

(1963) 09 PAT CK 0008

In the Patna High Court

Case No : Misc. Judl. Cases No's. 467 and 593 of 1963

Krishna Nandan Sahay and Another

APPELLANT

Vs

Ravaneshwar Misra and Others

RESPONDENT

Date of Decision : 25-09-1963

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1964 Patna 51

Hon'ble Judges : V. Ramaswami, C.J;N.L. Untwalia, J

Bench : Division Bench

Advocate : Basudeva Prasad and K.N. Keshava, in M.J.C. No. 467 of 1963, Government, Government Pleader and A.B. Jha and Nakuleshwar Prasad, in M.J.C. No. 593 of 1963, for the Appellant; Govt. Advocate, Govt. Pleader and A.B. Jha and Nakuleshwar Prasad in M.J.C. No. 467 of 1963, Basudeva Prasad and K.N. Keshava, in M.J.C. No. 593 of 1963, for the Respondent

Judgement

1. In response to a letter of the Registrar, Bihar University, asking the Bihar Legislative Council to elect a representative from amongst the members of the Bihar Legislative Council to the Senate of the Bihar university in accordance with Section 17 of the Bihar University Act, 1960 (Bihar Act 14 of 1960), the Chairman of the Bihar Legislative Council issued direction for holding the election on the 30th March, 1963. The Secretary of the Bihar Legislative Council accordingly wrote the following letter to all members of the Legislative Council on the 21st March, 1963.

"The Chairman, Bihar Legislative Council has been pleased to approve the following time-table for the said election:

Election time-table

1. Filing of nomination paper ... Monday, the 1st April, 1963 (up to 4 p. m.)

2.

Scrutiny and withdrawal, if necessary (in the office of the Re-turning Officer)

...

Wednesday, the 3rd April, 1963 (at 2 p. m. and, 4. p. m. respectively.)

3. Poll, if necessary. ...

Thursday, the 4th April, 1963, (After the termination of business of the Council or at 4 p.m. (whichever be earlier.)

A form of nomination paper is enclosed. Each nomination must be subscribed by two members of the Council -- one as proposer and the other as seconder--and must be either sign-ed by the candidate himself as assenting to the nomination or accompanied by his consent in writing.

Secretary to the Bihar Legislative Council is the Returning Officer for the purpose of the said election."

On the 25th March, 1963, the Secretary of the Bihar Legislative Council wrote the following letter with regard to the revised programme of election:

"In supersession of this Secretariat letter No. 1851-L.C., dated 21st March, 1963, on the above mentioned subject the Chairman, Bihar Legislative Council has been pleased to fix the following revised time-table for the said election of one representative of the Council to fill up the vacancy caused by the resignation of Shri L.N. Jha, Deputy Ministers:

Revised Election Time-table

1. Filing of nomination papers. ... Thursday, the 28th March, 1963 (up to 4 p. m.)

2.

Scrutiny and withdrawal if necessary (in the office of the Returning Officer).

...

Friday, the 29th March, 1963 (at 2 p.m. & 4 p. m. respectively.)

3. Poll, if necessary. ...

Saturday, the 30th March, 1963 (after the termination of business of the Council or at 4 p.m whichever be earlier).

A form of nomination paper is enclosed. Each nomination must be subscribed by two members of the Council -- one as proposer and the other as seconder-- and must be either signed by the candidate himself as assenting to the nomination or accompanied by his consent in writing.

Secretary to the Bihar Legislative Council is the Return-ing Officer for the purpose of the said election."

Shri Krishna Nandan Sahay and Shri Lakshmi Kant Jha were the nominated candidates for election to the Senate of the Bihar University from the Bihar

Council Constituency. The polling was held on the 30th March, 1963, in the premises of the Bihar Legislative Council under the supervision of Shri Enayetur Rahman, Secretary of the Bihar Legislative Council, who was appointed as the Returning Officer for the election. The ballot papers were scrutinised thereafter and ultimately on the 25th April, 1963, the Returning Officer decided that two ballot papers should be rejected, and out of the remaining number of votes Shri Krishna Nandan Sahay and Shri Lakshmi Kant Jha had polled 38 votes each. The order of the Returning Officer is to the following effect:

"Parties present. Ballot envelope found intact by them the following is the result of counting done.

Total votes polled78

No. of rejected ballots2

Shri L.K. Jha38

Shri K.N. Sahay38

The reasons for accepting and rejecting some votes have been recorded on the ballot papers themselves. There is thus equality of votes on both sides. There is no regulation of direction given by the Chairman in this regard, and the same has accordingly been submitted for further orders.

Sd/- E. Rahman., 25-4-63."

On the same date the Chairman of the Legislative Council held that there should be a re-poll in September, 1963, since both sides had polled equal number of votes. The order of the Chairman of the Legislative Council reads as follows:

"Both sides have filed objections placed on record. There is no substance in them and therefore they are rejected the question is that both sides having polled equal votes, I direct the Returning Officer to fix a date in the (sic) Session of Legislative Council due to be held in September, 1963, for re-poll. Inform the parties concerned accordingly.

Sd/- R. Misra., 25-4-63."

2. In Miscellaneous Judicial Case No. 467 of 1963 Shri Krishna Nandan Sahay has obtained a rule from the High Court (sic) upon the respondents to show cause why the order of the Returning Officer dated the 25th April, 1963, and of the Chairman of the Legislative Council of the same date should not be quashed by grant of a writ in the nature of certiorari under Article 226 of the Constitution and why a writ in the nature of mandamus should not be granted commanding them to declare Shri Krishna Nandan Sahay to have been elected as a representative of the Bihar Legislative Council to the Bihar University Senate.

3. In Miscellaneous Judicial Case 593 of 1963 Shri Lakshmi Kant Jha has obtained a rule from the High Court calling upon the respondents to show cause why a writ in the nature of certiorari under Article 226 of the Constitution should

not be issued for quashing the order of the Returning Officer and of the Chairman, Legislative Council, mentioned above and also why a writ in the nature of mandamus should not be granted commanding them to declare that Shri Lakshmi Kant Jha has been duly elected to be a member of the Bihar University Senate as a represents live of the Bihar Legislative Council.

4. In both these applications cause has been shown by claimed Counsel on behalf of the respective respondents to when notice of the rule was ordered to be given.

5. in Miscellaneous Judicial Case No. 467 of 1963 the main argument put forward on behalf of the petitioner is that both the Returning Officer and the Chairman, Legislative Council, were erroneous in law in rejecting the ballot paper which is marked annexure D to the writ application and which is reproduced below:

"FORM OF BALLOT PAPER FOR THE ELECTION OF ONE REPRESENTATIVE MEMBER TO THE SENATE OF BIHAR UNIVERSITY.

NAMES Of candidates Marks showing the choice.

Shri Lakshmi Kant Jha

? Shri Krishna Nandan Sahay X

INSTRUCTIONS TO MEMBERS.

1. Please place a mark thus X against the name of the candidate for whom you wish to vote.

2. The mark should not be placed against more than one name."

It was submitted on behalf of the petitioner that in paragraph 11 of the counter-affidavit respondent No. 2, the Returning Officer, has said that the ballot paper, annexure D to the writ application, was rejected on the ground that it contained two cross marks and militated against the directions printed at the foot of the ballot paper. In his affidavit in reply dated the 10th September, 1963, the petitioner has said that there was a double impression of the cross mark on the ballot paper on account of the folding of the ballot paper and so the Returning Officer was erroneous in law in rejecting the ballot paper on that ground. It was argued on behalf of the respondents that the explanation of the petitioner with regard to the double impression was not given in the original application. There is force in the objection raised on behalf of respondent No. 3 and we shall proceed to decide this case on the assumption that we ballot paper, annexure D, really contained two cross marks against the name of Shri Krishna Nandan Sahay.

Even so, we are of opinion that the Returning Officer was erroneous in law in rejecting the ballot paper on this ground. In a case of this description the principle is that a ballot paper should not be rejected as void merely because there are two cross marks in respect of a particular candidate if the marks are placed in such a position in the ballot paper as to leave no doubt for whom the voter intended to vote. That is the view expressed in the leading case, Woodward

v. Sarsons and Sadler, (1875) LR 10 C.P.133. It was held in that case that the ballot paper must not be marked so as to show that the voter intended to vote for more candidates than he is entitled to vote for, nor so as to leave it uncertain whether he intended to vote at all or for which candidate he intended to vote. If these requirements are not substantially fulfilled, the ballot paper is void and should not be counted. But the placing of two crosses, or three crosses, or a star instead of a cross, or a cross placed on the left hand side of the ballot paper, was held as not to avoid the vote, if it is clear from the ballot paper for whom the voter intended to give his vote.

The same view was expressed by Lord Coleridge, C.J. in Phillips v. Goff, (1886) 17 QBD 805. It was held in that case that the provisions of the General Order and of the Ballot Act, 1872, were sufficiently complied with where ballot papers at the election of a school board in a borough were marked otherwise than in the mode prescribed by the Order, if it could be ascertained with reasonable certainty for whom the voter in each case intended to vote, and how many votes he intended to give, and if it appeared that he had not intended to give a greater number of votes than there were members of the school board to be elected. Applying these principles it was held by the Queen's Bench Division that the ballot papers marked by placing crosses instead of figures, or single strokes, opposite the names of the candidates were valid.

The same view has been reiterated in a later case, Pontardawe Rural District Council Case; Hodgson v. Evans, 1907 2 KB 313. It was held in that case that a ballot paper was not rendered void under the Ballot Act, 1872, by reason of the voter placing his mark outside the ruled compartments on the paper, within which compartments it was intended that the voter's mark shall be placed, if the mark was in such a position opposite to the name of a candidate as to leave no doubt for whom the voter intended to vote. Applying the principle to the present case it is manifest that the ballot paper, which is annexure D to the writ application, should have been accepted as valid by the Returning Officer, and the order of the Returning Officer dated the 25th April, 1953, and of the Chairman of the Bihar Legislative Council of the same date, are vitiated in law for rejecting this ballot paper.

6. For these reasons we hold that a writ in the nature of certiorari should be issued for quashing the order of the Returning Officer and of the Chairman, Bihar Legislative Council, which are annexures E and F to the writ application. We further hold that a writ in the nature of mandamus should be granted to the petitioner under Article 226 of the Constitution commanding the Returning Officer, respondent No. 2, and the Chairman of the Bihar Legislative Council, respondent No. 1, to accept the ballot paper, which is annexure D to the writ application, as valid, and to declare the petitioner Shri Krishna Nandan Sahay as having been validly elected as a representative of the Bihar Legislative Council to the Senate of the Bihar University in accordance with Section 17 of the Bihar University Act, we accordingly allow Miscellaneous Judicial Case No. 467 of 1963,

but there will be no order as to costs.

7. In Miscellaneous Judicial Case No. 593 of 1963 the main argument presented on behalf of the petitioner is that the ballot paper (annexure C to the writ application in Miscellaneous Judicial Case No. 467 of 1963) should have been rejected as invalid by the Returning Officer and the petitioner should have been declared as having been elected to the Senate of the Bihar University u/s 17 of the Bihar University Act, The ballot paper in question is annexure C in Miscellaneous Judicial Case No. 467 of 1963 and is reproduced below:

"FORM OF BALLOT PAPER FOR THE ELECTION OF ONE REPRESENTATIVE MEMBER TO THE SENATE OF BIHAR UNIVEBSITY.

Names of candidates. Marks showing the choice.

Shri Lakshmi Kant Jha

X Shri Krishna Nandan Sahay

INSTRUCTIONS TO MEMBERS.

1. Please place a mark thus X against the name of the candidate for whom you wish to vote.

2. The mark should not be placed against more than one name.

Secretary to the Bihar Legislative Council."

The argument on behalf of the petitioner is that the cross mark should have been put inside the ruled compartment opposite the name of the candidate and not in front of the name of the candidate as in annexure C. In our opinion there is no warrant for the argument put forward on behalf of the petitioner in this case. In view of the principle or law laid down in (1875) LR 10 CP 733; (1886) 17 QBD 805 and (1907) 2 KB 313 which we have discussed above it is manifest that the ballot paper (annexure C to me writ application in Miscellaneous Judicial Case No. 467 of 1963) cannot be rejected as invalid because the mark has been placed in such a position that there is no ROOM FOR doubt as to whom the voter intended to vote for. It follows, therefore, that the Returning Officer was right in accepting the ballot paper as valid and the argument, put for-ward on behalf of the petitioner on this aspect of the case must be rejected.

8. For these reasons we hold that in Miscellaneous Judicial Case No. 593 of 1963 the petitioner has made our no case far grant of a writ under Article 226 of the Constitution. The application accordingly fails and must be dismissed. There will be no order as to costs.