

(2016) 02 PAT CK 0119

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.14306 of 2015

Ram Binay Kumar

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 04-02-2016

Acts Referred:

Bihar State Election Authority Act, 2008 — Section 12(1)(d)(iv)

Citation : (2016) 2 PLJR 613

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : Rakesh Kumar Jha, Advocate, for the Appellant; Ritesh Kumar, SC-33, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Jyoti Saran, J. (Oral) - Heard Mr. Rakesh Kumar Jha, counsel for the petitioner, counsel for the State Election Authority and Mr. Sanjeev Nikesh appearing for the private respondent no. 8 who also was the contesting candidate.

2. Mr. Nikesh presses I.A. No. 29 of 2016 filed by one Bindeshwari Yadav, a member of the society who had also independently questioned the election of the petitioner as Chairman of the Charkawan Primary Agriculture Credit Cooperative Society (hereinafter referred to as the Charkawan PACS") through Election Case No. 71 of 2014-15 and which has been disposed of in the light of the order passed in Election Case No. 72 of 2014-15 which is impugned in the present proceedings. A copy of the order passed in Election Case No. 71 of 2014-15 has been impugned at Annexure-2 to the interlocutory application. Although the cause of action for the intervener to question the order passed in Election Case No. 71 of 2014-15 would be in an independent proceedings but considering the import of the order passed in Election Case No. 71 of 2014-15 as well as its dependency in the outcome of the present proceedings, I have permitted Mr. Nikesh to address the Court on behalf of the intervener as well.

3. I have heard learned counsel for the parties and I have perused the records. It is not in dispute that the election of the petitioner to the post of Chairman of the "Charkawan PACS" has been questioned solely on account of infirmity in the voter list and no other infirmity. Law is well settled to require an extensive discussion on the issue and a challenge to an election on the basis of infracted voter list simpliciter cannot be a ground to upset the election until such time that the election petitioner is able to establish that the voters who were ineligible but had entered in voter list, had also contributed to the success of the returned candidate, which issue is to be established by leading substantive evidence to that effect. An election of a returned candidate cannot be interfered with on mere oral assertions of an infracted voter list. The issue raised stands well discussed in the decision of this Court reported in 2015 PLJR 881 (Sushila Devi v. State) and the grievance raised stands squarely covered under the decision.

4. The copy of the election petition is on record and except making sweeping allegation as regarding the infirmity in the voter list, there is no other pleading that the vote cast by the so-called ineligible voters has contributed to the success of the petitioner and has materially affected his election warranting an order declaring it void under Section 12(1)(d) (iv) of the Bihar State Election Authority Act, 2008.

5. Another relevant aspect of the matter which does not give a right to the election petitioner to question the election on the issue of voter list is that he never filed any petition as to its infirmity before the Returning Officer as is manifest from the counter affidavit filed on behalf of the Block Development Officer more particularly in paragraph-4, 5 and 12 thereof. The written statement filed by the Returning Officer before the prescribed authority is present at Annexure-3.

6. Another glaring illegality in the order is that it proceeds to upset the entire election to constitute the Managing Committee even in absence of pleadings and evidence to support the voidness. The prescribed authority has mechanically passed the order without appreciating that the foundational facts and evidence are missing. The non-application of mind is reflected from the statement of Mr. Jha who submits that except for the post of Chairman, there was no contest as the respondent nos. 10, 11 and 13 to 19 were declared elected uncontested.

7. In result the order dated 20.6.2015 / 01.7.2015 passed by the Joint Registrar, Cooperative Societies, Magadh Division, Gaya in Election Dispute No. 72 of 2014-15 cannot be upheld and is accordingly set aside. In consequence the Managing Committee of the "Charkawan PACS" stand restored to its position.

8. The writ petition is allowed.