

(2015) 02 PAT CK 0105

In the Patna High Court

Case No : CWJC No. 9538 of 2014 and I.A. Nos. 1158 and 1159 of 2015

Satyendra Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-02-2015

Acts Referred:

Citation : (2015) 2 PLJR 676

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Advocate : Ravindra Giriyaage, Binod Kumar Singh, Ravi Shankar and Devi Das Srivastava, for the Appellant; Anjani Kumar and Shivendra Prasad, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Jyoti Saran, J—Heard Mr. Ravindra Giriyaage, learned counsel appearing on behalf of the petitioner, learned counsel for the State and Mr. Shivendra Prasad, learned counsel appearing on for the private respondents. The petitioner has questioned the order dated 30.4.2014 passed by the Election Tribunal-cum-Sub-Judge-IV, Jehanabad in Election Petition No. 3 of 2011, whereby the election of the petitioner to the post of Member, Zila Parishad has been set aside.

2. The facts of the case briefly stated is that the petitioner had earlier contested a similar election in the year 2006 and was subsequently appointed as the Chairman of the Zila Parishad. A proceeding was initiated against the petitioner under the provisions of Section 70(5) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as "the Act") as it then existed and vide order passed on 9.1.2008, the Commissioner, Magadh Division, Gaya removed the petitioner from the Chairmanship of the Zila Parishad. As the forum of appeal at the relevant time was available to a party aggrieved under Section 70(5) of "the Act", the petitioner questioned such order before the Member, Board of Revenue which was dismissed on 12.12.2008 and being aggrieved the petitioner questioned the order in CWJC No. 2375 of 2009 which again has been dismissed vide order

passed on 9.2.2009 and against which order of the Writ Court the petitioner has filed an intra court appeal bearing L.P.A. No. 894 of 2010 which is pending consideration before the Division Bench.

3. In the meanwhile and on the expiry of the term of Zila Parishad, the next election was notified in 2011 and responding thereto the petitioner filed his nomination on 3.3.2011 and was again returned in the election which was questioned by the private respondents through the election case in question and which has been allowed and the election of the petitioner has been set aside, inter alia, relying upon the provisions of Section 70(5) of "the Act" as it stands after amendment and which disentitles the Adhyaksha/Up-Adhyaksha of Zila Parishad removed for misconduct or abuse of powers, from contesting any election until expiry of five years from the date of such removal under Section 70(5) of "the" Act".

4. Mr. Ravindra Giriyaage, learned counsel has appeared for the petitioner, the State is represented by the State Counsel and the private respondents are represented by Mr. Shivendra Prasad.

5. The arguments advanced by Mr. Giriyaage to contest the impugned order relying upon a Bench decision of this Court reported in Kumari Shobha Sinha Vs. The State of Bihar and Others, (2008) 2 PLJR 783 is that the removal of the petitioner took place on 9.1.2008 and when unamended provisions of Section 70(5) of "the Act" merely provided that the ousted Adhyaksha/Up-Adhyaksha so removed shall not be entitled for re-election during the remaining of the term. He submits that the said term existed until 2011 and during which no election took place rather even after removal as Adhyaksha, the petitioner continued as a Member. It is stated that the petitioner having suffered the penalty as envisaged under the unamended provisions of Section 70(5) of "the Act" he cannot be penalized again under the amended provisions. He further submits that although the petitioner has been unsuccessful in his contest against the impugned orders before the statutory authority as well as before this Court but the matter is now pending consideration before the Division Bench in the Letter Patent Appeal.

6. The argument of Mr. Giriyaage has been contested by learned counsel appearing for the State as well as the private respondents on the sole ground that the amended provisions providing for disqualification of Adhyaksha who stands removed under Section 70(5) of "the Act" is until five years from the expiry of the date of such removal and thus his election is void.

7. I have heard learned counsel for the parties and I have perused the materials on record.

8. The facts are not in dispute rather it is admitted. The issue which is required to be considered by this Court is whether the petitioner would be held eligible to contest the election after expiry of the term in terms of the unamended provisions or would be held ineligible to contest any election until expiry of five years from the date of removal which took place on 9.1.2008 in view of the

amended provisions of Section 70(5) of "the Act".

9. Some dates would be relevant to be mentioned in this regard. The earlier election took place in the year 2006 in which the petitioner was elected as Member of Zila Parishad and was subsequently appointed its Adhyaksha only to be removed on 9.1.2008 under the orders of the Commissioner, Magadh Division, Gaya under Section 70(5) of "the Act". Such order being questioned before the statutory authority as well as the Writ Court, the matter is pending consideration in L.P.A. No. 894 of 2010. In between the provisions of Section 70(5) of "the Act" was amended vide Bihar Panchayat Raj (Amendment) Act, 2007 (Bihar Act 8 of 2008) (hereinafter referred to as "the Amendment Act, 2007") whereby the second paragraph of Section 70(5) of "the Act" was amended in the following manner to be substituted in place of the original provisions. Paragraph 4 of the Amendment Act, 2007 in so far as it relates to amendment of Section 70 runs as follows:--

"4. Amendment of Section 70 of Bihar Act 6, 2006.--(i) In the first para of Section 70(5) of the Act the word "Commissioner" shall be substituted by the word "Government";

(ii) The second paragraph in Section 70(5) of the said Act "The Adhyaksha or Up-Adhyaksha so removed shall not be eligible for re-election as Adhyaksha or Up-Adhyaksha during the remaining term of office of such Zila Parishad. Appeal shall lie before the Member, Board of Revenue against the order of the "Commissioner", shall be substituted by the following para, namely:--

"The Adhyaksha or Up-Adhyaksha so removed on the charge of being found guilty of misuse of vested powers or of misconduct in the discharge of his duties shall not be eligible for election to any panchayat bodies till further five years from the date of such removal. The Adhyaksha or Up-Adhyaksha so removed on rest of the charges shall not be eligible for reelection as Adhyaksha or Up-Adhyaksha during the remaining term of office of such Zila Parishad".

10. It is thus to be seen as to whether the case of the petitioner would be considered as per the unamended provisions of Section 70(5) of "the Act" which merely disentitles the petitioner to contest the reelection for the rest of the term in which he had been removed or his case would be guided by the amended provisions and whereunder the petitioner cannot contest any election until expiry of five years from the date of removal i.e. 9.1.2008.

11. It has been canvassed by Mr. Giriyaage that even though sub-section (2) of Section 70 of "the Act" provided for removal of such Adhyaksha even from the membership of Zila Parishad for the remaining term but no such order was passed by the Government to remove the petitioner from the membership and thus he continued on the membership of the Zila Parishad until expiry of the term in 2011 and thus was fully eligible to contest the next election in 2011.

12. The arguments of Mr. Giriyaage though attractive but would have merited

consideration only if the amendment would have been introduced after the expiry of the term of Zila Parishad which expired in 2011. It is perhaps then that he could have argued that the order of removal and future disqualification stands exhausted on the completion of the term of the Zila Parishad. But the fact is that the amendment was enforced on 4.2.2008, i.e. during the tenure of the Zila Parishad and thus the original provision which merely disentitled an Adhyaksha from contesting any re-election for rest of the period was replaced by the amended provisions which disentitled him from contesting any election to any Panchayat bodies for next five years from the date of removal on 9.1.2008. In my opinion the amendment though was introduced on 4.2.2008 i.e. after the removal of the petitioner on 9.1.2008 but was enforced during the life of the Zila Parishad which was yet to expire in 2011 and which provided for a revised criteria as to the eligibility of an Adhyaksha/Up-Adhyaksha to contest an election which was based on his past conduct and whereby the period of disability/ineligibility in such cases was enhanced to 5 years but nonetheless it was yet to be applied only in cases of past misconduct or abuse of office by the elected representative.

13. It is not a case where the penal provision based on past conduct has been freshly introduced rather while maintaining the disqualification for contesting an election for past misconduct merely the period has been extended to five years.

14. The petitioner has thus sailed into the parameters of the amended provisions and since the amended provisions disentitles all Adhyaksha/Up-Adhyaksha who have been removed under Section 70(5) of "the Act" on grounds of misconduct or abuse of power from contesting any election in the next five years from the date of removal hence he was not entitled to contest the election in the year 2011.

15. I draw strength for my opinion from a judgment of the Supreme Court reported in *The State of Maharashtra Vs. Vishnu Ramchandra*, AIR 1961 SC 307 : (1961) CriLJ 450 : (1961) 2 SCR 26 .

16. For the reasons explained and the conclusion drawn by me I find no reason to interfere with the judgment and order passed by the Election Tribunal. This writ petition is accordingly disposed of. Interlocutory applications also stand disposed of.