
(1970) 12 PAT CK 0018
In the Patna High Court
Case No : C.W.J.C. No. 591 of 1969

Suraj Kant Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-12-1970

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1971) PLJR 155

Hon'ble Judges : B.D. Singh, J

Bench : Single Bench

Advocate : Satyanand Kumar and Ramanand Kumar, for the Appellant; R.P. Katriar for the State, for the Respondent

Final Decision : Allowed

Judgement

B.D. Singh, J.—An application under Articles 226 and 227 of the Constitution of India has been filed by the sole petitioner aggrieved by the order dated 11.6.69 of the S.D.O., respondent no. 2, who has affirmed the order dated 2.6.1969 (Annexure 1) of the Block Development Officer, respondent no. 3, rejecting the nomination of the petitioner mainly on the ground that the petitioner was not present at the time of the scrutiny. Mr. Satyanand Kumar appearing on behalf of the petitioner has challenged the above orders on the ground that there is no provision contained under the Bihar Panchayat Elections Rules, 1959 (hereinafter referred to as "the Rules") that the petitioner must be present at the time of the scrutiny. The only provision in this regard is to be found under Rule 23 of the Rules, the relevant portion of which reads as follows:--

23. (1) On the date and hour appointed for the scrutiny of the nomination papers, the candidates and one proposer of each candidate may, and, except for the purpose of assisting the Election Officer, no other person shall be present at the place where the scrutiny is done. The Election Officer shall give such persons all reasonable facilities to examine the nomination papers of all candidates which have been received.

(2) The Election Officer shall then examine the nomination papers and shall decide all objections which may be made at the time to any nomination and may, either on such objection or on his own motion after such summary enquiry, if any, as he thinks necessary, reject any nomination paper on any of the following grounds, namely:--

(i) that the candidate is disqualified from being chosen to fill the vacancy u/s 4 or Section 79 or Sub-rule (1) of Rule 21; or

(ii) that the proposer is disqualified from subscribing a nomination paper under Sub-rule (4) of Rule 21; or

(iii) that there has been any failure to comply with any provision of these Rules; or

(iv) that the signature or thumb mark of the candidate or of any proposer has been obtained by fraud.

Explanation--The absence of a proposer shall not be taken to be a ground for rejection of the nomination paper.

2. The Block Development Officer, respondent no. 3, by a reference to the Explanation to Rule 23 of the Rules, quoted above, thought that it was a mandatory provision which required the petitioner to be present at the time of the scrutiny. In my opinion, from that explanation it cannot be inferred that there is any such mandatory provision in the Rules. Rejection of nomination paper amounts to a penalty on the petitioner who files nomination. Therefore, had there been any such mandatory provision in the Rules it ought to have been clearly mentioned in the Rules itself. In absence of such provision, in my opinion, the impugned orders passed by respondents 2 and 3 cannot be sustained. Besides, in the instant case, the petitioner had also given sufficient explanation as to why he was not present at the time of the scrutiny. In the result, the application is allowed and the order passed by the S.D.O. dated 11.6. 1969 and the order passed by the Block Development Officer dated 2.6.1969 (Annexure 1) are quashed. In the circumstances of the case, however, there will be no order as to costs.