
(1985) 08 PAT CK 0009

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3622 of 1983

Hira Prasad Dubey

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 09-08-1985

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 19
Bihar Municipal Election and Election Petitions Rules, 1953 — Rule 7, 9

Citation : (1985) PLJR 998

Hon'ble Judges : Lalit Mohan Sharma, J; Binodanand Singh, J

Bench : Division Bench

Advocate : S.P. Mukherjee and B.K. Singh Chauhan for the Petitioners in C.W.J.C. 3622/83 and for the Caveator in C.W.J.C. 3453/83 and Nagendra Rai and Ajit Kumar for the Petitioners in C.W.J.C. 3453/83, for the Appellant; R.B. Mahto, A.G., Jagdish Nr. Pandey, G.P. II, Dharni Dhar Pd. Sinha, J.C. to G.P. II in C.W.J.C. 3622/83 and R.B. Mahto, A.G. and S. Rafat Alam, J.C. to A.G. in C.W.J.C. 3453/83 for the State, for the Respondent

Judgement

Lalit Mohan Sharma, J.—These two writ applications have been filed in connection with the election of the Commissioners of the Siwan Municipality, and, since common questions of law and fact are involved, they have been heard together and are being disposed of by this judgment. The election of the Commissioners of Siwan Municipality became due and a notification under rule 7 of the Bihar Municipal Elections and Election Petition Rules, 1953, framed u/s 19 of the Bihar and Orissa Municipal Act, 1922, was published in the Bihar Gazette on 13.12.1982 (annexure 3 to the writ petition in C.W.J.C. 3453/1983), directing the elections to be completed by the 15th of February 1983 and, accordingly, a notice of the particulars of the election was issued under rule 9. But as the question of addition of fresh areas in the Municipality was under consideration for a long time and the further question of revision of the voters list and delimitation of the wards was also pending the order dated 7.2.1983 as contained in annexure 4 to C.W.J.C. 3453 of 1983 was passed by the State Government

postponing the election sine die. Thereafter large areas were included in the Municipality u/s 6 of the Act, by the order in annexure "11" dated 9.4.1983, published in the 12th August, 1983 issue of the Bihar Gazette. According to the case of the State, there are about 25,000 voters, in the areas added; who became entitled to vote as a result of the notification annexure 11 and since wards were not formed of the additional areas and the additional voters were not treated as voters for the Municipal election, the steps taken for holding the election had to be ignored. The petitioner in C.W.J.C. 3622/1983 Hira Prasad Dubey was the Chairman of the Municipality and, under his Chairmanship, a resolution was passed on 17.5.1983, as contained in Annexure 12 of C.W.J.C. 3453/1983, to the effect that since the election could be held only after the formation and re-constitution of the wards, steps in this regard should be expeditiously taken. Accordingly the steps already taken for holding the election were ignored. It is important to note that nobody including the petitioner Hira Prasad Dubey is aggrieved by this decision of the State and neither annexure 4 nor annexure 12 of C.W.J.C. 3453/1983 is under challenge in any of these two cases.

2. As a result of the aforesaid developments, the election of the Municipality was delayed. The election of several other municipalities in the State also was due. Certain orders were passed by the State Government in this regard for holding the elections expeditiously. The orders in annexure "3" and "T" have been referred to by the petitioner Shri Dubey. Exercising the powers under the Act and the Rules, the District Magistrate, Siwan issued a notification on 25.7.1983 calling upon the voters of the Siwan Municipality to elect the commissioners by August, 1983. This was done without taking into account the added areas and the residents and without re-constituting the wards and modifying the voters lists. According to the programme, the 3rd of August, 1983 was fixed as the last date for filing nomination papers, the 4th of August, 1983 as the date of scrutiny, the 7th of August, 1983 as the last date for withdrawal of candidature and the 27th of August, 1983 as the date of poll. Ramdeo Singh, the petitioner in C.W.J.C. 3453/1983 states in his writ application that he met the District Magistrate and pointed out the illegalities arising out of the non-formation of wards of the fresh areas and denial of the right to vote of the residents of these areas. The matter was re-agitated pointing out that the added areas became part and parcel of the municipality and the residents had been on that basis subjected to certain liability, as mentioned in paragraph 16 of the writ petition in C.W.J.C. 3453/1983, but no steps were taken to rectify the error before 12.8.1983. On 7.8.1983 the petitioner Shri Dubey remained the sole candidate from the ward No. 7 and, according to his case, he became entitled to be declared elected as an uncontested candidate, Ramdeo Singh, the petitioner in C.W.J.C. 3453/1983, filed his writ application in this court on 9.8.1983. The case was placed for admission on 11.3.1983 before a Bench of which I was a member, and was postponed at the request of the respondents for filing an affidavit. On the 12th of August, 1983, the order, as contained in Annexure-1 (of C.W.J.C. 3622/1983),

was passed by the State Government stating that a decision had been taken for holding the election only after the re-constitution of the wards. The further steps in regard to the election were stayed. The petitioner Shri Dubey challenged this order by the writ application in C.W.J.C. 3622/1983 filed on 18.8.1983. He also became a caveator in the earlier writ case. The two cases were directed to be placed for admission together.

3. In view of the cases being related to election, attempt was made to dispose them of at the admission stage itself. However, the order sheet of the cases show that the State and its authority did not take prompt steps in instructing their counsel and the cases had to be adjourned from time to time. The State counsel could not supply relevant information sought by the Bench and on 13.9.1983 the applications were admitted. They were directed to be placed for hearing expeditiously but had to be adjourned more than once for publication of the relevant records. In May, 1984, the hearing was concluded. Before the judgment could be delivered, it was mentioned by Mr. Shyama Prasad Mukherjee, the learned counsel for Shri Dubey, that the authorities were contemplating to take expeditious steps for holding the election and so his application could become infructuous. The case was, therefore, placed under the heading "to be mentioned" for the State counsel to state the correct petition (sic). On 18.7.1984, Mr. Kamla Prasad Singh, the State counsel said that the authorities were seriously considering the question of holding the election without delay and a final decision in this regard would be taken soon. We directed that the State should file an affidavit giving the details of the decision and the steps proposed to be taken. Ultimately, on 13.11.1984, it appeared necessary to hear further arguments. As we were not sitting together and one of us was not available at Patna for a considerable period, the further hearing was delayed.

4. The final stand which has been taken by the State and its authorities is that a large number of voters residing the added areas cannot be denied the right to vote at the election and all the steps which was been taken in connection with the same have to be ignored. Steps for re-constitution of the wards of the Municipality after taking into account the additional areas have already been taken and now there are actually 32 wards (earlier there were only 16 wards which did not include the additional areas) in the Municipality and a fresh election has, therefore, to be held. The learned Advocate General who represented the State explained the delay by saying that the reorganisation of the wards took time as vast areas with large number of residents were included in the Municipality. It is further said that a fresh election would be held soon.

5. It cannot be denied that the concerned authorities have failed to take prompt steps in connection with the holding of the election. The term of the outgoing commissioners of the Municipality with Shri Dubey the petitioner as Chairman expired in the month of October, 1982 and fresh election should have been held within six months therefrom. As observed earlier, a notification was issued by the District Magistrate under rule 7 of the Rules for the election of the

Commissioners to be completed by the 15th of February, 1983, but the same was postponed on the grounds of revision of the voters' list and reorganisation of the wards. Thereafter a decision on the question of additional areas which was under consideration for several years was taken and a notice u/s 6 of the Act was issued on 9.4.1983. No grievance is being raised on behalf of any body including the present parties against these steps; Mr. Advocate General stressed on the fact that the resolution of the Municipality (annexure 12) passed under the Chairmanship of the petitioner Shri Dubey welcomed the steps and it was expressly resolved that a fresh election could be held only after reorganisation of the wards by including the added areas. It was argued that so long Shri Dubey continued as the Chairman in spite of expiry of his term, he was not keen to have early elections, and it was only after he ceased to be the Chairman on account of certain statutory legal provisions preventing the commissioners to continue in office after a certain period that he became restless for an immediate election to be held contrary to the Municipality's resolution in annexure 12 and the law.

6. The learned counsel appearing in support of the writ application in C.W.J.C. 3633/1983 contended that, On the issuance of the notification by the District Magistrate on 25.7.1983 calling upon the voters to elect the commissioners, the process of election commenced and the State Government has no power to stay the same. After the last date of filing of nomination papers, no amendment of the electoral roll is permissible in law and, therefore, any attempt on the part of the respondents to include additional voters after 3.8.1983 which was the last date for filing nomination papers is illegal. The electoral roll available at the time when the notification under rule 7 by the District Magistrate was issued is the only voters' list on which the election should be completed. Dealing with the jurisdiction to stay elections, the learned counsel urged that the authority in this regard vests in the District Magistrate and has to be exercised only in cases of emergency under rule 7(2), and no ground exists for exercise of such power in the present case. The power under rule 56 cannot be used by the State for this purpose, and, if the rule is interpreted otherwise, the provision shall be rendered ultra vires. The learned counsel also said that to (sic) the absence of a guideline in the Act for the purpose of exercise of power renders the rule 56 ultra vires.

7. In his final reply, Mr. Mukherjee further argued that the impugned acts are vitiated on account of bias and prejudice of the Minister incharge, Urban Development. He contended that initially he did not consider it necessary to raise the question of mala fides, and thought that the case could be decided on the basis of legal question alone. However, since Mr. Advocate General laid emphasis on the attitude of the petitioner, as mentioned above, Mr. Mukherjee considered it his duty to press the point relating to the Ministers mala fides. He relied on the statement made in one of the affidavits stating that Ramdeo Singh, the petitioner in C.W.J.C. 3453/1983, was a caste man of the minister and was a frustrated politician having lost the general election and the minister in order to help him directed stay of the process of election which had already started. Reliance was

placed on the petitioner's reply in C.W.J.C. 3622/1983.

8. Mr. Advocate General appearing on behalf of the State and its authorities placed the relevant sections of the Municipal Act and the rules of the Bihar Municipal Elections and Petitions Rules, 1953 and contended that, on the issuance of the notification dated 9.4.1983 u/s 6 of the Act, the additional areas became part of the Municipality. He is right. On behalf of Shri Dubey who filed a counter affidavit in C.W.J.C. 3453/1983 as a caveator, it was asserted that since, the notification u/s 6 of the Act was not published in the Bihar Gazette, the additional areas did not get included in the Municipality and the residents did not get any right of participation in the election or in the affairs of the Municipality. This statement was made in answer to an assertion in that writ application which was supported by a typed copy of the notification as annexure-2. In reply Ramdeo Singh, the petitioner in (C.W.J.C.) 3453/1983, re-asserted the fact and attached a copy of the Bihar Gazette dated the 12th April, 1983, containing the notification. The very foundation of the elaborate argument (as well as the wrong assertion of fact) made in paragraphs 4, 8, 9, 12 to 16 and 18 of Shri Dubey's counter affidavit, therefore, stands demolished. The position is that the added areas stand on the same footing as the other areas included in the Municipality from before, and the residents of these areas cannot now be treated differently. The Municipalities in Bihar established under the Act function as, to borrow the expression from the Entry No. 5 of list 2, schedule 7 of the Constitution local governments, and any attempt to exclude any person, otherwise eligible, from participation in the functioning of the local government must be struck down as discriminatory and ultra vires. It is true that the right to vote or to stand as a candidate in the election is not a civil right and is a creature of statute and must be subject to the limitation imposed by it, but this cannot sanction an arbitrary discrimination between groups of persons similarly situated.

9. Let us now consider the relevant provisions of the Act and the Rules in relation to municipal elections. Section 15 of the Act lays down the qualifications of the voters and section 17 deals with the qualifications of Commissioners. Section 18 states that the State Government may divide the municipality into wards to be represented by commissioners. The power to make rule to regulate elections is mentioned in section 19, and accordingly, the Bihar Municipal Election Petitions Rule, 1953, have been framed. Part II of the Rules contain the provisions in regard to the election and rule 3 states that the qualification for the registration of the electors shall be the same as those for the registration of electors of members to the Bihar Legislative Assembly. The main provisions of the rule 4 (excluding the proviso which is not relevant in the present case) are as follows:

4. Electoral rolls.-So much of the electoral roll or rolls of an Assembly constituency of the State of Bihar for the time being in force, as relates to the local areas comprised within the limits of the Municipality, shall be deemed to be the electoral roll for that municipality for the purpose of elections of Municipal commissioners and so much of the said electoral rolls as appertain to a particular

ward of the municipality shall be deemed to be the electoral roll of that ward.

Section 8 of the Act lays down that when any local area is included in a municipality by a notification published u/s 6, all the provisions of the Act and of the Rules etc. which immediately before such inclusion were in force throughout such municipality, shall be deemed to apply to such area, unless otherwise directed. It is not suggested that any order excluding the application of the Act or the Rules has been passed in this case and rule 4, therefore, must have full application not only to the original area but to be additional areas also. So the electoral roll of the Assembly constituency relating to the additional areas must be held to be included in the electoral roll for the Municipal election and the electors cannot be denied the right to participate in the election. According to section 17, a person shall not be qualified for election to be a commissioner of a municipality unless he is entitled to vote at the election. The exclusion of these voters is thus visited by the additional vice in this regard. The authorities, therefore, should have taken steps for formation of wards under section" 18 of the Act before proceeding to issue the notification under rule 7 calling upon the electors to choose the commissioners. Not having done so the process for election which was started in the present case on 25.7.1983 must be held to be vitiated in law-. If the State Government had not intervened in the matter this court would have been under a duty to pass appropriate orders directing holding of the elections in accordance with law. I, therefore, reject the case of the petitioner Shri Dubey that the impugned acts by the respondents should be quashed on the grounds of mala fides in law and, or facts.

10. Our attention was drawn to a decision by us in C.W.J.C. 776 of 1983. The relief claimed by the petitioner in that case was not contested on behalf of the respondents and was allowed without any decision on the interpretation of the Act and the Rules, and cannot, therefore, be treated as a precedent.

11. With respect to the argument about the power of State, reliance was placed by Mr. Advocate General on Rule 56 which is in the following terms:

56. State Government's power to issue directions. The State Government may issue from time to time such directions to the District Magistrate as it deems fit for the efficient conduct of the elections.

I do not find any merit in the contention of Mr. Mukherjee that rule 56 is ultra vires in absence of proper guidance. Sections 15 and 19 clearly lay down the purpose for which the rule can be framed and rule 56 vests in the State Government the authority to issue directions "for the efficient conduct of the elections". The government cannot issue any order which may frustrate the legitimate conduct of an election. If the power is exercised for a collateral purpose, the court may intervene. The rule 56, therefore, must be upheld as good law vesting authority in the State Government to act on proper occasions. In the present case, the process of election started by the District Magistrate's notification under rule 7 on 25.7.1983 was not in accordance with law and it was,

therefore, a very proper case where the State should have acted as it has done.

For the reasons mentioned above, the writ application must fail. Even assuming that the State Government be deemed to be incompetent to intervene in the matter, the High Court in its discretionary jurisdiction shall not interfere as that would lead to illegal consequences.

13. There is an intervention application in C.W.J.C. 3622/1983 by the caveator which in the circumstances has been rendered infructuous. The writ application in C.W.J.C. 3455/1983 has also become infructuous and should, therefore, be dismissed as such. The allegations made by the petitioner Shri Dubey against the Minister incharge, Urban Development Department of the State have no merit and must be rejected especially as the Minister has not been made party in the case and did not get any opportunity to meet them. In the result, both the writ applications are dismissed but in the circumstances without costs.

Binodanand Singh, J.

I agree.