits of the jurisdiction of a Gram Panchayat. Subsection (3) "of Section 3 of the Act lays down as mentioned above that the Government may, by notification in the Official Gazette, alter the local limits of the jurisdiction of any Gram Panchayat by including therein, or excluding therefrom, any village or part of a village and also alter the name of such Gram Panchayat. This Sub-section, therefore, confers power on the Government both to exclude or include a village or a part of a village from the local limits , of the jurisdiction of any Gram Panchayat.

6. I may then in this connection refer to notification No. 2/A-3-40369/66/ 15340-C. P. dated, the 30th of September, 1966 published in the Bihar Gazette dated the 10th of May, 1967. In this notification it was stated that

"in exercise of the powers conferred by Sub-section (3) of Section 3 of the Bihar Panchayat Raj Act, 1947 and in modification of notification No. 2203 dated the 25th March, 1954, the Governor of Bihar is pleased to establish for the village or villages specified in the sixth column....."

There is a reference also to the notification of 1954 and so by this notification dated the 30th of September, 1966 published in the Bihar Gazette of the 10th of May, 1967, there was an alteration in the local limits of the jurisdiction of Pratappur Gram Panchayat, inasmuch as, the two villages viz., Lahu-ara and Khuriari have been excluded from the jurisdiction of this Gram Panchayat. Column No. 6 of the table given in this notification shows that in the year 1966 by virtue of the notification published in 1967, the villages comprising in this Gram Panchayat are only Pratappur, Kumaitha, Dhanama and Bamhara. There is an important proviso to this Sub-section (3) of Section 3 of the Act and according to this it is incumbent upon the Government that before making any alteration in the local limits of the jurisdiction of any Gram Panchayat, the Government shall, in the prescribed manner, ascertain the views of the people of the area affected by such alteration.

I may also in this connection refer to Rule 4 of the Bihar Panchayat Miscellaneous Rules, 1961 which lays down that at any time after a Panchayat has been established u/s 3, the Government may, either on its own motion or otherwise, order that a village be included within, or excluded from, any Panchayat. The subsequent portion of the rule which need not be dealt with here in detail lays down the manner in which the opinion of the people has to be elicited. Now reading the proviso to Sub-section (3) of Section 3 of the Act along with Rule 4 of the Miscellaneous Rules, there can be also no doubt that before any alteration by exclusion or inclusion is made, the opinion has to be elicited of the people of the area likely to be affected by such inclusion or exclusion and that this has to be done in the manner as laid down by Rule 4, There can be no doubt as to the legal position which I have stated above, but there is a serious controversy between the parties on the point whether there was a compliance of the aforesaid provision, that is to say, whether the opinion of the people had been elicited or not.

7. In paragraph 17 of the petition It was stated that the petitioners came to know on the date of the poll that these two villages have been excluded from the jurisdiction of the said Gram Panchayat and in paragraph 18 it was stated that the views of the voters were not obtained prior to the exclusion. In paragraph 22 it was stated that these two villages have not been added to any other Gram Panchayat and in paragraph 24 it was stated that there was never any notification for the exclusion and inclusion of the villages named above in the said Gram Panchayat. As stated above, opposite party No. 4 filed a counter-affidavit and in paragraph 3 of the counter-affidavit it was stated that these two villages had been excluded from the Gram Panchayat by the Government notification dated 30-9-1966 to which I have referred above and in paragraph 4

it was stated that there was a proposal for the inclusion of these two villages in Srikkindi Gram Panchayat. The petitioners filed an affidavit in reply to the counter-affidavit and in paragraph 2 it was stated that the notification dated 30-9-1966 was issued but the petitioners remained voters of Pratappur Gram Panchayat, as the villages viz. Khuriari and Lahuara were neither actually excluded from Pratappur Gram Panchayat nor included in any other Gram Panchayat. It was also stated that the voters of both the villages had exercised their franchise in Pratappur Gram Panchayat till the last election and in 1970 they were not allowed to cast their votes and further that the voters' list for election in the Pratappur Gram Panchayat was prepared in 1970 on the basis of voters' list prepared in the year 1966 in which petitioners' names clearly found mentioned as voters of Pratappur Gram Panchayat.

A counter-affidavit has been filed on behalf of the State of Bihar. It may be mentioned here that this counter-affidavit has been sworn by one Kailash Prasad Singh who has stated in his affidavit that he was in-charge Supervisor, Gram Panchayat Block, Halsi, district Monghyr at the time of the last election of Pratappur Gram Panchayat in question. He claims to be competent to state about the actual state of affairs and in view of the fact that he was the Supervisor in-charge at the relevant point of time of the Gram Panchayat, prima facie he is a very competent person. In paragraph 10 of this counter-affidavit there is a clear statement to the effect that these two villages, viz Lahuara and Khuriari were previously part of Pratappur Gram Panchayat, but were excluded from the jurisdiction of the said Pratappur Gram Panchayat and there was a notification in the Gazette also dated 30-9-1966. In paragraph 11 it was also stated that before this exclusion there was a compliance of the provisions of Sub-section (3) of Section 3 of the Act and that objections had been invited from the local people in accordance with law, but no objection was filed by any local people against exclusion of the aforesaid two villages from the said Pratappur Gram Panchayat. In paragraph 14 it was also stated that there is a proposal for adding these two villages in Sirikhindi Gram Panchayat and this proposal has already been sent to the Director of Gram Panchayat, Government of Bihar by opposite party No. 3 in his letter No. 903 dated the 15th of April. 1965. It has also been submitted that the petitioners should have taken steps either to participate in or to challenge the election of the said Sirikhindi Gram Panchayat.

These facts are clear from the statements and counter statements in the petition, counter-affidavit, reply to the counter-affidavit and the counter-affidavit of the State of Bihar and they, in my opinion clearly show that there is a serious disputed question about the fact whether there was a compliance of Sub-section (3) of Section 3 of the Act. There "is also good deal of force in this that although there was a notification in the year 1966, but still no objection had been raised until the election of this Gram Panchayat. In my opinion, in view of the facts and the circumstances, stated above and on the materials on record, there " can be no decision on this controversial and disputed question of fact and obviously on such a disputed question in a writ application.

8. It may also be mentioned here that there was also a contention to the effect that although there was such a notification, but factually speaking these two villages still form part of Pratappur Gram Panchayat and that there is also a collection of rent from these two villages, but here again this question has been seriously disputed in the counter-affidavit filed by opposite party No. 4. Similarly there was also a dispute on the question whether the voters' list on which reliance has been placed by the petitioners was really the voters' list as contemplated by the Act. It may be stated here that no such voters' list had been filed along with the writ application, but a voters' list had been produced at the time of the hearing and it was seriously contended both on behalf of the State and on behalf of opposite party No. 4 that this was not the voters' list of the Gram Panchayat. Here again there was a very serious controversial question of fact which cannot be decided in a writ petition, as stated above. The present application, therefore, cannot be allowed.

9. In the result, the application is dismissed, but there will be no order for costs.