

(1964) 02 PAT CK 0007
In the Patna High Court
Case No : Misc. Judl. Case No. 919 of 1962

Bharosa Singh

APPELLANT

Vs

Sheo Baran Singh and Others

RESPONDENT

Date of Decision : 24-02-1964

Acts Referred:

Bihar Panchayat Election Rules, 1953 — Rule 17
Constitution of India, 1950 — Article 226

Citation : AIR 1964 Patna 500

Hon'ble Judges : V. Ramaswami, C.J; R.K. Choudhary, J

Bench : Division Bench

Advocate : Lal Narain Sinha, Kanhaiya Prasad Varma and Balbhadra Prasad Singh, for the Appellant; B.C. Ghosh and Mahendra Prasad Pandey, for the Respondent

Final Decision : Allowed

Judgement

1. In this case there was a polling for the election of a Mukhiya and Sarpanch of Hatinawan Gram Panchayat on the 17th August, 1962. There was another polling for election to the posts of Ranches and members of the Executive Committee of the same Gram Panchayat on the 18th August, 1962. As a result of the pollings respondent No. 1 was elected as the Mukhiya of the said Gram Panchayat, respondent No. 2 as the Sarpanch, respondents Nos. 3 to 5 as the Ranches and respondent No. 7 as a member of the Executive Committee. Respondents Nos. 6, 8, 9 and 13 were also declared elected uncontested to the office of a Panch and members of the Executive Committee on the 4th August, 1962. The case of the petitioner is that the whole election is illegal as there has been a violation of the mandatory provisions of Rule 17 of the Bihar Panchayat Election Rules which states as follows :

"17. On the eve of each general election or bye-election, the Elections Officer shall cause to be published in the office of the Panchayat as also in the office of the Block Development Officer, Anchal Adhikari, Circle Officer, Project Executive

Officer of the area an election programme giving the time-table of the different stages of the election including the date and hour of poll. The fact that an election programme has been published shall be announced by beat of drum in the different wards of the Panchayat within 48 hours of the publication of the programme."

The case of the petitioner is that the election programme was not drawn up according to rule 17 which was never published nor announced by beat of drum In the different wards of the said Gram Panchayat within 48 hours of its publication, or at any time, as required by the said Rule 17. It was alleged by the petitioner that the election programme was prepared under Rule 17 on the 10th May, 1962, but subsequently cancelled by the Elections Officer by his order dated the 29th May, 1962. A copy of this election programme is annexure A to the writ application. A second election programme was prepared on the 23rd June, 1962, but this also was cancelled by the Elections Officer by his order dated the 25th June, 1962. A copy of this election programme is annexure B to the writ application. For the third time the Elections Officer prepared an election programme on the 25th June, 1962, and a copy of this election programme is annexure C to the writ application. The case of the petitioner is that this election programme was not drawn up according to Rule 17 and the mandatory provisions of that rule were not carried out by the Elections Officer.

2. In these circumstances the petitioner has Detained a rule from the High Court calling upon the respondents to show cause why the election of the respondents to the various offices of Hathiawan Gram Panchayat of the 17th and 18th August, 1962, should not be quashed by grant of a writ in the nature of certiorari under Article 227 of the Constitution.

3. Cause has been shown by learned Counsel on behalf of the respondents to whom notice of the rule was ordered to be given.

4. The main question presented for determination in this case is whether there has been a violation of Rule 17 of the Bihar Panchayat Election Rules which has already been quoted above. The election programme was signed by the Elections Officer on the 25th June, 1962, which is annexure C to the writ application and is reproduced below :-

"Office of the Elections Officer, Khizrsarai, Gaya, Election Programme of Panchayat.

Programme of general election of Panchayats within Khizarasari Block under the Bihar Panchayat Rsjya Election Rules, 1959.

For Gram Panchayats-Hathiawan, Sarbahda, Basan Bigha, Maksudpur, Mai.

Particulars. Date Time Place

1.

Publication of election programme by beat of drum Rule 17.

On 14-5-62, the entire programme has been executed according to the list of 10-5-62

2.

Publication of true copy of the voters' list. Rule 10(1).

27-6-62 to 11-7-62. From 10.30 to 5 p. m. In each ward, the pun-chayat and in Block Office.

3.

Publication of true copy of the list of families and voters, Rule 10 (2).

Do. Do. Do.

4.

Last date of filing claim and objection before the Elections Officer. Rules 11 & 12.

16-7-62. 10.30 to 4 p.m. B. D. Office.

5.

Date of hearing of claim and objection before the Elections Officer Rule 12 (1) (2).

18-7-62. Do. Do.

6.

Last date of publication of list of families and voters' list.

22-7- 62 to 18(sic)-7-62. 10.30 to 4.30 Do.

7.

Publication of election programme by beat of drum. Rule 17.

22-7-62 Up to 5 p.m. In the entire Panchayat.

8.

Date of filing nomination paper in form J before the Elections Officer. Rule 18.

1-8-62. 10 to 12 noon. B. D. Office.

9. Date of scrutiny of nomination paper. 1-8-62. From 1 p.m. B. D. Office.

10. Last date of withdrawal of nomination paper. 4-8-62. Up to 4 p.m. B. D Office.

11.

Publication of notice of withdrawal of nomination paper. Rule 24.

6-8-62. Do. Do.

12.

Publication of list of nomination papers and publication of election symbol. Rules 25 and 34.

6-8-62. Do. Do.

13.

Publication of polling centre by the Elections Officer. Rule 31 (1).

22-7-62. Do.

In each ward of Panchayat and on Notice Board of B. D. Office"

14.

Date, time and place etc. of polling will be published later.

Sd/- R. K. Mishra, 25-6-62. Elections Officer, Khizarsarai, Gaya."

It is manifest that with regard to items 1 to 5 there has been no publication as required by Rule 17. With regard to items 6 to 13, a reference to the order-sheet of the Elections Officer shows that there was publication by hanging up the programme in the Gram Panchayat Cutchery on the 22nd July, 1962. That is the report of the Gram Sewak which is at page 22 of the Election Record of the Block Development Officer and Anchaladhikari of Khizar-sarai. We shall assume that this report of the Gram Sewak is correct. Even so, there was no publication of these items of the election programme in the offices of the Block Development Officer, Anchal Adhikari, Circle Officer and the Project Executive Officer of the area. We are, therefore, of opinion that with regard to these items also there was a violation of Rule 17 in this case. The more important omission is, however, with regard to item No. 14, because in the election programme signed on the 25th June, 1962, there is no mention of the date, time and place of the polling. It was submitted on behalf of the respondents that the date, time and place of the polling were published later on by a separate order of the Elections Officer on the 21st July, 1962. On reference to the order sheet it appears that on the 21st July, 1962, the Elections Officer ordered as follows :-

"As per Rule 31 (1) of the G. P. E. Rules the following polling booths are fixed for the wards mentioned against their names :-

Hathiawan U. P. School ... Ward No. 1

Keori Middle School ... " II

Bara U. P. School ... " III & IV.

The Following dates are fixed for polling :-

17-8-62 for Mukhiya and Sarpanch.

18-8-62 for Ranches and Members.

The time for polling will be from 8 a.m. to 4 p.m.

Ask the G.S. to publish these information"s on the Notice Board of the Ranchayat Office and announce the programme, in all the wards from 22-7-62.

Also publish one copy on the Notice Board of the Block Anchal Office.

Sd/-Illegible, E. O."

There is nothing to show from the records of the Elections Officer that these dates were published in the various places mentioned in Rule 17, or there was an announcement by beat of drum in the different wards of the Panchayat of the date and place of polling. In any event, Rule 17 does not contemplate that the election programme should be published piecemeal on different dates according to the choice of the Elections Officer. In our opinion Rule 17 contemplates that the election programme should be published at one and the same time, giving the timetable of different stages of the election, including the date and dour of the poll. It is manifest that in the present case there was a violation of Rule 17 of the Bihar Panchayat Election Rules by the Elections Officer of Khizarsarai. We consider that having regard to its object and intention the provisions of Rule 17 of the Bihar Panchayat Election Rules are mandatory in character and a violation of this rule therefore renders the entire election³ nullity in the eye of law. It, therefore, follows that the election of respondent No. 1 as the Mukhiya, respondent No. 2 as the Sarpanch, respondents Nos. 3 to 6 as the Panches and respondents Nos. 7, 8, 9 and 13 as members of the Executive Committee is illegal and ultra vires.

5. On behalf of the respondents it was contended that the petitioner was estopped from challenging the validity of the election. In our opinion there is no sub stance in this argument. In paragraph 5 of the writ application the petitioner has stated that he did not that part in the election at any of its stages. On behalf of the respondents reference was made to a decision of this High Court in Bindhayachal v. S.C. Mukherji, ILR 33 Pat 905. But in our opinion the principle of that decision does not apply to the present case and the petitioner is not debarred by the doctrine of estoppel from prosecuting the present writ application.

6. For the reasons we have already expressed, we hold that a writ in the nature of certiorari should be granted quashing the election of respondent No. 1 as the Mukhiya of Hathiawan Gram Panchayat, respondent No. 2 as the Sarpanch, respondents Nos. 3 to 6 as Panches and respondents Nos. 7, 8, 9 and 13 as members of the Executive Committee of Hathiawan Gram Panchayat.

7. We accordingly allow this writ application. There will be no order as to costs.