

(1994) 05 PAT CK 0013

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4100 of 1994

Rajendra Rai

APPELLANT

Vs

The Election Commission of India and Others

RESPONDENT

Date of Decision : 09-05-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Representation of the People Act, 1951 — Section 21(3)

Citation : AIR 1996 Patna 9

Hon'ble Judges : Sachidanand Jha, J; Banwari Lal Yadav, J

Bench : Division Bench

Advocate : Ganga Prasad Roy, Ras Bihari Thakur, Binod Kumar, Anil Kumar Rai and Arun Kumar Singh, for the Appellant; G.P. Jaiswal, for the Respondent

Final Decision : Dismissed

Judgement

B.L. Yadav and S.N. Jha, JJ.

1. Whether an election process, when it has commenced can be interdicted, retarded or interfered with in exercise of writ jurisdiction under Article 226/227 of the Constitution of India and whether an order of the Chief Electoral Officer seeking confirmation in respect of the modifications of the order passed by the Election Commissioner of India which is not final can be assumed to have become final and whether, under the circumstances of the present case, the petitioner can be said to be entitled to any relief sought for, are the short but significant questions that fall for determination in the present writ application filed by one Rajendra Rai, who is avoter of 9-Vaishali Parliamentary Constituency and he is also the President of Zila Janta Dal Vaishali.

2. The factual matrix of the case is that the electoral roll of the Vaishali Parliamentary Constituency (in short, the Constituency) was revised u/s 21 of the Representation of the People Act, 1950 (in short, "the Act,") and the same was also approved by the Election Commissioner of India. The voter list was also re-printed and rearranged. u/s 25 of the Representation of the People Act, 1951

(in short, "the 1951 Act") the District Election Officer, Muzaffarpur and Vaishali published the list of the polling stations in respect of the Constituency. There are 6 assembly constituencies out of which four are situated in Muzaffanpur and the remaining two in Vaishali Districts. A message was received from the Election Commissioner on the 13th April, 1994 indicating that the election be held according to the existing list of polling stations, the area and number of which correspond to their electoral roll part number revised with reference to 1-1-1994. But in those cases where approval has already been communicated and the rolls have been rearranged and reprinted after following the procedure prescribed above the newly approved polling stations may be used. The confirmation of the action be taken (An-nexure 1 to the writ petition). Thereafter on 15th April 1994 a letter was written by the Chief Electoral Officer, Bihar, Patna addressed to the Secretary, Election Commission of India (Annexure 2) stating that even though electoral rolls have been rearranged and reprinted, the procedure u/s 21(3) of the Act has not been followed. Consequently, in view of the instructions dated 13th April 1994 (Annexure 1) the confirmation of the Election Commissioner was sought for holding the bye-election of the Constituency according to the old polling stations. It is Annexure 2, the letter of the Chief Electoral Officer, Bihar, Patna seeking confirmation from the Election Commissioner that even though the electoral rolls have been re-arranged and reprinted but the procedure u/s 21(3) of the Act was not followed, it should be quashed in the present petition by issuing a writ of certiorari and the next relief is that the election of the Parliamentary Constituency be held in accordance with the new polling stations.

3. Mr. Ganga Prasad Roy, learned counsel for the petitioner urged that the order letter dated 15-4-94 was manifestly erroneous inasmuch as the electoral rolls have been rearranged and reprinted hence election is to be held on the basis of the new polling station and on the basis of the electoral roll finally published on 12-3-1994. The reliefs sought for in the present petition could not be obtained in an election petition to be filed by the petitioner u/s 81 of the 1951 Act taking the ground specified in Sub-section (1) of Section 100. Consequently, the letter sent by the Chief Electoral Officer (Annexure 2) be quashed. Reliance was placed on Rampakavi Rayappa Belagali Vs. B.D. Jatti and Others, and Shri Shreewant Kumar Choudhary Vs. Shri Baidyanath Panjiar, .

4. Having heard learned counsel for the petitioner in our opinion, the present writ petition has no merit. The right to question the election either to be held in future or as already held is not a fundamental right nor a right at common law rather it is a statutory right and the same has to be governed according to the particular statute. In the instant case, the 1950 Act and 1951 Act are self-contained Code and the procedure u/s 80 of the 1951 Act provides that no election shall be called in question except by an election petition presented in accordance with the provisions of this part (disputes regarding elections). Section 81 provides as to how the election petition has to be presented. Section 82 enjoins as to whom petitioner shall implead as respondents to election petition. Section 83 enacts the contents of the petition. Section 84 enacts as to what relief

may be claimed by the petitioner. Section 86 provides the trial of election petitions by the High Court. Section 87 provides about the procedure by the High Court. Section 100 enacts the grounds that can be taken for declaration of the election to be void. However, in our opinion, it is open to the petitioner or anybody else who may be a defeated candidate, to file an election petition in accordance with the procedure contemplated under the 1951 Act. There are string of decisions of their Lordships of the Apex Court to the effect that once election process has commenced, the High Court in exercise of the writ jurisdiction under Article 226/227 of the Constitution would not be justified in interdicting or retarding the election process.

5. In *Ramchandra Ganpat Sinde v. State of Maharashtra* (Judgments Today 1993 (4) SC 573 it was observed as follows :--

"Once the election process was set in motion according to law any illegality or irregularity committed while the election process is in progress or the content of the election is vitiated by any illegality or irregularity in its process, the proper remedy is to lay the action before the Tribunal constituted under that Act by means of an election petition and have the dispute adjudicated without the election process being interdicted or retarded in its mid way. The High Court or this Court while exercising the constituent plenary power under Article 226 or 32 or under 136, as the case may be, would decline to interfere with the election process and relegate the parties to take recourse to the alternative remedy of the election petition provided under the statute."

Under Article 329(b) of the Constitution it has been provided that notwithstanding anything in this Constitution no election to either House of Parliament or to the either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature. In our opinion, the expression "election" envisaged under Article 329(b) of the Constitution connotes the entire process commencing from the very inception and culminating a candidate being elected. In our opinion, the power of this Court under Article 226/227 of the Constitution, to interfere, interdict or retard with the election process has been taken away as the election of Vaishali Parliamentary Constituency is imminent. Even if the allegations of irregularity in the electoral rolls regarding polling stations (whether new polling stations or old polling stations) may be assumed nevertheless this Court would not be justified in interfering or interdicting the election process which has commenced much earlier even though there was irregularity in preparation of electoral rolls (see the case *A.K.M. Hassan Uzzaman and Others Vs. Union of India (UOI) and Others*, ; *Election Commission of India Vs. Shivaji and Others*, .

6. In *Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi*, , it was held that it is a statutory right to question election either of Parliament or of Legislature. The 1951 Act and 1950 Act are complete and self-contained Code even the procedure under the CPC applies the extent permitted by Section 83. Consequently,

interference with the election process would not be justified by the High Court.

It would not be inapt to refer certain elementary principles pertaining to interpretation of election law. In our opinion, the election law must be strictly construed, at the same time by hypertechnical approach could not be justified. There must be a balance in construction of the election law, and maintaining purity of election process at all costs. Our election law is statutory in nature and has to be strictly complied with as the election petition is not to be guided by everchanging notions of common law, principles of equity. It has to be ascertained that persons violating the statutory norms must suffer for the same (see the case of F.A. Sapa Etc., Etc., Vs. Singora and others,).

Shri Shreewant Kumar Choudhary Vs. Shri Baidyanath Panjiar, relied upon by the counsel for the petitioner, was based on different facts. There the controversy was as to whether the High Court while trying the election petition would be justified to go behind the electoral rolls and enquire into the question whether these persons were validly appointed as Commissioner and the inclusion of their names in the electoral roll was legal.

7. In the instant case, a letter has been written by the Chief Electoral Officer, Bihar, Patna to the Secretary, Election Commission of India (Annexure-2) by which confirmations have been sought for in connection with the message dated 13th April, 1994 (Annexure-1) received from the Secretary, Election Commission of India. Those confirmations were to be received from the Election Commission of India within a couple of days, and in any case prior to the date of election fixed for 28th May 1994. In such a situation, can that letter seeking confirmation be quashed at this stage?

8. The decision in Rampakavi Rayappa Belagali Vs. B.D. Jatti and Others, relied upon by the learned counsel for the petitioner is also of no assistance inasmuch as in that case it was held by the Apex Court that the High Court would not be justified u/s 100(d)(iv) of the Representation of the People Act, 1951 to set aside any election on the ground of non-compliance with the provisions of the Act of 1950 or any rules made thereunder with the exception of Section 16 of the Act of 1950. In the instant case, the confirmatory letter written by the Chief Electoral Officer, Bihar, Patna (Annexure-2) cannot be quashed which is yet to be confirmed or may be or may not be confirmed and the Election Commissioner may agree to the extent that the election may be directed to be held on the basis of the new polling stations or on the basis of the electoral rolls rearranged or re-printed. We would not, therefore, be justified either to interdict or interfere with the election process that has commenced. We do not find any merit, as indicated above, in the submissions of the learned counsel for the petitioner.

9. Summing up our answers to the questions posed at the initial stage are as follows : Once the election process has commenced the same cannot be interdicted or retarded by this Court in exercise of writ jurisdiction under Articles 226/227 of the Constitution. The letter written by the Chief Electoral Officer,

Bihar, Patna (Annexure-2) seeks certain confirmations from the Chief Election Commissioner is not final inasmuch as he may confirm or may not confirm the same and he may pass fresh order indicating that the election of Vaishali Parliamentary Constituency can be held in accordance with the electoral rolls re-arranged and re-printed and on the basis of the new polling stations. The letter practically contemplates a contingent position. On that basis no writ would be issued. In view of what we have said above, the petitioner cannot be said to be entitled to any relief.

10. Resultantly, in view of the premises aforesaid, the present petition fails and the same is dismissed.

11. Let a copy of this order be given to the learned counsel for the petitioner within three days.