

(2015) 12 PAT CK 0070

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3767 of 2015

Sangita Devi and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-12-2015

Acts Referred:

Bihar Panchayat Raj Act, 2006 — Section 45(3)(vii)

Citation : (2015) 12 PAT CK 0070

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : Ashish Giri and Pranav Kumar, Advocates, for the Appellant; Nadeem Seraj, GP-20, for the Respondent

Final Decision : Allowed

Judgement

Jyoti Saran, J.—The ballot received in a sealed cover has been opened in presence of counsel appearing for the petitioners, counsel for the State, counsel for the State Election Commission and Mr. S.B.K. Manglam appearing for the private respondent No. 7 for examination.

2. Heard Mr. Ashish Giri, learned counsel appearing on behalf of the petitioners, Mr. Nadeem Seraj, learned G.P. 20 for the State, Mr. Amit Shrivastava for the State Election Commission and Mr. S.B.K. Manglam for the private respondent No. 7.

3. The 12 petitioners herein including the Up-Pramukh have questioned the opinion recorded by the Executive Officer-cum-Block Development Officer, Paharpur present at Annexure-4 which contains the minutes of the special meeting held on 20.2.2015 to consider the "no confidence motion" moved against the respondent No. 7 and has been declared failed on account of the equality of votes inasmuch as in a 22 member Samiti, of the 12 votes cast, 11 were held valid while one was declared invalid and thus the motion was declared failed.

4. The Up-Pramukh who was the Presiding Officer in the meeting along with 11 members have approached this Court against the decision and their opposition is also recorded in the minutes of the meeting by the Block Development Officer-cum-Executive Officer of the Samiti. It is in consideration of the issue raised that the ballots so cast in the special meeting was directed to be produced in a sealed cover and as noted above the sealed cover was opened in presence of learned counsel and the ballot so declared invalid has been circulated for perusal by learned counsel. The only ground on which the said ballot has been declared invalid is a presence of a mark in the column opposing the motion apart from a "cross mark" supporting the motion.

5. Mr. Ashish Giri, learned counsel appearing for the petitioners with reference to the provisions of Section 45(3)(vii) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the "Act") has argued that any "no confidence motion" moved against the Pramukh or Up-Pramukh has to attain finality by the casting of ballots which is to be in the manner prescribed. He submits that although there is no rule governing a "no confidence motion" but the Bihar Panchayat Election Rules, 2006 (hereinafter referred to as "the rules") have been framed insofar as it relates to the direct election to the Panchayat as well as to elect the Pramukh, Up-Pramukh and other Panchayat heads on the basis of the internal election. He thus with reference to the Rules present at Chapter-10 and 12 of "the rules" submits that whereas Chapter-10 relates to scrutiny of ballot papers in cases of direct elections, the internal elections has been discussed in Chapter-12 and Rule 75 and 96 thereof relate to issue of invalid votes. Relying upon the second proviso to Rule 75 he submits that a situation of similar nature has been taken care of thereunder when it very clearly provides that if the intent of the voter could be gathered by perusal of the votes so cast then that should be the sole factor for scrutiny of any ballot and which is not to be invalidated in a routine manner. Proceeding therefrom it is submitted that since in the present case the intent of the member of the Samiti in casting her vote is manifest from the "cross mark" itself, a simple presence of "a half inch mark" in the other column which does not in any manner indicate that the said member intended to oppose the motion, it could not have been any ground to invalidate the vote. He thus submits that the Executive Officer has illegally usurped the jurisdiction to declare the vote invalid when it was upon the Presiding Officer to take a decision in this regard.

6. Mr. Amit Shrivastava appearing for the State Election Commission has with reference to the Rule 75(1)(i) of the Rules submitted that the power has been vested in the State Election Commission to issue guidelines as regarding the appreciation in such cases and pursuant where to the State Election Commission has issued necessary directives and guidelines. He has further submitted that it is only a "cross mark" which has to be upheld in the case of a scrutiny of a ballot and any other mark would invalidate such ballot.

7. Mr. Nadeem Seraj, learned counsel supporting the action of the Executive

Officer submits that since there was another mark present in the ballot hence the decision. The substantive opposition has come from Mr. Manglam standing for the sitting Pramukh to question the maintainability of the writ petition inter alia on grounds that the petitioner No. 1 herself being the Presiding Officer in the special meeting, she cannot question the proceedings for it was entirely her duty to express opinion on the ballots. It was further argued by Mr. Manglam that since the invalidity in the proceeding is being questioned by the Presiding Officer herself on the ground that it has been taken over by the Executive Officer hence the matter be remitted back to the Samiti for afresh exercise in this regard.

8. Responding to the argument of the respondent No. 7 and the Executive Officer it is argued by Mr. Giri that the minutes of the meeting so recorded by the Executive Officer itself records the opposition expressed by these petitioners who have opposed the opinion of the Executive Officer and thus the matters are now clearly open for a conclusive finding on the ballots.

9. I have heard learned counsel for the parties and I have perused the materials on record. True it is that no specific Rules have been framed to govern a special meeting held to consider a "no confidence motion" but then Rule 44(3)(vii) makes it abundantly clear that a "no confidence motion" would be concluded by casting of secret ballot which is to be done in the prescribed manner. The Panchayat Election Rules framed under "the Act" in Chapter-10 and Chapter-12 do provide for counting of votes in the matter of direct election and internal elections respectively and in Rule 75 and 96 thereof it also provides for circumstances in which a ballot paper can be held invalid. Since a finality to a "no confidence motion" is reached only after casting of ballots, hence in absence of any specific Rule framed to cater to a "no confidence motion" the provisions present at Chapter 10 and 12 of the rules and particularly Rule 75 and 96 thereof are sufficient guidance on the issue of an invalidation of any ballot so cast in the "no confidence motion" for removal of the Pramukh or any Panchayat head.

10. In fact the second proviso to Rule 75 leaves no room for confusion that unless the intent of the voter cannot be ascertained, a vote cast cannot be invalidated in a routine manner. Rule 75 of the Rules very clearly mentions that even if a mark is extended to two columns, it is column possessing the major portion of the mark which would reflect the intent of the voter and even in such cases a ballot is not to be rejected.

11. The case in hand is on a much better footing for even if a half inch mark opposing a motion is present, the clear intent of voter in putting a cross mark in the column supporting the "no confidence motion" puts an end to all speculations. A mere presence of a half inch mark in the other column could not have been any ground to invalidate the ballot. Further the intent of the members present in the special meeting is further manifest from the concluding portion of the minutes of the special meeting where the Executive Officer himself has recorded that the 12 members present in the meeting did oppose his opinion. In the 22 members Samiti, 12 members having voted and opposing the opinion of

the Executive Officer in invalidating one vote, itself was sufficient enough to uphold the motion.

12. Although the proceedings recorded do clearly show that the Executive Officer has exceeded his jurisdiction to interfere with the proceedings of the Special meeting and in any other circumstance the matter would require a remand but considering that except for the said infirmity, the special meeting suffers from no other illegality and the intent of the majority of the Panchayat Samiti members is loud and clear, I do not agree with the suggestion of Mr. Manglam of remand of the matter for it would only be a completion of formality which can well be done here and now.

13. For the discussions made by me hereinabove, I deem it proper to hold that the opinion of the Executive Officer is illegal and considering that the motion has reached finality by casting of ballots with no infirmity found by this Court to invalidate any ballot, the 12 votes so cast supporting the motion of no confidence moved against respondent No. 7 is upheld and as a consequence whereof the motion is declared passed. The respondent No. 7 stands unseated from the post of Pramukh.

14. The writ petition is allowed.

15. Let the envelop containing the 12 ballots be sealed and returned to Mr. Nadeem Seraj, learned Government Pleader-20.