
(1958) 02 PAT CK 0001

In the Patna High Court

Case No : Misc. Judl. Case No's. 591 and 598 of 1956

Raghuni Nayak and Others

APPELLANT

Vs

Dist. Magistrate and Others

RESPONDENT

Date of Decision : 04-02-1958

Acts Referred:

Bihar Municipal Election and Election Petitions Rules, 1953 — Rule 4, 7(1)
Constitution of India, 1950 — Article 226

Citation : AIR 1959 Patna 7 : (1958) 6 BLJR 177

Hon'ble Judges : V. Ramaswami, C.J; R.K. Choudhary, J

Bench : Division Bench

Advocate : Basanta Chandra Ghosh and Srideo Misra, for the Appellant; The Standing Counsel, Baldeva Sahay, Ramji Saran and Ras Bihari Singh, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Choudhary, J.—These two writ applications under Article 226 of the Constitution of India arise out of the election of commissioners of the Rosera Municipality in the district of Darbhanga. M. J. C. 591 of 1956 is by one Raghuni Nayak who states that he intended to stand as a candidate for being elected a commissioner of the above Municipality, but was debarred from doing so as his name did not appear in the electors' list. M. J. C. 898 of 1956 is by three defeated candidates, namely, Hansi Lal Sahani, Lakhan Nayak and Lakshmi Thakur.

By these two petitions the petitioners pray for issue of an appropriate writ setting aside the election of the commissioners of the above Municipality, restraining the returned candidates, namely, opposite party Nos. 3 to 15, from functioning as commissioners of the said Municipality and directing the District Magistrate of Darbhanga for holding a fresh election in accordance with law.

2. The short facts are these : On the 11th of April, 1956, a notice by the District Magistrate of Darbhanga, opposite party No, 1, being No. 4303R dated the 29th

March, 1956, was published in the Bihar Gazette fixing the 24th of July, 1956, as the last date for election of Municipal Commissioners for the Rosera Municipality. Sri Banarsi Prasad Singh, Magistrate, first class, Samastipur (opposite party No. 2 in M.J.C. 591 of 1956 and opposite party No. 3 in M.J.C. 898 of 1956), as being the Returning Officer for the said election, fixed the 27th of June, 1956, as the last date for filing nomination paper, the 29th of June, 1956, as the last date for scrutiny thereof and the 24th of July, 1956, for election, if necessary.

On the 10th of April, 1956, the petitioner of M.J.C. 591 of 1956, namely, Raghuni Nayak, moved an application before the District Magistrate of Darbhanga alleging that his name as well as the names of about 700 other people qualified to be registered as voters in the Assembly constituency of that area had been omitted from the electoral roll of the said constituency and prayed for a separate electors' roll for the Rosera Municipality to be prepared on the basis of the qualifications prescribed for the electoral roll of an Assembly constituency under the proviso to rules of the Bihar Municipal Elections and Election Petitions Rules, 1953.

On the 11th of April, 1956, Mr. Jacob, the District Magistrate of Darbhanga, rejected the said application. Subsequently, polls were held on the 24th of July, 1956, votes were counted on the 25th of July, 1956, and opposite party Nos. 3 to 15 of M.J.C. 591 of 1956, who are opposite party Nos. 4 to 16 in the other application, were declared elected by the Returning Officer. The Chairman of the Rosera Municipality is opposite party No. 2 in M.J.C. 898 of 1956, but he is not a party in the other application.

3. The petitioners state that the election of the Municipal Commissioners referred to above was void inasmuch as no electoral roll as required by the Municipal Act and the rules framed thereunder had been prepared in the case and also because it was not held within the last date fixed for the purpose. On these two grounds they seek to have the election set aside. Reliance has been placed on their behalf in support of their applications on a Bench decision of this Court in Parmeshwar Mahaseth and Others Vs. State of Bihar and Others, , and on certain provisions of the Municipal Act and the rules framed thereunder.

4. The Standing Counsel opposes the applications on behalf of the District Magistrate and the Returning Officer. Mr. Baldeva Sahay appears for opposite party Nos. 3, 4, 9 to 13 and 15 in M.J.C. 591 of 1956 who are opposite party Nos. 4, 5, 10 to 14 and 16 in M.J.C. 898 of 1956. Causa has been shown on their behalf opposing the applications by filing counter affidavits in both the cases. The other members of the opposite party do not appear before us.

5. Mr. Baldeva Sahay has adopted the arguments advanced by the learned Standing Counsel and it will not, therefore, be necessary to refer to his arguments separately.

6. So far as M.J.C. 898 of 1956 is concerned, the learned Standing Counsel has advanced an argument that the petitioners of that case having participated in the

election were estopped from challenging the validity of that election after having lost therein. The argument is well founded and is supported by a Bench decision of this Court in *Bindhyachal v. S. C. Mukherji* ILR 33 Pat 905 (B). In that case the petitioners knowing of the illegality acquiesced or concurred in the election of the Municipal Councillors.

In those circumstances their Lordships, after reviewing the various cases on the point, held that the petitioners were not entitled to information in the nature of *quo warranto* and an application for a writ at their instance could not be maintained. On behalf of the petitioners, however, Mr. Ghosh has contended that in the case of : *Parmeshwar Mahaseth and Others Vs. State of Bihar and Others*, , also the petitioners had participated in the election which was quashed at their instance. In that case there were ten petitioners out of whom petitioners 6 to 10 were the defeated candidates and petitioners 1 to 5 were some of the electors residing within the Municipality in question.

The question that has been raised in the present case was not raised in that case and the attention of their Lordships was not drawn to the Bench decision of this Court in ILR 33 Pat 905 (B), referred to above. There was thus no decision in that case on the point raised in the present case. Moreover, the facts of that case do not show that the first five petitioners had participated in the election. For the above reason that case cannot be an authority for holding a view contrary to the proposition laid down in the case of ILR Pat 905 (B). M.J.C. 898 of 1956 has, therefore, to be dismissed on this very ground.

7. I will now deal with the other case, namely, M.J.C. 591 of 1956. The first contention raised by Mr. Ghosh is that the election roll was not prepared in accordance with law. It is submitted that an application was made by the petitioner, as already stated, on the 10th of April, 1956, drawing the attention of the District Magistrate about the non-inclusion of the name of the petitioner and of about 700 other people qualified to be registered as voters in the Assembly constituency of that area, but the learned District Magistrate rejected the application with an observation that the petitioner should apply to the Chief Electoral Officer for inclusion of the names in the electoral roll.

It is also submitted that a general revision of the electoral rolls for the Assembly constituency in the district of Darbhanga was under preparation and the names of almost all the 700 persons which had been omitted in the previous electoral roll have now been included in the draft electoral roll prepared with reference to the 1st of March, 1956, as qualifying date.

It is, therefore, submitted that the electoral roll on the basis of which polls were held was not an accurate roll inasmuch as the names of several persons were omitted to be included therein. On behalf of the opposite-party the allegation about the non-inclusion of the names of 700 persons has been challenged and there is nothing to show that any of these 700 persons ever made any attempt for insertion of his name in the electoral roll. Be that as it may, one thing is

apparent from the own petition of the petitioner that he moved the District Magistrate for preparation of a separate electoral roll under the proviso to rule 4 of the Bihar Municipal Elections and Election Petitions Rules which runs as follows :

"Provided that where the District Magistrate is of opinion that electoral roll or rolls of an Assembly constituency are not suitable for purposes of elections of commissioners of the municipality, an electoral roll for that municipality shall be prepared on the basis of such qualification and in such manner as the State Government may, by notification, direct."

It has been held in the case of : Parmeshwar Mahaseth and Others Vs. State of Bihar and Others, that under the above proviso it is entirely for the District Magistrate to consider whether or not the electoral roll of the Assembly constituency is suitable for the municipal elections. In that view of the law, the petitioner could not claim as of right the preparation of a separate electoral roll under that proviso. The District Magistrate had a discretion to prepare any such roll and he having exercised his discretion against the petitioner by rejecting his application, there is an end of the matter in that regard.

8. It has then been contended by Mr. Ghosh that u/s 15 of the Bihar and Orissa Municipal Act a separate register of voters must be prepared and published before the holding of election is notified. The proposition of law is absolutely correct and is borne out by the above decision of : Parmeshwar Mahaseth and Others Vs. State of Bihar and Others, , but in the present case such a separate register had been prepared and, therefore, there is no point in raising this question in the present case.

9. The next contention of Mr. Ghosh is that the result of election not having been declared by 24-7-1956, which was the last date for election, it was void. It is submitted that the expression "election" includes the declaration of the elected person, and, as such, when by the notification the election had to be completed by 24-7-1956, the result of the election should also have been declared by that date and not later.

It is true that the expression "election" generally includes registration, nomination, voting and the manner in which votes are to be counted and the result made known. The case of : Parmeshwar Mahaseth and Others Vs. State of Bihar and Others, also has taken the same view about this expression. It has, therefore, to be seen whether the election is void by reason of its result having been declared subsequent to the last date fixed for election. In this connection Rule 7 (1) of the Bihar Municipal Elections and Election Petitions Rules is of importance. It runs as follows :

"For the purpose of constituting the municipality or re-constituting it on the expiration of the term of office of the commissioners or u/s 386, the District Magistrate shall, by a notification published in the Official Gazette and in the manner laid down in Section 356, call upon all the wards of the municipality to

elect commissioners in accordance with the provisions of the Act and these rules before such date as may be specified in the notification."

The above rules require the District Magistrate to call upon all the wards of the municipality to elect commissioners. In my view, the expression "to elect commissioners" does not exactly convey the same meaning as the expression "election of commissioners." The expression "to elect" means to pick out or choose, and, in my opinion, where the election has to be made by casting votes, the expression "to elect" so far as the electors are concerned, would mean to pick out or choose by casting their votes. It is in the above sense that the expression "to elect" has been used in the above Rule 7 (1).

The electors, as the rule envisages, are called upon to elect, or in other words, to cast their votes for the election of the commissioners. Therefore, when in the present case 24-7-1956 was fixed as the last date for the electors to elect commissioners, it was obviously meant that it was the last date by which the voters had to cast their votes. Rule 45(1) of the above rules provides that when the counting of the votes has been completed, the Returning Officer shall forthwith declare the candidate or candidates, as the case may be, to whom the largest number of votes have been given, to be elected. The counting of the votes and the declaration of the result is for the Returning Officer.

The voters are not called upon to do anything in that matter under the notification as provided by Rule 7 (1). Their business is over after they have given their votes. In : Parmeshwar Mahaseth and Others Vs. State of Bihar and Others, also the result of the election was declared after the last date fixed for the electors to elect but no argument was advanced that the election was bad on that account. There thus appears to be no merit in this contention also and this application has also to fail.

10. In the result it is manifest that no case has been made out by the petitioners for issue of any writ under Article 226 of the Constitution of India and the applications are accordingly dismissed with costs. Hearing fee : Rs. 100 in each of the cases.

V. Ramaswami, C.J.

11. I agree.