
(2006) 04 PAT CK 0054
In the Patna High Court
Case No : CWJC No. 1146 of 2006

Bhagya Narain Rai

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-04-2006

Acts Referred:

Bihar Panchayat Raj Ordinance, 2006 — Section 124, 126

Citation : (2006) 04 PAT CK 0054

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : K.B. Nath and Sanjeev Nikes, P.K. Verma, for the Appellant;
Mahesh Prasad, SC8, for the Respondent

Judgement

Barin Ghosh, J.—Twice assembly elections were held in the year 2005 - one in the 1st part of the year 2005 and the other in the latter part of the year 2005. In the list of voters prepared for election held in the 1st part of the year 2005. the name of the petitioner featured as a voter of Kanti Assembly Constituency within Part No. 179. Mohammadpur Sube @ Baneri Gram Panchayat. For no reason forthcoming, the name of the petitioner was deleted from the voters list for the assembly election held in the latter part of the year 2005. The petitioner came to learn about such deletion in the month of July, 2005 i.e. much prior to holding of the election in the latter part of the year 2005. On 21st July. 2005. the petitioner submitted an application in the prescribed form for making necessary correction in the voters list. The correction. as was applied for by the petitioner, was not acceded to and accordingly, the name of the petitioner did not feature in the voters list prepared for the assembly election held in the latter part of 2005. The petitioner could not cast his vote in that election.

2. The present petition was filed on 18th January, 2006 seeking correction of the voters list in the same manner as had been applied for by the petitioner. In the counter affidavit filed on behalf of the State although no reason has been given as to why the name of the petitioner was deleted from the voters list but it has

been stated that inasmuch the petitioner did not appear when time to consider his application had been fixed, his application for correction of the voters list had been rejected. The learned counsel for the petitioner submitted that in point of fact, no notice fixing a date of hearing had been communicated to the petitioner. He submitted on instructions that the report of the Process Server upon which reliance has been placed is a report prepared in the Office of the Process ; Server. He has indicated that the witness to the service is a resident of a far flung village and it is unexpected , that when witnesses are available nearby, the Process Server will obtain a witness from a far flung village. If what is being stated by the petitioner is correct then it appears that the application made by the petitioner was considered without giving him any notice of hearing of that application. It is submitted by the learned counsel for the petitioner on instructions that on the basis of the complaint made to by the petitioner, the district administration enquired into the matter when the Sub Divisional Officer found that there was no just reason for deleting the name of the petitioner from the voters list, and accordingly has issued appropriate instructions to the Block Development Officer to include the name of the petitioner in the voters list. If that be so then what the petitioner is seeking in this writ petition has already been received by him, and accordingly his name would be included in the voters list of the next assembly election as and when the same will be held. If what the petitioner has stated is not correct. then I think that having regard to the fact that adult franchise is a sine qua non of democracy, adopted by this country, before preventing the petitioner, an adult male citizen of this country, he should be given a fresh opportunity, and accordingly the Block Development Officer concerned is directed to communicate a fresh date of hearing to the petitioner for the purpose of deciding the application of the petitioner seeking rectification at an early date.

3. Learned counsel for the petitioner has submitted that inasmuch as the name of the petitioner was deleted from the voters list for the last assembly election for no just reason, the respondents are now not permitting the petitioner to participate in the panchayat election.

4. Having regard to the mandate contained in Section 126 of the Bihar Panchayat Raj Ordinance, 2006. it was permissible for the State Election Commission to effect changes to be made in the electoral roll on receipt of a written representation from the aggrieved person but then having regard to the fact that the State Election Commission was not approached by the petitioner for such change to be effected. having regard to the mandate also contained in Section 126 of the said Ordinance. the State Election Commission cannot now alter the electoral rolls and permit the petitioner to participate in contest the ensuing panchayat election inasmuch as by a notification issued by His Excellency the Governor u/s 124 of the Ordinance. the date of panchayat election has already been notified.

5. With the above observations. this writ petition is disposed of. There shall be no

order as to costs.