

(2013) 03 PAT CK 0032

In the Patna High Court

Case No : LPA No. 1128 of 2012 in CWJC No. 9061 of 2012

Prafful Chandra Sudhanshu

APPELLANT

Vs

The State Election Commission (Municipality) and Others

RESPONDENT

Date of Decision : 01-03-2013

Acts Referred:

Bihar Municipal Act, 2007 — Section 479

Citation : (2013) 2 PLJR 114

Hon'ble Judges : R.M. Doshit, C.J.;Ahsanuddin Amanullah, J

Bench : Division Bench

Advocate : S.B.K. Mangalam, Ravi Ranjan and Mrs. Chandani, for the Appellant; Amit Shrivastava, Girish Pandey for the Respondent Nos. 1-4 and Mr. Santosh Kumar Sinha -2 for the Respondents No. 5, for the Respondent

Final Decision : Allowed

Judgement

R.M. Doshit, C.J.—Feeling aggrieved by the judgment and order dated 29th June, 2012 made by the learned single Judge in C.W.J.C. No. 9061 of 2012 Ed.-- reported in Prafful Chandra Sudhanshu Vs. The State Election Commission (Municipality) and Others, ., the writ petitioner has preferred this Appeal under Clause 10 of the Letters Patent. The matter at dispute relates to election of a Councillor of Ward No. 40, Danapur Nagar Parishad. Pursuant to declaration of the ejection programme, the appellant submitted his nomination for election as Councillor from Ward No. 40, Danapur Nagar Parishad. After due scrutiny of the nomination papers, the nomination submitted by the appellant was accepted by the Returning Officer on 26th April, 2012. The respondent no. 5 raised objection against the acceptance of the nomination on 28th April, 2012. The same having not been considered by the Returning Officer, he submitted his objection before the Bihar State Election Commission (hereinafter referred to as "the State Election Commission"). The State Election Commission, under its direction dated 29th April, 2012, directed the Returning Officer to reconsider the nomination submitted by the appellant. On such reconsideration the said nomination was

rejected on 29th April, 2012. It is the decision of the Returning Officer to reject the nomination of the appellant which led to above C.W.J.C. No. 9061 of 2012.

2. According to the appellant, the Returning Officer, having once accepted the nomination papers, had no authority to reconsider the decision and to reject the same on a later date. The learned single Judge has rejected the writ petition. Therefore, this Appeal.

3. Learned Advocate Mr. S.B.K. Mangalam has appeared for the appellant. He has relied upon Rules 46, 47 and 51 of the Bihar Municipal Election Rules, 2007 (hereinafter referred to as "the Rules of 2007"). He has submitted that the appellant being the only contestant whose nomination was accepted by the Returning Officer. It was the duty of the Returning Officer to declare the appellant to be elected. Further, in view of the intervention by the State Election Commission, such declaration has illegally been aborted. Mr. Mangalam has also relied upon Section 479 of the Bihar Municipal Act, 2007 (hereinafter referred to as "the Act").

4. Learned Advocate Mr. Amit Shrivastava has appeared for the State Election Commission. He has contested the Appeal. He has relied upon Rule 92 of the Rules of 2007. He has submitted that the State Election Commission has power to issue directions as may be necessary for the efficient conduct of the election. The instruction in question was issued in exercise of power conferred by Rule 92 of the Rules of 2007. Appeal is also contested by the respondent no. 5.

5. Rule 46 of the Rules of 2007 provides for scrutiny of nomination papers. Specific directions are issued to the Returning Officer as to the matters which he should scrutinize. Rule 47 of the Rules of 2007 gives finality to the decision of the Returning Officer. Rule 51(2) thereof provides for declaration forthwith of candidates to be duly elected when the number of candidates are equal to number of seats.

6. In the present case, it is not in dispute that the appellant was the only candidate whose nomination was accepted by the Returning Officer. The Returning Officer, having accepted his nomination, was under obligation to declare him elected uncontested. The power conferred upon the State Election Commission to issue direction for efficient conduct of the election under Rule 92 of the Rules of 2007 cannot be utilized for issuing instruction in the individual cases. The said power is meant for general instructions. Whether or not to accept a nomination of an individual candidate cannot be the matter covered by the words "efficient conduct of the election". Moreover, the said Rule 92 does not confer power upon the State Election Commission to issue direction contrary to statutory provisions.

7. In view of the above provisions, we are of the opinion that it was the duty of the Returning Officer to declare the appellant elected once his nomination was accepted and he was the only candidate whose nomination was accepted. State Election Commission had no authority to issue direction to scrutinize the

nomination once again as was done in the present case. If aggrieved, the respondent no. 5 would have the remedy to file election petition against the election of the appellant on the ground that may be available to him u/s 479 of the Act of 2007.

8. For the aforesaid reasons, the Appeal is allowed. The impugned judgment and order dated 29th June, 2012 made by the learned single Judge in C.W.J.C. No. 9061 of 2012 Ed.--Reported in Praful Chandra Sudhanshu Vs. The State Election Commission (Municipality) and Others, is set aside. C.W.J.C. No. 9061 of 2012 Ed.--Reported in Praful Chandra Sudhanshu Vs. The State Election Commission (Municipality) and Others, is allowed. The order dated 29th April, 2012 made by the Returning Officer is quashed and set aside. The respondents will declare the appellant elected from Ward No. 40, Danapur Nagar Parishad as envisaged by Rule 51(2) of the Bihar Municipal Election Rules, 2007. Registry will send copy of this order to the respondent no. 4 forthwith.