

**(2008) 12 PAT CK 0036**  
**In the Patna High Court**  
**Case No : CWJC No. 14543 of 2007**

Dr. Binod Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

**Date of Decision :** 12-12-2008

**Acts Referred:**

Bihar State Universities Act, 1976 — Section 22, 22(1)

**Citation :** (2009) 57 BLJR 961 : (2009) 2 PLJR 102

**Hon'ble Judges :** Ramesh Kumar Datta, J

**Bench :** Single Bench

**Advocate :** Rajesh Kumar Singh, for the Appellant; Ambar Nath Banerjee, Shivendra Kishore, Shail Kumari, SC 23 and S.K. Ranjan, J.C. to SC 23, for the Respondent

**Final Decision :** Dismissed

## Judgement

Ramesh Kumar Datta, J.

Heard learned Counsel for the parties.

1. The petitioner seeks a direction upon the respondent-authorities of the B.R. Ambedkar Bihar University to declare the result of election for teacher members of Syndicate held on 25.9.2003. Subsequently, by way of amendment which was allowed, the petitioner has also prayed to quash the letters dated 10.7.2007 and 27.9.2007 by which the Chancellor of Universities has directed for holding fresh elections of the members of the Syndicate u/s 22(1)(h) of the Bihar State Universities Act, 1976 and the further memo dated 21.10.2008 issued by the Registrar-cum-Returning Officer of the University by which he has issued election communiqu? for holding fresh election of the Syndicate from the Professors/ Readers category of teachers under the said Section.

2. The short facts of this case are that a communiqu? dated 5.9.2003 was issued by the Registrar of the University notifying the programme for election to the Syndicate by the Senate of the University u/s 22 of the Bihar State Universities

Act. The petitioner filed his nomination paper as one of the candidate for the post from Teacher category of members from amongst Professors and Readers other than University Head u/s 22(1)(h) of the Act. The election was held on 25.9.2003. It is contended by the petitioner that after the conclusion of the counting of votes, a fax message dated 24.9.2003 issued by the Deputy Secretary, Governor's Secretariat was received in the election hall by which it was communicated that the Chancellor has been pleased to order to withhold the declaration of result of the election. Although it is submitted that the counting was over and, the candidates knew about the result, but on account of the said order of the Chancellor the result was not declared officially. The said interim order of the Chancellor was passed on the representation filed by one Dr. Padmasha Jha in which she had complained that her name was illegally omitted from the list of voters. Ultimately by order dated 8.11.2003, the Chancellor directed the University to announce the result of the election of the members of Syndicate u/s 22(h) of the Act by excluding the vote of Dean Student Welfare and Proctor.

3. Against the aforesaid order of the Chancellor the petitioner filed CWJC No. 13294 of 2003 before this Court which was dismissed by the order dated 24.8.2004; however, with respect to the submission of learned Counsel for the petitioner that the order of the Chancellor to declare the result excluding the votes of Dean Students Welfare and Proctor is not possible to be given effect to since their votes cannot be identified, it was observed by this Court that guidelines had been sought by the Registrar of the University from the Chancellor and the Chancellor has to take a decision on the said issue and thus no interference was called for by the Court at that stage. In LPA No. 984/2004 filed by the petitioner it was observed that no case for interference is made out and with the expectation that the Chancellor will dispose of the matter expeditiously, the appeal was disposed of. Thereafter by his order dated 13.10.2004, the Chancellor directed the Registrar-cum-Returning Officer to open the seal cover and count the votes and if the votes secured by all the winning candidates was more than two votes then the said result shall be final but even if one among the winning candidates secured two or less than two, then as it would be a case in which legality and illegality are not severable the Registrar shall take a fresh poll, by not allowing the aforesaid two persons to vote and declare the result. It was further made clear in the said order that the same voters' list on which the election was held earlier shall be the voter list in the event fresh polling becomes necessary.

4. The fresh counting of votes after the aforesaid order dated 13.10.2004 of the Chancellor was delayed by about 21 months, i.e., 9.8.2006 whereafter the Registrar-cum-Returning Officer recommended for re-election on the ground that none of the winning candidate have secured more than two votes than the running candidate. Thereafter it is stated that on the petitioner's representation to the Vice-Chancellor, the Registrar-cum-Returning Officer was directed for re-counting of votes which was held on 14.8.2006 but the results were not declared

by the Registrar despite orders of the Vice-Chancellor to that effect.

5. The stand of learned Counsel for the petitioner is that after the final counting of votes the petitioner had obtained as many as 25 votes out of 42. Thus, according to learned Counsel for the petitioner, the petitioner ought to have been declared elected as his votes were much more than 50% plus one of the total votes and would be much more than the margin of two votes as per the order of the Chancellor dated 13.10.2004. However, it is stated that the matter was delayed by the Registrar-cum-Returning Officer for reasons best known to him and in the meantime the opinion of the Advocate General was taken in which it was opined that it does not appear appropriate to act on the basis of the election held in 2003 almost three years ago. On a consideration of the said matters ultimately the Chancellor by order communicated through letter dated 20.8.2007 directed to hold fresh election of the members of the Syndicate from the members of the Senate u/s 22(h) of the Bihar State University Act, 1976. Pursuant to the same, communiqu? for holding elections was also issued by the University. Aggrieved by the same, the petitioner has challenged the aforesaid actions of the University.

6. Learned Counsel for the petitioner submits that even from letter dated 7.5.2007 (Annexure-11) sent by the Registrar to the Governor's Secretariat, it is evident that the petitioner had ultimately got 25 votes and thus in terms of the earlier order of the Chancellor he was entitled to be declared elected but on account of manipulations by the officials of the University the same has not been done and ultimately the petitioner has been debarred of the benefit of the said post.

7. Learned Counsels for the Chancellor and the University, on the other hand, state that no doubt there was some delay in acting upon the orders of the Chancellor, dated 8.11.2003 but the stand of the petitioner that he had secured 25 votes and therefore, he ought to have been elected, is not correct. According to them, after the last but one round of counting of votes the position which emerged was that in the Professor/Reader category the petitioner secured 18 votes whereas the next candidate Shri Narendra Prasad Singh secured 17 votes. It is thus argued that the difference of votes after the last but one round of counting was only one. The difference was less than two hence it was recommended for fresh poll in the light of the order of the Chancellor dated 13.10.2004. However, on the representation of the petitioner and direction of the Chancellor fresh counting was held on 14.8.2006 and the position reported was that after excluding the name of Dr. Narendra Kumar Singh from the poll 7 votes were transferable to the petitioner and consequently he secured 25 votes in all. It was on account of the said position that the matter was referred to the learned Advocate General, Bihar for his legal opinion who gave his opinion that on the basis of election held almost three years back it does not appear to be appropriate to act. In the said circumstances, the matter was referred to the Governor's Secretariat and ultimately it was decided to go for fresh elections.

8. It is submitted by learned Counsels for the respondents that much water has flown since the election of 2003; voters have changed, many of the lecturers have been promoted as Readers/Professors in the meantime and many have even retired; in the said circumstances, according to them, to insist upon reverting to the old state of affairs as prevailing in 2003 would be against the statutory provisions and the only way out would be to hold fresh elections on the basis of a fresh voter list in which the eligible persons alone should participate. It is submitted that the said action of the University is totally justified and reasonable and the same is also supported by the opinion of the Advocate General.

Learned Counsel for the petitioner has sought to counter the arguments by stating that the post has remained vacant for nearly 20 years and thus nothing untoward would have happened if the University had complied the direction of the Chancellor and declared the result on the basis of the 2003 elections.

9. On a consideration of the entire facts and circumstances of the case, this Court is of the view that the subsequent action of the respondent-authorities/orders of the Chancellor directing the holding of fresh election is not at all arbitrary or unreasonable. It is true that the Chancellor had issued certain directions earlier but on account of delay and negligence of the University-authorities they could not be carried out for one and half years after the said order was passed. Even after the counting of last but one round it appears that the petitioner had only one vote more than that of the next running candidate. In the said circumstances, it appears that it could not be said as to in whose favour the two votes of the ineligible voters, namely, Dean Student Welfare and Proctor, had gone and thus he was the candidate who had secured the lesser number of votes after the last but one round of counting and the question would therefore arise as to whether such a candidate can be excluded in the said circumstances. In my view, because elections themselves had been held by allowing two ineligible candidates to vote in the same, a difficult situation had arisen and the right of the petitioner for the counting to have continued for a further round and the elimination of the candidate immediately next to him could only have arisen if the difference between him and that of the next candidate would be more than two votes. Since the margin of votes secured by the petitioner in the last but one round was not more than two, to allow the counting process to go on into a further round on the basis of the system of single transferable vote could have led to serious anomalies in the result. In the said circumstances, the proper course would have been to go for a fresh election on the basis of the same voter list and with the same candidates immediately as directed by the Chancellor in his order dated 13.10.2004. However, since the same was not done and the matter has been allowed to linger, after passage of more than 5 years from the earlier elections when there have been so many changes not only in the voter list but also in the candidates who would be eligible to contest for the post in question, including the fact that many persons have retired in the meantime, the best course of action would now be to go for fresh elections on the basis of the

fresh voter list and giving an opportunity to all the presently eligible persons to contest the same, as has been decided by the respondent-authorities.

10. In view of the aforesaid facts and circumstances and in the light of the above discussions, this Court does not find any merit in the writ petition and the same is, accordingly, dismissed.