
(2015) 09 PAT CK 0029

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7135 of 2014

Sushila Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-09-2015

Acts Referred:

Representation of the People Act, 1951 — Section 100, 100(1)(d)(iv), 19, 27(5), 62

Citation : (2015) 4 PLJR 881

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Advocate : Yogendra Mishra, for the Appellant; Anjani Kumar, AAG, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Jyoti Saran, J—Heard Mr. Yogendra Mishra, learned counsel for the petitioner and learned counsel for the State.

2. The petitioner is aggrieved by the order dated 28.12.2013 passed by the Deputy Registrar, Cooperative Societies, Patna Division, Patna in Misc. Case No. 9 of 2013 whereby the election case has been dismissed on grounds of lack of evidence and absence of locus of the petitioner to prefer such election dispute.

3. Mr. Mishra has appeared to advance the case of the petitioner to submit that whereas in view of the provisions of Section 10 of the Bihar State Election Authority Act, 2008 (hereinafter referred to as "the Act") an election dispute can be raised either by a candidate or an electorate and in so far as the issue of lack of evidence to confirm the invalid voters" list is concerned, the same is manifest from the voters" list present at Annexure-2 which apparently consists of such persons who are resident of the district of Nalanda and not the operative district of the society which has its headquarter at Patna. He submits that although the petitioner was not a candidate in the election but she did file her objection against the voters" list and since in the meanwhile the election had been notified

and the objection had not been disposed of that she moved this Court in C.W.J.C. No. 22491 of 2012 and a bench of this Court without interfering with the election so notified disposed of the writ petition by allowing the petitioner to question the election on grounds so taken in accordance with law. It is pursuant to the liberty so granted by this Court that the election dispute in question has been preferred and has been rejected and the petitioner being aggrieved is before this Court.

4. As I have observed, hereinabove, the election case has been rejected on twin grounds namely;

(a) absence of locus; and

(b) absence of evidence to support the claim.

5. Mr. Mishra learned counsel appearing on behalf of the petitioner while supporting the claim of the petitioner to raise an election dispute even if she is not a candidate has simply referred to Section 10 of "the Act" and to submit that it can be a candidate or the electorate who can prefer such dispute.

6. Considering the provisions of Section 10 of the "the Act" in the backdrop of the provisions of Section 81 of the Representation of the People Act, 1951, I find no bar for an elector to challenge the election on any of the grounds so available under Section 12 of "the Act" and to that extent I agree with the contentions of Mr. Mishra that the petitioner could not have been non-suited on grounds of absence of locus.

7. This would bring to this Court second issue raised regarding illegal voter list. According to Mr. Mishra the evidence that the voter list was infracted was on record and even the objections had been raised but not decided by the election officer which had infracted the elections so as fit to be declared void under Section 12(1)(d)(iv) of "the Act" inasmuch as it is founded on an irregular voters" list.

8. Mr. Mishra in support of his arguments has relied upon a judgment of the Supreme Court reported in Bar Council of Delhi and Others Vs. Surjeet Singh and Others, AIR 1980 SC 1612 : (1980) 4 SCC 211 : (1980) 3 SCR 946

9. I have heard learned counsel for the parties and I have perused the records.

10. The petitioner did not contest the election yet seeks a declaration to hold the election void on grounds of irregularity in the voter list which as per the petitioner, has not been prepared in violation of the legal provisions. The petitioner may be right and may be some infirmities have crept into the voter list but then the issue for consideration is whether an election is to be declared void on mere grounds of infirmities in the voter list. The law is well settled on the issue and irregular voter list simplicitor cannot be a ground for such declaration. The order impugned reflects that even when the petitioner was making complaint regarding dead persons voting and that voters were residents of different districts, yet there is no evidence to confirm the position that such persons had

voted. In fact except for the entry in the voters" list the petitioner has no other evidence. Even to support the voter list contained dead persons, all that the petitioner could produce is four death certificates of whom only three were electorate. The question would be even if these irregularities complained of is accepted on its face value, whether it is sufficient for declaring the election void. Mr. Mishra has canvassed the case of the petitioners on the anvil of the statutory provision underlying Section 12(1)(d)(iv) of "the Act" which is pari materia to Section 100(1)(d)(iv) of the Representation of the People Act and reads as follows:

"12(1) Subject to the provisions of sub-section (2) if Prescribed Authority is of opinion--

(a) that on the date of his election, a returned candidate was not qualified or was disqualified, to be chosen as a member under this Act; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

(i) by the improper acceptance or any nomination; or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent; or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or

(iv) by any non-compliance with the provision of this Act or of any rules or orders made thereunder; the Prescribed Authority shall declare the election of the returned candidate to be void.

11. A plain reading of the statutory provisions would confirm that there is a twin duty cast upon a person to question an election on grounds of non compliance of the provisions of "the Act" or any rules and which is that he has not only to prove that the rules and provisions have been violated rather he has also to demonstrate that such statutory violation has resulted in the success of the returned candidate.

12. This very issue came up for consideration in the case of Shyamdeo Pd. Singh Vs. Nawal Kishore Yadav, AIR 2000 SC 3000 : (2000) 9 JT 486 : (2000) 6 SCALE 135 : (2000) 8 SCC 46 : (2000) 2 SCR 668 Supp : (2001) 1 UJ 78 : (2000) AIRSCW 3247 : (2000) 6 Supreme 12 and a bench of three Judges of the Supreme Court taking note of the judgments on the issue as to whether an election can be declared void on grounds of infirmity in the electoral roll has

concluded as follows:

"26. To sum up we are of the opinion that inclusion of person or persons in the electoral roll by an authority empowered in law to prepare the electoral rolls, though they were not qualified to be so enrolled, cannot be a ground for setting aside an election of a returned candidate under sub-clause (iii) or (iv) of clause (d) of sub-section (1) of Section 100 of the Representation of the People Act, 1951. A person enrolled in the electoral list by an authority empowered by law to prepare an electoral roll or to include a name therein is entitled to cast a vote unless disqualified under sub-sections (2) to (5) of Section 62 of the Representation of the People Act, 1951. A person enrolled in the electoral roll cannot be excluded from exercising his right to cast vote on the ground that he did not satisfy the eligibility requirement as laid down in Section 19 or 27(5) of the Representation of the People Act, 1950."

13. In fact the view expressed by the Supreme Court continues to govern the field right since after the judgment in the case of Kunwar Nripendra Bahadur Singh Vs. Jai Ram Verma and Others, AIR 1977 SC 1992 : (1977) 4 SCC 153 : (1978) 1 SCR 208 : (1977) 9 UJ 528 and has been cited on the approval in the subsequent judgment reported in Laxmi Kant Bajpai Vs. Hazi Yaqoob and Others, (2009) 15 JT 315 : (2009) 14 SCALE 447 : (2010) 4 SCC 81 : (2009) 16 SCR 526 : (2010) 1 UJ 149 .

14. There is absolute lack of pleadings to support that the voters who had been illegally included in the list had contributed to the success of the returned candidate and which had materially affected the election nor is there any thing on record to show whether any such prayer had been made by the petitioner in conformity with the statutory provisions. In fact even in absence of such prayer the petitioner simply proceeded to seek a declaration that the entire election was void on such infirmity.

15. Another aspect which adversely effects the case of the petitioner is that even when the petitioner has chosen to question the right of persons on the issue of membership, none of them were added as a party to the case. In my opinion a dispute on a membership issue has taken a colour of an election dispute on the anvil of irregular voters" list with the members not even being added as a party.

16. For the reasons aforementioned I am not persuaded to interfere with the conclusion so drawn by the prescribed authority and the writ petition is accordingly disposed of.