
(2009) 01 PAT CK 0002
In the Patna High Court
Case No : CWJC No. 12492 of 2008

Hari Madho Sah

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-01-2009

Acts Referred:

Bihar Panchayat Election Rules, 2006 — Rule 63
Bihar Panchayat Raj Act, 2006 — Section 44, 44(3)

Citation : (2009) 2 PLJR 251

Hon'ble Judges : Ramesh Kr. Datta, J

Bench : Single Bench

Advocate : Ashok Kumar Choudhary and Manish Mishra, for the Appellant;
S.B.K. Manglam, Satya Prakash Parasan for Respondent No. 8 and Government
Pleader No. 13 for the State, for the Respondent

Final Decision : Allowed

Judgement

Ramesh Kr. Datta, J.—Heard learned counsel for the parties. The petitioner has come to this Court for quashing the resolution of no confidence motion brought against the petitioner-Pramukh of Madhaura Panchayat Samiti in the special meeting held on 28.7.2008 and further for quashing the requisition for calling the special meeting to move no confidence motion against the petitioner-Pramukh vide letter dated 8.7.2008 claiming that the same has been made in contravention to the provisions of Section 44(3) of the Bihar Panchayat Raj Act, 2006 and further for consequential reliefs.

2. The short facts of this case are that pursuant to requisition dated 8.7.2008 for calling the special meeting for considering no confidence motion against the petitioner-Pramukh of Madhaura Panchayat Samiti in the District of Chapra the special meeting was convened on 28.7.2008. Out of thirty elected members as many as 29 members participated in the special meeting and cast their votes. The votes in favour of no confidence motion were 16 while 13 were against no confidence motion. On the basis of the same, the petitioner was declared to have

vacated the office of the Pramukh.

3. The grievance of the petitioner is that a minor being son of respondent No. 24, Sarswati Devi, was permitted to cast the vote for respondent No. 24 and also respondent No. 20, Aamna Khatoon. It is submitted by learned counsel for the petitioner that there is no provision under the Bihar Panchayat Raj Act and Rules framed thereunder for providing any assistance to any person for casting of votes during no confidence motion. It is contended that in any case Rule 63 of the Bihar Panchayat Election Rules, 2007, relied upon by the respondents, only pertains to election held under the said Act and does not have any application to the special meeting for considering no confidence motion. It is urged by learned counsel for the petitioner that in any view of the matter even Rule 63 of the Bihar Panchayat Election Rules, 2006 provides for assistance being granted to a voter who is blind or disabled by a person who is not less than 18 years of age, and that even during election, there is no provision for providing assistance to any person on the ground of illiteracy since neither respondent No. 20 nor respondent No. 24 is either blind or disabled. It is, therefore, submitted that there has thus been a violation of the secrecy of the ballot paper also, which is mandatory requirement under the provisions of Section 44 of the Act.

4. Learned counsel for respondent No. 8, on the other hand, submits that the petitioner had the right to raise an objection at the time when the special meeting was being held and respondent Nos. 20 and 24 were permitted assistance in casting of their votes but no such objection was raised and thus he cannot be permitted to challenge the result of the voting after the same has gone against him. In support of the same, he relies upon a decision of a learned Single Judge of this Court in the case of Balram Singh Yadav Vs. State of Bihar and Others .

5. It is further contended by learned counsel for respondent No. 8 that in the no confidence motion as many as 16 votes have gone against the petitioner and there is nothing on the record to show that the votes of respondent Nos. 20 and 24 had, as a matter of fact, gone against the petitioner. It is further submitted that in order to justify the said ground, it is for the petitioner to prove that the said two votes, which were cast on the basis of assistance provided had been cast in favour of no confidence motion and since the petitioner has failed to show the same, he is not entitled to any relief. Lastly, learned counsel relies on Rule 63 of the Bihar Panchayat Election Rules, 2006 which makes the provision for assistance to the voter under certain circumstances. It is submitted that mere provision of assistance is not barred under the law and the same principles would apply where the member participating in no confidence motion seeks assistance so as to correctly cast his/or her vote for the same.

6. On a consideration of the facts and circumstances of the case and the respective submissions of learned counsel for the parties, this Court finds sufficient force in the argument of learned counsel for the petitioner. Nothing has been brought on the record by the respondents to show that there is any

provision for providing assistance to any member for casting a vote during the proceedings of the Panchayats. Even Rule 63 *stricto sensu* has no application to the present matter since it relates to the elections for various offices under the Panchayat. The same does not and cannot control any internal proceedings of the Panchayats for considering a no confidence motion. Again, the said Rule 63 confines itself to providing assistance to a blind or disabled candidate and not to any one merely on the ground of illiteracy or any other ground. It is pointed out by learned counsel for the petitioner that the only stand taken by the respondent is that the assistance was provided to respondent Nos. 20 and 24 on the ground that they were illiterate. However, there is no such provision even in Rule 63 for providing assistance to illiterate voters. In the said circumstances, it was not open to the authorities to have provided any assistance to respondent Nos. 20 and 24 merely on the ground that they were illiterate.

7. A photocopy of the ballot paper has also been brought on the record by learned counsel for the petitioner, which has not been challenged by learned counsel for the respondents and that, in fact, is also borne out by the details mentioned in the proceedings of the special meeting dated 28.7.2008. From a perusal of the same, it is evident that it contains only two columns marked "Han" and "Nahi" and on the right side of each of the said columns a box has been provided for putting voting mark thereon and how the voting was to be done is also required to be explained by the authorities before voting is done and the same was also done in the present matter as is evident from the minutes of the proceedings.

8. This Court is clearly of the view that the ballot paper in such a matter has such a simple format that even an illiterate person can be easily made to apprehend as to how the voting is to be carried out in favour of or against the no confidence motion and no assistance is required to be provided in such matter. In the absence of any rules brought before this Court which provides for such assistance and further there being no necessity for the same, it is reprehensible and wholly unacceptable that an outsider was permitted to enter the voting area and cast the vote in favour of as many as two of the members.

9. The contention of learned counsel for the respondents, that the petitioner having participated in the proceedings cannot be permitted to turn around and challenge the same in view of the law laid down in the case of *Bal Ram Singh Yadav* (supra), this Court finds that the said proposition has no application in the context of the present matter. Here it is not a matter where it had been made known to the petitioner and the other members that assistance would be permitted to any illiterate member in casting the vote and it was only during the course of the proceedings that the said assistance was provided to two of the members. That being the situation, there is no question of participation leading to estoppel against a person to raise any objection to illegality committed during the course of the special meeting. Since the illegality had been committed during the course of the proceedings, the same would vitiate the proceedings

irrespective of the fact whether any of the members had the presence of mind to have made an objection then and there and his participation in the meeting can have no effect upon the right of a party to challenge any illegality committed during the said proceedings.

10. Lastly, this Court does not find any substance in the contention of learned counsel for the respondents that it is for the petitioner to prove that the said two votes were cast in favour of the no confidence motion. Since the voting is by secret ballot it is not possible either for the petitioner or respondents or any one else at this stage to point out as to whether the vote had been cast in favour of or against the no confidence motion,

11. In such circumstances, this Court has only to consider that if it is presumed that the two votes had been cast in favour of no confidence motion and those two votes are taken away/subtracted from the total number of votes cast in favour of the no confidence motion whether that would materially affect the result of the no confidence motion or not. In the present matter the total directly elected members in the Panchayat Samiti being 30, a no confidence motion to be passed would have required the votes of at least 16 directly elected members. Thus, if the two votes are presumed to have been cast in favour of the no confidence motion and accordingly the same are excluded for considering the result of the no confidence motion, then only 14 votes can be said to have been cast in favour of the no confidence motion with certainty. In the said situation, it cannot be said that the no confidence motion would have been passed even apart from the said two votes which had been allowed to be cast in an illegal manner.

12. In the above facts and circumstances, this Court is of the view that the assistance granted to respondent Nos. 20 and 24 to cast vote during no confidence motion is clearly contrary to the provisions of law and impermissible and since it cannot be said as to in whose favour those two votes have been cast, the resolution of no confidence stands vitiated and the same has to be set aside. Accordingly, the resolution passed in the special meeting in favour of no confidence motion cannot stand and it is quashed and consequently, it is directed that the petitioner shall be reinstated on the post of Pramukh of Madhaura Panchayat Samiti. The writ application is, thus, allowed.

13. However, it is made clear that it would be open to the respondents to have a fresh date fixed for convening the special meeting for considering no confidence motion against the petitioner. Let the said date be fixed within a period of one week from the date of receipt/production of a copy of this order by the Executive Officer of the Panchayat Samiti, who shall fix the date providing for one week clear notice as required by law. Let a copy of this order be handed over to learned Government Pleader No. 13.