
(2012) 06 PAT CK 0013
In the Patna High Court
Case No : CWJC No. 9061 of 2012

Praful Chandra Sudhanshu	Vs	APPELLANT
The State Election Commission (Municipality) and Others		RESPONDENT

Date of Decision : 29-06-2012

Acts Referred:

Bihar Municipal Act, 2007 — Section 445
Penal Code, 1860 (IPC) — Section 177, 181
Representation of the People Act, 1951 — Section 100, 33A, 36(2), 36(6)

Citation : (2012) 4 PLJR 520

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Advocate : S.B.K. Mangalam, for the Appellant; Amit Shrivastava and Girish Pandey for the S.E.C., for the Respondent

Judgement

Sheema Ali Khan, J.—The petitioner is a candidate contesting in the Danapur Nagar Parishad election from Ward No. 40. The petitioner accordingly filed his nomination paper before respondent no. 4, the Returning Officer on 21.4.2012. The date of scrutiny for the nomination paper was fixed on 26.4.2012 which was accepted by the Returning Officer. The nomination paper of the other two candidates was rejected and the petitioner remained the sole candidate. An objection was filed by respondent no. 5 on 28.4.2012 which was forwarded to the Circle Officer, Danapur for the purposes of conducting an enquiry. The allegation in the complaint was that the wife of the petitioner had purchased 1 Katha of land which was not mentioned in the affidavit filed by the petitioner alongwith his nomination paper. The matter was sent to the Circle Officer, Danapur to make an enquiry. The Circle Officer recorded that the name of the petitioner's wife has not been entered into Register-II. Learned counsel for the petitioner submits that his wife had filed an application before the Circle Officer, Danapur for valuation of the plot which was purchased by her. The said application was filed by the petitioner on 20.3.2012 and on the same date the Revenue Karamchari had mentioned the value of the land in the margin of the

application and had recommended to the Circle Officer for issuance of valuation certificate but the Circle Officer, Danapur refused to value the property of the petitioner on the ground that her name had not been entered in Register-II of the Circle Office. On the basis of the aforesaid facts it is submitted that although it is a fact that the petitioner had purchased the property but her name was not recorded by the Circle Officer and neither in the Register-II and as such, it cannot be said that the information disclosed by the petitioner was deliberately suppressed.

2. Apart from what has been stated aforesaid, the question that has been raised in this writ application is that the date of scrutiny of the nomination paper was 26.4.2012. No objections to the nomination were filed at that time. Two days later objection was filed by the respondent no. 5 making the allegations as explained above. The Returning Officer called for a report and rejected the nomination of the petitioner. Sub-rule (4) of Rule 46 enjoins that Returning Officer will hold scrutiny on the date appointed and shall not allow any adjournment of the proceeding. It further specifies that if an objection is made the candidate concerned may be allowed the time to rebut the allegation not later than following day of the scrutiny. The argument on behalf of the petitioner is that once his nomination was accepted on 26.4.2012 respondent no. 5 did not have the right to interfere in the matter and the only remedy available to the respondent no. 5 was to challenge the election process by filing an election petition.

3. In this context, this Court cannot hold that the complaint was filed after a delay. It is another fact that the enquiry and the subsequent order has been rendered on 29th April, 2012, which ought to have been done much earlier in view of the fact that the elections were to take place on 17th May, 2012 and, in some districts on 22nd May, 2012.

4. The second question argued on behalf of the petitioner is based on a judgment of the Supreme Court in the case of People's Union for civil Liberties (PUCL) and Others Vs. Union of India (UOI) and Another, .

5. Paragraph 112 deals with the conclusion reached by the Supreme Court while discussing the issues raised in the writ application. This Court is concerned with the conclusion at sub-paragraph (9) of paragraph 123 which reads as follows:--

The Election Commission has to issue revised instructions to ensure implementation of Section 33A subject to what is laid down in this judgment regarding the cases in which cognizance has been taken. The Election Commission's orders related to disclosure of assets and liabilities will still hold good and continue to be operative. However, Direction 4 of para 14 insofar as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not be enforce.

6. The said finding of the Supreme Court is laid down the direction given in

paragraph 14(4) of the order passed by the Election Commission of India dated 28th June, 2002. Sub-para 4 provides as follows:--

Furnishing of any wrong or incomplete information or suppression of any material information by any candidate in or from the said affidavit may also result in the rejection of his nomination paper where such wrong or incomplete information or suppression of material information is considered by the Returning Officer to be a defect of substantial character, apart from inverting penal consequences under the Indian Penal Code for furnishing wrong information to a public servant or suppression of material facts before him:

Provided that only such information shall be considered to be wrong or incomplete or amounting to suppression of material information as is capable of easy verification by the Returning Officer by reference to documentary proof adduced before him in the summary inquiry conducted by him at the time of scrutiny of nominations u/s 36(2) of the Representation of the People Act, 1951, and only the information so verified shall be taken into account by him for further consideration of the question whether the same is a defect of substantial character.

7. In this context it has been argued on behalf of the State Election Commission that whereas Section 445 of the Bihar Municipal Act, 2007 specifically provides that the assets of a candidate and the assets of his dependants have to be declared at the time of filing of the nomination paper. There is no such provision to provide information, under the Representation of the People Act. It has been pointed out that Section 36(6) of the Representation of the People Act provides that the Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same if the nominations is rejected. It is incumbent that he shall record in writing a brief statement of his reasons. The only remedy available in such cases is to file an election petition u/s 100 of the Representation of the People Act. It may be noted that Section 75(a) of the Representation of the People Act which has been inserted with effect from 24.8.2002 provides that the elected members have to declare their assets before the Speaker. It is thus submitted by counsel for the petitioner that the declaration has to be given in one form or the other.

8. It has thus been submitted that this declaration is now required under the Representation of the People Act, at the time of filing the nomination paper, however it is not incorporated in the Statute. It is, in this context, that the Supreme Court has recorded the finding as referred to above at paragraph 9 of the judgment in the case of Peoples Union For Civil Liberties.

9. Having regard to the peculiar facts of this case, the Court can only observe that the petitioner would have the liberty to challenge the election before the competent authority. However, this Court finds that at this stage it cannot be said that the petitioner would be guilty of suppression so as to invoke the provisions of Sections 177 and 181 of the Indian Penal Code until such time when there is a

finding by the competent authority that the suppression was deliberate. This writ application is disposed of with the aforesaid observations.