
(1992) 07 PAT CK 0004

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 40 of 1992

Rameshwar Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 27-07-1992

Acts Referred:

Citation : (1993) 1 BLJR 604

Hon'ble Judges : Bisheshwar Prasad Singh, J

Bench : Single Bench

Judgement

Bisheshwar Prasad Singh, J.—In this writ application the petitioner has prayed for quashing of Annexure-2, which is an order passed by the Subdivisional Officer-cum-Superivising Officer (Sanchalan Padadhikari), It appears from the Bihar Co-operative Societies Rules that Sanchalan Padadhikari is appointed under " Rule 21-B of the Rules by the State Government and is vested with the power to organise election in a Co-operative Society. In the case of Primary Society whose area of operation does not extend beyond the territorial boundary of one Subdivision, the Subdivisional Officer may be appointed as Sanchalan Padadhikari. The said authority appoints Election Officer whose statutory duties have been enumerated in the Bihar Co-operative Societies Act. Similarly the polling officer is also vested with certain powers under the Rules.

2. The facts not in dispute are that respondent No. 4 is a Primary Agriculture Credit Co-operative Society. The Subdivisional Officer (respondent No. 2) was appointed Sanchalan Padadhikari, whereas the Anchal Adhikari (respondent No. 3) was appointed on Election Officer. The election of office-bearers of the said Society was to be held since the term of the Managing Committee expired on 30th September, 1991. Accordingly, the Election Officer published the election Schedule.

3. The grievance of the petitioner is that at the beset of one candidate whose nomination had been rejected on scrutiny, namely, Bhagwat Sah, the impugned order was passed by respondent No. 2, the Election Supervising Officer

(Sanchalan Padadhikari). Counsel for the petitioner submits that respondent No. 2 has no jurisdiction under the Rules to issue such an order and in any event even if he had such authority, he could only have postponed the date of poll and could not have asked for a fresh schedule to be prepared.

4. From Annexure-2 it appears that respondent No. 2 has cancelled the election to be held on 31-12-1991 on the ground that in view of the tension and apprehension of the breach of peace created on account of firing done on 18-12-1991, the election was postponed having regard to the law and order situation. A copy of the said order was sent to respondent No. 3 as also to the Assistant Registrar, C-operative Societies requesting him to prepare another programme in connection with the meeting of the general body and election of the Managing Committee. It will thus appear that respondent No. 2 has cancelled the election having regard to the law and order situation caused on account of firing which was resorted to on 18-12-1991 in Raghunathpur Block Office.

5. So far as the first submission is concerned, counsel, for the petitioner submitted that the Rules envisage a situation where polling may not be possible on account of tension created on account of violence or other such or similar circumstances. He refers to the provision of Rule 21-T(i) of the Rules and submits that in terms of the said Rule if at an election, the proceedings at any polling station are interrupted or obstructed by any riot or violence, or is not possible to take the poll at any polling station/booth on account of natural calamity, or any other sufficient cause, the Police Officer for such polling station/booth shall announce an adjournment of the poll to a date to be notified later. Sub-rule (2), provides for the procedure to be followed in case the poll is adjourned. He, therefore, submits that if there was any apprehension of the breach of peace or violence, it was for the polling officer to take a decision and it was not open to respondent No. 2 to pass the impugned order.

6. Learned Standing Counsel No. 1, appearing on behalf of the State, could not point out any provision of the Act or Rules which authorises the Election Supervising Officer (Sanchalan Padadhikari) appointed under Rule 21-B of the Rules to take a decision to cancel the election.

7. I have, therefore, no option but to hold that the impugned order (Annexre-2) passed by respondent No. 2 is without jurisdiction and must be quashed on that ground.

8. This brings me to the second question urged on behalf of the petitioner, namely, that even in a situation envisaged under Rule 21-T of the Rules, if other steps had been taken in accordance with the schedule announced and only the poll is postponed on account of reasons mentioned in the Rule, the poll may be adjourned and the date for the poll may be announced later. This does not authorise even the polling officer to call for a fresh schedule for holding of the election. It is well-settled that if the election process is halted for any reason and the election process commences thereafter, it must be commenced from the

stage at which it had been halted. In the instant case, admittedly nominations had been made. The nomination papers had been scrutinised and other steps had also been taken. The polling was to be held on 31st December, 1991. In such a situation, if the circumstances so justified the polling could be adjourned to a subsequent date. The impugned order (Annexure-2) requests the Assistant Registrar to prepare a fresh schedule for the meeting of the general body and the election. That order is clearly unjustified, because even if he had jurisdiction, all that he could have done was to adjourn the polling if his apprehensions were justified and request the authority concerned to fix any other date for the poll.

9. In these circumstances, this writ application must be allowed. The impugned order (Annexure 2) passed by respondent No. 2 is quashed. The respondents shall now proceed to conduct the election from the stage at which it was stopped by reason of Annexure-2. There will be no order as to costs. It is expected that the authorities concerned shall take appropriate action within two weeks from the date on which a copy of this order is either received by any one of them in normal course, or is served upon any one of respondent Nos. 1 to 3 by the petitioner.