
(2003) 04 PAT CK 0042
In the Patna High Court
Case No : C.W.J.C. No. 6129 of 2002

Shyama Kant Dubey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-04-2003

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2003) 3 PLJR 285

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : S.N.P. Sharma and Umakant Shukla, in C.W.J.C. No. 6342 of 2002, for the Appellant; S.N.P. Sharma, for Respondent 5 in C.W.J.C. No. 6342 of 2002 and Umakant Shukla, for Respondent 5 in C.W.J.C. No. 6129 of 2002 and K.B. Nath in C.W.J.C. No. 6129 and 6342 of 2002 for Respondent Commission, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Garg, J.—This order shall dispose of C.W.J.C. No. 6129/2002 (Shyama Kant Dubey v. The State of Bihar and Ors.) and C.W.J.C. No. 6342/2002 (Pran Nath Singh v. The State of Bihar and Ors.)

2. The facts in nutshell are that the present Petitioner Shyama Kant Dubey, Petitioner Pran Nath Singh of C.W.J.C. No. 6432/2002 and number of others contested the election for the office of Mukhiya of the constituency known as South Gaundhara. After conclusion of the election and count of the votes the present Petitioner Shyama Kant Dubey was declared elected by margin of six votes. Being aggrieved by the said results Pran Nath Singh, the election Petitioner filed an election petition inter alia submitting that from the records and the diary maintained by the Polling Officer it would clearly appear that there were number of bunglings in the counting, certain unsocial elements had taken-over the polling booth and had used signed and unsigned votes. It was also submitted by him that from the records available it would clearly appear that only 486

votes were cast while the counting was of 496 votes Shyama Kant Dubey, the returned candidate contested the election petition tooth and nail and submitted before the Court that the elections were free, were not adversely affected because of any ministerial clerical mistake and as his election results were in accordance with the results the election petition be dismissed. The learned trial court afforded proper opportunities of hearing to the parties, recorded the evidence of the witnesses, received the documentary evidences and vide its order dated 15th April, 2002 (Annexure-1) observed; that the elections were adversely affected) because of wrong counts and because certain unsocial elements have caputred the booth. While observing that the counting was illegal it also observed that the present Petitioner Shyama Kant Dubey had committed corrupt practices, and, accordingly allowed the election petition.

3. Shyama Kant Dubey has filed this writ application challenging the correctness validity and propriety of the order passed by the learned Munsif on the ground that the evidence was not properly appreciated. The learned Munsif was swayed away by oral evidence and without appreciating that the booth Officer was making it clear that the elections were peaceful. According to the Petitioner there was no occasion to set aside the election results or allow the election petition or to hold that the Petitioner committed corrupt practices. This writ application is opposed by Pran Nath Sing who himself has filed C.W.J.C. No. 634 of 2002 seeking reliefs that this Court should declare that Pran Nath Singh has be(sic)validily elected and that but for the com practices adopted by the returned can date the returned candidate could not he ibeen elected and a further relief in alternates been sought for re-polling in booth No. 321 be only directed. I have heard both be Parties.

4. In a petition under Article 227 of be Constitution of India when correctness, validity and propriety of an order passed by subordinate Tribunal is challenged the High Court not sit as a Court of appeal. It does not look into sufficiency or insufficiency of the evidence but would look into be decision making process. Under the (sic) judgment of the election petition could be final and cannot be challenged anywhere but in my opinion to a limited (sic)dent the High Court can look into the correctness of the judgment and if it finds the order is patently illegal, is contrary (sic) law or is in teeth of the provisions of law (sic) the decision suffers with the decision (sic)ing process then the High Court can (sic)erfere in the matter. In the present matter the learned election Tribunal has con(sic)dered the entire oral evidence available in the record, it has also given due consideration -to the documentary evidence filed in the side of the election Petitioner. From Annexure-A to Annexure-D it would clearly appear that contrary to the instructions sude by the Election Commission certain terpolations were made. Instead of making correctness by adding or deleting or by wich other procedure as allowed by the (sic)ction Commission, the concerned officer have scored off the entire results and the give the fresh figures. This apparently an legality which may adversely affect election and the election results. From Annexure-D the diary of the election Of-her would clearly appear that at about 4-

(sic)5. P.M. certain unsocial elements en(sic)ed into the election booth mishandling (sic)officers snatched the ballot papers, were torn and some after affixation the seals were put in the ballot boxes. It also in the diary that those unsocial (sic)ments /miscreants wanted to take away the ballot boxes but because of the interference of the guards they could not succeed in their illegal designs. Relying upon these facts the election Tribunal held that the elections were not peaceful. It also observed that total 486 votes were cast while the result was declared in relation to 496 votes. If the margin of victory was more than ten votes then obviously the present Petitioner/returned candidate could maintain before this Court that even if the ten votes were illegally counted in his favour or were reduced from what he has received then too the election results would not be adversely affected. In the present case the margin is six votes only. If the margin is six votes and the illegality is in relation to ten votes then obviously the results are adversely affected. While recording the finding the learned Tribunal observed "that the third party committed corrupt practices to see that the Petitioner succeeds". Further, in paragraphs 42, 43 of the order it did not record even a single finding that the corrupt practices adopted by the Election Officer or the miscreants was at the instance of or under the directions of the returned candidate. In absence of such a finding, in my considered opinion the Court below cannot observe that the present Petitioner also committed corrupt practices. That part of the order appears to be illegal and deserves to be set aside.

5. While maintaining the order of the learned Tribunal holding the elections to be bad I set aside the part of the order wherein it is observed that Shyama Kant Dubey committed corrupt practices.

6. So far as the petition filed by Pran Nath Singh is concerned he has made a request to the Court that he be declared to be the winning candidate. In my opinion such a relief cannot be granted to the said Petitioner because nobody know which ten votes were illegally cast. Nobody knows that out of 496 which ten votes are to be ignored. If the facts are not crystal clear then in an election petition just for the sake of asking a person cannot be declared elected. In such a case such election Petitioner will have to bring certain evidences on records to show that if such illegality was not committed or the corrupt practices were not played he and he alone could have been declared elected. I do not find any good reason to interfere in the order passed by the Court below or declare the said Petitioner Pran Nath Singh as returned or elected candidate.

7. The petition filed by Shyama Kant Dubey is allowed in part. The writ application filed by Pran Nath Singh is dismissed.

8. It is expected of the Election Commission that within a reasonable period it shall declare the election programme so that the Panchayat does not work without its Mukhiya.