

(1968) 08 PAT CK 0032
In the Patna High Court
Case No : Misc. Judl. Case No. 142 of 1967

Ramroop Yadav

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 29-08-1968

Acts Referred:

Contempt of Courts Act, 1971 — Section 1

Citation : AIR 1969 Patna 151

Hon'ble Judges : Tarkeshwar Nath, J

Bench : Single Bench

Advocate : Prem Shankar Sahay, in C.W.J.C. No. 307/67, for the Appellant; S. Sarwar Ali, A.G.P. (for opp. Party Nos. 4 and 5 in CWJC No. 307/67 and Kameshwari Nandan Singh, for the Respondent

Judgement

Tarkeshwar Nath, J.—The facts giving rise to this case are these:

A notice was issued on the Sub Divisional Officer. Sadar Bhagalpur, and the Block Development Officer of Pirpainty, acting as the Election Officer, Pirpainty Block, Bhagalpur, (opposite party Nos. 4 and 5) in pursuance of an order dated the 17th July 1967, passed in Civil Writ Jurisdiction case No. 307 of 1967 (Ramroop Yadav v. The State of Bihar and others) to show cause, why a proceeding for contempt should not be started against them.

2. Ramroop Yadav had filed an application under Articles 226 and 227 of the Constitution of India, against (1) The State of Bihar, (2) The District Magistrate of Bhagalpur, (3) The District Panchayat Officer, Bhagalpur, (4) The Sub-divisional Officer, Bhagalpur and (5) The Block Development Officer, acting as the Election Officer, Pirpainty Block, Bhagalpur, for a writ in the nature of certiorari for quashing the notification no, 5411/G.P. dated the 26th April. 1967. published in the Bihar Gazette on the 10th May, 1967 and issued under Sub-section (3) of Section 3 of the Bihar Panchayat Raj Act 1947, with regard to the addition and subtraction of some areas to and from, the jurisdiction of the Gram Panchayat in pursuance of which the election of the Gram Panchayat was to be held, and he

had made a prayer for staying the election of the Parasurampur Gram Panchayat which was to be held on the 28th May, 1967. That application was registered as Civil Writ Jurisdiction case No. 307 of 1967. That application was admitted on the 25th May, 1967, and an ad interim stay of the holding of the election was granted pending the final hearing of the application. On the same day (i. e., the 25th May, 1967), the Deputy Registrar of this Court sent a copy of that order, along with a copy of the writ petition to the Block Development Officer, Pirpainty (Bhagalpur), for his information and guidance and for immediate communication of the said order to all concerned, vide memo No. 5652 dated the 25th. May, 1967. On the same date, Mr. Prem Shan-kar Sahay, Advocate for the petitioner in Civil Writ Jurisdiction case No. 307 of 1967. sent a letter to Ramroop Yadav, informing him that the High Court had passed an order staying the election of the Parasurampur Gram Panchayat and the stay order would be communicated in course of the day. He asked Ramroop Yadav to inform the Block Development Officer (Election Officer) Pirpainty. to stop the election. A copy of this letter is enclosed with the application filed on the 7th June, 1967, and marked Annexure "2". On the same day, the said learned Counsel sent a telegram (Annexure "1") to one Shivanand Tiwary (the petitioner in Civil Writ Jurisdiction Case No. 306 of 1967), informing him that the High Court had stayed the election of Parasurampur and Kali Prasad Panchayats. The learned counsel asked the addressee to inform the Election Officer about the said order. On the 26th May, 1967, Ramroop Yadav, who was a candidate for the Mukhiyaship of the Parasurampur Gram Panchayat, filed an application (copy marked Annexuer "3") before the Election Officer, Pirpainty, bringing to his notice that the High Court had stayed the election of the Parasurampur Gram Panchayat, scheduled to be held on the 28th May, 1967. In support of this version, he enclosed true copies of the letter and the telegram sent by Mr. Prem Shankar Sahay, and made a prayer to stay the election of the Parasurampur Gram Panchayat. On. the 27th May, 1967, the Block Development Officer, who was acting as the Election Officer, sent a letter to the Sub-divisional Officer, Bhagalpur, informing him that Ramroop Yadav and Shivanand Tiwary, candidates for the Mukhiyaship of the Gram Panchayats Parasurampur and Kaliprasad, respectively, had produced before him a telegram and a letter received by them from an Advocate of the High Court, Patna, stating therein that the High Court had stayed the election of those Panchayats in cases Nos. 306 and 307 of 1967, and, there was a request on their behalf to stay the election, which was to be held on the 28th May, 1967, and the 30th May, 1967, respectively. The Block Development Officer enclosed the copies of the letter and the telegram with his letter, and sought for instructions for taking further steps in the matter of the election. He, however, pointed it out that he had not received any order from the High Court or from any other higher authority. The Sub-Divisional Officer made a note on this letter that the opinion of either the Public Prosecutor or the Government Pleader should be taken. Opinion of the Government Pleader was obtained on the 27th May, 1967, and that was to the following effect:--

"From the letter of the Advocate, Patna, it appears that election has been stayed, but no official information has been received. No copy of the H. C. order has been filed. Election Party has already (?) (been) deputed with necessary materials. Election works may, therefore, proceed till any communication is received as it is not practicable to stay the election at this stage."

In view of this opinion of Shree R.N. Tewary, Government Pleader, the Sub-divisional Officer (opposite party No. 4) sent instructions to the Block Development Officer who was the Election Officer, Pirpainty (opposite party No. 5) to act according to the said opinion. The election of the Mukhiya of the Parasurampur Gram Panchayat was thus held on the 28th May, 1967.

3. A copy of the order of this Court, passed in Civil Writ Jurisdiction Case No. 307 of 1967, staying the election was received by opposite party No. 5 on the 29th May, 1967, but by that time, the election of the Mukhiya of Parasurampur Gram Panchayat was already over, and one Govind Mandal was elected as the Mukhiya of the said Gram Panchayat. On receipt of the said order of this Court, election of the other Gram Panchayat (Kali Prasad) scheduled to be held on the 30th May, 1967, was stayed.

4. On the 7th June, 1967, Ramroop Yadav filed an application in Civil Writ Jurisdiction case No. 307 of 1967 for maintaining the status quo of the Parasurampur Gram Panchayat which was before the holding of the election on the 28th of May, 1967, and permitting him (the old Mukhiya) to continue in office till the hearing of that application. He stated in that application that the holding of the election after it had been stayed by this court was completely illegal and the newly elected Mukhiya Govind Mandal should not take charge of the office. He further indicated in that application that the Election Officer did not stay the election in spite of the fact that the order of this court was communicated to him and the letter and telegram of the learned counsel were shown to him. That application filed on the 7th June, 1967, was put up before the Bench on the 17th July, 1967 and an order was passed for the addition of Govind Mandal as opposite party No. 6 to Civil Writ Jurisdiction Case No. 307 of 1967, and a further order was passed for issuing notices to opposite party Nos. 4 and 5 of the main application to show cause why a proceeding for contempt should not be started against them.

5. In answer to the said notice, the Sub-divisional Officer, opposite party No. 4, has shown cause, stating that the order of the High Court staying the election was not communicated to him before the holding of the election and in fact a copy of the stay order was received by opposite party No. 5 on the 29th May, 1967. He has referred to the opinion of the learned Government Pleader, which was given to him on the 27th May, 1967, for proceeding with the election on the 28th May, 1967, and has submitted that in accordance with that opinion, he sent instructions to opposite party No. 5 to act according to that opinion. It further appears from the show-cause application that on receipt of the order of this Court opposite party No. 5 did not hold any election of the Kali Prasad Gram

Panchayat on the 30th May, 1967. Moreover, Govind Mandal was, no doubt, elected as the Mukhiya of the Parasurampur Gram Panchayat, but he was not allowed to take oath on the 3rd June, 1967, in view of the order of this court dated the 20th May, 1967. He has further mentioned that he again sought for the opinion of the Government Pleader on the receipt of the order of this Court and the Government Pleader advised him to stay further proceedings till the order of injunction was in force. It further appears from the petition that the old Mukhiya of the Parasurampur Gram Panchayat was still functioning and no prejudice has been caused to him (Ramroop Yadav, the previous Mukhiya) and the order of this Court had been respected. His point of view is that the certified copy of the order of this Court not having been filed either by Ramroop Yadav or Shivanand Tiwary, he had no alternative but to seek the opinion of the Government Pleader and act according to that opinion. Towards the close of his petition, he has mentioned that he never showed any disrespect to any order of this Court and in case this court took a different view, then he tendered unqualified apology, inasmuch as he never intended to disobey the order of this Court,

6. Opposite party No. 5 also has shown cause on the same lines and he was acting according to the instructions of opposite party No. 4. He also has tendered unqualified apology in case this Court would come to the conclusion that he had committed any contempt.

7. Learned Counsel for opposite party Nos. 4 and 5 submitted that a copy of the order of this court dated the 25th May, 1967, was not received either by opposite party No. 4 or 5 until the 29th May, 1967, and that being so, they had to be guided by the opinion of the Government Pleader with regard to the facts contained in the letter and the telegram sent by Mr. Prem Shankar Sahay, and on obtaining his opinion, the election of Parasurampur Gram Panchayat was held on the 28th May, 1967. Learned Counsel submitted that these two officers did not at all disobey the order of this Court and they acted bona fide in holding the election on the 28th May, 1967. He pressed that as soon as the copy of the order of this court was received by them, they did not allow the newly elected Mukhiya, Govind Mandal, to take oath and the election of the other Gram Panchayats to be held on the 30th May, 1967, was stayed. I find great force in this submission of learned Counsel for opposite party Nos. 4 and 5.

8. Learned Counsel for the State of Bihar, on the other hand, urged that the letter and telegram, referred to above indicated clearly that this court had passed an order for stay of the holding of election and on the production of those documents, the Sub-divisional Officer or the Election Officer ought to have stayed their hands.

The question for consideration is as to whether opposite party Nos. 4 and 5 can be held to be guilty for contempt of Court.

9. Learned counsel for the contemnors referred to Har Kishun Singh and Others Vs. Chhotan Mahton and Others, . The relevant observations in that case were

the following:--

"When an order of stay or other such prohibitory order has been made by this court and when the Subordinate Judge or Magistrate is informed of the order by an advocate or pleader, he ought, I consider, ordinarily to accept what is stated by the advocate or pleader, and stay further proceedings. Certainly, he ought to do so, if the advocate or pleader is in a position to satisfy him as to the source of his information and is prepared to support it by an affidavit. The reason why the Subordinate Judge or Magistrate should invariably take such a course is that an advocate or a pleader is an officer of the court and is not likely to supply information as to the correctness of which he is not himself completely satisfied. If an advocate or pleader acts improperly or carelessly and it eventually turns out that no prohibitory order has been made by this court, suitable action can be taken against him. If, on the other hand, the Subordinate Judge or Magistrate disregards such information and continues the proceeding, he may find it a matter of difficulty to satisfy this court that he believed in good faith that no prohibitory order had been made."

10. A letter of an Advocate intimating the order for stay of any proceeding passed by this court should not be disbelieved and discarded by the court in which it is produced, unless it has any reason to suspect the genuineness of that letter, in the sense that either the said letter was not sent by the Advocate who purported to have sent it or it did not bear his signature. In other words, if an Advocate gives a certificate that this Court has granted stay of one proceeding or the other in a particular case, that certificate should be ordinarily accepted to be correct, inasmuch as an Advocate is an officer of the Court and he has taken upon himself full responsibility before giving that certificate. It may, however, be that in a particular case, the court may have some special reason for not accepting that certificate, but, in that case, it is open to the Court to ask the party producing that certificate to file an affidavit in support of that certificate and then the court can pass a suitable order, if an affidavit is filed. It happens in more than one case that whenever an order for stay is passed by this court, a certificate is granted by an Advocate indicating the order passed by this Court and the litigant carries that certificate and produces it before his lawyer appearing in the courts below, so that he may make use of it. Such step is taken inasmuch as some delay is likely to be caused in obtaining a certified copy of the order passed by this court. The litigant is always anxious to inform the courts below about the orders for stay passed by this court, so that the proceedings in the Courts below may be stayed and with that end in view he rushes to the courts below with the certificate of the Advocate.

11. In the present case, the letter and the telegram sent by Mr. Prem Shankar Sahay were undoubtedly produced before opposite party No. 5, but he had to be guided by his superior officer, opposite party No. 4. Opposite party No. 4, in his turn, took the advice of the Government Pleader and I have already referred to the said advice. It would have been more advisable for the Government Pleader

on being informed of the letter of Mr. Prem Shankar Sahay, to ask the Sub-divisional Officer to stay the election which was to be held on the 28th of May, 1967. instead of proceeding with the election work, particularly, when there was no proper material before him for doubting the genuineness of the letter of Mr. Prem Shankar Sahay. In any event, the fact remains that opposite party Nos. 4 and 5 were guided in this case by the opinion of the Government Pleader, and, in the circumstances of the present case, it cannot be held that they wilfully disobeyed the order of this court. Their conduct was bona fide and, in fact, on receipt of the order of this court, they stayed their hands and did not allow the elected Mukhiya, Govind Mandal, to take oath. I am satisfied with the explanations given by them and no further action is necessary against them.

12. In the result, the rule for con tempt is discharged but there will be no order for costs.