
(2013) 12 PAT CK 0020
In the Patna High Court
Case No : CWJC No. 21110 of 2013

Sri Krishna Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2014) 1 PLJR 593

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Judgement

Ahsanuddin Amanullah, J.—Heard Mr. P.K. Verma, learned senior counsel assisted by Mr. Sanjay Kumar Ghosarvey, learned counsel for the petitioners, Mr. Sunil Kumar Mandal, learned S.C. 24 for the State and Mr. Y.V. Giri, learned senior counsel assisted by Mr. Ranjit Kumar Pandey, for the respondents No. 2 and 3. The challenge in the present writ application under Article 227 of the Constitution of India is to the order dated 18.9.2013 passed in Title Suit No. 13 of 2013 by the learned Munsif, Barh, Patna by which interim injunction has been granted restraining the election to the State Working Committee of Bihar Tailik Sahu (Vaishya) Sabha (hereinafter referred to as the "Sabha") till the disposal of the suit.

2. The brief facts required for adjudication in the case are noted here in under:--

3. The Sabha is a body incorporated under the Societies Registration Act, 1860 and the working of the Sabha is conducted by an elected Working Committee (hereinafter referred to as the "Committee"). The term of the Committee is for four years. The term of the incumbent Committee was coming to an end in August, 2013 and thus decision was taken by the Committee of the Sabha to get the election held for which an Election Committee has been constituted. As per the decision of the Committee, the election had to be held on 4th August, 2013 and it was further stipulated that those persons who got the requisite amount deposited by 19th July, 2013 would be allowed to vote in the election. It appears that thereafter the tentative programme was also published but due to various

reasons the date for accepting the fee for being included in the voter list kept being extended. Ultimately, on 12.8.2013 the Committee decided to call a meeting of the Working Committee, the Election Committee and the Advisory Committee on 18.8.2013 to sort out the controversy and differences. It appears that a meeting was held on 18.8.2013 in which a decision was taken to the effect that members would be enrolled till 31.8.2013 at 7:00 p.m. and on the basis of the same, the election would be held. This gave cause of action to the respondents No. 2 and 3 who filed Title Suit No. 13 of 2013 before the learned Munsif, Barh, Patna, seeking the following reliefs:--

- i. It be held and declared that the action of the defendant No. 2 whereby extension of time of inclusion of new member and deposit new membership fees after 5.7.2013 is illegal, unconstitutional and invalid and also for further declaration that those new members included after 5.7.2013 are not entitled to cast their votes or participate in the present election of defendant No. 1 in any manner.
- ii. That it be declared by the court that the Notification as per Annexure-1 of the plaint is illegal, void and the defendants are not entitled to hold election by it.
- iii. And it be further declared that the defendant No. 2 should extend the date of Election after 6 months by publishing a General Notification in the local dailies within the State of Bihar.
- iv. An order of temporary injunction restraining the defendant No. 2 from holding any election during the pendency of the suit.
- v. Any other relief or reliefs for which the plaintiffs are entitled be awarded.
- vi. The cost of the suit be awarded to the plaintiff.

4. A petition was thereafter filed under Order XXXIX, Rules 1 and 2 by the plaintiffs (respondents No. 2 and 3 herein) of the Code of Civil Procedure, 1908 (hereinafter referred to as the "Code"). The same upon contest was allowed and the Court granted temporary injunction and restrained holding of the election till the disposal of the suit. It would be relevant to indicate here that the defendants were the Sabha through the Chairman and the Election Committee through its seven members.

5. Earlier by order dated 28.10.2013, while issuing notice to the respondents No. 2 and 3, the Court had granted ad interim stay of the order dated 18.9.2013 passed in Title Suit No. 13 of 2013, which is the order impugned in the present proceeding.

6. Learned counsel for the petitioners submits that the jurisdiction of the Court below to interfere in the matter related to election, once the process has started is not only uncalled for but also beyond jurisdiction as has been held by various judicial pronouncements on the issue. He submits that once a notification of an election process is issued, the Courts ought not to interfere and the only remedy

available to a person who may be aggrieved is after the process is over to challenge the election in accordance with law on various grounds including irregularities or anomalies relating to the procedure or the manner of conduct of such election. But, the challenge midway when an election process has started, is not maintainable before a Court of law. For such proposition, learned counsel for the petitioners has relied upon the decision of the Hon''ble Supreme Court in the case of Supreme Court Bar Association and Others Vs. B.D. Kaushik, , the relevant being at paragraphs 43 and 60 to 63. Learned counsel submits that in the impugned order, the Court below has erred vide relying upon a decision of a Bench of this Court in the case of Sri Chand Prasad and Others Vs. The State of Bihar and Others, , as the same was neither referred to by learned counsel appearing for the defendants in the suit and also that the same stood overruled by a Division Bench of this Court in the case of The State Election Commissioner Vs. State of Bihar and Others . Learned counsel for the petitioners next relied on the decisions of this Court in Mohan Pandey and Another Vs. Smt. Usha Rani Rajgaria and Others, , the relevant being at paragraph 6 and Commissioner of Income Tax and Others Vs. Chhabil Dass Agarwal, , the relevant being at paragraphs 15 to 17. Learned counsel submits that the Court failed to consider the fact that the persons who had filed the suit were doing so more or less in representative capacity and the nature was that of a public interest litigation since there was no grievance with regard to any personal right having been violated but rather an imaginary injury which was sought to be put right. Learned counsel submits that the plaintiffs being life members of the Sabha had not come to the Court seeking to be included in the voter list rather their main prayer was that persons who had not submitted the required amount till 4th July, 2013 be not allowed to participate in the election process. Moreover, in view of Section 9 of the Code, the suit could be filed when a right to property or to an office is contested. In the present case, no such right is either claimed or relief sought and accordingly the suit itself should have been rejected under Order VII, Rule 11 of the Code for not disclosing the cause of action.

7. Learned counsel for the respondents No. 2 and 3 has raised a preliminary objection and submits that the present application under Article 227 of the Constitution is not maintainable as the petitioner in the first instance should have either filed an appropriate petition Order XXXIX, Rule 4 of the Code for setting aside the order of injunction or if required, should have moved in appeal under Order XLIII, Rule 1(r) of the Code. Learned counsel submits that when there is a statutory forum available, which is equally efficacious, writ is not maintainable under normal circumstances and the petitioners have not shown any urgency to warrant straightway coming to the High Court. Learned counsel further submits that the second objection of maintainability is on the ground of locus inasmuch as the petitioners who have filed the present writ application are not parties in the suit and thus the application by so-called strangers ought not to be entertained. Learned counsel has also submitted that judicial orders cannot be interfered by the High Court while exercising jurisdiction under Articles 226/227

of the Constitution. For such proposition, learned counsel has relied upon the decision of a Full Bench of this Court in the case of Ramesh Kumar Ravi @ Ram Prasad Vs. The State of Bihar, and 3 Others, , the relevant being at paragraphs 27, 28 and 29. Learned counsel has also tried to distinguish the general rule with regard to non interference by the Court in election matters on the ground that such principle has been laid down only where an election is pursuant either to a constitutional or statutory provision but not in the present case relating to a totally internal election of a private society based on its own bye-laws. So far as the decision of the Hon''ble Supreme Court in the case of Supreme Court Bar Assn. (supra) is concerned, learned counsel submits that the Hon''ble Apex Court exercising jurisdiction under Article 136 of the Constitution of India had interfered in the matter and the said case was not a judicial pronouncement with regard to the maintainability of a writ petition directly from the order refusing injunction by the Court below. He submits that even on merit, the petitioners ought not to be given indulgence for the reason that the Court below in its impugned order has noted down the admission on the part of the defendants in the suit relating to irregularities which clearly vitiates the election process which is sought to be conducted by the Election Committee and under challenge in the suit. Learned counsel submits that with regard to the maintainability of the suit before the Court below, no challenge to this effect was ever raised and no petition for rejection of the plaint was filed and thus in the present proceeding, this Court would not go into that aspect. The same is also not under challenge even in the present proceeding. Learned counsel submits that the respondents No. 2 and 3 also had locus to file the suit since they are life members of the Sabha and have a vested and vital interest in the working of the Sabha which includes a duly and legally constituted Working Committee since the same has wider repercussions, as it would be the body which would be guiding the activities of the Sabha for the next four years. Learned counsel submits that the dispute being totally of a private nature, should rightly be left to the Civil Court of competent jurisdiction for adjudication and any interference by the High Court at the present stage would set a wrong judicial precedence and the hierarchy of the Courts would be disturbed, which is not in the larger interest of the institution. As far as the provision of Section 9 of the Code is concerned, learned counsel submits that in fact it indicates that the suit was maintainable since it takes note that the Courts have jurisdiction to try all suits of civil nature except those of which cognizance is either especially or impliedly barred, which in the present case is not the position.

8. Learned counsel for the petitioners, by way of reply, submits that as far as maintainability of the present case is concerned, the judgment of the Hon''ble Supreme Court in the case of Supreme Court Bar Association settles the matter for the reason that the injunction granted by the lower Court was directly interfered with by the Supreme Court which is indicative that the statutory remedy is not an absolute bar to a party moving to a Court of superior and higher jurisdiction. He further relied on the decision of the Hon''ble Supreme

Court in the case of Surya Dev Rai Vs. Ram Chander Rai and Others, , the relevant being at paragraphs 26 to 29 and 32 to 38. He submits that this decision has been followed and further expounded by a Division Bench of this Court in the case of Durga Devi and Others Vs. Vijay Kumar Poddar and Others , the relevant being at paragraphs 6, 7 and 36 to 42. Learned counsel submits that there may be a forum available to the petitioner but because of the urgency of the matter, they moved this Court as it was the only efficacious remedy for them in the facts and circumstances of the case.

9. Learned counsel further submits that, as of now, in view of the election schedule which has already been put into effect, the voting is to be held day after tomorrow and thus, at this late juncture the Court may not refuse to interfere only because there is an alternative forum available for the petitioners to agitate the matter. He submits that after the order dated 28.10.2013, the schedule was announced and also widely circulated by publication in the daily newspapers on 15.11.2013 followed by it being sent under registered cover to the District Committees of the Sabha. Learned counsel submits that the Court may take into consideration the fact that election process is to be completed only in a few days and non-interference only on the ground of alternate remedy may not weigh with the Court.

10. This Court has heard learned counsel for the parties at length. The contention of the petitioners in the present writ application with regard to grant of injunction staying the election process which has already started, though undoubtedly could have more appropriately been agitated as per the statutory provisions under the Code, but in view of the fact that subsequent developments due to efflux of time have taken place and the final polling is to be held day after tomorrow i.e., 8th of December, 2013, this Court is not inclined to unsuit the petitioners only on the ground that they should have first availed the statutory remedy. Though Mr. Giri argued on the question of maintainability of the petition basically on this ground which, according to this Court, also merits consideration, but having regard to the settled principle of law that there is no absolute bar to exercise of jurisdiction under Article 227 of the Constitution of India, this Court is of the considered view that in the present case, having heard the parties on merits the Court should decide the issue relating to grant of injunction without going into the question of maintainability, which is left to be decided in a more appropriate case. Thus, this Court would like to dwell on aspects relevant for considering grant or refusal of temporary injunction which may also touch on the merits of the case but the same would be only for the purposes of deciding the present application and not with a view to decide the issue finally which may be dealt with during the trial of the suit. It is not in dispute that the parties to the present dispute are all eligible for being members of the Sabha. The only rider for them to be eligible to vote being payment of a subscription amount for which initially a date was also fixed. However, due to various reasons, which are not required to be gone into, the schedule was not adhered to leading to controversy which forced the Committee to convene a joint meeting alongwith the Election

Committee as well as the Advisory Committee on 18.8.2013 for sorting out all the issues and differences. Once decision was taken at the highest level in a common meeting of all the duly constituted Committees, the same being implemented cannot be faulted. This does not mean that the Court is giving a clean chit to the procedure and modalities which may have been adopted or set into motion by the Election Committee for taking the election process to its conclusion, but in any view of the matter, the voter list, which is the main bone of contention, has been prepared as per the revised dates and time schedule pursuant to the decision taken on 18.8.2013. Thus, to that extent prima facie there cannot be said to be any mitigating circumstances or glaring irregularities worth interfering with and stopping of the present election process. The other equally important aspect which is weighing with the Court is that in a democratic set up, where there is an election to a body of a society, it is always a healthy trend that as many eligible voters as possible on the date of election are allowed to participate. The election schedule and the date of polling having been announced and published in a newspaper and also sent to the Districts and thereafter there being no challenge or controversy being raised with regard to the voter list by any person, itself indicates that by and large the process has gone in accordance with the requirement. On the practical side, it is well known that there cannot be hundred percent satisfaction in any exercise of this sort by any authority. There are bound to be differences of opinion on each and every point. However, the Courts in matters where there is a democratic procedure prescribed in electing either a governing body or representative to any such body, have given primacy of the majority view prevailing over the misgivings of a few minority. The view taken by the Court finds support from the decision of the Hon'ble Apex Court in the case of Supreme Court Bar Assn. (supra). In this connection it would be useful and relevant to reproduce the following portions from the said order of the Hon'ble Supreme Court at paragraphs 39, 43, 60 and 61:--

39. This Court in a catena of reported decisions has laid down the principle that interim relief, which has tendency to allow the final relief claimed in the proceedings, should not be granted lightly. No special circumstances have been mentioned in the two impugned orders which would justify decreeing the suits at interim stage. The relief granted by the learned Judge at the interim stage was not warranted by the facts of the case at all. Therefore, the impugned orders are also liable to be set aside on this ground.

43. It hardly needs to be emphasised that in anybody governed by democratic principles, no member has a right to claim an injunction so as to stall the formation of the governing body of the Association. No such right exists in election matters since exercise of a right conferred by a rule is always subject to the qualifications prescribed and limitations imposed thereunder.....

60. Further, the appellants had rightly pointed out to the learned Judge that election process had already started and, therefore, injunction, as claimed,

should not be granted. Since 1952 this Court has authoritatively laid down that once election process has started the courts should not ordinarily interfere with the said process by way of granting injunction.....

61. This Court has no doubt at all that the injunction granted by the learned Judge has propensity to intervene and interfere with the election process which had already started.....

11. Whatever grievances any person may have, he is not left remediless since there is always the opportunity to challenge the same in a duly constituted proceeding with regard to the election on all grounds which may be available, both on facts as well as in law. It is also relevant to indicate that the suit itself is still pending and the challenge is also with regard to there being irregularities in preparation of the voter list. Thus, if the same is established during the trial, then ultimately that would give sufficient cause of action to any person aggrieved for challenging the election including the result. As far as the objection raised by Mr. Giri with regard to the locus of the petitioners to maintain the present writ application, the same cannot be sustained in view of the fact that the defendant No. 1 in the suit is the Sabha itself though through its Chairman. Thus, the petitioners being the other office bearers of the Sabha cannot be said to be strangers to the suit and in that view of the matter, the present application brought by them, in the opinion of this Court, is maintainable.

12. From the discussions made hereinabove it is quite clear that the plaintiffs in the suit had not made out any case warranting grant of injunction in their favour as the three principles of there being a prima facie case, balance of convenience and irreparable loss being caused, are not made out in their favour.

13. For the reasons aforesaid, this Court finds that the order impugned dated 18.9.2013 passed by Munsif, Barh, Patna, in Title Suit No. 13 of 2013 cannot be sustained and accordingly the same is set aside. It is made clear that whatever observations have been made in this order are only for the purposes of deciding the issue relating to grant of injunction by the Court below and the same shall not cause prejudice to any party during the trial of the suit which shall be disposed off on its own merits in accordance with law. The writ application stands allowed.