

(2023) 02 PAT CK 0014

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2083 Of 2023

Lalan Kumar Singh

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 10-02-2023

Acts Referred:

Citation : (2023) 02 PAT CK 0014

Hon'ble Judges : Ashutosh Kumar, J; Satyavrat Verma, J

Bench : Division Bench

Advocate : Lalit Kishore, Dr. Ranjeet Kumar, Ayush Kumar, Yogesh Kumar, Kanishk Kaustubh, Shikhar Mani, Mukesh Kumar Thakur, S.B.K. Mangalam

Final Decision : Disposed Of

Judgement

1. We have heard Mr. Lalit Kishore, the learned Senior Advocate for the petitioners and Mr. Mukesh Kumar Thakur for the respondent/State Election Authority. The respondent No. 12, a candidate in the elections, is represented by Mr. S.B.K. Mangalam.

2. The challenge in the present writ petition is to the decision of the Returning Officer based on the communication made by the Advisor to the State Election Authority, whereby the names of the petitioners and 76 others have been deleted from the voter-list.

3. The urgency for the petitioners to approach this Court is that elections have been announced, which is to be held on 13th of February, 2023.

4. It is the contention of the petitioners that their names were not included in the draft voter-list, to which they had objected and on their furnishing proof, they were included in the final voter-list, which was published on 09.01.2023.

5. It has further been informed to us that barely a day after the final voter-list was published, a complaint was received in the office of the State Election Authority by the private respondent No. 12 and others that without any rational

basis, the Returning Officer has included the names of the petitioners in the final voter-list. Pursuant to such complaint, the Returning Officer was asked to explain and submit a report, which he did. The District Co-operative Officer also was asked to inquire into the matter and report to the State Election Authority.

6. However, without awaiting the result of such enquiry, the elections schedule was announced by the State Election Authority on 11.01.2023 only.

7. On the basis of the enquiry report by the District Co-operative Officer and the Returning Officer, the State Election Authority has now taken a decision, behind the back of the petitioners and 76 others, that their inclusion in the voter-list is not sustainable and therefore their names be deleted.

8. The primary objection of the petitioners is that they ought to have been given notice before any decision was taken to exclude their names from the final voter-list. The other objection is that when such complaint was entertained, the State Election Authority ought to have awaited the report of the enquiry which was ordered by it before announcing the date of the elections.

9. The petitioners lament that they have been left with a very small window to operate and have the order rectified. The petitioners, therefore, smell rat that the whole decision making process is collusive.

10. On the contrary, Mr. Mangalam has expostulated that there is nothing in the records which would justify the inclusion of the petitioners in final voter-list. No sooner, the private respondent and many others, some of whom had thrown their hat in the ring, made complaint before the State Election Authority, which was promptly responded to. Only when it was found that the inclusion of the names of the petitioners in the final voter-list was not sustainable, that such a decision was taken, which cannot be faulted with and the elections be permitted to be held as scheduled.

11. The learned counsel appearing for the State Election Authority has submitted that in view of the complaints against the petitioners and 76 others of their wrongly having been included in the voter-list by the Returning Officer, necessary enquiry was made and the complaint was found to be genuine.

12. The election dates, no doubt, were announced earlier, but that was on the requisition of the District Co-operative Officer as vacancy had arisen in the concerned Vyapar Mandal and without elections, the Vyapar Mandal would not have functioned properly.

13. What has caught our attention is that when a final voter-list was prepared, whereafter the elections were announced, it was not appropriate for the State Election Authority to have directed for deletion of the names of the petitioners and 76 others without giving them an opportunity of presenting their cause, notwithstanding any complaint against their inclusion and an adverse enquiry report against them. They are required to be heard before a decision to disenfranchise them is taken. Merely in the garb of the State Election Authority

exercising superintendence over the election matters of such Vyapar Mandal would not justify such an action. The Advisor to the State Election Authority, on the decision of the Authority, has unilaterally made a communication to the Returning Officer, who has passed necessary orders disenfranchising the petitioners.

14. This cannot be sustained in the eyes of law.

15. Mr. Mukesh Kumar Thakur, the counsel for the State Election Authority was asked to take telephonic instructions from the Authority.

16. The State Election Authority is reportedly willing to postpone the date of elections and decide the issue in question (the correctness of the decision of the Returning Officer of including the names of the 78 persons including the petitioners) first, should the matter be relegated to it.

17. For the aforesaid circumstances, we dispose off this writ petition with a direction to the State Election Authority to hear out the petitioners and other voters whose names have been deleted from the voter-list and all others, including the private respondent and other candidates who have entered the fray as well as the Society (Vyapar Mandal) and take a final decision with respect to the genuineness of the claim of the petitioners and similarly situated persons of being members of the Vyapar Mandal, for them to exercise the right to vote.

18. The District Co-operative Officer also shall be heard by the State Election Authority.

19. The election dates shall be extended till such time to complete such enquiry and resultant decision.

20. This Courts expects that the entire exercise shall be concluded within a period of 30 days, to be counted from today, whereafter the election dates shall be announced which shall, as far as possible, not be beyond the period of 45 days from today.

21. The State Election Authority would be well advised to fix a date on which all the interested parties would appear before it for the issue to be finally decided.

22. With the aforesaid observation/direction, the writ petition stands disposed off.

23. Interlocutory application/s, if any, also stands disposed off.