

(1995) 03 PAT CK 0013
In the Patna High Court
Case No : C.W.J.C. No. 11233 of 1992

Jagada Nand Jha

APPELLANT

Vs

Mr. Laloo Prasad Yadav and Others

RESPONDENT

Date of Decision : 06-03-1995

Acts Referred:

Constitution of India, 1950 — Article 171, 171(5), 226, 227, 361(4)

Citation : (1995) 2 PLJR 114

Hon'ble Judges : S.K. Singh, J;B.L. Yadav, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The composition of the Legislative Council in this State is governed by the provisions of Article 171 of the Constitution of India. Under Article 171(5) the Governor made nominations of nine members of the Legislative Council, Respondents 7 to 15. These are the persons having special knowledge and practical experience in literature, science, art, co-operative movement and social service. Their names were published in the Gazette as well.

2. Petitioner has filed this present application in person under Articles 226 and 227 of the Constitution of India challenging the validity of the nomination of the Respondents 7 to 15 and its publication in the Gazette. The prayer for issuance of a writ of certiorari has been made, quashing the nomination of these nine members.

3. The nominations were made in 1991 and prior to that some nominations were made in 1989. The case of the Petitioner is that there were four vacancies of members of the Legislative Council in 1986 but they were not filled-up in that year.

4. This may be stated that earlier on a number of dates Petitioner in person, who is an advocate, has argued the matter and completed his arguments. It was, therefore, only the reply of the Respondents which was required and the

Petitioner was not to argue to anything. The case was listed on 23.2.95, a request for adjournment was made on behalf of the Petitioner, we adjourned the matter to 24.2.95 and directed that no further adjournment would be granted. This is how the matter was taken up on 24.2.95. Again a request was made on behalf of the Petitioner to grant adjournment but in view of Court order dt. 23.2.95, there was no justification to grant adjournment, particularly when Petitioner has concluded his arguments. We, therefore, heard the learned Additional Advocate General No. 2 on 24.2.95 and directed the matter for delivery of order to be listed on 6.3.95. This is how the arguments were concluded on that day.

5. The grievance of the Petitioner is that the names of these nominated members of the Legislative Council were not published in the Gazette. Hence their nominations were invalid.

6. The learned Additional Advocate General No. 2 urged that the publication in the Gazette was also made and he further added that in view of Article 361(4) of the Constitution of India there is immunity for the Governor of the State inasmuch as no civil proceeding can be instituted against the Governor during his tenure of office, in any court in respect of act done or purporting to be done by him in his personal capacity, whether before or after he entered his office as a Governor. He places reliance upon certain decided cases but it is not relevant to discuss.

7. Having heard counsel for the parties, the principal question for our consideration is as to whether the nomination of the Respondents was published in the Gazette and whether the Governor was immune from any action brought against him.

8. As regard the first point, suffice it to say, that the Gazette was shown to us and we had directed that a copy of the same may be kept on the record. In this view of the matter, it cannot be said that the nominations of the Respondents 7 to 15 were not published in the Gazette.

9. As regards the second point, no doubt Article 361(4) of the Constitution of India provides protection of the Governor and the President from any civil proceeding brought out against them. In the present case it was directly the act of the Governor in nominating the Respondents 7 to 15 as members of the Legislative Council. We do not find any error in the order of appointment made by the Governor.

10. In our opinion, considering the facts and circumstances of the case, the nomination made by the Governor under Article 171(5) of the Constitution of India does not suffer from any infirmity much less an apparent error on the face of the record.

In view of the premises, we do not find any merit in the present application and the same is dismissed but without any order as to costs.