

(1964) 12 PAT CK 0017

In the Patna High Court

Case No : Misc. Judl. Case No's. 551 and 552 of 1961

Ram Chandra Prasad Sahi and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 08-12-1964

Acts Referred:

Bihar Panchayat Election Rules, 1959 — Rule 24, 3
Bihar Panchayat Raj Act, 1947 — Section 84B
Constitution of India, 1950 — Article 226

Citation : AIR 1965 Patna 250

Hon'ble Judges : V. Ramaswami, C.J;N.L. Untwalia, J

Bench : Division Bench

Advocate : Shreenath Singh, L.M. Sharma and Nagendra Prasad Singh No. 1, for the Appellant; Pradyumna Narayan Singh, for the Respondent

Final Decision : Dismissed

Judgement

Untwalia, J.—In both these application filed, on their face, under Article 227, but in substance, under Article 226 of the Constitution of India, the election of Shri Jagannath Prasad Singh, respondent No. 3, as Mukhya of Morsand Gram Panchayat in the district of Muzaffarpur, has been challenged as ultra vires, illegal and void by different petitioners, but the attack made at the time of the argument of the cases by learned counsel for the petitioner is on different grounds to be stated hereinafter.

M. J. C. 551/61.

2. The sole petitioner in the case was a candidate for election to the office of the Mukhya of the Gram Panchayat aforesaid. He along with other candidates filed his nomination on 31st of May, 1961. After security his nomination paper was accepted. According to his case, on the 3rd of June, 1961, the due date for withdrawal of nominations, a withdrawal petition purporting to be on behalf of the petitioner was fraudulently filed before the Elections Officer (respondent No. 2) by some interested individual but without complying with the requirements of

Rule 24 of the Bihar Panchayat Election Rules, 1959, hereinafter referred to as the Rules. In violation of that rule, the Elections Officer passed an order on 3rd of June, 1961, accepting the withdrawal of the petitioner's candidature along with others. After withdrawal, the only candidate left in the field for the office of the Mukhiya was respondent No. 3, and, consequently, he was declared duly elected as Mukhiya and respondent No. 2 under Rule 26 of the Rules

On the 4th of June, 1961, the petitioner filed an application repudiating the purported withdrawal of his candidature and drawing the pointed attention of the Elections Officer to the fact that the alleged application of withdrawal had not been filed by the petitioner in person and, in fact, he had not withdrawn. A copy of that petition is Annexure A to the petition. But the Elections Officer, by his order dated the 4th of June, 1961, a copy of which is Annexure A/1 to the application, illegally and wrongly rejected the petitioner's application on the ground that the withdrawal had been endorsed by the Gram Sewak and the repudiation had been made beyond the date of withdrawal. The declaration of election of respondent No. 3, therefore, has been challenged as illegal and void

3. In the counter-affidavit of respondent No. 3, it has been stated that the petitioner himself had filed the petition on 3-6-1961 before the Elections Officer, and there was no infraction of Rule 24 of the Rules. It is obvious that the decision of this case depends upon determination of two disputed questions of fact, namely, (i) whether the application for withdrawal was signed by the petitioner; and (ii) whether it was filed personally by him before the Elections Officer. The petitioner's remedy, therefore, was to file an application before the Election Tribunal to challenge the allegedly void election of respondent No. 3 to the office of the Mukhiya of the Gram Panchayat. It has been held by this Court in several cases that, in view of the provisions of Section 84B of the Bihar Panchayat Raj Act, 1947, and also in view of the general principles governing the exercise of powers under Articles 226 and 227 of the Constitution of India, and specially, when disputed questions of fact are involved, this Court will not exercise its powers either under Article 226 or 227 of the Constitution and quash the election when the petitioner has not availed of the alternative and better remedy for deciding the disputed questions of fact. In my opinion, M.J.C. 551 of 1961 has got to fail on this simple ground. It is accordingly dismissed but without costs M. J. C. 552 of 1961.

4. In this case, there are three petitioners who claim to be voters of the Gram Panchayat aforesaid. Their case is that the Gram Panchayat was established u/s 3 of the Bihar Panchayat Raj Act, 1947, hereinafter referred to as the Act, under notification No. PEL-11917 G.P., dated 9-12-1959, published in the Bihar Gazette, dated 17-2-1960. The first general election of the Gram Panchayat was purported to be held in accordance with the election programme published on 20-5-1961 beyond the period of four months prescribed under Rule 3 of the Rules, as it then existed. It has further been stated in the petition that the District Magistrate had not, by any order in writing, extended the said period of four months in exercise

of his powers under the proviso to the said rule Later on, in this petition also the facts relating to the alleged withdrawal of Shri Ram Chandra Prasad Sahi, petitioner in the other case and respondent No. 4 in this case, and the declaration of election of Shri Jagannath Prasad Singh, respondent No. 3, to the office of the Mukhiya have been stated, and the election has been challenged not only on the ground of infraction of Rule 3 but also on facts similar to the ones alleged in the other petition. At the time of argument, however, the attack on the election was only on the ground of violation of the requirements of Rule 3 of the Rules, as it stood at the relevant time.

5. In the counter-affidavit of respondent No. 3, it has been stated that the District Magistrate in exercise of his powers under the proviso to Rule 3 had extended the time for election to the various offices of the Gram Panchayat from time to time. But the statements in the counter-affidavit were not pressed for our consideration at the time of the hearing of the case by the learned counsel for respondent No. 3. I shall, therefore, assume in favour of the petitioners that the time was not extended by the District Magistrate. The question, however, arises whether the election can be said to be illegal and void merely because it was held beyond the period of four months from the date of the publication of the notification u/s 3 of the Act establishing the Gram Panchayat.

6. Rule 3 of the Rules read as follows:

"The first election of the Mukhiya, the Sarpanch, the elected Panchas and the elected members of the Executive Committee shall take place within a period of four months from the date of the publication of the notification under Sub-section (1) or (3) of Section 3 of the said rules (Act):

Provided that the District Magistrate may, at any time by order in writing, under intimation to the Director of Gram Panchayats, extend such period".

By the notification No. 10327-G.P., dated 26th August, 1963, published in an Extraordinary issue of the Bihar Gazette, dated August 28, 1963 the said rule was omitted retrospectively stating in the amending notification--

"...Rule 3 shall be omitted and shall be deemed always to have been omitted";

Mr. Shreenath Singh, learned counsel for the petitioners, firstly, submitted that the deletion of Rule 3 with retrospective effect was ultra vires the State Government in exercise of their powers u/s 80 of the Act, as, the said Section by itself or reading it with Section 24 of the Bihar General Clauses Act did not empower the State Government to make or amend the rules with retrospective effect.

In support of this contention, counsel placed reliance upon the decision of the Supreme Court In the Strawboard Manufacturing Co. Ltd. Vs. Gutta Mill Workers" Union, and of the Mysore High Court in India Sugars and Refineries Ltd Hospet v. State of Mysore AIR 1960 Mys 326 and, then, secondly, he submitted that the requirement of Rule 3 of the Rules to the effect that the first election shall take

place within a period of four months from the date of the establishment of the Gram Panchayat is mandatory and the election in question having been held beyond that period must be held to be illegal and void. The first point urged on behalf of the petitioners is attractive and seems to have force, but I do not propose to decide this question in the case as, in my opinion, even assuming in favour of the petitioners that Rule 3 in fact and in law existed at the time of the election in question, for the reasons to be presently stated. I am definitely of the view that the requirement of the said rule was directory and not mandatory, and the first selection held beyond the period of four months from the date of the establishment of the Gram Panchayat cannot be assailed and held to be void on that account.

7. In Mahesh Prasad Sinha Vs. Manjay Lal and Others, this Bench had the occasion to consider the salient and guiding principles for determining whether the requirement of a Statute or statutory Rule is directory or mandatory. Out of the various quotations from various authorities and authoritative books given in that decision, I would only quote here a few ones which govern the instant case. At page 56 (column 1) occur the following lines from page 515 in Section 261 of the Crawford's Statutory Construction--

".... if the provision involved relates to some immaterial matter, where compliance is a matter of convenience rather than substance or directs certain actions with a view to the proper, orderly, and prompt conduct of public business, the provision may be regarded as directory, but where it directs acts or proceedings to be done in a certain way and indicates that a compliance with such provisions is essential to the validity of the act or proceedings, or requires some antecedent and prerequisite conditions to exist to the exercise of the power, or be performed before certain other powers can be exercised, the statute may be regarded as mandatory".

In the same book at page 516 is a passage which has been quoted with approval by the Supreme Court of India in State of U.P. Vs. Manbodhan Lal Srivastava, which runs thus--

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intention is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other....."

In Article 656 of the Halsbury's Laws of England, 3rd Edition, Volume 36 at page 435, it is stated--

"No universal rule can be laid down for determining whether provisions are mandatory or directory; in each case the intention of the legislature must be ascertained by looking at the whole scope of the statute and, in particular, at the importance of the provision in question in relation to the general object to be

secured.

Although no universal rule can be laid down, provisions relating to the steps to be taken in the parties to legal proceedings in the widest sense have been construed with some regularity as mandatory; and it has been observed that the practice has been to construe provisions as no more than directory, if they relate to the performance of a public duty, and the case is such that to hold null and void acts done in neglect of them would work serious general inconvenience, or injustice, to persons who have no control over those entrusted with the duty, without at the same time promoting the main object of the legislature".

8. Judging the requirement of Rule 3. In the light of the above principles, it is clear that the requirement relates to the performance of a public duty and is a matter of convenience rather than substance. The failure of the public authorities to adhere to the said requirement strictly would not make the election null and void, as to hold it so for acts done in neglect of requirement of the rule would work serious general inconvenience or injustice to persons who have no control over those entrusted with public duty and that, at the same time, would not promote the main object of the Act or the Rules, which is to establish the Gram Panchayat and to hold the elections as soon as possible. It is further to be noted that under the proviso to the rule, the District Magistrate has been empowered to extend, at any time by order in writing--which would mean even after the expiry of the period of four months--under intimation to the Director of the Gram Panchayats, the period for holding the election. In my opinion, the requirement of Rule 8 is merely directory and gives a direction to the public authorities to hold the election as soon as possible preferably within a period of four months from the date of establishment of the Gram Panchayat u/s 3 of the Act. The people of the Gram Panchayat cannot be made to suffer by declaring the elections held beyond the period of four months as ultra vires and illegal.

9. It is now undisputed that in the case of Statutes or Statutory Rules that are said to be mandatory or imperative, the Courts have decided that if it is not done, the whole thing fails and the proceedings that follow upon it are all void;

on the other hand, when the Courts hold a provision to be directory, they say that although such provision may not have been complied with, the subsequent proceedings do not fail.

10. Learned counsel for the petitioners placed reliance upon three unreported decisions of three learned Judges of this Court, given by each of their Lordships sitting singly, namely, Lakhan Singh v. Chandeshwar Singh, M.J.C. No. 787 of 1958 decided by Sahai, J., on the 15th of May, 1959 (Pat), Hidayanarain v. Indrajit Singh, M.J.C. No. 79 of 1961 decided by Misra, J., on the 16th of November, 1961 (Pat) and Mahendra Pathak v. S.D.O. Begusarai, M.J.C. No. 487 of 1961 decided by Choudhary, J., on 14th December 1961 (Pat). In all these cases, it would be noticed that the main point, which was canvassed and decided was as to whether there bring an alternative remedy available, the election could

be challenged by filing a writ application in the High Court. Following the Bench decision of this Court in Parmeshwar Mahaseth and Others Vs. State of Bihar and Others, , it was decided in these cases that, if the whole election was challenged as being ultra vires, illegal and void, the availability of an alternative remedy is no bar to the grant of relief by this Court in exercise of its powers under Article 226 of the Constitution of India.

I may observe that, on this point, these cases are against the petitioners as they have not challenged the whole election of the Gram Panchayat in this case. On reading their petition as a whole, it would appear that they have endeavoured to challenge the election of respondent No. 3 only, who was elected as Mukhiya. In regard to the question, however, as to whether the election held in violation of the provisions contained in Rule 3 of the Rules without there being an extension of time by the District Magistrate is void or not, these cases, no doubt, support the contention put forward on behalf of the petitioners that such an election is void. The point does not seem to have been well argued and discussed and I venture to observe with great respect to the learned Judges that it has been decided on the assumption that the rule is mandatory without any discussion of the guiding principles for determination of such a question. In my opinion, they do not lay down the correct principle of law as to the interpretation of Rule 3 of the Rules.

11. In the result, M.J.C. No. 552 of 1961 also fails and is dismissed but without costs.

Ramaswami, C.J.

12. I agree.