

(2008) 11 PAT CK 0111
In the Patna High Court
Case No : LPA No. 315 of 2006

The State Election Commission and Others	APPELLANT
Vs	
The District Magistrate-cum-District Election Officer, Patna and Others	RESPONDENT

Date of Decision : 19-11-2008

Acts Referred:

Bihar Panchayat Raj Ordinance, 2006 — Section 124, 126

Citation : (2009) 2 PLJR 229

Hon'ble Judges : R.M. Lodha, C.J.; Kishore K. Mandal, J

Bench : Division Bench

Advocate : Dharendra Kumar Munna, Kumar Brajendra Nath and Sanjeev Nikesh, for the Appellant;

Final Decision : Allowed

Judgement

1. The State Election Commission of Bihar and its functionaries have filed this Letters Patent Appeal, aggrieved by the order of the Single Judge, directing them to pay compensation in the sum of Rs. 50,000/- for not including the name of the writ petitioner (respondent No. 6) in the voter list for panchayat election held in the year 2006. For the sake of convenience, we shall refer the present respondent No. 6, "the petitioner" and the appellants, "State Election Commission". The petitioner filed a writ petition before this court for directing the State Election Commission for inclusion of her name in the voter list of Ward No. 11 of Gram Panchayat Raj, Balia, Block-Ekma, District-Saran. The petitioner set up the case that prior to her marriage she was residing in Patna at Rajendra Nagar. In the year 1988, she married Anil Kumar Singh, resident of Binaut, District-Saran. Since her husband was on a transferable post, even after her marriage until 2005, she continued to reside at Patna and her name was included in the voter list of Patna West assembly constituency. In 2005, there was partition in the family of her husband and to look after the property that had fallen to the share of her husband, she shifted to Village-Binaut, District-Saran.

Having become resident of Village-Binaut, District-Saran, she desired to be registered as an elector for 35, Manjhi assembly constituency and for that purpose she made an application before the Block Development Officer, Ekma for inclusion of her name in the voter list of 35, Manjhi assembly constituency. She is also said to have made an application to the District Magistrate-cum-District Election Officer, Patna for deletion of her name from the voter list of Patna West assembly constituency. According to her, upon the enquiry made by the Block Development Officer, Ekma, the petitioner was found to be permanent resident of Ward No. 11, Village-Binaut, Gram Panchayat Raj, Balia, District-Saran and he recommended to the District Magistrate-cum-District Election Officer, Saran for inclusion of the petitioner's name in the voter list vide his letter dated 11th February, 2006. The District Magistrate-cum-District Election Officer, Saran wrote a letter to the State Election Commission on 24th February, 2006 for inclusion of the petitioner's name in the voter list of Ward No. 11, Gram Panchayat Raj, Balia under 35, Manjhi assembly constituency. No action was, however, taken by the State Election Commission. On 25th February, 2006, a notification for holding Panchayat election was issued by the Governor u/s 124 of the Ordinance and since the petitioner's name was not included in the voter list by the State Election Commission, she has been constrained to approach this Court.

2. The State Election Commission contested the writ petition and set up the plea that electoral rolls, particularly, for the panchayat election, 2006 have been prepared in the light of the provision contained in Section 126 of the Bihar Panchayat Raj Ordinance, 2006 and the Rules framed thereunder and, accordingly, the names of the persons whose names were included in the current assembly electoral rolls were included in the corresponding territorial panchayat electoral rolls. The State Election Commission did admit that the recommendation was received from late District Magistrate-cum-District Election Officer, Saran for inclusion of the petitioner's name in the concerned Panchayat electoral roll vide his letter dated 24th February, 2006 but since no petition for inclusion of her name in the voter list of 35, Manjhi assembly constituency was submitted by the petitioner and that panchayat elections were notified on the next day i.e., 25th February, 2006, no further action in the matter could be taken.

3. The Single Judge considered the provision contained in Section 126 of the Panchayat Raj Ordinance, 2006 and held that in view of the first proviso appended thereto, the State Election Commission was authorized to include the name of a voter in the electoral roll for concerned panchayat despite such person's name not being there in the electoral roll of last State Legislative Assembly election but despite that a wholly misconceived stand has been set up by the State Election Commission to shield its utter failure and, consequently, he directed the State Election Commission to pay compensation in the sum of Rs. 50,000/- to the petitioner. It is this part of the order that is impugned in the present Letters Patent Appeal.

4. The question that falls for our determination is: is the award of compensation

in the sum of Rs. 50,000/- by the Single Judge to the petitioner is legally justified?

5. Section 126 of Bihar Panchayat Raj Ordinance, 2006 reads thus:-

"Electors of Panchayat.-All such persons who are enrolled as electors in the electoral roll or that part of the rolls of the State Legislative Assembly Constituency for the time being in force which is concerned with the territorial constituency of any Gram Panchayat shall be the electors for concerned Panchayat Elections:

Provided that the State Election Commission suo motu or on receipt of written representation from an aggrieved person is of the opinion that there is sufficient reason for doing so may direct such changes to be made in the electoral rolls of the concerned territorial constituency of the Panchayat as it may deem proper:

Provided further that no such change of the electoral roll shall be made after the notification of the date of Panchayat Election by the Governor u/s 124 of the Ordinance."

6. By this provision, the electors in the existing electoral roll of the State Legislative Assembly Constituency whose names find place in such electoral roll ipso facto become electors of the concerned territorial constituency of panchayat in the panchayat elections. The State Election Commission is, however, empowered to include the name of a person whose name does not find place in the existing electoral roll of State Legislative Assembly constituency either suo motu or on a receipt of the representation by an affected person. Pertinently, no such variation or correction in the electoral roll could be made by the State Election Commission once the notification of the date of panchayat elections is issued by the Governor u/s 124 of the Panchayat Raj Ordinance, 2006.

7. Bihar Panchayat Election Rules, 2006 came to be framed by the Governor of Bihar in exercise of power conferred u/s 146 of the Panchayat Raj Ordinance, 2006. These rules came into effect on 18th January, 2006. Chapter-IV of these rules deals with the electoral rolls, Rules 19 to 25 provide for the entire procedure viz., preparation of electoral roll, its publication and modification and correction therein. Rule 21 provides that the electoral roll in Form-4 for a concerned Gram Panchayat shall be prepared as per the provision contained in Section 126 of the Panchayat Raj Ordinance, 2006. Rule 22 makes a provision for publication of such electoral roll as provided in Rule 21 in the manner prescribed. Rule 23 provides for amendment in the electoral list prepared under Rule 21 and published under Rule 22. According to Rule 23, the District Election Officer under the direction, control and supervision of State Election Commission, may amend the electoral list prepared under Rule 21 suo motu or on an application of the aggrieved person within the time prescribed in Rule 22. It would be, thus, seen that the preparation of the electoral roll for election of Gram Panchayat, its publication and any amendment therein are provided in Chapter-IV of Bihar Panchayat Election Rules, 2006 and more particularly, Rules 21, 22 and 23

thereto.

8. The duty of preparation of electoral roll for Gram Panchayats under Bihar Panchayat Raj Ordinance, 2006 is cast upon District Election Officer; of course the District Election Officer has to undertake that task and complete the process for preparation of electoral roll under the direction, control and supervision of the State Election Commission. The Single Judge ignored and overlooked Chapter-IV of Bihar Panchayat Election Rules, 2006 which casts primary duty of preparation of electoral rules for conduct of such elections and amendment therein upon the District Election Officer. The State Election Commission can of course issue directions to the District Election Officer. Seen thus, when we advert to the facts that have come on record, we find that there was no negligence, deliberate or otherwise, or inaction or laxity, of any nature whatsoever, on the part of the State Election Commission in dealing with the matter concerning inclusion of petitioner's name in the electoral roll of Ward No. 11, Gram Panchayat, Raj Balia, District-Saran. That the petitioner's name was recorded in the existing electoral list of the Patna West assembly constituency is not in dispute. In other words, her name was not recorded in the electoral roll of 35, Manjhi assembly constituency at the relevant time is an admitted position. According to the petitioner, she, having settled at Village Binaut, District-Saran, made an application to the Block Development Officer, Ekma for inclusion of her name in the voter list of 35, Manjhi assembly constituency in the prescribed form. The date on which she made such application is not stated nor copy of the application has been placed on record. On 11th February, 2006, according to her, the Block Development Officer, Ekma recommended her name to be included in the voter list to the District Electoral Officer, Saran. The District Electoral Officer, Saran addressed the letter to the State Election Commission on 24th February, 2006 for their approval for inclusion of the petitioner's name in the voter list of Ward No. 11, Gram Panchayat, Raj Balia under 35, Manjhi assembly constituency. It is not in dispute that on 25th February, 2006, i.e. the next day, the Governor issued notification for holding the election of Gram Panchayats in the State of Bihar in exercise of his power u/s 124 of the Panchayat Raj Ordinance, 2006. in the backdrop of these facts, where was the time for the State Election Commission to consider the recommendation made by the District Electoral Officer, Saran for inclusion of petitioner's name in the electoral list since after issuance of notification u/s 124 of the Panchayat Raj Ordinance, 2006, on 25th February, 2006, no amendment, modification or variation in the electoral roll was permissible. There is not even iota of negligence or inaction on the part of the State Election Commission in dealing with the matter.

9. In our view, thus, there was no reason much less justifiable reason for the Single Judge in directing the State Election Commission to pay compensation of Rs. 50,000/- to the petitioner for not including his name in the voter list of Ward No. 11, Gram Panchayat, Raj Balia, District-Saran. Resultantly, we allow this appeal and quash and set aside the order dated 4th April, 2006 passed by the Single Judge. Since the petitioner (respondent No. 6 herein) has not chosen to

appear, we direct the parties to bear their own cost.