

(1995) 03 PAT CK 0050

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 242 of 1995

Badre Alam Badar and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-03-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Patna Municipal Corporation Act, 1951 — Section 15, 544

Citation : (1995) 03 PAT CK 0050

Hon'ble Judges : A.K. Ganguly, J

Bench : Single Bench

Advocate : S.P. Mukherjee and Gyanand Roy, for the Appellant; S.R.C. Pandey, Amrendra Prasad for Respondent No. 5, K.K. Thakur, for Respondent No. 6, L.K. Bajla and 8 and D.N. Singh, for State, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Ganguly, J.—Heard learned Counsel for the respective parties appearing in this case. Since this is a matter relating to election of Mayor and Deputy Mayor of Darbhanga Municipal Corporation (hereinafter referred to as the said Corporation), this Court feels that this matter should be disposed of at the stage of admission itself without causing any delay and I do so hereby by passing the following order:

2. The grounds of challenge to the election of Mayor and Deputy Mayor to the said Corporation at the instance of the Petitioners, who are Councillors of the said Corporation, rest on various allegations including an allegation to the effect that the said election was not initiated by any notification by the Chief Executive Officer. The case of the Petitioners, inter alia, is that the election has been held at the instance of some unauthorised persons and in a manner which is wholly untenable in the eye of law. In support of the said submission, the writ Petitioners sought to rely upon the two annexures, namely, Annexures 6 and 11 of the writ petition. Those annexures are communications made by the Chief

Executive Officer of the said Corporation pointing out the illegalities in the matter of holding of the said election. Learned Counsel for the Respondent No. 6, Anr. Councillor of the said Corporation, supporting the case of the Petitioner also urged that the said election has been held at a point of time when the entire matter is subjudice before this Court. The election, therefore, should not have been held. The learned Counsel further contended that the notification issued in Annexure-1 by the State Government under Selection 15 of the Patna Municipal Corporation Act (hereinafter referred to as the said Act) recognising the said election is also improper and illegal.

3. Learned Counsel for Respondent Nos. 7 and 8, the allegedly elected Mayor and Deputy Mayor of the said Corporation have supported the impugned election and have contended that the conduct of the Petitioner in filing this writ petition is not above board and by filing this writ petition, the Petitioners are trying to restrain the validly elected persons from acting as Mayor and Deputy Mayor.

4. This Court is unable to decide any one of the aforesaid controversies raised by the parties as this Court holds that a writ petition challenging the election of Mayor and Deputy Mayor of the said Corporation, in the facts and circumstances of this case, is not maintainable in view of the clear statutory remedy "provided u/s 544 of the said Act. The provisions of Section 544 of the said Act are set out below:

544. Election petitions to be heard and disposed of by District Judge.-(1) If the qualification of any person declared to be elected for being a Councillor is disputed, or if the validity of any election is questioned, whether by reason of the improper rejection of a nomination or of the improper reception or refusal of a vote, or for any other cause, any person enrolled in the municipal electoral roll may, at any time within fifteen days from the date on which the election of a Councillor is notified u/s 15, apply to the District Judge of Patna. If the application is for a declaration that any particular candidate shall be deemed, to have been elected, the applicant shall make parties to his application all candidates who, although not declared elected, contested the election from the same ward.

(2) If the District Judge, after making such inquiry as he deems necessary, finds that the election was a valid election and that the person whose election is objected is not disqualified, he shall confirm the declared result of the election, if he finds that the person whose election is objected to is disqualified for being a Councillor, he shall declare such person's election null and void. If he finds that the election is not a valid election he shall set it aside. In either case, he shall direct that the candidate, if any, in whose favour the next highest number of valid votes is recorded after the said person or after all the persons who were returned as elected at the said election, and against whose election no cause of objection is found, shall be deemed to have been elected.

(3) The District Judge's order shall be conclusive.

(4) Every election not called in question in accordance with the foregoing provisions shall be deemed to have been to all intents a good and valid election.

(5) The word "District Judge of Patna" includes any person for the time being exercising the powers of the District Judge of Patna.

5. In the writ petition no averment has been made justifying the filing of this writ petition by passing the said statutory remedy. When confronted with this question, learned Counsel for the Petitioners has drawn the attention of this Court to paragraphs 24 to 27 and Annexure 11 to the writ petition. Those paragraphs and the contents of Annexure-11 may highlight some of the alleged irregularities in the matter of holding of the election in question but those averments do not make out any case justifying the non-exhaustion of the specific alternative remedy provided u/s 544 of the said Act.

6. Therefore, this Court holds that no case is made out in the writ petition justifying the by-passing of the alternative remedy provided for under this Act.

7. Apart from that it is the consistent view of the Apex Court that in election matter the alternative remedy must be availed of before rushing to file a petition under Article 226 of the Constitution of India. Learned Counsel for the writ Petitioners, has, in the course of his submission, vaguely referred to the decision of the Supreme Court relating to Bar Council Election. The said decision of course, was not cited by the learned Counsel. But on a reference made by this Court, to the said decision in the case of Bar Council of Delhi and Anr. v. Surjeet Singh and Ors. I reported in AIR 1980 S.C. page 1612, it appears that in that case the Supreme Court held that alternative remedy in an election matter can be by-passed where the election is held on the basis of the void and ultra vires rules relating to preparation of pectoral rolls. In the context of that fact situation, the Supreme Court held that the bar of alternative remedy will not stand in the way of challenging the election by filing a writ petition.

8. In the said case of Bar Council of Delhi (supra) the learned Judges of the Supreme Court in paragraph 18 at page 1620-1621 were pleased to make the following observations:

We may add that the view expressed by some of the High Courts in the cases referred to above that merely because the whole election has been challenged by a writ petition, the petition would be maintainable in spite of there being an alternative remedy being available, so widely put, may not be quite correct and especially after the recent amendment of Article 226 of the Constitution. If the alternative remedy fully covers the challenge to the election then that remedy and that remedy alone must be resorted to even though it involves the challenge of the election of all the successful candidates. But if the nature and the ground of the challenge of the whole election are such that the alternative remedy is no remedy in the eye of law to cover the challenge or, in any event, is not adequate and efficacious remedy, then the remedy of writ petition to challenge the whole election is still available. In the present case we have pointed out above that the

Election Tribunal would have found itself incompetent to declare the proviso to Rule 3(3) of the Delhi Bar Council Election Rules ultra vires and that being so the alternative remedy provided in Rule 34(8) was no remedy at all. (emphasis added)

9. In the facts of the present case it has not been made clear to this Court why the challenge to the alleged illegality or the irregularity of the election in question cannot be decided by filing an election dispute before the learned District Judge. In that view of the matter, relying on the ratio of the said judgment in the case of Bar Council of Delhi (supra) this Court holds that the instant writ petition is not maintainable.

10. In a still later judgment of the Supreme Court in the case of Gujarat University v. Shri N.U. Rajguru and Ors. reported in AIR 1988 S.C. page 66 the Supreme Court has held that the right to elect and seek election and cast vote in an election are merely statutory rights. Those rights are governed by the provisions of the Statute itself. In this connection the following observations made in paragraph 6 of the said judgment are set out below:

It is well settled that where a statute provides for election to an office, or an authority or institution and if it further provides a machinery or forum for determination of dispute arising out of election, the aggrieved person should pursue his remedy before the forum provided by the statute. While considering an election dispute it must be kept in mind that the right to vote, contest or dispute election is neither a fundamental nor common law right instead it is a statutory right regulated by the statutory provisions. It is not permissible to invoke the jurisdiction of the High Court under Article 226 of the Constitution by-passing the machinery designated by the Act for determination of the election dispute. Ordinarily the remedy provided by the statute must be followed before the authority designated therein. But there may be cases where exceptional or extraordinary circumstances may exist to justify by-passing the alternative remedies.

11. In this case no fact has been pleaded in the writ petition justifying the by-passing of the statutory forum for filing an election dispute challenging the election in question. In that view of the matter, this writ petition is dismissed.

12. It is, however, made clear that while dismissing this writ petition on the ground of non-exhaustion of statutory remedy, this Court has not expressed any opinion on the merits of the controversies raised between the parties.

13. The notification u/s 15 of the said Act in this case has been issued on 2nd January, 1995 as would appear from Annexure-1 to the writ petition and this writ petition has been filed before this Court on 8th January, 1995 i.e. within the period of 15 days from the date of the notification. In that view of the matter, I hold that if an election dispute is filed before the appropriate authority u/s 544 of the said Act within a period of seven days from the date of receipt of a copy of the judgment, the appropriate authority will proceed to decide the said dispute

on merits without insisting on the period of limitation. It is also expected that the said authority created under the said Act will proceed to dispose of the election dispute as early as possible and; preferably within a period of three months after the filing of the same.

14. With the above observations, this writ petition is dismissed. There will be no order as to cost.