

(1995) 02 PAT CK 0036

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 1120 of 1995

Saiyed Bedrudoja

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-02-1995

Acts Referred:

Citation : (1995) 02 PAT CK 0036

Final Decision : Dismissed

Judgement

1. This writ petition has been filed with a prayer for giving a direction upon the Chief Election Commissioner, New Delhi, Election Commissioner, Bihar and the Election Officer, Kishanganj-cum-Sub-Divisional Officer, Ramdeo Yadav to withdraw from respondents Nos. 5 and 6 the symbol of Bicycle and Elephant in the ensuing Assembly Election to be held in Bihar. The said symbol has been allotted to the Samajwadi Party and Bahujan Samaj Party and should have been allotted to the petitioner and the further contention of the petitioner is that he, as the official candidate of that party, is entitled to the said symbol.

2. The petitioner's case is that he has been allotted "Apple" as a symbol but the grant of symbol of Bicycle and Elephant to respondents Nos. 5 and 6 will prejudice his election inasmuch as the petitioner at the time of filing his nomination paper had opted for the Bicycle symbol.

3. After hearing learned counsel for the parties and considering the contention of the writ petitioner this writ petition is being disposed of at the stage of admission itself by the following order.

4. In respect of the ensuing Assembly election in Bihar a notification dated 16th January, 1995 has been issued by the Governor of Bihar on the recommendation of the Election Commission calling upon all the Assembly constituencies in the State to elect members in accordance with the Act and the Rules.

5. It has been well settled by a catena of decisions that once the notification is issued, as aforesaid, the "rainbow of operation" start and the jurisdiction of this

Court even under Article 226 of the Constitution is barred in the matter of interference with the on-going process of election. The provisions of Article 329(b) of the Constitution is clear on this point. The same is quoted hereinbelow:

"329. Bar to interference by Courts in electoral matters-- Notwithstanding any thing in this Constitution

(a) xxx xxx xxx (b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

6. The Supreme Court in its Constitution Bench judgment in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , on a consideration of the previous judgment of the Supreme Court in the case of N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, illustrated what is meant by "election" by laying down as follows in paragraph 22 at page 424 (of SCC): (at p. 363 of AIR) of the report:--

"Every step from start to finish of the total process constitutes "election", not merely the conclusion or culmination."

This position has been further clarified in page 427 (of SCC) : (at p. 866 of AIR) as follows:--

"The rainbow of operations, covered by the compendious expression "election", thus commences from the initial notification and culminates in the declaration of the return of a candidate. The paramount policy of the Constitution-framers in declaring that no election shall be called in question except the way it is provided for in Article 329(b) and the Representation of the People Act, 1951, compels us to read, as Fazl Ali, J. did in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, , the Constitution and the Act together as an integral scheme. The reason for postponement of election litigation to the post-election stage is that elections shall not unduly be protracted or obstructed. The speed and promptitude in getting due representation for the electors in the legislative bodies is the real reason suggested in the course of judgment."

7. In this connection the law made by the appropriate Legislature is the Representation of the People Act, 1951 (hereinafter referred to as the said Act) in which Section 100 of the said Act provides the grounds on which the election can be challenged. Relevant provisions of Section 100 of the said Act is set out below:--

"100. Grounds for declaring election to be void.-- (1) Subject to the provisions of Subsection (2) if the High Court is of opinion--

(a) 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 of this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected--

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act."

8. One of the grounds for calling election in question is non-compliance with the provisions of the Constitution or of the said Act or of any rules or orders made under the said Act.

9. The grievance of the writ petitioner relates to allotment of Symbol which governed by any controlled under the Election Symbols (Reservation and Allotment) Order, 1968. The said Order has been framed in exercise of power under Article 324 of the Constitution read with Section 29-A of the said Act and also Rules 5 and 10 of the Conduct of Election Rules, 1961. As such any violation of the said Order in the matter of allotment of Symbol comes squarely within the provisions of Section 100(1)(d)(iv) of the said Act, In that view of the matter, any alleged illegality or irregularity in the matter relating to allotment of Symbol can only be challenged only by filing a petition on any of the grounds u/s 100 of the said Act after the election process is over and not at the intermediate stage by filing a writ petition.

10. In the case of Roop Lal Sathi Vs. Nachhattar Singh, , " the learned Judges of the Supreme Court have been pleased to hold that any breach of the Symbols order amounts to non-compliance with the provisions of the Constitution or the Act, or any Orders made under the Act. Therefore, the grievance of any candidate about allotment of Symbols is a matter which falls within the purview of Section 100(1)(d)(iv) of the said Act.

11. I am, therefore, unable to entertain this writ petition in view of the constitutional bar and having regard to the aforesaid statutory dispensation.

12. In that view of the matter, I hold that this writ petition is not maintainable at the threshold and as such I dismiss the writ petition without going into the merits of the case. There will be no order as to cost.