

(1972) 01 PAT CK 0015

In the Patna High Court

Case No : Civil Writ Jur. Case No. 1163 of 1970

Shyama Pada Pandit

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-01-1972

Acts Referred:

Bihar Panchayat Election Rules, 1959 — Rule 21, 4, 5

Citation : AIR 1972 Patna 380

Hon'ble Judges : Kanhaiyaji, J

Bench : Single Bench

Advocate : S.B. Sanyal, Chaudhary, S.N. Mishra and Anirudh Pd. Sharma, for the Appellant; R.P. Katriar, for the Respondent

Final Decision : Dismissed

Judgement

Kanhaiyaji, J.—In this writ application under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the election of Goalkhar Gram Pancha-yat, within Barbara Block, in the district of Santhal Paragana held on the 16th April, 1970. The petitioner is a voter of the said Gram Panchayat. It is stated in the application that according to an election programme, 6th February, 1970, was the date fixed for filing of nomination papers. The petitioner, in order to contest the election for the office of Mukhiya, presented his nomination paper, duly proposed, but the Election Officer (Respondent No. 2) refused to accept the same on the ground that it was not accompanied by a challan of Rs. 20/-. It is alleged that the petitioner was denied his fundamental right to contest the election by the illegal demand of Rs. 20/- by the election officer. Another line of attack on the election is that two unnotified villages, namely Mashlandpur, Thana No. 148 and Milik Gopalpiir, Thana No. 170 were included in ward Nos. 4 and 1 respectively of the said Gram Panchayat. A copy of the formation of the wards showing the inclusion of those two villages is Annexure "2" to this writ application. It has been asserted that the inclusion of those two villages in Goalkhar Gram Panchayat by the election officer, without any legal authority, has

vitiated the entire election. A supplementary affidavit has been filed by the petitioner stating therein that he presented a nomination paper on 5th February, 1970 before the Election Officer without a challan of Rs. 20/- as required under Rule 21 (7) of the Bihar Panchayat Election Rules, 1959, hereinafter referred to as the "Rules", duly proposed by Raghunath Pandit, whose serial number in the voters list is 105 but the election officer refused to entertain the said nomination paper as it was not accompanied by a challan of Rs. 20/-. A copy of the said nomination paper is Annexure "3" to the supplementary affidavit.

2. A counter-affidavit has been filed! on behalf of the State of Bihar (Respondent No. 1), in which it is denied that the petitioner filed any nomination paper which was refused by the Election Officer. It is, however admitted that two unnotified villages Maslandpur, Thana No. 148, and Milik Gopalpur, Thana No. 170 were taken into account of Goalkhar Gram Panchayat. It is asserted in the counter-affidavit that the election held on the 16th April, 1970, was held properly in accordance with the provisions of law.

3. Mr. S. B. Sanyal, learned counsel appearing for the petitioner, has urged that the election of Goalkhar Gram Panchayat should be declared to be void on both the grounds, namely, illegal demand of nomination fee of Rs. 20/- and inclusion of two unnotified villages in the two wards of the aforesaid Gram Panchayat.

4. In Dilip Kumar Singh and Another Vs. State of Bihar and Others, a Full Bench of this Court held that the Bihar Panchayat Raj Act, 1947 does not authorise the State Government for levying any impost to be collected by itself under the rule-making power conferred upon it, and levying of a nomination fee as imposed by amendment to Rule 21 is illegal. No impost can be levied by any bye-law, rule or regulation unless the statute under which the subordinate legislation is made specifically authorises the imposition. This judgment was delivered on the 5th May, 1970. In August, 1970 however, the Governor of Bihar promulgated an ordinance (Bihar Ordinance No. III of 1970). A new Section 4R-C was added, after Section 48-B, in the Bihar Panchayat Raj Act, 1947 empowering the State Government to levy and collect non-refundable nomination fee at the prescribed rates and in the prescribed manner. Section 80 of the said Act was amended by adding a new Clause (upp) after Clause (p) for the levy and collection of non-refundable fees for elective posts Hinder a Gram Panchayat by the State Government. Section 4 of the Ordinance provides as follows:

"Notwithstanding anything contained in any law or any Judgment or order of any Court or authority, none of the provisions of subrules (6), (7) or (8) of Rule 21 or Clause (v) of Sub-rule (2) of Rule 23 of the Bihar Panchayat Elections Rules, 1959, shall be deemed to be, or ever to have become, illegal and no election to any elective post under a Gram Panchayat shall be deemed to be illegal or void, or ever to have become illegal or void, by reason only of the requirements of the said provisions."

Thus Section 4 of the Ordinance removed the illegality noticed by the Full Bench

in making amendment to Rule 21 of the Rules for levy of nomination fee. Therefore, even if it be assumed that the petitioner's nomination paper was rejected on the ground that it was not accompanied by a challan of Rs. 20/- as required under amended Rule 21 of the Rules, it cannot be held that the election of Goalkhar Gram" Panchayat was vitiated on this ground.

5. Coming to the second point, it must be stated that it has nowhere been stated in the writ application that the inclusion of the two unnotified villages has in any way affected the result of the election. Mr. Sanyal urged that there has been violation of Rules 4 and 5 of the Rules, Rule 4 provides for division of the area comprised within a panchayat into four parts, each part being called a Ward and Rule 5 provides that so much of the electoral roll or rolls of an Assembly constituency of the State of Bihar for the time being in force, as relates to the areas comprised within the local limits of the jurisdiction of a panchayat, shall be deemed to be the voters list for that panchayat for the purpose of election of Mukhiya and Sarpanch and so much of the said electoral roll or rolls as appertain to a particular ward, constituted under Rule 4, shall be deemed to be the voters list of that particular ward for the purpose of election of panch and member of the Executive Committee from the ward concerned. Sub-rule (2) of Rule 5 provides that no person other than the person whose name is included in the voters" list shall have the right to Vote. It is not known whether the name of any person from the two unnotified villages had been included in the voters list of any one of the wards. Even if it is held that the provisions of Rule 5 are mandatory and some persons from the two unnotified villages were shown as voters having right to vote, but on that account it cannot be held that the election has been vitiated. It appears that there has been some irregularities in complying with the provisions of Rule 4 by including the two unnotified villages in two wards of the panchayat, but in my opinion, unless it is shown that the result of the election has been affected, the petitioner cannot get a declaration in this case that the election held on the 16th April, 1970 was void.

6. Mr. Sanyal relied on three decisions of this Court namely, Parmeshwar Mahaseth and Others Vs. State of Bihar and Others, . Bishwanath Prasad and Others Vs. Ramji Prasad Sinha and Others, and Shyamesh-war Misra v. S. D. O-Sadar, Muzaffarpur 1966 BLJR 253. In all these decisions names of several persons who were entitled to vote were expunged from the voters list or the voters list itself was defective and several persons were deprived of their right to vote. Without there being any amendment or revision of the electoral roll, and on account of prejudice caused to the voters, the elections were held to be void. The facts of the instant case are, however, different from the aforesaid decisions and, therefore, they have no application to the facts of the instant case.

7. For the reasons given above, both the contentions raised by Mr. Sanyal fail. The application is accordingly, dismissed but in the circumstances of this case, there will be no order as to costs.