

(1966) 10 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No's. 150 and 151 of 1965

Musai Rai and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-10-1966

Acts Referred:

Bihar Panchayat Election Rules, 1959 — Rule 77, 79(2), 87

Citation : AIR 1967 Patna 346

Hon'ble Judges : S.N.P. Singh, J;N.L. Untwalia, J

Bench : Division Bench

Advocate : J. Pandey, for the Appellant; B.D. Singh in C.W.J.C. Nos. 150 and 151 of 1965 and Pratap Dhari Singh in C.W.J.C. No. 150 of 1965, for the Respondent

Final Decision : Dismissed

Judgement

1. The point involved in these two applications is identical. The petitioner in C.W.J.C. 150 of 1965 was elected as mukhiya and the petitioner in C. W. J. C. 151 of 1965 was elected as sarpanch of Ladaura Sumera Gram Panchayat in the District of Muzaffar-pur. The election petitions were presented before the Election Tribunal the member of which was a Deputy Collector Incharge Land Reforms, challenging the election of both the petitioners. The nomination papers of both the petitioners had been rejected by the Elections Officer. They filed applications before the Subdivisional Officer under Rule 23 of the Bihar Panchayat Election Rules, 1959, hereinafter called the Rules. The Subdivisional Officer accepted the nomination papers of both the petitioners. That being so, within the meaning of Sub-clause (i) of Clause (b) of Rule 2 of the Rules, the proper Election Tribunal where the two election petitions ought to have been presented was one, the member of which was an Additional District Magistrate, because an order made under Rule 23 (4) of the Rules was sought to be challenged in both the applications, as originally presented. That is to say, the case of the petitioners in both the election petitions was that the Subdivisional Officer had committed an

error in accepting the nomination papers of both the petitioners. If that point would not have been taken in the election petitions, it is manifest that the election petitions could have been presented to the Election Tribunal, the member of which was the Deputy Collector In-charge Land Reforms, as appears from Sub-clause (ii) of Clause (b) of Rule 2.

2. A preliminary objection was raised on behalf of the petitioners that the election petitions were not maintainable as the Election Tribunal, before which they were presented, had no jurisdiction to try them. On such an objection being raised, the statements contained in the relevant paragraphs of the two election petitions challenging the acceptance of the nomination papers of the petitioners by the Subdivisional Officer were not pressed by the petitioners in the two election petitions, i.e. they were sought to be deleted by amendment of the election petitions. The prayer was allowed by the Election Tribunal. And after such amendment, it is obvious that the election petitions were triable by the Election Tribunal, before which they were presented. The petitioners' grievance in both these writ petitions is that the amendment ought not to have been allowed in order to enable the petitioners in the election petitions to cure an infirmity of the kind which involved the point of jurisdiction and would have entailed their dismissal.

3. Mr. Jagdish Pandey appearing on behalf of the petitioners in the two cases has placed reliance upon *Raja Ram Sahu v. Brijraj Bahadur* ILR (1959) Pat 95 in support of his proposition on the grievance of the petitioners as stated above. On behalf of the opposite parties and the State of Bihar, reliance has been placed upon the decision of Sahai, J. in *Dhanilal Misra v. Dwarka Nath Misra*. 1963 BLJR 86 and the decisions of the Supreme Court in *Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and Others*, and *Amin Lal Vs. Hunna Mal*, .

4. In our opinion, we need not go into the debatable question if, at all, it is debatable as to whether an infirmity of the kind which entails the summary dismissal of an election petition under Rule 77 of the Rules and Rule 68 of the Bihar Municipal Election and Election Petitions Rules which were the subject-matter of interpretation in *Raja Ram Sahu's* case ILR (1959) Pat 95 can be allowed to be cured by an amendment of the election petition. Rule 77 or, as a matter of that, any other rule does not say as to what consequence, if an election petition is presented before a wrong tribunal, will follow. Is the election petition liable to be dismissed summarily? Or, ought it to be returned to the petitioner in the election petition for presentation before a proper election tribunal? Rule 79 (2) provides--

"Subject to the provisions of these rules, every election petition shall be tried by the Election Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits:"

Rule 87 says--

"In respect of any matter not specifically provided for in these rules, the Election

Tribunal shall proceed in such manner as it considers proper in the circumstances of the case."

In view of these provisions contained in the Rules, we are of the view that the general power of allowing amendment in the election petitions is there in the Election Tribunal although Mr. Pandey is right that the special power for allowing amendment of as engrafted in Clause (b) of Sub-rule (2) of Rule 75 of the Rules is confined to the allowing of an amendment of the list of corrupt practices only and does not, in terms, confer a general power on the Election Tribunal to allow amendment of the election petitions. But in view of the general powers conferred on the Election Tribunal for the trial of the election petitions, it has got to be held that the Election Tribunal has committed no illegality or error in allowing the petitioners in the election petitions to delete from their respective petitions allegations or statements in connection with the allegedly improper acceptance of the nomination papers of the two petitioners before us.

5. For the reasons stated above, we are of the view that there is no substance in either of the petitions. They are accordingly, dismissed but there would be no order as to cost.