

(1972) 01 PAT CK 0022

In the Patna High Court

Case No : Civil Writ Jur. Case No. 944 of 1971

Kailash Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-01-1972

Acts Referred:

Bihar Panchayat Election Rules, 1959 — Rule 31, 90

Citation : AIR 1972 Patna 290

Hon'ble Judges : Kanhaiyaji, J

Bench : Single Bench

Advocate : Birendra Prasad Sinha, for the Appellant; T.K. Jha, Standing Counsel No. 2, Nagendra Prasad and Umesh Prasad Singh, for the Respondent

Final Decision : Dismissed

Judgement

Kanhaiyaji, J.—This application under Articles 226 and 227 of the Constitution of India is for a declaration that the election of respondents Nos. 6 to 9 to the various offices of the Panapur Gram Panchayat held on 11th June, 1971, was void.

2. The facts leading to this application are these. There is a Gram Panchayat constituted under the Provisions of the Bihar Panchayat Raj Act, 1947 within the jurisdiction of Minapur Assembly constituency and the petitioner is a voter of the said Gram Panchayat. The said Gram Panchayat consists of villages Panapur, Piprahi and Kharika. On 1st November, 1969, the Block Development Officer-cum-Election Officer, Minapur, respondent No. 4, published an election programme under Rule 17 and a voters' list under Rule 13 of the Bihar Panchayat Election Rules, 1959 thereafter called "the Rules") and invited nomination papers for the various offices of Panapur Gram Panchayat on the 10th November, 1969. A copy of the said programme is annexure "1" to this writ application. The petitioner along with others filed nomination papers for the office of Mukhiya and his nomination paper was accepted. Respondents Nos. 10 to 13 filed their nomination papers for the office of Panch and respondents Nos. 14 and 15 for the office of Executive Committee and there being no contest, respondents Nos.

10 to 15 were declared elected uncontested to the offices of Panch and Executive Committee respectively under Rule 26 of the Rules on 28th November, 1969. As such, contest remained for the office of Mukhiya, Sarpanch and the remaining members of the Executive Committee from wards 2 and 3. The poll was to be held on 3rd January, 1970. But in the meantime, the State Government for the reason stated in the order, postponed the holding of election indefinitely. In this connection, it may be mentioned that a booth list had been prepared and duly published for holding the said election a copy of which is annexure "3" to this Writ application. According to that list four polling stations were fixed and a total number of voters who were to cast their votes at all the polling stations was 4591 out of which 289 voters were shown as deleted and the remaining 4302 voters were to cast their votes.

3. A fresh election programme was published on 20th April, 1971 along with a voters' list of the Gram Panchayat. A copy of the said programme is annexure "4" to this writ application. According to this voters' list out of 4943 voters, 413 were shown as dead and the remaining 4530 were to cast their votes. On 30th April, 1971 nominations were received for the offices of Mukhiya, Sarpanch and two members of the Executive Committee. Several persons filed their nomination papers including respondents Nos. 6 to 9. Finally on 11th June, 1971 the poll was held and respondent No. 6 was declared elected as Mukhiya, respondent No. 7 as Sarpanch and respondents Nos. 8 and 9 as members of the Executive Committee. It is stated in the writ application that on 15th May, 1971 the Election Officer, respondent No. 5 prepared a list of polling stations and on the same date it was sent to the sub-divisional officer, respondent No. 3, for approval. On 20th May, 1971, the said list was approved by the District Panchayat Officer, respondent No. 16. The list of polling stations was approved by the District Magistrate on 22nd May, 1971. A copy of the list of polling stations is annexure "5" to this writ application. According to this list (annexure "5") six polling stations were created and the number of voters who were to cast their votes at the different polling stations was 5306 whereas the "number of voters shown in the voters' list as published on 20th April, 1971 was only 4943. Obviously, there was a duplication of voters which was corrected before the poll took place on 11th June, 1971.

4. The main argument advanced on behalf of the petitioner is that the election of respondents Nos. 6 to 9 should have been held on the basis of the Electoral Roll published as on 1st November, 1969 which contained the names of 4591 voters. My attention was drawn to Rule 17 which provides that on the eve of each general election or bye-election, the Election Officer shall cause to be published in the office of the Panchayat as also in the office of the Block Development Officer, Anchal Adhikari, Circle Officer, Project Executive Officer of the area, an election programme giving the time table of the different stages of the election including the date and hour of poll. It was urged that the election begins with the publication of the programme and ends with the declaration of the result of the polls. If it is held that the election held on 11th June, 1971 was in continuation of

the election which began on 1st November, 1969 then, obviously there was illegality in adopting the voters' list of 1971. The question that arises for consideration is as to what is the effect of postponement by the State Government under Rule 91. Rule 90 envisages that in case election of Panchayat is not held for some reason or the other within a period of six months from the date of filing of nomination papers, the election shall be held after calling for fresh nomination papers. In this case, I have already stated that the State Government postponed the election for some reason for more than a year. Therefore, according to Rule 90, the election could have been held only after calling for fresh nomination papers.

5. Rule 18 provides that the Election Officer shall, in the election programme published under Rule 17, appoint the date, place and hours during which the nomination papers in Form A of the candidates for election as the Mukhiya or the member of the Executive Committee or the Sarpanch or Panch shall be presented to him. Therefore, before calling for fresh nomination papers, programme has to be published under Rule 17. In this case the election programme (annexure "4") was published on 20th April, 1971 under Rule 17. It provided publication of voters' list under Rule 13 (1) from 20th April, 1971 to 30th April, 1971. At this stage a question arises as to which voters' list whether the old or the new should have been kept hung for the period between the date of publication of the election programme under Rule 16 and the date of receiving nomination papers under Rule 18. Rule 5 provides that 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 areas comprised within the local limits of the jurisdiction of a Panchayat, shall be deemed to be the voters' list for that Panchayat for the purpose of election of Mukhiya and Sarpanch etc. It has been held in many cases of this Court that that must be the voters' list as it stands on the date when the election programme was published. It is so, among others, for the obvious reason that the candidates must know who are the voters whom they have to approach for casting their votes which will enable them to assess the strength of their supporters in the Gram Panchayat before they could offer themselves as candidates (See the case of Parmeshwar Pasi v. Block Development Officer Sarmera 1967 BLJR 24. In my opinion, the construction of Rule 90 leads to the conclusion that calling for fresh nomination papers envisages a fresh election. If this is appreciated then it must be held that the procedure adopted for holding; the election of respondents Nos. 6 to 9 was neither illegal nor void.

6. Next I will deal with the other part of the argument as to whether the election could be divided into two parts. In this connection, it may be noticed that there is nothing in the election programme (annexure "4") to show that nominations had been called only for limited number of offices. Secondly, in the situation like this, no bar has been imposed for holding fresh election either by the Bihar Panchayat Raj Act or the Rules. The facts of the case of Bishwanath Prasad and Others Vs. Ramji Prasad Sinha and Others, on which reliance has been placed on behalf of the petitioner were entirely different. In that case, a revised roll

published on 9th May, 1960 was wrongly and illegally used at the time of poll and that vitiated the entire election. It was held in that case that people have to exercise their rights of franchise on the basis of the electoral roll and therefore, if the roll itself is not a proper one, the very foundation of election is shaky and infirm and therefore, the election conducted on the basis of such a roll cannot stand. In the instant case, in my opinion, the elections of respondents Nos. 6 to 9 have been validly held according to the election programme published under the provisions of the Rules. I may point out that the decision of this writ application will not affect the election of respondents Nos. 10 to 15 whose uncontested election has not been challenged by the petitioner in this writ application.

7. It was next argued that the list of four polling stations published under the old election programme duly approved by the District Magistrate, could not have been changed or altered for holding a part of the remaining election. Rule 31 provides that the Election Officer shall select one or more polling stations as may be considered necessary by him, for each panchayat and shall obtain the approval of the District Magistrate thereon. Once approved, the polling stations shall not be changed. The Election Officer shall publish the list of the polling stations on his own notice-board as also on that of the panchayat at least two weeks before the date of actual poll. According to this Rule, the list of the polling booths was to be published two weeks before the date of the actual poll which took place on 11th. June, 1971. For this election a list of six booths was prepared by the Election Officer and approved by the District Magistrate. There is no prohibition in Rule 31 that the list of the polling booths could not have been changed by the Election Officer with the approval of the District Magistrate before two weeks of the date of actual poll. If the number of the booths has been increased and the list has been prepared and published under Rule 31, there has been no irregularity or illegality either in preparation or in publication of the same.

8. Lastly, it was argued that the voters' list was corrected on the day of the poll. It appears in this connection that one of the candidates for Sarpanch filed Title Suit No. 82 of 1971 on 4th June, 1971 in the court of Munsif I, Muzaffarpur, praying for injunction restraining the Election Officer from holding the election on the basis of such list of polling stations as annexure "5" to this writ application. The defendants appeared in the suit in response to a notice and filed their show cause and admitted the mistake regarding duplication of voters' name and undertook to correct those mistakes. In pursuance to that, the mistake was corrected by the authorities concerned. The correction of such clerical mistake cannot be said to be illegal. It has not deprived any voter of his right of franchise nor has it affected in any way, the result of the election.

9. For the reasons stated above, I find no merit in this application. The application, therefore, fails and is dismissed but, in the circumstances, there will be no order as to costs.