

(2015) 02 PAT CK 0107
In the Patna High Court
Case No : CWJC No. 1710 of 2014

Shahood Alam

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-02-2015

Acts Referred:

Citation : (2015) 2 PLJR 680

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Advocate : Sanjay Pandey, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Jyoti Saran, J—None appears on behalf of the petitioner. Mr. Girish Pandey, learned counsel appearing for the State Election Commission and the counsel for the State are present. Heard learned counsel for the respondents and perused the records.

2. The petitioner has questioned the order dated 3.10.2013 passed by the State Election Commission in Case No. 19 of 2013, whereby the election case has been dismissed.

3. The facts of the case briefly stated is that the petitioner along with the private respondent contested the election of the Zila Parishad, Saharsa and whereas the petitioner lost the election, the private respondent succeeded therein. The election of the private respondent was questioned by the petitioner before the Election Commission, inter alia on grounds that the proposer of the private respondent who was a voter from the Bakhtiyarpur South Gram Panchayat which formed part of Zila Parishad now stands dissolved and along with the Gram Panchayat of Simri Bakhtiyarpur North now forms part of the Nagar Panchayat. The issue raised by the petitioner has been decided against him by the Election Commission relying upon the provisions of Rule 39 of the Bihar Panchayat Election Rules, 2006 (hereinafter referred to as "the Rules") to hold that even if

the constituency from where the proposer was a voter would now form part of the Nagar panchayat yet it would not effect the election of the returned candidate. Such opinion the Election Commission has been questioned before this Court.

4. Whereas Section 135 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as "the Act") prescribes that every persons who choses to contest an election should be a voter of the Panchayat Constituency concerned and Rule 39 of "the Rules" provides a similar stipulation for the proposer as well but it is only where a returned candidate incurs disqualification that he can be disqualified under Section 136 of "the Act". There is no such provision either in "the Act" or in "the Rules" which mandates that even if the proposer would incur any form of disqualification including his name being removed from the voter list of the Panchayat concerned, this would be sufficient reason to disqualify a returned candidate.

5. In the present case it is not in dispute that when the election was held the proposer of the respondent No. 9 namely Brahmdeo Bhagat was voter of the Panchayat Constituency and it is almost one year after the election held on 27.5.2011 that the constituency of the proposer was dissolved to form a Nagar Panchayat. It is taking note of the statutory provisions that the Election Commission has held that mere transformation of the constituency of the proposer would not affect the election of the returned candidate and in my opinion also unless the returned candidate would incur such disqualification where his own constituency gets dissolved or gets altered in the manner prescribed under Section 151 of "the Act", any subsequent development where the constituency of the proposer has been dissolved would not be sufficient to disqualify his election more particularly where the proposer was a voter of the said constituency on the date on which the election was held i.e. 27.5.2011.

6. That the Panchayat Constituency of the proposer of the respondent No. 9 was in existence and had not been dissolved is manifest from the statement of the petitioner himself made in paragraph 6 of the writ petition in which he admits that the panchayat election for Bakhtiyarpur (North) and (South) were also held on 27.5.2011 which is the date on which the election of the Zila Parishad was held. In the opinion of this Court the order of the Election Commission is in tune with the statutory provisions and does not require any interference. The writ petition is disposed of accordingly.