
(2009) 12 PAT CK 0012
In the Patna High Court
Case No : CWJC No. 6786 of 2009

Prabhat Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

Bihar Panchayat Election Rules, 2006 — Rule 76(2), 76(3), 79, 79(1), 79(2)

Citation : (2009) 12 PAT CK 0012

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Advocate : Y.V. Giri and Sanjeev Kumar, for the Appellant; R.S. Pradhan Rajeev Lochan, for Respondent No. 2, J.P. Shukla Devendra Prasad Singh, S B K Mangalam and Kamlesh Kr. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.—This writ petition has been filed by the petitioner against the judgment and order dated 20.05.2009 passed by the Munsif, Sheikhpura in Election Case No. 7 of 2006 by which he has set aside the election of petitioner as Mukhiya of Gagri Gram Panchayat in the district of Sheikhpura and declared respondent No. 6, who was the election petitioner, as elected Mukhiya. Respondent No. 6 has since appeared and counter affidavits have been filed with rejoinder thereto. With consent of parties, this writ petition was heard at this stage itself for its final disposal.

2. Elections for the post of Mukhiya of Gagri Gram Panchayat were held on 02.06.2006. The counting of votes was done on 06.06.2006. After counting, on 06.06.2006 itself, petitioner first requested recount of votes at one polling booth. Thereafter, on 07.06.2006, he, in writing, requested for recount of votes declared to be invalid alleging that large number of his valid votes were rejected as invalid. The Returning Officer entertained both these applications of petitioner and pursuant to recount for each booth, the statutory Form 20 were revised and then a formal declaration was issued in statutory Form 21 declaring petitioner

elected as Mukhiya of Gagri Gram Panchayat by a margin of 23 votes over respondent No. 6. Respondent No. 6 immediately protested on the declaration of results in writing to various authorities and, getting no redressal, filed the instant election case being Election Case No. 7 of 2006.

3. Initially when the election petition was filed, a copy of which is Annexure-3, there was prayer for recount of votes but then by amendment petition subsequently relief (ia) was added for declaring results on basis of Form 20 excluding addition and subtractions thereby. In the election case, the third contesting candidate was also made a party but inspite of notice, he did not choose to appear and, as such, the proceedings proceeded ex parte against him.

4. In course of trial, respondent No. 6, who was the election petitioner, brought on record the statutory Form 20 as prepared in terms of Rule 76(2) of the Bihar Panchayat Election Rules, 2006 which were marked as Exhibit 4 to Exhibit 4 (k). Exhibit-5 is the declaration of result in Form 21 as prescribed in relation to Rule 81 of the said Rules. Large number of witnesses were examined and cross-examined by both sides including official witnesses.

5. The learned Munsif, the Election Tribunal, has, in his judgment as impugned, clearly noted that in view of the manner in which he was deciding the case, there was no necessity for referring and/or discussing oral evidences for he based his decision and judgment on basis of results of counting as was tabulated in Form 20 which showed additions and subtractions in course of recount.

6. Mr. Giri, learned Senior Counsel appearing in support of the writ petition has raised several issues to assail the judgment of the Tribunal. He firstly submits that the election petition is not duly verified as mandatorily required by law which itself should have required the Court to reject the same. It did not separately and clearly mentioned as to which part of the election petition and which averments were true to the knowledge of the petitioner and which were true to the information and which were submissions. The whole petition was verified as true to the knowledge and information. The second submission was that after the time for filing election petition had expired, the election petition was amended praying for a new relief in the form of claiming relief only on basis of retabulation of votes on basis of Form 20 without reference to additions and subtractions therein by virtue of recount. This could not be done and as would be seen, this later became the solitary ground on which petitioner's election was set aside and respondent No. 6 declared elected. Lastly and most importantly, it was submitted that the whole judgment impugned was based on a palpably wrong interpretation of Rule 79 of the Bihar Panchayat Election Rules, 2006. The Election Tribunal has interpreted Rule 79 in a manner which prohibits more than one application for recount by the same person which, it is submitted, is not born out by the Rules. Lastly, it was pointed out that the learned Munsif committed grave error of record in noting that the counting of votes were concluded on 06.06.2006 whereas a reference to Form 21 would show that in fact, the result was signed, sealed and declared only on 07.06.2006 and the whole allegation of

the election petitioner (respondent No. 6), that result was declared on 06.06.2006, was false.

7. On the other hand, respondent No. 6, who succeeded in the election petition, submits that there was a lot of bungling in the process of recounting and the Election Tribunal rightly discarded the recounting results and it was open to him to rely on the initial count alone as two petitions for recount from the same candidate was not permissible.

8. Having heard the parties and considered the matter, in my view, as the petitioner has been non-seated solely on ground of interpretation of Rule 79, the result would depend on that. The Election Tribunal held, as noted above, that Rule 79 did not permit multiple applications for recount by the same candidate. For proper appreciation, Rule 79 of the Rules is quoted hereunder:

79. Recounting of votes: (1) The candidate or in his absence his election agent or counting agent may file a written application to the Returning Officer or the Officer authorised by him for recounting of votes stating therein grounds for the same.

(2) The Returning Officer or the Officer authorised by him may fully or partially accept or reject the application stating the reasons for the same.

(3) If the Returning Officer or the Officer authorised by him accepts fully or partially the application under Sub-rule (3) then he will get the ballot-papers recounted and amend the result of the counting in the form prescribed in Sub-rule (2) of Rule 76 and declared the result.

(4) After that no application for re-counting will be entertained again.

9. A reference to Rule 79 would clearly show that Sub-rule (1) thereof refers and authorises to a candidate or his agent for petitioning the Returning Officer for recounting of votes stating therein grounds for the same. Sub-rule (2) provides and authorises the Returning Officer to accept in whole or part of the request. Sub-rules (3) and (4) are then important. Sub-rule (3) clearly provides that if the Returning Officer accepts the plea for recount, he would get the recount done and amend the result on counting and declare the result. Sub-rule (4) now states after that no application for recounting will be entertained again. In my view, the only embargo placed by Rule 79, on a conjoint reading of Sub-rule (3) or Sub-rule (4) thereof, is that after the results are declared upon recount, no further application of recount would be entertained. This, even otherwise, would be a natural consequence as upon declaration of results, the election process is over and the Returning Officer becomes functus officio. No part of Rule 79, either directly or by necessary implication, implies that there cannot be multiple applications for recount by the same candidate. The interpretation sought to be given by the respondents that once recount is done, but before results are declared, no another application can be entertained, is, thus, clearly misconceived because Sub-rule (4) clearly operates after results are declared.

10. Upon this interpretation, this Court finds it difficult to sustain the impugned judgment. What the learned Munsif has done is that having taken this erroneous view of Rule 79, he has discarded the results of recount and counted from Form 20, the result of counting of votes in the first round and based thereon, held that respondent No. 6, the election petitioner should have been declared the winning candidate by two votes and did so himself non-seating the petitioner. In view of law, as stated above, this was clearly wrong. That vitiates the entire decision and judgment because that is the sole basis for the judgment.

11. One small aspect I may notice before parting. From the judgment impugned, it appears that the learned Munsif was of the view that the results were declared on 06.06.2006. The declaration of result is in Form 21 and is Exhibit-5. The learned Munsif was clearly wrong. Exhibit-5, certified copy whereof is annexed to the writ petition, is clearly signed and sealed on 07.06.2006. Another matter of concern is from the ordersheet of the learned Munsif, it is clear that 20th May, 2009 was the date fixed for hearing. On that day on behalf of petitioner, an application was filed for adjournment on ground of his lawyer from the High Court being unable to come because of marriage in the family. The said application was rejected on the same day and arguments were heard and concluded. What is surprising is, soon after on the same day, the judgment was delivered. The judgment is a long 15 pages judgment written in long hand purporting to have been written on the same day after arguments were concluded. That is a matter of concern and clearly indicates that judgment was apparently written and ready even before arguments were concluded. Nevertheless, I am not basing my judgment on any of these but purely on a legal issue, as noted above.

12. The result is that the judgment impugned by which petitioner has been non-seated is found to be unsustainable and is set aside as such. Petitioner would continue his full term of Mukhiya unless removed by law.

13. The writ petition is allowed.