
(2007) 02 PAT CK 0088
In the Patna High Court
Case No : CWJC No. 10105 of 2006

Shambhu Lal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-02-2007

Acts Referred:

Citation : (2007) 02 PAT CK 0088

Final Decision : Dismissed

Judgement

Navin Sinha, J.—Heard the Counsels for the parties.

2. This writ application raises a very short controversy for determination.

3. Will the limitation period of 30 days provided under Rule 106 of the Bihar Panchayat Election Rules 2006 (hereinafter called "the Election Rules") for institution of an election petition from the date of declaration of the result, be absolute or will it be amenable to condonation under the Limitation Act by excluding the time spent in obtaining the certified copy of the documents assailed. In paramateria is Section 81 of the Representation of People's Act (hereinafter referred to as "the R.P. Act") providing a limitation period of 45 days.

4. The results of the election of the Zila Parishad were declared on 12.6.2006. The petitioner applied for certified copy on 29.6.2006. The copy was prepared on 20.7.2006 and delivered to him on the same day. The election petition before the Civil Court was then filed on 31.7.2006.

5. Learned Counsel for the petitioner submits that the time spent in obtaining the certified copy of the document had to be excluded. If that be done the election petition was in time. He relied upon The Commissioner of Sales Tax, U.P. Vs. Madan Lal Das and Sons, Bareilly, Addl. Collector of Customs, Calcutta and Another Vs. Best and Co., , Municipal Board Lucknow v. Bhagwan Das Danda Rajeshwari Vs. Bodavula Hanumayamma and others, . The order dated 2.8.2006, by the Court below rejecting the Election Petition as being barred by delay, being beyond 30 days of the date of declaration was bad in law and was fit to be set

aside.

6. Shri R.S. Pradhan, Senior Advocate on behalf of the respondents submitted that the limitation of 30 days was absolute not amenable to condonation. As far back as *Hukumdev Narain Yadav Vs. Lalit Narain Mishra*, , considering the scope of Section 81 of the R.P. Act it was held that the provisions of Section 5 of the Limitation Act do not govern the filing of election petitions. In *Raj Kumar Yadav Vs. Samir Kumar Mahaseth and Others*, , the Apex Court held that the statutory limitation prescribed u/s 81 of the R.P. Act could not be altered and extended by the High Court Rules.

7. The judgments relied upon by the petitioner except for the case of *Danda Rajeshwari (Supra)* do not deal with election petitions and have no relevance to the present controversy. In the *Danda Rajeshwari (Supra)* case the writ petition was filed the very next day of the declaration, well within limitation. The High Court declined to interfere relegating the party to the statutory remedy of an election petition. The Apex Court held that in the circumstances, the High Court rightly directed filing of an election petition within three weeks from the date of disposal of the writ petition without going into limitation. The facts therein were entirely different from the present context. In *Lachhman Das Arora Vs. Ganeshi Lal and Others*, . the Apex Court held that the R.P. Act is special code providing for a period of limitation for the filing of an election petition. The Limitation Act does not prescribe any period for filing of an election petition. The R.P. Act is a complete Code and a special law in so far as presentation and trial of election disputes is concerned. The provisions of Sections 4 to 24 of the Limitation Act did not apply. The limitation of 45 days u/s 81 of the R.P. Act could not be extended and the direct result would be the dismissal of the election petition filed beyond time u/s 86 of the R.P. Act.

8. Coming to the facts of the present case, it is beyond controversy that the election petition was filed beyond the statutory period of 30 days prescribed under Rule 106.

9. There is no merit in this writ application. The same is accordingly dismissed.

10. No costs.