
(1992) 05 PAT CK 0005

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5098 of 1990

Ram Sharan Yadav

APPELLANT

Vs

The Union of India and others

RESPONDENT

Date of Decision : 20-05-1992

Acts Referred:

Representation of the People Act, 1951 — Section 100, 123(2), 8A, 8A(1), 8A(3)

Citation : (1993) 1 PLJR 625

Hon'ble Judges : B.C. Basak, C.J.; S.K. Singh, J

Bench : Division Bench

Advocate : Arvind Ujjwal and Bhanu Pratap Singh, for the Appellant; Y.V. Giri and V.R.P. Singh, for the Respondent

Judgement

B.C. Basak, C.J. and S.K. Singh, J.—This application discloses how a discredited candidate can take advantage of a situation created because of inaction on the part of the Election Commission and the appropriate authority of Bihar Legislative Assembly (hereinafter referred to as the Assembly) in performing their duties though he is not entitled to the same. The facts of this case are as follows. In the year 1977 the petitioner contested the General Election of Bihar Legislative Assembly from Goh constituency, and was declared elected. Upon an election petition being filed, the petitioner's election was set aside by this High Court on 10/4/1980 on the ground that he had committed corrupt practices u/s 123 (2) of the Representation of People Act, 1951, (hereinafter referred to as the said Act.) He preferred an appeal against the same before the Supreme Court. On 23/4/80 the Supreme Court granted an ex-parte stay. On 6/5/83, the Supreme Court confirmed the interim stay pending final disposal. On 30.10.84, the Supreme court dismissed the appeal and vacated the order of stay. In spite of the Supreme Court's order upholding the judgement of Patna High Court as no further action was taken the petitioner contested the election. The nomination of the petitioner was accepted and objection against acceptance was rejected. However, he lost the election. In the month of February, 1990, the petitioner again contested the election. His nomination was accepted by the Returning officer, overruling the

objection, because till then the order of his disqualification had not been passed. He won the election. At last on 19.3.1990 pursuant to the provision of section 8-A (1) of the R.P. Act, 1951, the Secretary, Bihar Legislative Assembly, the specified authority, submitted the case of the petitioner to the President for determination of the question whether the petitioner should be disqualified and, if so, for what period. On 27.3.1990 the President in turn, as provided u/s 8-A (3) made a reference to the Election Commission for seeking its opinion on the question whether the petitioner should be disqualified, and if so, for what period for being found guilty of corrupt practice. On 4.4.90, the Commission issued a notice to the petitioner to appear before it personally or through counsel on 17.4.90. The petitioner appeared on 17.4.90 before the Commission and prayed for time. The Commission adjourned the case till 16.5.90 to enable him to file written statement. On 15.5.90 the petitioner filed written statement and prayed for time and hearing was adjourned. On 26.5.1990, the petitioner was represented through his counsel who urged the Commission not to impose any disqualification. On 12.6.90 after considering the facts and circumstances of the case written statement, argument and legal position the Commission tendered its opinion on 3.7.90. Acting on the Commission's opinion, the President decided to disqualify the petitioner for six years from 30.10.84 i.e. the date of judgment of the Supreme Court. Mr. Chandra Shekhar, Learned Counsel appearing on behalf of the petitioner has submitted that the decision taken particularly in Annexure-4 in this case is illegal. In this context, he has submitted that in view of the provision of section 100 of the Representation of People Act. 1951 (hereinafter referred to as the Act) even if there is any such ground, that should be taken up in a Election petition. The said provision provides that subject to the provision of sub-section (2) if the High Court is of the opinion that on the date of his election a returned candidate was not qualified or was disqualified to be chosen to fill the seat under the Constitution or this Act or the Govt. of Union Territories Act, 1963, the High Court shall declare the election of the returned candidates as void. In his opinion there is no such declaration and declaration can be made only when an Election petition is filed and an order is made.

2. In this case we may point out that an Election petition was actually filed by another candidate, one of the prayers in which was for setting aside the election on this ground but in view of the Presidents order of disqualification passed by the time the matter came up for disposal, no separate order was passed.

So far as the second prayer for directing the petitioner therein to be declared as elected is concerned, the same was not allowed. It appears that an appeal (bearing no. 5211/91) has been preferred before the Supreme Court by the petitioner therein for not declaring him as successful candidate, which is pending.

3. In our opinion even if the petitioner's contention might have some ground in view of such election petition, the petitioner is not entitled to the relief prayed for. In any view of the matter, it is well settled that the writ petition is a discretionary jurisdiction. If the order is otherwise found to be correct, then the

same should be upheld even if there is any technical irregularity.

4. We find in this case that because of the laches on the part of the authorities concerned no action was taken for a long time. Section 8A of the Representation of the People Act provides as follows?

8A Disqualification on Ground of Corrupt Practices.

1. The case of every person found guilty of a corrupt practice by an order u/s 99 shall be submitted, as soon as may be after such order takes effect, by such authority as the central Government may specify in this behalf, to the president for determination of the question as to whether such person shall be disqualified and if so, for that period, provided that the period for which any person may be disqualified under this sub-section shall in no case exceed six years from the date on which the order made in relation to him u/s 99 takes effect.

2. Any person who stands disqualified under section 8A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act 1975 (40 of 1975), may, if the period of such disqualification has not expired, submit a petition to the president for the removal of such disqualification for the unexpired portion of the said period.

3. Before giving his decision on any question under mentioned in sub-section (1) or on any petition submitted under subsection (2), the president shall obtain the opinion of the Election Commission on such question or petition and shall act according to such opinion.

The petitioner's election as Member of the Assembly in the General Election of 1977 was set aside by the High Court in an Election petition by its judgment and order dated 10th April 1980. This was on the ground that the petitioner had committed corrupt practices. Being aggrieved by the same, an appeal was preferred before the Supreme court and the Supreme Court initially granted ex-parte stay, but later on the appeal was dismissed and the order of stay was vacated on 30.10.84. The said judgment is reported in AIR 1985 S.C. 124.

5. Having regard to the same immediately thereafter, i.e. after 30th October, 1984 appropriate proceeding should have been initiated u/s 8A of the said Act. Admittedly, the authority within the meaning of section 8A is the Secretary of the Assembly but the whole mischief has been created by the fact that no such action was taken until 19th of March 1990. Meanwhile the petitioner contested the election in the year 1985 though he lost. But having taken the advantage of the fact that there was no proceeding u/s 8A initiated by the competent authority, he stood for election again in 1990. He filed nomination paper and an objection was raised but this was over-ruled because till then the order of disqualification had not been passed. As a matter of fact, no step was taken for initiating such proceeding for disqualification until the election was over. It was only after the petitioner was elected and after about 5? years after the final order was passed by the Supreme Court, by disposing of the appeal and vacating the

stay order, the Secretary of the Assembly who is said to be the specified authority within the meaning of section 8A of the Act, thought it fit to initiate a proceeding u/s 8A of the Act. Until then he did not submit the case of the petitioner u/s 8A of the Act to the President of India for determination of the question whether the petitioner should be disqualified as required under the law. Ultimately the President directed disqualification of the petitioner for a period of six years from 30th October, 1984, which is the date of judgment of the Supreme Court. In that view of the matter, here we find that taking advantage of the laches on the part of the appropriate authority u/s 8A of the Act, the petitioner stood for election and was elected and ultimately he was found to be disqualified. In view of the disqualification the petitioner could not have filed any such nomination. The petitioner took advantage of the fact that no such proceeding was initiated for 5? years.

6. this Court which is a court of discretion and the court of extraordinary remedy shall not exercise its jurisdiction in favour of such a petitioner who had got an advantage due to the laches and negligence on the part of the authority concerned.

Accordingly, in our opinion in any view of the matter we are not inclined to exercise our discretion in this matter. Accordingly we dismiss this application.

7. In this case an interim order was passed by virtue of which no election/bye-election could take place in respect of this constituency which was declared to have fallen vacant. We direct that all interim orders shall stand vacated.

8. We called for a report from the authority concerned of the Assembly as to who were the Speaker and the Secretary at the relevant time and such report has been furnished to us. Let this form part of the record of the case. We request the present Speaker to hold an enquiry into the matter and find out the reasons as to why no such step was taken for such a long time. This is not to be taken as a direction from the court. It is merely the desire of the court to ascertain the reason and also for the purpose of upholding the image of the Assembly. We are also of the opinion that the Election Commission of India also failed in its duty, we do not accept the contention made on its behalf that the Election Commission had no duty in this connection. As soon as the judgment of the Supreme Court was delivered on 30.10.1984 admittedly the same was conveyed to the Election Commission. The Election Commission should have given necessary direction to the competent authority for initiating proceedings u/s 8A of the 1951 Act. If they had taken such steps, then the aforesaid situation would not have taken place whereby, though a person had been found guilty of corrupt practices by the Supreme Court itself but in as much as for a period of 5? years no proceeding was initiated u/s 8A to disqualify him, the petitioner filed his nomination paper and got himself elected as a M.L.A. Accordingly, we direct the Election Commission to make an enquiry into the matter and submit a report to this Court as to what step the Election Commission had taken so that appropriate proceeding u/s 8A of the Act was initiated by the competent authority in this

case. Let copies of this Judgment be sent by the Registrar to the Hon''ble Speaker and also to the Chief Election Commissioner.