
(2011) 03 PAT CK 0031
In the Patna High Court
Case No : CWJC No. 14306 of 2009

Shyam Sunder Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Citation : (2011) 03 PAT CK 0031

Judgement

Navin Sinha, J.—Heard learned Counsel for the Petitioners, for the State and for the Respondent No. 9.

2. The Petitioners seek a declaration that the elections for the post of Chairman and member of the Executive Committee to the. Primary Agriculture Credit Society, Bagodar be declared void ab initio.

3. Petitioner Nos. 1 and 3 are stated to have subsequently preferred an Election Petition. The writ application has therefore become infructuous with regard to them and is accordingly disposed off.

4. Petitioner No. 2 was also a candidate for the post of member of the Executive Committee in the reserved category. He was allotted an election symbol "Kulhari". On the date of the election when ballot papers were distributed to those who intended to cast votes, the election symbol was changed to a Baloon.

5. A counter affidavit is stated to have been filed on behalf of official Respondent Nos. 3 to 5 on or about 4.2.2010, affirmed by the Block Development Of-ficer-Cum-Returning Officer. It is not on record. The Court therefore requested the counsel for the State for his copy to peruse.

6. The counter affidavit does not make any statement that it is on behalf of Respondent Nos. 3 and 5 also. The averments therefore are individual, statement of Respondent No. 4, the Block Development Officer-Cum-Returning Officer, Hisua at Nalanda who alone remains answerable for the statements made. Paragraph 12 of the counter affidavit takes the facts of the case beyond any controversy and it stands admitted.

7. The Court is aghast at the manner in which the Block Development Officer appears to be discharging his duties, his sense of responsibility, not only in obligation to the Government which has placed trust in him, but also the casualness with which he takes proceedings before this Court defending the interest of the Government.

8. Curiously the Block Development Officer states that when the error in the ballot paper was discovered it was put on the Notice Board on the fateful day that the election symbol of the Petitioner No. 2 stood changed to a Balloon. The importance of an election symbol has been noticed by the Supreme Court in *Samyukta Socialist Party Vs. Election Commission of India and Another*, at paragraph-11 has holding as follows:

11. ?These arguments require careful consideration because the importance of the symbols to our system of elections needs no exaggeration. Symbols are its very soul and without them the exercise of franchise by the majority of our citizens would be impossible. No doubt elections are fought on party lines but even if there is a plebiscite between parties, the symbols play a key role by identifying the parties. Slogans, placards, appeals all invoke the symbols and not the candidates. In fact, the voters are asked to vote for this symbol or that symbol. The Election Commission can allot symbols as desired by parties and candidates but, in a case such as this, it has to decide who is to have which symbol without, of course, putting a hurdle in the way of any party.

9. The objections of the Respondents that the proper remedy for the Petitioner shall be an Election Petition, more particularly in view of Petitioner Nos. 1 and 3 having availed that remedy for the same election is one aspect of the matter. The official laxity making a mockery of the whole election and treating the whole process with utmost casualness by the Block Development Officer is another aspect of the matter.

10. In the nature of the controversy, when the election symbol of the Petitioner was changed at the last moment, his remedy shall appropriately lie in an Election Petition.

11. Insofar as the Block Development Officer is concerned, there can be no doubt that he by his negligent conduct scuttled the elections to the P.A.C.S. generating unwarranted litigations when those who may have been elected in accordance with law are frittering their time in litigation and those who were elected are forced to face litigation. In both events, the work of the P.A.C.S. suffers. Finances, time and manhours are being fettered away, whether of the State or individual. The responsibility shall lie with the Block Development Officer alone.

12. The Secretary, Rural Development, shall examine the conduct of the Block Development Officer concerned, Sri Anil Kumar Pandey and take such appropriate administrative action as he may deem fit and proper to ensure that functionaries of the Government while acting on behalf of the Government behave responsibly, keeping in mind that as Government servants, they are also

individually accountable for their acts and the Government is not liable for their negligent acts. The liability is individual and not that of the Government.

13. Any Election Petition filed by the Petitioner, needless to say has to be decided on its own merits expeditiously in accordance with law in a manner so that keeping in mind, the tenure, The Election Petition is not rendered infructuous.

14. The application stands disposed.