

(2006) 12 PAT CK 0063
In the Patna High Court

Jageshwar Rai

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-12-2006

Acts Referred:

Citation : (2006) 12 PAT CK 0063

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the petitioner, learned Counsel for respondent-State and learned Counsel for private respondent No. 2.

2. This writ petition has been filed by the defendant in the election case for issuance of a writ of certiorari quashing order dated 09.10.2002, by which learned Munsif, Sadar, Sitamarhi, allowed the two amendment petitions filed by the election petitioner (respondent No. 2 in this Court), in Election Case No. 06 of 2001.

3. When this case was earlier taken up for hearing in the admission matter on 07.07.2004 before a learned Single Judge, learned Counsel for the petitioner placed reliance on an earlier decision of this Court in the case of Bambhola Rai v. State Election Commission, Bihar and Ors. reported in 2004 21 P.L.J.R. 400. in which it was held that the election petitions are to be governed by the Bihar Panchayat Raj Act and the Bihar Panchayat Election Rules and the detailed procedure of CPC will not apply to such cases, except with respect to the manner of hearing of the election petition, which does not include the amendment of the plaint/ pleadings/election petition It was also held in the said decision that the amendment cannot be held to be legal as the plaintiff's evidence had already been closed and six witnesses of defendant had been examined before filing of the amendment petition. In the said circumstances, the learned Single Judge, who was hearing this case, referred the matter to a Division Bench keeping in view the importance of the matter and also the fact that a decision on the question shall have hearing on a large number of election petitions.

4. In the instant case, Election Petition No. 06 of 2001 was filed by respondent No. 2 in June, 2001 challenging the election of the writ petitioner on the post of Mukhiya of Mahadeopatti Gram Panchayat within Parihar Police Station in the district of Sitamarhi. Thereafter, a written statement was filed by the writ petitioner in the said case and when both the parties completed their evidence, the same was closed and the date for arguments of the parties was fixed. But before the arguments could start, respondent No. 2 filed two petitions dated 11.02.2002 and 13.05.2002 (Annexures 3 and 4, respectively for amendment of her pleadings in the election petition, against which two rejoinders were filed by the writ petitioner in the said election petition on 14.2.2002 and 12.6.2002 (Annexures 5 and 6, respectively). Learned Counsel for both the parties were heard by the court below and by the impugned order dated 09.10.2002, it allowed the said petitions and directed the election petition to be amended accordingly.

5. Learned Counsel for the petitioner argued before this Court that there is no provision under the Bihar Panchayat Raj Act, 1993 (hereinafter referred to as "the Act of 1993 " for the sake of brevity) or under the Bihar Panchayat Election Rules, 1995 (hereinafter referred to as "the Rule of 1995" for the sake of brevity) for amendment of the election petition and hence the detailed procedure of the CPC (hereinafter referred to as "the Code" for the sake of brevity) will not apply to the instant case except with respect to the manner of hearing of the matter of the election petition as has been provided under Rule 111 of the said Rules, but the manner of hearing does not include the amendment of the plaint/pleading/election petition. It was also the claim of the petitioner that in the instant case the evidence of the parties had already been closed and the case was fixed for argument when the amendment petitions were filed, hence there was no occasion for the learned court below to allow the amendments at such a belated stage. On both the aforesaid counts learned Counsel for the petitioner submitted that in similar circumstances, an order allowing the amendment petition was quashed by a learned Single Judge in the case of Bambhola Rai (supra).

6. Learned Counsel appearing for respondent No. 2 opposed the contentions raised by learned Counsel for the petitioner and submitted that the provisions of the Code were applicable to election petitions and hence the provision of Order VI Rule 17 of the Code will also be applicable and the amendments sought, if found necessary for adjudication of the case, should be allowed.

7. After hearing learned Counsel for the parties, it is quite apparent that the entire case of the petitioner depends upon the decision of the learned Single Judge in the case of Bambhola Rai (supra). The said decision was with respect to the provisions of the Act of 1993 and the Rule of 1995, which were applicable at the time of passing of the said order. Under the same Act and Rule, the election in question in this case was held and the election petition has been filed and is pending. In the aforesaid decision, the learned Single Judge has relied upon

Rules 108, 110, 111 and 113 of the Rule of 1995. The same provisions have been verbatim included as Rules 106(i), 108, 109 and 111, respectively in the new Bihar Panchayat Election Rules of 2006. Now a new Bihar Panchayat Raj Act of 2006 has also come into force.

8. According to Rule 108 of the Rule of 1995 the election petition against any elected candidate may be filed under the provision of Section 140 of the Act of 1993 before the prescribed Court within thirty days of the declaration of the election result. This provision does not show as to what procedure has to be adopted for the conduct and adjudication of the election petition.

9. Rules 110 and 111 of the Rule of 1995 specifically provide that the plaintiff will file election petition in the manner prescribed under the Civil Procedure Code, 1908 and the competent court will hear the election petition in the manner as prescribed by the Code. These provisions clearly show that the filing and hearing of the election petition has to be done in accordance with the manner and procedure prescribed under the Code.

10. Furthermore, Rule 113 of the Rule of 1995 prescribes that for hearing of the election petition, the Indian Evidence Act, 1872 will apply. This provision is also similar to the provision of the Code, according to which the hearing of the election petition and the production and consideration of the evidence will be according to the provisions of the Indian Evidence Act, 1872.

11. In the said circumstances, it is quite apparent that although no provision for amendment of pleading is prescribed in the Act of 1993 or in the Rule of 1995 but it has been specifically provided that the filing and the hearing of the election petition has to be done in the manner prescribed in the Code, which includes the specific provision of amendment also. It is also to be noted that either in the Act of 1993 or in the Rule of 1995 no bar is at all provided either to the application of the Code in any matter whatsoever or to the amendment of the pleadings in accordance thereof.

12. So far the reliance of the learned Single Judge in case of Bambhola Rai (supra), on Rule 75 of Bihar Panchayat Election Rules, 1959 is concerned, it is quite apparent that Sub-rule (1) of the said Rule specifically provided that the election petition had to be filed in the manner as laid down in the Civil Procedure Code, 1908, whereas, sub-rule 2(b) prescribed that the Election Tribunal may allow the particulars included in the list to be amended or order such terms as to costs and allow to be amended or order such better particulars in regard to any matter referred to therein to be furnished as may, in its opinion, be necessary for the purpose of ensuring a fair and effectual trial of the petition provided that the Election Tribunal shall not by means of any such amendment allow particulars to be furnished of any corrupt or illegal practice other than a corrupt or illegal practice set forth in the list furnished by the petitioner.

13. From a bare reading of the aforesaid sub-rule 2(b) of Rule 75 of the Rule of 1959, it is quite apparent that it was self contradictory in nature. However, in any

view of the matter, the said Rule was made under the provision of Section 80 of the Bihar Panchayat Raj Act, 1947. The said Act of 1947 was repealed by the Bihar Panchayat Raj Act, 1993, under the provision of Section 121 of which Bihar Panchayat Election Rules, 1995, was framed in which no such provision as Section 75(b) of the Rule of 1959 was included. Hence, after coming into force of the said Rule of 1995, the provisions of Bihar Panchayat Election Rules, 1959 became inapplicable and lost its force. Thereafter, the Rule of 2006 and the Act of 2006 came into force and even in that Rule and Act also, no such provision has been included. In the said facts and circumstances, provision of the Bihar Panchayat Election Rules, 1959, which lost its force much earlier, cannot be legally made applicable to the elections and cases under the Act of 1993 and Rule of 1995. Even when provision of the said Rules of 1959, was applicable, a Full Bench of this Court in the case of Saratchandra Mandal Vs. Phani Bhusan Singh and Others, held that the Tribunal has power to amend defective verification, but the election petitioner cannot be given an opportunity for removal of major and fatal defects. Hence on both the counts reliance placed on the said decision was not at all proper and justified .

14. Thus in the aforesaid facts and circumstances and in view of the above mentioned position in law it is held that not only the principle, but even the procedures, including the provision of amendment, prescribed in the code will be applicable in such election matters, except those which are specifically barred by any provision of the Act or the Rule under which the elections were held.

15. Through the first amendment petition, election petitioner (respondent No. 2) wanted to add names of certain persons, who were alleged to have cast bogus votes after receiving illegal gratification from the writ petitioner and also names of those persons, who were not present at the time of voting but bogus votes were cast in their names. By the second amendment petition, the election petitioner wanted to add details of documentary proof of complaint made by her to the Election Officer and others, who are in possession of said papers. The learned court below has considered the matter in detail and it found that the amendment proposed in the second amendment petition was formal in nature whereas the amendment proposed in the first amendment petition was only elaboration of earlier pleadings already present in the election petition as in paragraph 3 of the election petition, it was already stated that 609 votes in favour of respondent No. 2 (election petitioner) and 683 votes in favour of the writ petitioner (defendant No. 1 in the court below) have been declared valid votes, which was not true, whereas, in paragraph No. 4 of the election petition, it was already stated that the writ petitioner distributed money among the minors and youths of bad character and the bogus votes were cast in the name of such persons also, who were working outside the State on that date and the associates of the writ petitioner put forged signatures and thumb impressions on the counter-foils of the ballot papers. Since specific pleadings were already present in the election petition, the proposed amendment would neither change the nature of the case nor was the otherside going to be prejudiced in any

manner.

16. In the said circumstances, the learned court below rightly found the proposed amendments to be necessary for determination of real controversy between the parties. Furthermore, the court below is also a court of equity and if it finds that the nature of the case is not going to be changed nor is the otherside going to be prejudiced and the amendments are necessary for determination of real controversy between the parties, there is no occasion for interfering with the said finding, especially when it is based on legal, valid and proper consideration of facts and law applicable to the case.

17. So far as the question of delay in filing of the amendment petitions is concerned, it is clear that the amendment petitions were filed when the evidence of both the parties were closed, but it is an undisputed fact that the said amendment petitions were filed before the start of the arguments of the case and also before coming into force of the amendment of 1999 and 2002 in the Code. Before the said amendment in the Code, Order VI Rule 17 provided that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. By the CPC (Amendment) Act 1999, the said provision of Order VI Rule 17 was omitted, whereas, by the CPC (Amendment) Act, 2002, the said provision of Order VI Rule 17 was substituted as follows:

17. Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

As both the amendments were brought into force from 1st July, 2002 vide notification No. S.O.603(E) and notification No. 604(E) both dated 06.06.2002, the said amended provision was not applicable to any case prior to 1st July, 2002.

18. It is not in dispute that the election petition as well as both the amendment petitions were filed much before coming into force of the aforesaid amended provision of Order VI Rule 17 of the Code. Hence, the amended provisions of Order VI Rule 17 of the Code will not be applicable to the instant case, whereas, the proposed amendments had to be considered according to the original provision of Order VI Rule 17 of the Code, which read as follows:

17. Amendment of pleadings.- The Court may at any stage of the proceedings

allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

19. The Law in this regard is quite clear, consistent and well settled that the jurisdiction to allow or not to allow amendments is discretionary in nature and hence it has to be exercised in a judicious evaluation of facts and circumstances in which the amendments are sought. If the granting of the amendments really subserves the ultimate cause of justice, it has to be allowed. This view finds support from the decision of the Hon''ble Apex Court in case of Pankaja and Another Vs. Yellappa (D) by Lrs. and Others, . Furthermore, in another case of Prem Bakshi and Ors. v. Dharam Dev and Ors. reported in 2002(2) PLJR (SC) 187 the Hon''ble Supreme Court has held as follows:

It is almost inconceivable how mere amendments of pleadings could possibly cause failure of justice or irreparable injury to any party. Perhaps the converse is possible, i.e. refusal to permit the amendments sought for could in certain situations result in miscarriage of justice. After all amendments of the pleadings would not amount to decisions on the issue involved. They only would serve advance notice to the other side as to the plea which a party might take up. Hence we cannot envisage a situation where amendment of pleadings, whatever be the nature of such amendment would even remotely cause failure of justice or irreparable injury to any party.

20. Hence after judicious evaluation of the facts and circumstances as well as the provisions of law and case laws, it is quite apparent that the amendments sought really subserve the ultimate cause of justice being necessary for determining the real question in controversy between the parties as has been correctly found by the learned court below, Furthermore if the defendant (writ petitioner) wants ,to object to the amended pleadings, he has the right of rebuttal by way of filing additional written statement confined to those amended pleadings, as even the arguments have not been started in the said case,

21. No doubt this is an election case and in such matters unnecessary delay has to be avoided, nut when the election petitioner himself files amendment, petitions, prolonging the proceeding and practically making his own election petition infructuous (due to subsequent election for the post concerned in 2006), the matter would be different.

22. In view of the abovementioned legal positions with respect to the applicability of the provisions of the Code, including the provision for amendment, to election petitions filed under the Act and also with respect to the effect of stage at which amendment petition is filed, the law laid down in the aforesaid decision of the learned Single Judge in the case of Bambhola Rai (supra) is hereby held to be not a good law and is, accordingly, overruled.

23. In the result, we do not see any illegality or even irregularity in the

impugned order of the learned court below and, accordingly, this writ petition is dismissed.