

(1973) 01 PAT CK 0007
In the Patna High Court
Case No : C.W.J.C. No. 474 of 1971

Saligram Sharan Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 31-01-1973

Acts Referred:

Bihar Panchayat Election Rules, 1959 — Rule 23(1), 23(2), 23(4)
Bihar Panchayat Raj Act, 1947 — Section 79(1)

Citation : AIR 1974 Patna 3

Hon'ble Judges : Madan Mohan Prasad, J

Bench : Single Bench

Advocate : Jyoti Narayan, for the Appellant; Jagannath Jha, Standing Counsel II, for the Respondent

Final Decision : Allowed

Judgement

Madan Mohan Prasad, J.—This is an application under Articles 226 and 227 of the Constitution of India for quashing an order passed by the Sub-divisional Magistrate under Sub-rule (4) of Rule 23 of the Bihar Panchayat Elections Rules, 1959 (hereinafter referred to as the Rules) and issuing necessary directions.

2. The case of the petitioner, briefly, stated is as follows: There was an election of Sarwak Gram Panchayat situated within the jurisdiction of the police-station at Rafiganj in the district of Gaya to take place in the year 1971. The date for nomination papers to be filed in connection with different posts was fixed as 30th of March, 1971. The petitioner filed his nomination paper for the office of Mukhiya. Respondents 4 to 14 also filed their nominations for the same post. The nomination papers of respondents Nos. 4 and 5 were, however rejected thus leaving the petitioner and respondents 6 to 14 as the duly nominated candidates. At the time of the scrutiny respondent No. 6 filed a petition of objection to the acceptance of the nomination paper of the petitioner on the ground that he had entered into an agreement for the purpose of constructing a well in village Naraich lying in the Sarwak Gram Panchayat and had received an advance of

money therefore but did not construct the well. The election officer rejected this petition and declared the nomination of the petitioner to be valid. The two respondents 4 and 5 whose nomination papers had been rejected did not file any objection petition before the Sub-divisional Magistrate against the rejection of their nominations and the matter thus became final. Respondent No. 4, however, filed an objection petition under Rule 23 (4) before the Sub-divisional Magistrate directed against the acceptance of the nomination of the petitioner. Sub-divisional Magistrate accepted the objection and declared the nomination of the petitioner to be invalid. Hence this application.

3. Learned counsel for the petitioner has raised two points before me: Firstly, that the learned Sub-divisional Magistrate had no jurisdiction to entertain this petition from respondent No. 4 and the order passed thereon is, therefore, without jurisdiction. Secondly, that the learned Sub-divisional Magistrate has committed an error of law which is apparent on the face of the record inasmuch as, he has not considered the question whether the petitioner was disqualified at the date of nomination but has accepted the previous state of things existing on a previous date as the determining factor. I must state at the outset that there is no substance in the first contention but the second contention of learned counsel must prevail.

4. On the first point learned counsel has urged that under Sub-rule (4) of Rule 23 it is only a candidate who has made an objection before the election officer to the acceptance or rejection of a nomination paper who can file an objection before the learned Sub-divisional Magistrate. According to him no other person is entitled to raise such an objection. Learned counsel has urged that under Sub-rule (1) of Rule 23 of the Rules the candidates and one proposer of each of the candidates are entitled to be present at the scrutiny and they are to be given all facilities to examine all the nomination papers received, that Sub-rule (2) provides for the examination of the nomination papers by the election officer and decision of all objections which may be made at the time to any nomination and that Sub-rule (4) provides that any person aggrieved by an order of the election officer accepting or rejecting a nomination paper may file an objection before the sub-divisional Magistrate. It is urged that reading Rule 23 as a whole it is quite apparent that the person who can raise an objection before the Sub-divisional Magistrate must be the candidate who had raised the objection earlier. It is urged that even the proposer though present at the scrutiny cannot raise an objection before the Sub-divisional Magistrate under Sub-rule (4). Learned counsel for the parties have stated that this is a question which arises for the first time in this Court and there is no decision on the point.

5. I am unable to accept the interpretation put upon the provisions of Sub-rule (4). It appears from Sub-rule (1) that not only the candidates but even the proposers are allowed to be present at the time of scrutiny and they have to be given facilities for examining the nomination papers. Obviously, the purpose of such examination is to enable them to make any objections to the acceptance

or rejection of a nomination paper. Sub-rule (2) provides for such objections to be decided. Sub-rule (2) does not specifically mention as to who are the persons entitled to raise the objections. But it is quite obvious that persons present and given facilities for examination of nomination papers must be deemed to be persons entitled to raise objections before the election officer. The relevant part of Sub-rule (2) says "..... the election officer shall examine the nomination papers and shall decide all objections which may be made at the time to any nomination and may either on such objection or on his own motion reject any nomination paper....." The words "all objections which may be, made at the time" must be deemed to mean or include all objections which may be made by any of the persons present at the time.

6. Sub-rule (4) which needs interpretation in this case is as follows :

"Where the powers of the Election Officer under the preceding Sub-rule are exercised by an officer other than the Sub-divisional Magistrate, any person aggrieved by an order of the Election Officer accepting, or rejecting a nomination paper may, within seven days from the date of such order, file an objection petition before the Sub-divisional Magistrate who shall consider the grounds of objection raised in the petition and pass orders thereon within a week of the filing of the objection petition. Any order passed by the Sub-divisional Magistrate under this Sub-rule shall, subject to any decision to the contrary given by the Election Tribunal on the trial of an election petition calling in question the election be final".

The question is whom the words "any person aggrieved by an order of the election officer" refer to. The argument of learned counsel that they refer to the candidates alone must be rejected. One may ask why is it not open to the proposer of a candidate to raise an objection to the nomination of another candidate. When a voter proposes a particular person for a particular office he is interested in the order passed by the election officer accepting or rejecting his candidate's nomination paper. He is equally interested in getting nomination papers of other rival candidates rejected. In view of what I have said about Sub-rule (2) viz. that even a proposer can raise objection, it is impossible to come to the conclusion that although the proposer may object before the election officer to the acceptance of the nomination paper of another candidate, it is not open to him to raise an objection by a petition under Sub-rule (4) before the Sub-divisional Magistrate. The legislature cannot be deemed, in the absence of any express provision, to have intended to make a discrimination between the candidates and the proposers for the purpose of making an objection under Sub-rule (4). Both categories of persons may be aggrieved by the order of the election officer.

7. In the instant case the objection was made before the Sub-divisional Magistrate by a candidate whose nomination paper itself had been rejected but he had not raised any objection to it before the Sub-divisional Magistrate under Rule 23 (4). It is, therefore, said that he had ceased to be a candidate in view of

the rejection of his nomination paper and his having not made any objection before the election officer and that he could not have made the objection before the Sub-divisional Magistrate. I am unable to accept this contention. If this contention were to be accepted, it would mean that even if he had raised an objection before the election officer, he would not be in a position to challenge the order of the Election Officer before the Subdivisional Magistrate. And there is no justification for importing into Rule 4 all this. In the absence of any express or implied provision to this effect, it would be wrong to suppose that under Sub-rule (4) it is only a person who is yet in the field as a candidate who alone can challenge the acceptance of the nomination paper of another candidate before the Sub-divisional Magistrate. This would be importing into Sub-rule (4) something which does not exist and for which there is no sanction in law. The words "any person aggrieved" occurring in Sub-rule (4) cannot be interpreted so as to mean only such persons as were candidates present at the time of the scrutiny and who are themselves duly nominated candidates thereafter. Such an interpretation would be doing violence to the language of the rule.

8. Reading Sub-rule (4) of Rule 23, it must be noted that the Legislature has used comprehensive words by saying that "any person aggrieved with the order of the Election Officer accepting or rejecting a nomination paper may file an objection petition before the Sub-divisional Magistrate." There are no words of limitation put in this rule nor does one find it elsewhere. It is a well-accepted rule of interpretation that plain words used by the Legislature must be given their apparent meaning unless there is anything in the context to lead to the contrary conclusion. It will appear from Rule 72 that an objection petition can be filed by any voter or any candidate. The question whether a nomination paper has been properly accepted or not, can certainly be agitated by an election petition. A voter thus has been given the right to challenge the election on this ground. The question arises whether the same right of challenging the acceptance or rejection of a nomination paper at an earlier stage before the Sub-divisional Magistrate is available to the voter including a proposer or not. It is obvious that in the absence of any rule to the contrary no limitation can be put upon the right of the voter by reading the words "any person aggrieved" in the limited sense as referring to the candidate alone. In my view, therefore, Rule 4 enables any person aggrieved, be he a voter, a proposer or a candidate, to raise an objection before the Sub-divisional Magistrate under Rule 4. I have been able to find out a decision of a learned Judge of this Court which supports the view which I have taken. It is in the case of *Ram Saran Singh Azad v. Tribeni Prasad Sukul* 1961 BLJR 801). The learned Judge took the same view as I have done, namely, that any person, be he a voter or a candidate, can make an objection under Rule 23 (4) if he is aggrieved by the order of the Election Officer, even though an objection on the ground taken in the petition was not taken earlier.

9. I have already held that in the absence of any limitation in the wordings of Rule 23 (4) it would be doing violence to the language of the rule if it be said that the words "any person aggrieved" mean only such persons as had raised an

objection before the Election Officer. It may be that a person who had not raised any objection before the Election Officer may raise the objection before the Sub-divisional Magistrate. Obviously a voter is not entitled to be present at the time of the scrutiny and is thus incapable of raising an objection at the time of the scrutiny. The rule must be read, therefore, as enabling any person whether he had raised such objection before the Election Officer or not, to be entitled to raise an objection before the Sub-divisional Magistrate. If a contrary interpretation were to be accepted it would have the effect of limiting the right of the voter to challenge before the Sub-divisional Magistrate the acceptance or rejection of a nomination, a view for which there seems to be no sanction in law. It cannot, therefore, be said that the words "any person aggrieved" include the candidates but exclude the proposer or any other voter. It cannot also be held that the words mean only such candidates as had made an objection before the Election Officer and continue to be duly nominated candidates.

10. In my view, the Sub-divisional Magistrate was acting within his jurisdiction in entertaining the objection filed by respondent No. 4. The first contention of learned counsel must, therefore, be rejected.

11. With regard to second contention it has been rightly urged that the learned Sub-divisional Magistrate has misdirected himself on a question of law. Section 79 of the Bihar Panchayat Raj Act (hereinafter referred to as the Act) contains disqualifications of Mukhia and others. Clauses (h) and (i) of Sub-section (1) of Section 79 are the relevant provisions for the purpose of the present case. They are as follows:

"79. Notwithstanding anything contained in this Act, a person shall be disqualified for election, nomination or appointment as a "Mukhia", member of the Executive Committee, Sarpanch, or Panch if such person.....

XX XX X. (h) holds any salaried office or place of profit in the gift or disposal of a "Gram Panchayat".

(i) has directly or indirectly any share or interest in any contract, with, by or on behalf of, the "Gram Panchayat" while owning such share or interest."

In the instant case the learned Sub-divisional Magistrate has come to the conclusion that the Mukhia of the aforesaid Gram Panchayat had given a contract to the petitioner for construction of the well in the year 1966 and the petitioner had received an advance for the same in the year 1967 and it appeared that the money had not been refunded in 1970 for which distress warrant had been issued and therefore the petitioner held an office of profit and owed dues to the Gram Panchayat. On this ground the learned Subdivisional Magistrate held the nomination paper of the petitioner to be invalid. The learned Subdivisional Magistrate has committed an error of law in construing the provision of Clauses (h) and (i) of Section 79 of the Act. The use of the present tense in both Clauses (h) and (i) leaves no room for doubt that the disqualification must be subsisting at the relevant date i.e. the date of nomination. It was, therefore, the date of the

nomination which was the relevant date for the purpose of finding out whether the petitioner suffered from any of the disqualifications. There might have been dues in the year 1970 but they could have as well been paid off before the date of the nomination. There might have been a contract in the year 1966, but it could have ceased to subsist before the date of nomination. The Subdivisional Magistrate has not cared to find out whether any of these disqualifications existed so far as the petitioner is concerned at the date of the nomination. He has relied on the antecedent facts and has declared the nomination paper of the petitioner to be invalid for that reason. The learned Subdivisional Magistrate had undoubtedly no jurisdiction to act in the manner he did. If there were no disqualifications existing at the date of the nomination, the petitioner's nomination paper could not have been rejected. In the absence of any finding to the effect that such disqualifications existed at the relevant date, the order cannot be sustained.

12. In this connection I would mention that the petitioner has stated on affidavit several facts. Firstly, that the contract was "entered into between the Block Development Officer and the petitioner and it was not by or on behalf of the Panchayat, and that the Gram Panchayat had nothing to do with this contract and secondly that the amount due from him had been realised by issue of distress warrant on the 23rd of January, 1971 more than two months before the date of the nomination. The agreement and the work order have been produced as Annexures 3 and 4 to this application. In my view, it will not be proper for this court to enter into the evidence on the point as to whether the alleged disqualification subsisted at the date of nomination. There is no statement in the present petition whether these documents had been produced before the Subdivisional Magistrate. There is also nothing to show that any document to show that the dues had been paid off long before the date of his nomination paper had been produced before the Subdivisional Magistrate. In such circumstances this court will not for the first time consider the evidence and decide a question of fact. This will be a matter to be considered by the Subdivisional Magistrate.

13. For the reasons mentioned above, I would quash the order passed by the Subdivisional Magistrate on the 12th of April, 1971 invalidating the nomination paper of the petitioner and direct him to consider the question as to whether there was any subsisting disqualification in respect of the petitioner on the date of nomination and to dispose of the matter in accordance with law.

14. This application is accordingly allowed. There will however, be no order for costs.