

(2002) 03 PAT CK 0085
In the Patna High Court
Case No : C.W.J.C. No. 930 of 2002

Prem Chandra Prasad

APPELLANT

Vs

Bihar State Election Commission and Others

RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:

Citation : (2002) 2 PLJR 556

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : R.S. Pradhan and Amrendra Nr. Rai, for the Appellant; Sandeep Kumar, for Respondent No. 4, Rajeshwar Prasad, for State and K.B. Nath, for Election Commission, for the Respondent

Final Decision : Allowed

Judgement

R.S. Garg, J.—Heard the parties.

2. The grievance of the Petitioner appears to be that an election petition was submitted to the election tribunal much beyond the period of limitation and the concerned election tribunal without giving any opportunity of hearing or even without issuing the notice to the Petitioner condoned the delay. The Petitioner submits that after learning about the condonation of delay, he made an application to the said election tribunal to consider the question afresh but as his application has been rejected on the ground that the earlier order was passed after due application of mind, there was no reason to recall the order. The Petitioner submits that once the limitation to file a suit, proceedings, or application expires then a valuable right accrues in favour of the opposite party and if that right is sought to be infringed then the authority has to issue the notices of the condonation application giving an opportunity of hearing to the affected party and only then pass the orders.

3. Learned Counsel for the Respondent/election Petitioner to jettison the arguments of the Petitioner submits that in the present matter with due

application of mind the delay was condoned, the Petitioner took part in the proceedings and after two witnesses were examined by the election tribunal, only to delay the proceedings the Petitioner made this application, which was rightly rejected.

4. Learned Counsel for the State and the learned Counsel for the election commission say that the matter is between the private parties, therefore they are not required to file their counter.

5. There is no dispute before me that the delay was condoned ex-parte on 10.7.2001. It is also not in dispute before me that before condoning the delay no opportunity of hearing was provided to the present Petitioner/returned candidate. When the delay is sought to be condoned by the authority then not only it is to apply its mind to the facts submitted in support of the application but observing the principles of the natural justice, it has to give a proper and due opportunity of hearing to the party Respondent/Defendant. Undisputedly in the present matter the delay was conducted without a notice to the present Petitioner. When such an action is taken by the authority, then the party aggrieved by the said order is not required to challenge the said order in an appeal because it can always challenge the validity of the order before the same authority by making an application for review or recall of the said order. The submission of the learned Counsel for the private Respondent that the application was made at a belated stage should not detain this Court unnecessarily because the question of limitation goes to the very root of the matter and if the delay is not condoned then the authority would have no jurisdiction to proceed with the matter. When a question relates to the jurisdiction of the authority then a question of jurisdiction can always be raised at any stage of the proceedings. In the present matter if the delay is not condoned then the election tribunal would have no jurisdiction to proceed further with the matter, therefore, and as the principles of natural justice have been violated by the election tribunal in condoning the delay the order passed by the election tribunal cannot be allowed to stand. The order passed by the authority is hereby quashed. The election tribunal is hereby directed to give an opportunity of hearing to the parties and decide the question of delay as a preliminary issue. If the authority comes to the conclusion that the delay deserves to be condoned then the authority would proceed further with the matter.

6. The petition is allowed.