

(1971) 11 PAT CK 0015

In the Patna High Court

Case No : Civil Writ Jur. Case No. 910 of 1971

Ramdeo Prasad Singh and Another

APPELLANT

Vs

The Election Officer, Sarmera Gram Panchayat Elections and Others

RESPONDENT

Date of Decision : 18-11-1971

Acts Referred:

Bihar Panchayat Election Rules, 1948 — Rule 91

Citation : AIR 1972 Patna 438

Hon'ble Judges : S. Anwar Ahmad, J

Bench : Single Bench

Advocate : S. Mazhar Hussain, Shyam Nandan Pd. Sharma, Pashupati Pd. Sinha and Shambhu Nath Jha Nos. 2, for the Appellant; Sushil Kumar Jha, Govt. Pleader No. 2, for the Respondent

Final Decision : Allowed

Judgement

S. Anwar Ahmad, J.—This application under Articles 226 and 227 of the Constitution of India is for quashing the election of Sarmera Gram Panchayat held on the 23rd of May, 1971.

2. According to the petitioners the polling of the said election as per election programme was scheduled to be held on the 17th May, 1971, the Election Officer by his Memo No. 407, stayed the holding of the election on the 17th of May, 1971, and fixed it for poll on the 23rd of May, 1971. Thus, according to the petitioners, there was a clear violation of Rule 91 of the Bihar Panchayat Raj Elections Rules. The said rule runs as follows:

"91. In cases of emergency like outbreak of epidemics, fire, flood, famine, communal riot or maintenance of law and order, the District Magistrate may, by an order in writing, and similarly the State Government may also, in any of the above cases or for any other reason stated in the order, stay the holding of elections to Panchayats in any local area for such time as they may, in their discretion, consider necessary:

Provided that in case such order is passed by the District Magistrate, it shall be communicated within a week of the date of the order, to the Government for their confirmation.

According to this rule, in case of emergency, the District Magistrate is empowered to change the date of elections to Panchayats in any local area by an order in writing. The proviso to this rule, however, says that if such an order is passed by the District Magistrate changing the date of election on the ground of emergency, it shall be communicated within a week of the date of order to the Government for confirmation. It is admitted by learned Counsel for the State on the basis of a letter received by him from the Sub-Divisional Officer, Barh (Letter No. 5423 dated 17-11-71), that no formal order of the District Magistrate was obtained for changing the date "of the aforesaid Gram Panchayat In view of this letter, Mr. Sushil Kumar Jha, learned Counsel for the State, very fairly conceded that without any formal order being passed by the District Magistrate the date for holding the election of Sarmera Gram Panchayat was changed by the Election Officer.

3. The scheme of the Act and the Rules framed thereunder is that once the date for holding the election has been notified, it cannot be changed to another date and it was only in case of emergency that the District Magistrate could, for reasons to be recorded in writing, change the date of election. The other direction given to the District Magistrate is that he must communicate the change of date so ordered by him to the Government for confirmation within a week of his order.

4. The point for decision is as to whether on the facts of this case the non-compliance of Rule 91 is an irregularity or an illegality vitiating the entire election of the Gram Panchayat.

5. On the concession made by the Counsel for the State, it is obvious that no orders had been passed by the District Magistrate changing the date of the election of the aforesaid Gram Panchayat. No other authority is entitled either under the Act or under the Rules to change the date fixed for holding the election. It is thus clear that the Election Officer had no jurisdiction whatsoever to change the date of election of the Gram Panchayat from the 17th of May, 1971 to the 23rd of May, 1971. In this view of the matter, any order passed by him fixing the date of election beyond the 17th of May, 1971, must be held to be a nullity or non est. Accordingly, the election of the aforesaid Gram Panchayat held on the 23rd of May, 1971 has to be ignored as if no election had taken place.

6. The result, therefore, is that the application is allowed and the election of the Mukhia, Sarpanch and other members of the Executive Committee from Ward No. 4, Sarmera Gram Panchayat, is quashed.