
(2015) 02 PAT CK 0071
In the Patna High Court
Case No : CWJC No. 14322 of 2014

Shiv Kumar Sahni and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-02-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 34, 379, 504

Citation : (2015) 2 PLJR 214

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Advocate : Y.V. Giri and Arun Kumar, for the Appellant; Anil Kumar, Advocates for the Respondent

Final Decision : Allowed

Judgement

Jyoti Saran, J.

1. Heard the parties. The petitioners are aggrieved by the order dated 25.6.2014/23.7.2014 passed by the Joint Registrar, respondent No. 3 in Election Dispute No. 141 of 2012, whereby the election held for reconstitution of the Managing Committee of the Darbhanga Prakhanda Matasyajeevi Sahyog Samiti Limited (hereinafter referred to as "the Society") has been declared void ab-initio.

2. Mr. Y.V. Giri, learned senior counsel has appeared for the petitioners, while the State is represented by the learned State Counsel, the State Election Authority is represented by Mr. Mukesh Kumar and the petitioner before the Joint Registrar who is respondent No. 19 herein is represented by Mr. Deepak Kumar.

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

4. The respondent No. 19 along with respondent Nos. 20 and 21 had questioned the election to "the Society" on the following grounds:-

(a) The life of the Ad-hoc Committee had expired on 5.2.2011 and in view of the

order passed by this Court on 20.3.2012 in CWJC No. 5401 of 2012, the petitioner No. 1 could not have represented "the Society" as its Secretary nor could have furnished the voter-list which in view of the order of this Court could only be furnished by the Administrator and be prepared by the Bihar State Election Authority and in terms of the provisions of the Bihar Co-operative Societies Act, 1935 and the Bihar State Election Authority Act, 2008 (hereinafter referred to as "the Act");

(b) In view of the position explained at item No. (a) above the voter-list furnished by the petitioner No. 1 could not have been acted upon and thus would render the election void;

(c) The petitioners herein are residents of a Block which is outside the working area of "the Society" and thus they could neither have been a voter nor a contestant in the election;

(d) The objection of the election petitioners on the nominations so filed by these petitioners was not disposed of by the returning officer nor the election schedule so published was in tune with the provisions of Rule 21-M of the Bihar Co-operative Societies Rules, 1959 (hereinafter referred to as "the Rules") framed under Section 66 of the Bihar Co-operative Societies Act, 1935 and which has further rendered the election void; and

(e) The petitioner No. 1 was involved in a criminal case arising from Complaint Case No. 1594 of 2011 and in which cognizance had been taken under Sections 323, 379 and 504/34 of the Indian Penal Code on 27.1.2014.

5. The petitioners contested the case and by the impugned order passed on 25.6.2014/23.7.2014 bearing Memo No. 4157 dated 24.7.2014 the Joint Registrar (Marketing), Co-operative Societies, Bihar has declared the election of the Managing Committee as void ab-initio and being aggrieved the four petitioners are before this Court.

6. Although such declaration has even affected the respondent Nos. 10 to 18 but they have not chosen to question the same.

7. Although several grounds as noted above were raised by the respondent Nos. 19 to 21 to question the election but the election case has been allowed by the Joint Registrar only on two grounds, namely:-

(a) That the petitioners are residents of a different Block which is beyond the working area of "the Society" and thus not eligible to be voters in "the Society"; and

(b) In view of the cognizance order passed against the petitioner No. 1, he stands disqualified to continue in view of the provisions underlying Rule 23(1)(f) and Rule 24 of "the Rules".

8. Since the matter is open for discussion before this Court on all counts, hence this Court required Mr. Giri to address on the issue of voter-list as well for if the

voter-list was not in consonance with the statutory provisions yet the election cannot be upheld. Thus even if no such finding has been given by the statutory authority on the issue but if it is manifest from the pleadings then the absence of opinion by the statutory authority on this issue would not preclude this Court to deliberate on the issue of voter list as well.

9. It is the contention of Mr. Giri that even if the life of the Ad-hoc Committee stood expired and this Court in its judgment passed in CWJC No. 5401 of 2012 had required the Administrator to discharge the duties but by furnishing the voter-list to the State Election Authority, the petitioner No. 1 had merely acted as a postman and it was for the Returning Officer and the authorities under "the Act" to check the veracity thereof and prepare the electoral rolls for the election and in which exercise, the petitioner has no role to play.

10. The argument of Mr. Giri is upheld. True enough the provisions of Section 4 of "the Act" read with Rule 21-Y (b) of "the Rules" leave no room for doubt that the preparation of electoral rolls lies within the exclusive jurisdiction of the State Election Authority and thus a mere communication of the list would not ipso facto be sufficient to render the list bad or the election void until such time that the voter-list itself was held to be suffering from grave infirmity. That no such infirmities were pointed out by the petitioners (sic-respondents) except that the voter-list was transmitted by petitioner No. 1 while claiming himself to be the Secretary of an outlived Society, this by itself would constitute no sufficient reason to hold the election void.

11. This would bring this Court to the two issues which are the foundation for the impugned order, namely, the petitioners not being the residents of the working area and the cognizance order against the petitioner No. 1.

12. In so far as the issue of not being the residents of the working area is concerned, it was the argument of Mr. Giri that the papers/documents submitted by the petitioners before the Joint Registrar have not even been discussed in the impugned order. Instead of remitting the matter to the statutory authority for reconsideration, this Court required an opinion from the District Magistrate as to whether these four petitioners were residents of Darbhanga Sadar. This issue stands noted in the order of this Court passed on 9.2.2015. A counter affidavit has been filed by the District Magistrate himself in which he has specifically stated that Ward Nos. 39 and 40 of Mohalla-Bakarganj of which these petitioners are residents, falls within the Darbhanga Sadar Circle and since the operational area of "the Society" is within the Darbhanga Sadar hence the petitioners have been confirmed to be the residents of Darbhanga Sadar which is within the operational area of "the Society". Apparently the order of the Joint Registrar is contrary to the factual position and cannot be upheld.

13. This would bring this Court to the issue regarding the cognizance order. Although it has been strenuously argued by Mr. Deepak Kumar relying upon the provisions of Rule 25 of "the Rules" to submit that once a cognizance order has

been passed against a person he is not only disqualified to contest the election rather he also ceases to be the representative of such Society but while making such argument learned counsel is oblivious to the fact that the petition filed on behalf of respondent Nos. 19 to 21 was for declaring the election void and not for disqualifying the petitioner No. 1 exclusively. The filing of election case to declare the election of the Managing Committee in its entirety as void is completely distinct from an application filed for disqualifying an elected representative on any of the count mentioned in Rule 23 of "the Rules". It is more than manifest from the election petition placed at Annexure-4 to the writ petition that the prayer of the election petitioners was not for disqualification of petitioner No. 1 but was for declaration of the ejection of the Managing Committee as a whole as void.

14. Another aspect of the matter is that whereas the results of the election were declared on 4.6.2012, the cognizance order was passed against the petitioner No. 1 only on 27.1.2014, i.e. almost two years thereafter. Obviously a cognizance order passed subsequent to the election cannot be a basis to declare an election void even if it can vest a right in a party aggrieved to move appropriate application before the statutory authority for disqualification of the elected representative who has incurred such disqualification by virtue of an order of cognizance passed subsequent to his election.

15. My discussion above answers the second issue raised by the election petitioners and a cognizance order passed against petitioner No. 1 exclusively, two years after the election could not have been a basis for declaring the election itself void.

16. For the reasons aforementioned the impugned order dated 25.6.2014/23.7.2014 passed by the Joint Registrar, respondent No. 3 in Election Dispute No. 141 of 2012 as contained in Annexure-12 cannot be upheld and is accordingly set aside. The writ petition is allowed.