

(2002) 02 PAT CK 0117
In the Patna High Court
Case No : L.P.A. No. 273 of 2002

Ram Ratan Yadav

APPELLANT

Vs

The State Election Commission and Others

RESPONDENT

Date of Decision : 28-02-2002

Acts Referred:

Citation : (2002) 2 PLJR 380

Hon'ble Judges : Ravi S. Dhavan, C.J;S.K. Singh, J

Bench : Division Bench

Advocate : Subodh Chandra Jha, for the Appellant;

Final Decision : Dismissed

Judgement

1. This is a Letters Patent Appeal by one Ram Ratan Yadav who is contender for the post of a Up-Mukhia in the elections to Gram Panchayat Budhawara, district Nawadah. The other contender on this post of Up-Mukhia was one Mumtaz Khan. The election was scheduled for 13 June, 2001. At the end of the elections of the 14 who could cast their votes 13 participated so that 7 votes went to Shri Ram Ratan Yadav and 6 to Shri Mumtaz Khan. After these votes had been recorded, the Mukhia Pankaj Kumar raised his objection that he as a Mukhia had been prevented from giving his vote. He had his objection recorded. It was his contention that the Executive Officer had prevented him from giving his vote and participating in the election of the Up-Mukhia. This objection is dated 13 June, 2001, and is on record. This was the day of the election also. On these facts there is no issue.

2. The objection of the Mukhia was taken into consideration and the Acting Executive Officer upon finding that the Mukhia had been prevented by sufficient cause not to participate in the election of Up-Mukhia on 13 June, 2001, decided that the Mukhiya would be entitled to cast his vote as the law so permits him. The date for the Mukhia to cast his vote was scheduled on 24 November, 2001. These facts are not in the petition but in the counter affidavit. The petition had

been filed about one month prior to the objection of the Mukhia being considered.

3. In this regard, it will be necessary to notice the provision which permits the Mukhia to vote in the election of an Up-Mukhia and in addition also permits him to exercise a casting vote should there be a tie. In this context, the relevant provision is Section 15(3)(i) and (ii) which is reproduced below:

15. Election of Mukhia and Up-Mukhia.-

(3) (i) After election every Gram Panchayat, in its first meeting shall elect one Up-Mukhia from amongst the members elected under the provisions of Clause (b) of Sub-section (1) of the Section 12 of the Act, by a majority of votes.

(ii) The Mukhia of the Gram Panchayat shall be a voter in the election of Up-Mukhia and in case of equality of votes he shall exercise a casting vote.

4. With the records standing that the Mukhia had been prevented from casting his vote, on 13 June, 2001 which he was entitled to the vote was cast in favour of one Mumtaz Khan. On this vote cast on 24 November, 2001 there was a tie. Each candidate received 7 votes each. The result of the election of Up-Mukhia was inconclusive. Now the Mukhia exercised his casting vote. The law permits him to do so. This vote was cast in favour of Mumtaz Khan. The balance of the tie was upset in favour of Mumtaz Khan. Mumtaz Khan now received 8 votes defeating Ram Ratan Yadav by a majority of one.

5. Ram Ratan Yadav feels aggrieved that the Mukhia was permitted to exercise his vote and casting vote, subsequently.

6. The matter may not be seen in isolation that the Mukhia was permitted to exercise his casting vote subsequently. What is relevant is had the Mukhia been prevented from casting his vote. There were two solutions to this problem. One was that the entire election could be countermanded and the other was that if the people of the village Panchayat had already cast their vote then this voting pattern cannot change. There is no irregularity in this voting. The irregularity was in keeping the Mukhiya out of the election to choose an Up-Mukhia. This irregularity was not of the Mukhiya's making. It was involuntary to him. This is the relevant aspect.

7. Elections to local bodies as institution of self government is witnessing a return in Bihar after three decades. The necessary corollary is that the experience of a working democracy at all levels is missing. Mistakes in working local self government will happen with lack of experience. Then, the bureaucracy must assimilate with institutions of self government. And bigger politicians will need to recognise small-area-politicians, who in their own sphere are no less than the big ones.

8. What is more important is the working of Panchayats. Fineness and niceties of the law to fine tune the working of Panchayats will also happen as Panchayats, their members and the attending bureaucracy are richer by the experience of

grass root democracy. Unfortunately, at present this is missing.

9. This may be a hard case that one vote has upset the situation for one candidate. This is a lesson for the Executive Officers to get oriented to the system of the Panchayats and in future make sure that a Mukhia is not kept out of arena.

10. It was lack of experience, unless a case of misplaced power, that-the Acting Executive Officer of the concerned block kept the Mukhiya out of the collegiate of the Gram Panchayat.

11. In the circumstances the aspect that the learned Judge has declined to interfere on the petition was not incorrect to avoid a tedious de novo exercise. This Court would not like to take a different view than the one taken by the learned Judge on the petition by declining to interfere.

12. Dismissed.