
(1990) 06 PAT CK 0001
In the Patna High Court
Case No : C.W.J.C. No. 6477 of 1988

Jamuna Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-06-1990

Acts Referred:

Citation : (1990) 38 BLJR 1182 : (1990) 2 PLJR 663

Hon'ble Judges : U.P. Singh, J; Satya Brata Sanyal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satya Brata Sanyal, J.—In this writ petition the petitioner seeks quashing of the orders dated 1-8-1988 and 18-8-1988 contained in Annexures 5 and 6 respectively passed by the Chairman, Bihar State Agricultural Marketing Board (hereinafter referred to as the "Board") setting aside the election of the petitioner as Vice Chairman of the Agricultural Produce Market Samiti, Patna City, purported exercise of the power conferred under Rule 49(xi) of the Bihar Agricultural Produce Markets Rules, 1975 (hereinafter referred to as "the Rules").

2. The submission of the learned Counsel for the petitioner is ; the Chairman of the Board illegally entertained the dispute, which was raised after the declaration and publication of the result under Form XVI in accordance with Rule 49(ix) of the Rules. Whereas the contention of the respondent Nos. 4 and 5 is meaningful adjudication take place only after declaration of election result.

3. The Patna City Market Committee comprises 12 elected members, 3 nominated members and 2 ex-officio members with the Subdivisional Officer, Patna City, as the Chairman. The Assistant Director, Agricultural Marketing Board, Patna Circle, was authorised to call the first meeting of the newly constituted Committee to elect its Vice Chairman and pursuant thereto notices were issued to all the members intimating the proposed meeting and the election of Vice-Chairman of the Board on 30-7-1988, as would be apparent from Annexure 2.

On 30-7-1988 the meeting was held as also the election which was participated by 16 members present. There were two contestants for the post of Vice Chairman, namely, the petitioner and respondent No. 5. It appears that out of 16 polled ballots, 15 valid votes were found and after counting the ballots the Returning Officer declared the petitioner elected having secured 8 valid votes. The result was declared and published as required under Rule 49(ix).

4. According to the petitioner, after the result of the election was duly declared and published, one hour thereafter respondent No. 5 filed an objection disputing the election, which has been marked as Annexure 7. This objection petition has also been filed on behalf of respondent No. 3, Assistant Director-cum-Returning Officer marking it as Annexure A. From the endorsement of the Returning Officer on the objection petition, it appears that it was filed after one hour of the declaration of the result. Respondent No. 5, however, does not accept this position.

5. On 1-8-1988 an appeal was filed by respondent No. 5 before the Chairman (respondent No. 2) enclosing the declaration notice under Form XVI with a prayer to set aside the election and to stay the operation of the declaration of result. The Chairman by his order dated 18-8-1988 (Annexure-6) held that one ballot paper was wrongly rejected, which was cast in favour of respondent No. 5 and directed to hold a lot in view of equality of votes. Previous to it while admitting the said appeal bearing No. 1/88 U/R 49(ii) of the Chairman granted stay of the election result and transferred the case to the Managing Director of disposal, but subsequently the Chairman recalled the case to himself and decided the matter, as referred to above.

6. The dispute rests on the correct interpretation of Rule 49(xi) of the Rules, which reads as follows:

If during the course of a Vice-Chairman any dispute arises as to correctness or otherwise of the decision given or procedure followed by the Director or the officer, authorised by the Director, it shall be referred to the Chairman of the Board or any other person appointed by the Board and the decision thereon shall be final and conclusive.

7. It may be stated here that this writ petition was filed on 29-9-1988 by Jamuna Prasad Singh (petitioner) who was declared elected against the impugned order of the Chairman (Annexure-6) impleading respondent No. 5. Respondent No. 5 on his turn filed on 10-3-1989 another writ petition (C.W.J.C. No. 290 of 1989) for quashing the declaration of the result under Form XVI by the Returning Officer and commanding the respondent-Assistant Director to refer the dispute to the Chairman with respect to the rejection of a ballot paper. That writ petition, however, was withdrawn by respondent No. 5 on 13-9-1989.

8. According to Mr. K.P. Verma, learned senior counsel appearing on behalf of the petitioner, reference to the Chairman is permissible only when a dispute is raised during the course of election of Vice-Chairman and not otherwise. In the instant

case, the dispute having been raised one hour after the result was declared under Rule 4V(xi) of the Rules, the Chairman acted without jurisdiction in setting aside the election.

9. Learned counsel appearing on behalf of respondent No. 5, on the contrary, contended that respondent No. 5 could raise the dispute as to correctness or otherwise of the decision given or procedure followed after the declaration of the result as well, provided the decision and/or procedure related to "during the course of election". It was also contended that respondent No. 5 had raised an oral objection during the course of election, which was followed by a written objection after the declaration of result and, therefore, the Chairman was validly empowered to deal with the matter.

10. Mr. K.D. Chatterjee appearing on behalf of respondent No. 4 (the Chairman) submitted that the Court should refrain from giving literal meaning to Rule 49(xi) of the Rules, as that would defeat the object of the Statute and may result in total futility. The Rule must receive a meaningful interpretation and for this purpose the structure of the sentence should be modified. According to Mr. Chatterjee, Rule 49(xi) of the Rules should be read *utres magts valeat quam pereat* with slight alteration in the syntax as hereunder:

If any dispute arises as to the correctness of a decision given or procedure followed by the Director or the officer, authorised by the Director during the course of election of a Vice-Chairman, it shall be referred to the Chairman of the Board or any other person appointed by the Board and the decision thereon shall be final and conclusive.

According to the learned Counsel, if the Rule is read in the aforesaid manner, the Chairman will retain his adjudicatory power and take cognizance of the dispute ever after the presiding officer announces the result. Any other construction will render the adjudicatory power under Rule 49(xi) nugatory.

11. In Part II of the, Rules elaborate scheme has been provided, for election of the members to the Market Committee from various constituencies. Rule 43 of the Rules provides for filing of election petition within fifteen days from the date of publication of the result, together with deposit of two hundred rupees as security for costs to the Munsif within whose territorial jurisdiction this market yard of the market area concerned is situated for the determination of the validity of the election. The Court of Munsif is empowered to deal with the matter and decide the dispute by adopting the procedure of a trial of suits and grant relief by declaring the election of all or any of the returned candidate void and/or declaring the election petitioner or any other candidate to have been duly elected. From the decision of the Munsif an appeal has also been provided under Rule 44 of the Rules. But, the provision for adjudication of election petition as envisaged under Rule 43 is not applicable to the case of election of Vice-Chairman.

12. The electoral roll of the Vice-Chairman is confined only to the elected

members who amongst themselves have to select a Vice-Chairman of the Committee. There is no provision for filing of an election petition as such. Rule 49(xi) on its literal construction means that the dispute has to be raised during the course of election. The words if during the course of election of a Vice-Chairman any dispute arises "clearly indicate raising of an objection during the course of election- A dispute cannot arise without an objection being filed. Once such objection is filed during the course of election with respect to any decision taken by the election officer or in following any procedure by the latter, the said objection shall be referred to the Chairman for his decision. The decision of the Chairman thereon will be final and conclusive. It is a summary procedure for ventilation of grievance before the election result is notified in Form XVI and publication thereof. I do not find the literal meaning of Rule 49(xi) takes away the efficacy of the provision and/or fails to achieve the object.

13. It is clear from the scheme of the statute that election of Vice-chairman is not subjected to any election petition as is in other cases of election. The Vice-Chairman is a necessary office-bearer of the Committee and, therefore, his election has not been subjected to a long drawn procedure for the proper functioning of the Committee. It is true, if the literal meaning of Rule 49(xi) leads to illogical conclusion or in the context indicates contrary legislative intent, the courts will not be loath in giving flexibility to the meaning and thereby hit the target intended by the law maker, I am aware of the Supreme Court that "a construction leading to failure to achieve the object must be avoided" Commissioner of Income Tax, Delhi Vs. S. Teja Singh, . It is also true that where the language of a statute leads to a manifest contradiction of the apparent purpose or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put by the Court which modifies the meaning of the words and even the structure of the sentence Tirath Singh Vs. Bachittar Singh and Others, Mr. Chatterjee in his usual persuasive manner tried to impress upon us that any strict literal construction will lead to anomaly and result in many absurdity which was not intended. Rule 49(ix), according to Mr. Chatterjee will be meaningful if an adjudication takes place after the result of election is declared as that would effectuate a particular object and not negative which it sought to achieve Firm Amar Nath Basheshar Dass Vs. Tek Chand, ..14. As stated earlier, I do not agree with Mr. Chatterjee that literal meaning to the language used by the legislature under Rule 49(xi) gives rise to any anomaly or ambiguity or make it irrelevant in achieving the object of the scheme of Rule 49(xi). The Rule has purposely excluded filing of election, petition, but has provided a forum for ventilating grievance during the course of election of Vice-Chairman. The electoral roll of the Vice-Chairman is comprised of a very small number of elected members, who are qualified to be the members of the Committee. The entire process is carried out in presence of the members as is evident from Rule 49(vii). Therefore, there is enough scope to raise objection as to the correctness or otherwise of the decision taken or procedure followed during the course of election The participating members are required to note in

advance pre-election irregularity if any. A candidate who is proposed and seconded is required to be read out by the President in the meeting itself. If there are more than one nomination, the votes of the members present in the meeting shall be taken. The voters will be supplied with voting papers in Form XV on which the names of all the candidates for the office of Vice-Chairman will be written and the voting papers shall be initialed on the reverse by the president. The voter is thereafter required to mark the name of the candidate and deposit it in the ballot box, whereafter the ballot box will be opened and the votes will be counted in presence of the members and declare the member who secures largest number of votes to have been elected as Vice-Chairman. In the event of any equality of votes between two or more candidates the Presidents is authorised to draw lot in the presence of the members and the member whose name is first drawn shall be declared to have been elected. Any voting papers which does not contain the mark of voter or on which the mark is placed against more than one name or reverse of which does not contain the initial of the President shall be invalid. Thereafter the President shall cause a notice under Form XVI declaring the name of the person declared to have been elected as Vice-Chairman and affix the result in some conspicuous place in the office of the Market Committee. Rule 49 is self-contained and does not envisage filing of election petition as commonly understood and/or provided in the cases of election of members of the Committee. Every action is taken in presence of the small number of members in a meeting to select Vice-Chairman of the Committee. The selection of Vice-Chairman has been made simple under the scheme. Rule 49 has purposely excluded adjudication of election disputes beyond what has been provided under Rule 49(xi). It envisages that all objections have to be taken during the course of election and not thereafter.

15. I do not think that the provision fails to achieve the object of the Statute, or leads to any anomaly as suggested by Mr. Chatterjee. I am reminded of the words of Lord Cransworth that "the great cardinal rule is to adhere as closely as possible to the literal meaning of the words. When once you depart from that canon of construction you are launched into a sea of difficulties which it is difficult to fathom" *Gundij v. Pinnigar* (1852) 1 DGM 502. If the Court is to reconstruct the rule in the manner suggested by Mr. Chatterjee in paragraph No. 10, the first difficulty that would arise is to provide limitation for filing of election petition after the declaration of the result. The second difficulty would be the mode and manner of disposal of the election petition so on and so forth. The Court certainly cannot supply period of limitation for filing of an election petition. The exclusion of Rule 43 in relation to the election of Vice-Chairman is also meaningful and is indicative of legislative intent and object. The rule in my opinion, has "the force and life of the intention of the legislature and does not require to iron out the creases. See *Seaford Court Estates v. Asher* (1949) 2 All ER 155- The statutory provision, in my opinion, is unambiguous and the legislative intent is clear. Therefore, we need not call into aid the other rules of construction of Statutes. I am, therefore, of the opinion that objection to the

election of Vice-Chairman must be filed and raised during the course of election of Vice-chairman and not after the declaration of result. The submission to the contrary is rejected.

16. Now, I will deal with the alternative submission of Mr. Katriar, learned Counsel appearing on behalf of respondent No. 5 that during the course of election objection was raised to the rejection of valid vote in favour of his candidate. Learned counsel for the petitioner referred to paragraph No. 17 of the writ petition to the effect that no dispute was ever raised during the course of election but the dispute was raised only after the petitioner was declared elected and the declaration was notified in Form XVI. In support of the said submission the petitioner has annexed the appeal filed u/s 49(xi) before the Chairman by respondent No. 5, which has been marked as Annexure-4, as also a copy of the protest petition filed by respondent No. 5 before the Election Officer, which has been marked as Annexure-7. From a perusal of the grounds of appeal it transpires that at the time of voting all the members were present. It has been further stated in the said petition that respondent No. 2 declared opposite party No. 3 (petitioner) to have won the election without valid reason and thereafter the petitioner filed an objection. From a perusal of the protest petition filed before the Election Officer (Annexure-7) it appears that the said protest petition was filed one hour after the declaration of the result, as per the endorsement of the election officer. Respondent No. 3, Assistant Director, who conducted the election of Vice-Chairman has also filed an affidavit. He has stated in paragraph Nos. 3 and 4 of his affidavit that "an hour after the declaration of result in Form XVI, respondent No. 5 came to the deponent and asked him to receive an application. The deponent received the application and handed over the copy of the application to respondent No. 5 after endorsing it. The deponent recorded the time of filing of the protest petition at the top of the said petition and kept it on the record. The said petition has been annexed and marked Annexure A/3 to the counter-affidavit of respondent No. 3. Respondent No. 5 in some of his supplementary affidavits now states that he raised an oral objection also at the time of rejection of a valid vote, but no such statement was made in his earliest application, namely, the protest petition filed before the Election Officer and/or the grounds of appeal filed before the Chairman resulting in the impugned order.

17. I am, therefore, satisfied on the materials made available before us that the protest petition was filed one hour after the election was declared. There is no mention of any oral objection during the course of election in the protest petition. Further, this is a disputed question of fact which cannot go into in our writ jurisdiction.

18. In the result, the writ petition is allowed. The orders contained in Annexures 5 and 6 are quashed. The result declared under Form XVI vide Annexure-3 and the communication thereof (Annexure-2) are restored, declaring the petitioner as the Vice-Chairman of the Committee. There will be no order as to costs.

U.P. Singh, J.

19. I agree.