
(2001) 08 PAT CK 0083
In the Patna High Court
Case No : C.W.J.C. No. 8769 of 2001

Hazari Prasad Roy

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-08-2001

Acts Referred:

Constitution of India, 1950 — Article 243B

Citation : (2001) 3 BLJR 1892 : (2001) 3 PLJR 715

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—The petitioner has filed the present writ application for a declaration that he may be allowed to continue as a member of the Block Panchayat Samiti as well as a member of the Zila Parishad at the same time after his election to the said posts and the direction issued by the State Election Commission in exercise of the power under Rule 121 of the Bihar Panchayat Election Rules (hereinafter referred to as "the Rules"), as contained in Memo No. 4563 dated 24-5-2001 in Clause (d) providing that if one candidate has been elected for more than one post in the Panchayat Election then, he will be administered oath on all the elected posts but within fifteen days of taking oath the candidate has to express his willingness to continue on one post in writing to the concerned authority and, thereafter, his election to other posts shall stand cancelled, is invalid as the same is contrary to the provisions contained in Section 139(3) of the Bihar Panchayat Raj Act, 1993 (hereinafter referred to as "the Act").

2. The facts necessary for disposal of the present writ application are that in accordance with the provisions of the Act and Rules, the Panchayat election was held in the State of Bihar. The writ petitioner contested the election for two posts. He was a candidate from Dariapur Block Panchayat Samiti, Constituency No. 25 Bela Part I as well as for the Zila Parishad, Saran, Constituency No. 41.

Election for both to have been elected as a member of the Dariapur Block Panchayat Samiti and so also from the Zila Parisad, Saran.

3. The State Election Commission issued a direction dated 24-5-2001, as contained in Annexure 3 to the writ application in exercise of the power under Rule 121 of the Rules. Clause (d) thereof provides that if a candidate is elected for more than one posts in the Panchayat Election then after administering oath of all the posts, he has to express his willingness in writing within fifteen days to continue on one post and his election on other posts shall automatically stand cancelled. The petitioner represented before the District Magistrate, Saran, stating that the said provisions are contrary to the provisions contained in Section 139(3) of the Act and as such he may not be compelled to resign from one post of the two posts. The District Magistrate, Saran, sought clarification from the State Election Commission and the latter directed him to act according to the provisions contained in Section 139(3) of the Act, read with the aforesaid instruction. Thereafter, the petitioner has filed the instant writ application.

4. Learned Counsel for the petitioner submitted that there is no legal bar in holding two posts as a member of the Block Panchayat Samiti and the Zila Parisad for the reason that no such bar is created u/s 139 (3) of the Act. The instruction issued by the State Election Commission, as contained in Annexure 3, is contrary to the provision of Section 139(3) of the Act and as such the same has to be declared invalid and a direction may be issued to the authorities to allow the petitioner to continue on both the posts.

5. Learned Counsel for the State Election Commission, on the other hand, submitted that the word "Panchayat" has been used in a wider sense under the provisions of the Act. In this connection he referred to Article 243B of the Constitution and the definition of "Panchayat" u/s 2(r) of the Act. Elaborating his submission, he submitted that the Panchayat includes the electorate body at three levels, namely, at the village, intermediate and district levels and as such the word "Panchayat" used u/s 139(3) of the Act will include election to the offices of the aforesaid three levels. Section 139(3) of the Act is, thus, clear that if a member is elected to the Panchayats and at the same time becomes a member of the other bodies including other Panchayats then he has to show his willingness to retain one post and leave other posts within the time stipulated in the said Section otherwise his election to the Panchayat shall automatically stand cancelled. He further submitted that the direction issued by the State Election Commission, as contained in Annexure 3 to the writ application is in conformity with the provision contained in Section 139 of the Act.

6. To appreciate the submissions advanced on behalf of the parties at the Bar, it is necessary to refer to the relevant provisions having a bearing on the question in controversy. By the Constitution (Seventy-Third Amendment) Act, 1992, Part IX, dealing with the Panchayats, was inserted in the Constitution, which came into force on 24-4-1993. Article 243B of the Constitution provides that there shall be constituted in every State, Panchayats at the village, intermediate and

district levels in accordance with the provisions of the Act. It also contains other provisions regarding constitution of Panchayat, duration of Panchayat etc. The State of Bihar repealed the Bihar Panchayat Raj Act, 1947 and enacted the Act in question in conformity with the provisions contained in Chapter IX of the Constitution of India. The Act contains a provision with regard to three tier Panchayat systems in the State, namely, at the village level. Block level and district level. The Panchayat at the village level is called Gram Panchayat, the Panchayat at the Block level is called as Block Panchayat Samiti and the Panchayat at the district level is called Zila Parisad. Section 139 of the Act contains a provision with regard to disqualification of membership. Sub-section (3) thereof is relevant for the purpose of this case, which runs as follows:

139(3). If a person who is chosen as a member of Panchayat is or becomes member of Lok Sabha, Rajya Sabha, the State Legislature Assembly or the State Legislative Council or is or becomes a municipal Councillor or a Councillor of a Municipal Corporation or a Member of a Sanitary Board, any other Panchayat or a notified area committee, then within fifteen days from the date of commencement of the term of office of a member of the Lok Sabha, the Rajya Sabha, the State Legislative Assembly or State Legislative Council or of a Municipal Councillor or a Councillor or a Municipal Corporation or a Member of a Sanitary Board or a Town Board or a Notified Area Committee or such other Panchayat his seat in the Panchayat shall become vacant unless he has previously resigned his seat in Lok Sabha, the Rajya Sabha, the State Legislative Assembly or the State Legislative Council or the Municipal Council or the Municipal Corporation or the Sanitary Board or such other Panchayat or the Notified Area Committee, as the case may be.

7. Section 121 of the Act empowers the State Government to make Rules and in accordance with the said provision, 1995 Rules were made by the State Government. Rule 121 of the said Rules empowers the State Election Commission to issue directions in accordance with the provisions contained in the Rules. In exercise of the said power, he has issued the direction dated 24-5-2001 as contained in Annexure 3 containing a detailed instruction with regard to the election matter, Clause (da) of the said direction provides that in case a person is elected for more than one post in the Panchayat election then after taking oath on all the posts, he has to express his willingness within fifteen days in writing to continue on only one post to the concerned authority and, thereafter, his election to the other posts shall stand cancelled.

8. From the conjoint reading of the aforesaid provisions, it is clear that the word "Panchayat" does not refer only to a Gram Panchayat. It has a wider import and in terms of Article 243B of the Constitution and the provisions of the Act, the word "Panchayat" includes the Panchayat at the village level, Block level and the district level and the election as a Member to the Block Panchayat Samiti and the Zila Parisad is also an election as a Member to the Panchayat. The word "Panchayat" cannot be given a limited meaning as submitted on behalf of the

petitioner. Section 139(3) extracted above clearly states that if a person is chosen as a Member of Panchayat and is or becomes Member of other bodies, including the Member of any other Panchayat, in that case within fifteen days from the date of commencement of the term of the Panchayat or other bodies as mentioned therein his seat in the Panchayat shall become vacant unless he has previously resigned his seat in the other Panchayat or other local bodies as mentioned therein. In other words, according to the said provision, a person can remain Member of only one Panchayat and not more than that. If he is elected as a Member for more than one Grampanchayat, that is to say he is elected as a member of the Gram Panchayat, Block Panchayat Samiti and the Zila Parisad then he has to remain as a Member of only one Panchayat body and he has to resign from the other posts within the period prescribed therein.

9. In that view of the matter, I find that the direction issued by the State Election Commission dated 24-5-2001, as contained in Annexure 3, is in conformity with the provisions of Section 139(3) of the Act and it is not in the way of supplanting or contrary to the provisions contained therein. Thus, the submission advanced on behalf of the petitioner has to be rejected. The petitioner has to retain and continue on only one post and it is for him to decide in terms of the provisions contained in Section 139(3) of the Act and the direction issued by the State Election Commission dated 24-5-2001 as contained in Annexure 3.

10. For the reasons aforementioned, I do not find any merit in this writ application and it is, accordingly, dismissed.