
(2007) 01 PAT CK 0001
In the Patna High Court

Rajendra Ram and Others

APPELLANT

Vs

The State Election Commission (Panchayat) and Others

RESPONDENT

Date of Decision : 04-01-2007

Acts Referred:

Bihar Panchayat Raj Act, 2006 — Section 135

Citation : (2007) 1 BLJR 722 : (2007) 1 PLJR 447

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—Heard learned counsel for the petitioners and learned counsel for the respondents.

2. This writ petition has been filed for quashing the list prepared by the respondents for reservation of different territorial constituencies of Block Panchayat Samiti, Vaishali, under which the respondents have not reserved a territorial constituency in favour of the Scheduled Caste category, which, according to the petitioners, should have been reserved for that category and conversely they have reserved a territorial constituency in favour of Scheduled Caste category, which according to the petitioners, should not have been reserved under the provisions of Rules 9 and 11 of the Bihar Panchayat Election Rules, 2006 (hereinafter referred to as "the Rules" for the sake of brevity). Another prayer is made for quashing the list prepared by the respondents for reservation of different Territorial constituencies of Mukhiya under the Vaishali Panchayat Samiti, by which they have not reserved a constituency for Scheduled Caste category, which according to the petitioners ought to have been reserved for them and conversely they have reserved a constituency in favour of the Scheduled Caste category, which according to the petitioners should not have been reserved for the said category. Further prayer has also been made for directing the respondent-authorities to hold the elections of the three tier Panchayats for Vaishali Block as per the provisions contemplated under the Bihar

Panchayat Raj Act, 2006 (hereinafter referred to as "the Act" for the sake of brevity).

3. Learned counsel for the petitioners submitted that in the earlier election of 2001, no reservation was made for the post of Chairpersons in view of the decision of a Division Bench of this Court in the case of Krishna Kumar Mishra and Another Vs. State of Bihar and Others etc. etc., , hence the election held under the Act in the year 2006 was the first election, in which the post of Mukhiya was reserved. He further submitted that with respect to the Panchayat Samiti reservations were made in the election of 2001, hence the election of 2006 was the second election for that purpose as has been held by a Division Bench of this Court in the case of Vijay Kumar Singh and Others Vs. State of Bihar and Others and Union of India (UOI) and Others, .

4. Learned counsel for the petitioners also averred that according to Rule 9(3) of the Rules the authorities have to first ascertain seats for "Scheduled Castes and Schedule Tribes" reservation on the basis of highest total population of the constituency and then for general class and others . He also stated that as per Rule 11(1) of the Rules, Scheduled Castes and Scheduled Tribes" reservation of seats have to be rotated starting from the most populous constituency. But according to the petitioners" counsel, the authorities reserved posts of Panchayat Samiti and the Mukhiya whiasically violating not only Rule 9(3) and Rule 11(1) of the Rules, but also ignoring the provision of Section 135 of the Act as well as the provisions of the Constitution of India. He also stated that due to the aforesaid deliberate mistakes and violation of the specific provisions of law, the entire election is a nullity without any sanction of law and has to be set aside and fresh election has to be held and the entire expense of re-election has to be recovered from the erring authorities.

5. On the other hand, learned counsel for the respondents submitted that the entire claim of the petitioner is frivolous and misconceived as according to the second proviso to Rule 11(1) of the Rules there has to be no reservation in the first election of the Panchayat Samities and hence no constituency was reserved in the election of 2001. He also relied upon the "Explanation" of Section 15 of the Act. According to which the principle laid down for the purpose of reservation of Scheduled Castes and scheduled Tribes" constituencies for Mukhiya and Up-Mukhiya shall commence from the first election held after the commencement of Bihar Panchayat Raj Act, 1993, hence according to the said provision election of 2006 was the second election. He further submitted that there cannot be any dispute with respect to the aforesaid decisions of this Court in cases of Krishna Kumar Mishra (supra) and Vijay Kumar Singh (supra), but he added that this Court in the case of Sanjay Kumar Verma Vs. The State of Bihar and Others, discussed the matter in detail about the reservations of Backward Caste and since no rensus for O.B.C. was done, 20% of the total seats were to be deducted from the general category as per the provision of Rule 9(3), read with Rule 11(1) of the said Rules and proviso thereof.

6. Learned counsel for the respondents also said that Annexure "B" annexed to the counter-affidavit filed by the respondents is a Chart with respect to the various constituencies of Panchayat Samities of Vaishali, whereas. Annexure "c" of the said counter-affidavit is a Chart with respect to the various posts of Mukhiyas. He also stated that according to the said Chart, firstly constituency for general classes was to be determined according to highest population of general classes, whereafter the second constituency had to be reserved for Scheduled Castes and Schedule Tribes, which had the highest population of that Class. Hence, he submits that the authorities have selected the constituencies for general and reserved categories as per the aforesaid principle of law and, thus, there is no requirement of any interference by this Court.

7. After hearing counsel for the parties and after perusal of the materials on record as well as the provisions of law, it is quite apparent that the instant case is with respect to the dispute between the petitioners and the authorities as to what would be the basis for fixing any constituency as general category constituency or reserved category constituency. According to the petitioners, reservations have to be given on the basis of the highest total population in a constituency and hence according to them, the constituency having highest total population has to be left for general category candidates, whereas, the constituency having second highest total population has to be reserved for Scheduled Castes and Schedule Tribes and so on and so forth. On the other hand, claim of the respondents is that the reservations have to be given on the basis of the highest population of that category in a constituency and hence according to them the constituency having the highest population of general classes has to be left for general classes. Whereafter the constituency having the highest population of Scheduled Castes and Scheduled Tribes people has to be reserved for that category and so on and so forth. This is the gist of dispute in the instant case, whereas, the other points raised by the parties are either uncontroverted or insignificant for the purposes of this case.

8. In view of the nature of dispute between the parties in the instant case, the provisions of Rule 9 and 11 of the Rules are necessary to be appreciated, which read as follows:

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9. A bare reading of the aforesaid provisions of law and also considering other relevant laws and case laws mentioned above, it is quite apparent that the law in this connection is well-settled that the reservations have to be given on the basis of highest population of the category concerned in the constituency and not on the basis of highest total population in that constituency concerned. Annexure "B" of the counter affidavit clearly shows that, with respect to the Panchayat Samiti first constituency fixed for general classes had the highest population of

general classes among all the constituencies. Whereafter, the next constituency was reserved for Scheduled Castes and Scheduled Tribes, which had the highest population of that category among all the constituencies and the same pattern has been followed thereafter. Furthermore, Annexure "C" of the counter-affidavit shows that for the post of Mukhiya same method has been used. It is also apparent from the records that the constituencies have been fixed for general and reserved categories keeping in view the constituencies, which were fixed for general and reserved categories in the election of 2001, so that there may not be any repetition as according to the provisions of law there has to be rotation of the constituencies for general and reserved classes. In the said circumstances, I do not find any illegality in the process of reservation in the election concerned, which was already held and completed in the year 2006. Thus, there is no occasion for any interference by this Court.

10. This writ petition is without merit and is accordingly dismissed.