
(2002) 11 PAT CK 0039
In the Patna High Court
Case No : L.P.A. No. 1149 of 2002

Chandrika Prasad Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-11-2002

Acts Referred:

Citation : (2002) 11 PAT CK 0039

Final Decision : Dismissed

Judgement

R.S. Garg and Rajendra Prasad, JJ.—Heard learned Counsel for the appellant.

2. Being aggrieved by the order dated 7-10-2002 passed by the learned Single Judge in C.W. J.C. No. 5004/2002 granting the writ application filed by Mahendra Rai setting aside the judgment and order dated 6-4-2002 passed by the Munsif, Raxaul at Motihari, East Champaran in Election Case No. 6/2000 allowing the election petition filed by the writ Respondent No. 4 setting aside the election of the present writ petitioner and declaring the writ Respondent No, 4/present appellant as the returned candidate, has filed this appeal under Clause 10 of the Letters Patent.

3. The appellant-election petitioner filed an election petition before the Munsif inter alia submitting that the corrupt practices were writ large and as his request for recount was unceremoniously rejected by the Election Officer, the Munsif must interfere in the matter, direct recount of the votes, set aside the election and declare him elected. It appears that evidence was led but from the side of the election petitioner/ appellant no evidence was led to prove the fact that he had made an application for recount and that was unceremoniously rejected. However, the learned Munsif ordered that the votes be recounted by his interim order. Learned Counsel for the appellant submits that the interim order dated 20-10-2001 was challenged before this Court but this Court refused to interfere at that stage. It appears that thereafter the votes were recounted and the learned tribunal interfered with the election, set aside the same and declared the present appellant as returned candidate. Being aggrieved by the said order, the

Respondent No. 4 filed the writ application which after hearing learned Counsel for the parties was allowed.

4. The appellant submits that the learned Single Judge was not justified in not taking into consideration the true import of the judgment of the Supreme Court in the matter of Vadivelu Vs. Sundaram and Others, , Placing reliance upon the judgment of the Supreme Court in the matter of Ram Sewak Yadav Vs. Hussain Kamil Kidwai and Others, and R. Narayanan Vs. S. Semmalai and Others, , it is contended that if the election tribunal is satisfied that to do complete justice between the parties, the recount is a must then the Court must order, and if the Court after recording a finding orders for recount then such an order would be valid,

5. From the order of the learned Single Judge it appears that this very argument was raised before the learned Single Judge, who after taking into consideration the judgment of the Supreme Court in the matter of Smt. Ram Rati Vs. Saroj Devi and others, overruled the submission and allowed the petition mainly on the ground that not only it is to be pleaded that an application for recount was made but the fact is to be proved and after the fact is proved, the learned tribunal must record a finding that recount in view of the allegations and evidence brought on record is a must.

6. In the matter of Ram Rati (supra) the Supreme Court has observed that not only the fact that an application was made is to be pleaded but is also to be proved. The Supreme Court has observed that if the basic requirement is not proved then the Court would not be entitled to interfere with the secrecy of the ballots in directing recount of the ballots. In the present case undisputedly no evidence has been brought on record to show or suggest or to satisfy the judicial conscience of the Court that such an application was made immediately after declaration of the result of the election or such an application was rejected unceremoniously and illegally.

7. In the matter of Ram Sewak (supra) the supreme Court had observed that an order for inspection of the ballot papers cannot be granted to support vague pleas made in the petition supported by material facts or to fish out evidence to support such pleas. The Supreme Court further observed that the case of the petitioner must be set out with precision supported by averments and material facts. It was also observed that to establish a case so pleaded in order for inspection may undoubtedly, if the interest of justice requires, be granted. From the observations made by the Supreme Court it would clearly appear that the case of the petitioner has to be set out with precision supported by averments and such allegations made by the petitioner are required to be proved in according with law. It can be said that simple allegations made in the election petition would not take the place of the proof. The law is very candid and specific. At allegation must be proved by reliable and clinching evidence and then there must be a finding by the Court that what was required under the law was so done. If there is no finding then nothing can be done in the matter.

8. In the matter of R. Narain (*supra*) the Supreme Court observed that the Court would be justified in ordering recount of the ballot papers only where: (1) the election petition contains an adequate statement of material facts on which the allegations of irregularity or illegality in counting are founded; (2) on the basis of evidence adduced, said allegations are *prima facie* established, affording a good ground for believing that there has been a mistake in counting; and (3) the Court trying the petition is *prima facie* satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties.

9. The observations of the Supreme Court made in paragraph 14 of the judgment would come into operation, if the petitioner is in a position to satisfy the Court that he did make an application for recount and the application was illegally rejected, unless the fact of making the application and its rejection is not proved by leading cogent evidence, the subsequent act which are to be done by the Court cannot be taken under hands. The first thing is to open the lock put on the jurisdiction of the Court and only then the Court can inspect the inside material. If a party fails in proving making of the application then the Court would not be entitled to interfere with the secrecy of the ballot.

10. In the present case, in the considered opinion of this Court, the learned Single Judge was absolutely justified in setting aside the judgment/order passed by the learned Munsif. The petition is dismissed.