

(1975) 08 PAT CK 0004

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 634 of 1974

Chandrika Prasad Singh

APPELLANT

Vs

The Sub-Divisional Education Officer and Others

RESPONDENT

Date of Decision : 13-08-1975

Acts Referred:

Bihar High Schools (Constitution, Powers and Functions of Managing Committee)
Rules, 1964 — Rule 40
Constitution of India, 1950 — Article 226, 227

Citation : AIR 1976 Patna 153

Hon'ble Judges : Madan Mohan Prasad, J

Bench : Single Bench

Advocate : Sarwan Kumar, for the Appellant; Rambalak Mahto, Jawahardhari Singh and Jagdish Pandey, for the Respondent

Final Decision : Dismissed

Judgement

Madan Mohan Prasad, J.—This is an application under Articles 226 and 227 of the Constitution of India, challenging certain elections held in course of the Constitution of the Managing Committee of a School.

2. The petitioner's case, briefly stated, is as follows: He is a donor of the Siropatti Khatnaha High School, within the District of Samastipur. The Managing Committee of the School was being reconstituted and in course of that a notice was issued in respect of a meeting at which the guardian Members of the Managing Committee were to be selected. At this meeting, held on the 20th November, 1973, Respondents Nos. 7 and 8 were selected by the guardians assembled in the meeting. Surprisingly, however, the first respondent held another meeting on the 16th December, 1973, at which Respondents Nos. 2 and 3 were selected as guardian's representatives. Again there was a notice issued on the 23rd January, 1974, in respect of a meeting for the co-option of 3 educationists to be the members of the Managing Committee. No notice, however, was given to Respondents Nos. 7 and 8. Yet, at this meeting, held on

the 3rd February, 1974, Respondents Nos. 4 to 6 were elected as such Members. Respondents Nos. 7 and 8 came up to this Court in Civil Writ Jurisdiction Case No. 336 of 1974, but, on the persuasions of the first respondent, withdrew that application on the 28th March, 1974. The intimation thereof was received by the first respondent on the 5th April, 1974, with the result that with an unseemingly haste, he ordered the further elections for the purpose of constituting the Managing Committee to be notified and taken up. As a result thereof, on the 6th April, 1974, a notice was issued in respect of a meeting for the election of the President and the Secretary of the Managing Committee. At this meeting Respondents Nos. 7 and 8 were not invited. At this meeting, however, Respondents Nos. 4 and 5 were elected the Secretary and the President, respectively. On account of the absence of notice to Respondents Nos. 7 and 8, all the steps taken in respect of the Constitution of the Managing Committee were illegal and for that reason the election of Respondents Nos. 3 to 6 is illegal. The petitioner claims to be a donor and he says that no notice was issued to him or to the other donors and the entire election is, therefore, illegal. Further he says that in any case, the notices issued for the meeting to elect the President and the Secretary of the Managing Committee were not issued clear ten days before the meeting.

3. On behalf of the first respondent, a counter-affidavit has been filed, according to which the meeting for selection of guardians' representatives to be held on the 20th November, 1973, had been cancelled on the 19th November, 1973, notices not having been issued to the guardians on account of the illness of the Headmaster, who was supposed to have issued those notices. Accordingly this meeting was held on the 16th December, 1973, after due notice to all concerned. The allegation of the petitioner about a meeting being held and about Respondents Nos. 7 and 8 having been elected thereat is denied. With regard to the meeting for the co-option of the three educationists, it is said that Respondents Nos. 7 and 8 not having been elected guardians' representatives, undoubtedly no notice was sent to them and notices were sent only to persons entitled to vote thereat. Regarding this meeting notice was given to the petitioner on the 23rd January, 1974, and the meeting was to be held on the 3rd February, 1974. With regard to the election of the President and the Secretary again it is said that due notice was given, notice having been issued on the 6th April, 1974, for the meeting to be held on the 16th April, 1974. A certificate of posting is said to have been obtained in respect of the posting of the notice. Upon these facts, it is said that the election at all the three stages was perfectly legal. It has also been stated that the petitioner had the alternative remedy by way of appeal against the elections concerned, which lay before the President of the Board of Secondary Education, which he has not exhausted. The writ application is, therefore, said to be not maintainable in this Court.

4. Counsel for the petitioner urged, firstly, that the entire election was bad on account of the absence of notice to Respondents Nos. 7 and 8, secondly, that the election of the President and the Secretary is bad on account of the notice not

being issued ten clear days before the meeting, and thirdly, that since he was challenging the entire election Rule 40 of the Bihar High Schools (Constitution, Powers and Functions of the Managing Committee) Rules, 1964, did not apply.

5. This case, it appears to me, can be decided on the short point, as to whether the petitioner has exhausted his remedy before coming to this Court and if Rule 40 of the Bihar High Schools (Constitution, Powers and Functions of Managing Committee) Rules, is a bar to this Court entertaining this application. It has been urged on behalf of the petitioner that Rule 40 has no application, for the simple reason that the entire election is being challenged. I am unable to accept this contention. So far as the Constitution of the Managing Committee is concerned, it will appear from the Rules that there are several steps to be taken, they are to be found in Rule 3, which are steps for the Constitution of the Managing Committee of a school other than a proprietary school, to which category the present school belongs.

6. According to Rule 3, the Managing Committee consists of the following Members:--

"(1) All hereditary members and life members (declared under Rule 4);

(2) The Headmaster (ex-officio);

(3) A teacher's representative, to be appointed; by the Headmaster in the manner Laid down in Rule 5;

(4) An officer of the Education Department of the State Government to be nominated by the President of the Board of Secondary Education;

(5) Two donors, if available, to be elected in the manner laid down in Rule 6;

(6) Two guardians, to be elected in the manner laid down in Rule 7;

(7) One member of the State Legislature, representing or residing in the Assembly Constituency in which the School is situated to be co-opted by the Members referred to in Items (1), (4), (5), and (6) of this rule;

(8) Three persons of the locality, interested in education, of which one shall be A member of the Scheduled Castes or Scheduled Tribes, if not otherwise a member, to be co-opted by the members referred to in Items (1) to (7) of this Rule. It will appear from the subsequent Rules 4 to 9 that they lay down the procedure in respect of the declaration of hereditary members, the appointment of teachers' representative, the election of donors, selection of guardians, co-option of three persons of the locality interested in education, and election of the President and the Secretary.

7. The point which ought to be noted is that these steps do not form part of one election. So far as hereditary and life members are concerned, the Inspectress of Schools for Girls or the Deputy Director of Education has merely to declare them. There is no question of election involved. No such question is involved in the

appointment of teachers representative either. There is of course election of donors. Again there is no election of guardians. They are to be selected in view of Rule 7. In case there are two guardians, they are both selected. In case there are more than two, they are to be selected by lot. The members have to be co-opted at a meeting by secret ballot. The fact again requires notice that these steps at different stages are to be taken and different persons are entitled to vote thereat. At the election of donors, only persons whose name is entered in the list prepared by the officers concerned. In the case of guardians, as I said, there is no question of voting. At the meeting for co-option of members, who are interested in education, they are to be co-opted by all the members mentioned in Items 1 to 7 of Rule 3 aforesaid. It is, therefore, not everybody who is entitled to vote at the different election envisaged under the Rules. There are thus different kinds of steps, declaration, election, selection and co-option at different stages, at which different persons are entitled to vote, that have to be taken for the Constitution of the Managing Committee of the School. The argument thus that the Petitioner is challenging the entire election for the Constitution, of the Managing Committee, which may be treated as one single transaction cannot be accepted.

8. Regarding the next question, whether Rule 40 is a bar to the present application being entertained by this Court, I would do well to read Rule 40;

"If any dispute arises whether any person has been duly declared, elected, selected or co-opted as, or is entitled to be donor, life-member, hereditary member, President, Secretary, or a member of the Managing Committee, as the case may be, the matter shall be referred to the President of the Board of Secondary Education, whose decision thereon shall be final."

Undoubtedly, in the present case, the petitioner is raising a dispute with regard to election, selection or co-option of certain members, namely. Respondents Nos. 3 to 6. It is quite obvious, reading Rule 40, that the petitioner had alternative remedy before the President of the Board of Secondary Education. Undoubtedly, the petitioner has not availed himself of this remedy. It is well settled that a person must ordinarily exhaust his other remedy before his application for grant of rule can be entertained by this Court. The petitioner has not only not exhausted his remedy by moving the President. Board of Secondary Education, but has not given any explanation as to why he has not done so and why he has moved this Court. There is thus no explanation which could be taken into consideration for the purpose of deciding the question of maintainability of this application. This application is, therefore, fit to be rejected on that ground alone.

9. I may, however, state that even if I were to accept the arguments of the Counsel for the petitioner to the effect that he was challenging the entire election, even so he had to exhaust his other remedies available on account of Rule 40. It makes no difference to this case, therefore, whether he is challenging all the elections or some of the elections held for the purpose of the Constitution of the Managing Committee.

10. On the first point raised by the learned Counsel with regard to the selection of guardians, it has been pointed out on behalf of the respondents that those guardians. Respondents Nos. 7 and 8, themselves had challenged the election in a writ application to this Court in Civil Writ Jurisdiction Case No. 336 of 1974, but they had withdrawn their application. It is further said that the petitioner was not a voter, not being a guardian, at the time of selection. Therefore, he has no locus standi to challenge, and the persons concerned having withdrawn their challenge.

11. With regard to the co-option of the educationist, members, it has been alleged on behalf of the respondents that in his writ petition this petitioner admits that he had notice of this meeting. The only dispute between the parties, it is said, is that according to the respondents they got notice served by a special messenger on the 23rd January, 1974, whereas according to the petitioner, he received notice on the 29th January, 1974. Further it is said, with regard to the election of the President and the Secretary that 10 days notice was given, the notice having been issued on the 6th April, 1974, the meeting to be held on the 16th April, 1974. It is, however, unnecessary for me to go into these questions in view of my finding against the petitioner on the question of maintainability of this application.

12. In the result, this application is dismissed. In the circumstances of this case, however, there will be no order as to costs.