

(2002) 09 PAT CK 0033
In the Patna High Court
Case No : C.W.J.C. No. 16423 of 2001

Uday Shankar Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-09-2002

Acts Referred:

Bihar Panchayat Raj Act, 1993 — Section 140, 68(4), 70(2)

Citation : (2002) 4 PLJR 873

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Y.V. Giri, Raghib Ahsan, Kameshwar Prasad Gupta and Khursheed Ahmad Siddique, for the Appellant; J.C. to Govt. Pleader No. VI for State, S.S. Asghar Husain, Rajendra Narain, Markandjwaj Upadhyaya for Respondent No. 5, S.S. Nayar Husain, A.K. Kishore Sahay for Intervenor Respondent (Adib Rao and Ors.), Sanjay Kumar and Rajendra Prasad Sah for Intervenor Respondent (Ram Babu Paswan), for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam, J.—Heard Mr. Y.V. Giri, Senior Advocate appearing in support of this writ petition, the J.C. to Govt. Pleader No. VI appearing for the State and Mr. S.S. Asghar Husain, Senior Advocate appearing for Respondent No. 5; also heard Mr. S.S. Nayar Husain, learned Senior Advocate representing one set of intervenors and Mr. Sanjay Kumar appearing for another intervenor.

2. On 10.6.2001 the Petitioner was elected as the Chairman of the newly constituted Zila Parishad, Arrah. The Zila Parishad consists of 58 members in which the number of elected members is 31. On 28.9.2001 twelve members of the Parishad made a requisition for convening a special meeting to consider the motion of no confidence against the Petitioner (the Chairman), and the Vice Chairman. No special meeting, however, could materialise on the basis of that requisition. Then on 29.10.2001, another requisition was made by 10 members for holding a special meeting to consider the motion of no confidence against the

Petitioner and the Vice Chairman. In pursuance of the requisition, dated 29.10.2001 the Dist. Magistrate convened a meeting on 27.10.2001 (sic-27.11.2001 ?) in which the motion of no confidence was passed against the Petitioner and the Vice Chairman with 18 members voting in favour of the motion and none (sic-none ?) voting against it. The Petitioner was, thus, removed from the elected office of Chairman of the Zila Parishad.

3. He filed this writ petition in this Court on 20.12.2001, challenging his removal on the basis of the vote of no confidence passed in the meeting of 27.11.2001. A few days later and even before this writ petition could be taken up for admission, the court closed for the X-mas holidays. In the mean while a meeting of the Zila Parishad was convened by the Dist. Magistrate on 31.12.2001 for electing a new Chairman and a Vice Chairman to fill up the vacancies caused by the removal of the Petitioner and the earlier Vice Chairman. Notices for the meeting of 31.12.2001 were duly sent to individual members and also appeared in the news paper. The Petitioner protested against the holding of the meeting on 31.12.2001 and in that regard he submitted an application before the Dist. Magistrate. In his application, the Petitioner stated that challenging his removal from the office he had filed a writ petition before this Court which could not be taken up as the court had closed for X-mas holidays and requested that the meeting for electing a new Chairman should be postponed till the final decision of his case. In the absence of any order, final or interim from any court, the Dist. Magistrate disregarded the Petitioner's request not to hold the meeting on 31.12.2001. The meeting was held as scheduled and interestingly the Petitioner chose to participate in the meeting. He not only participated in the meeting but also contested the election for the post of Chairman. He filed his nomination setting himself up as a candidate. He, however, lost the election in the meeting of 31.12.2001 with Respondent No. 5 getting 13 votes and the Petitioner getting 12.

4. When this Court reopened after the X-mas holidays, the Petitioner filed an amendment petition on 7.1.2002 in which prayers were made to implead Respondent No. 5 as a Respondent who was elected as the new Chairman of the Zila Parishad and to quash the entire proceedings of the meeting of 31.12.2001. The writ petition along with the amendment petition was taken up for the first time on 10.1.2002. On that date, the prayer made in the amendment petition were allowed and an interim order was passed making the election of Respondent No. 5 subject to the final result of this case and further directing that during the pendency of this case all financial transactions of the Zila Parishad will be made by the Dist. Development Officer who was the Executive Officer of the Parishad and not by Respondent No. 5. However, from that order it appears that at that stage it was not brought to the notice of the court that though praying for the quashing of the proceeding of the meeting held on 31.12.2001, the Petitioner had himself fully participated in it; that he had contested the election and had lost to Respondent No. 5.

5. Later on, a large number of supplementary petitions/affidavits were filed by

the Petitioner and Respondent No. 5 and also by two sets of intervenors who appeared to oppose the writ petition.

6. Mr. Giri, learned Senior counsel appearing for the Petitioner assailed the Petitioner's removal mainly on three grounds. Learned Counsel stated that the special meeting held on 27.11.2001 was attended only by 18 elected members, all of whom had voted in favour of the motion. He pointed out that Section 70(2) fixed 1/3rd of the total number of members of the Zila Parishad as coram for the meeting of the Zila Parishad. According to him, therefore, the so called meeting of 27.11.2001 did not have the necessary coram; there was, therefore, no meeting in the eye of law and the proceedings of that meeting were a nullity.

7. Mr. Giri next submitted that the requisition dated 29.10.2001 for convening the special meeting was made only by 10 elected members. He pointed out that Sub-section (4) of Section 68 of Bihar Panchayat Raj Act, 1993 required that the requisition for a special meeting must be signed by not less than 1/5th of the total members of the Zila Parishad. According to him, therefore, the requisition itself was incompetent and on that basis no special meeting could be convened by the Dist. Magistrate.

8. Further, relying upon an order passed by a division bench of this Court in Smt. Shyama Devi Vs. The State of Bihar and Others, , Mr. Giri submitted that neither in the requisition nor in the notice issued by the Dist. Magistrate for the meeting, grounds were stated for the removal of the Petitioner from the post of Chairman; further that in the meeting of 27.11.2001 the Petitioner was not given an opportunity to defend himself against the grounds for his removal. Mr. Giri contended that the resolution to remove the Petitioner without giving him an opportunity to defend himself against the charges for his removal was unsustainable in the eye of law.

9. Mr. Giri's first submission, based on Section 70(2) of the Act, that the meeting of 27.11.2001 was bad for want of coram and hence, its resolution was nonest does not appear to be correct on facts. It may be noted here that the point regarding lack of coram for the meeting of 27.11.2001 was not taken either, in the main writ petition or in the amendment petition or in the supplementary petitions/ affidavits filed on behalf of the Petitioner. Even the statement that the total number of members of the Zila Parishad was 58, which was basic for raising the issue of coram was not made anywhere. This issue was raised for the first time in the last but one supplementary affidavit filed on behalf of the Petitioner, in para 2 of which it was stated, for the first time, that the total number of members of the Zila Parishad was 58.

10. In support of the statement that the meeting was attended only by 18 persons, Mr. Giri relied upon the score card regarding the motion passed in that meeting. The Score card (Annexure-5) reads as follows:

(i) Number of votes cast in favour of the motion - 18

(ii) Number of votes cast against the motion - Nil

(iii) Number of valid votes - 18

(iv) Number of invalid votes - Nil

(v) Number of total votes cast-18

11. It is to be noted that this score card does not indicate the number of participants in the meeting and that comes to light from Annexure-A appended to the "consolidated counter affidavit" filed on behalf of Respondent No. 5 on 11.9.2002, a copy of which was given to the Petitioner on 17.9.2002. Annexure-A is a photostat copy of the proceedings of the meeting and contains the names and signatures of all the 31 elected members of the Zila Parishad. From Annexure-A, it appears that all the 31 members, including the Petitioner had participated in the meeting. The name of the Petitioner No. 1 is at serial No. 1 and against his name he duly put his signature. It is, thus, evident that at the commencement of the meeting all the 31 members were present and, therefore, there can be no question of any lack of coram. If in course of the meeting, one faction realised that it was in minority and the members of that faction either walked out or did not cast their votes, that would not make the meeting irregular or bad for want of coram. This is what seems to have happened in this case, It, therefore, cannot be said that the meeting of 27.11.2001 was bad for want of coram, as provided u/s 70(2) of the Act and the resolution passed in that meeting was, therefore, nonest or a nullity in the eye of law.

12. Once this issue is decided against the Petitioner, the rest of the case is squarely covered by an earlier decision of this Court in Sanjay Singh Som Vs. The State of Bihar and Others . In Sanjay Singh Som, the requisition for the meeting was admittedly incompetent because it was made by less than 1/5th of the total number of members of the Zila Parishad. But the Petitioner in that case, like the Petitioner of the present case, had contested and lost the election for the new Chairman for filling up the vacancy caused due to his removal and in those circumstances this Court had declined to exercise its discretion in his favour.

13. Mr. Giri laboured hard to try to persuade me that the case of the Petitioner was distinguishable from the case of Sanjay Singh Som. He submitted that in the protest letter submitted by Sanjay Singh Som, he had requested the Dist. Magistrate either to postpone the meeting or alternatively to hold a meeting under her personal supervision. The Petitioner, on the contrary, had made no request that the meeting should be held under, the supervision of the Dist. Magistrate but had plainly and clearly asked the Dist. Magistrate to postpone the meeting till a decision was rendered by this Court on his writ petition.

14. To my mind those differences are quite irrelevant and of no consequences. What is material and decisive is that when the meeting was actually held the Petitioner did participate in it and filed his nomination setting himself up as candidate and lost the election to Respondent No. 5. Therefore, the Petitioner's

challenge to his removal from the office of the Chairman is fully and squarely covered by the decision in Sanjay Singh Som (Supra).

15. In the end Mr. Giri tried to assail the election of Respondent No. 5 in the meeting of 31.12.2001. It was stated that on that date Respondent No. 5 was an "absconder" in connection with a criminal case. It was also alleged that many other irregularities were committed in the meeting. Some of the elected members were prevented from casting their votes. A first information report was also lodged with regard to the coercion and violence resorted to by the other side.

16. In my view in a writ petition any challenge to an election can only be consequential and incidental to the main issue of removal from office. If the challenge to the removal fails or if for any reason no relief may be allowed with regard to the removal, then the validity of the subsequent election for filling up the resultant vacancy can not be separately and independently examined in the writ proceeding. This is for the simple reason that for challenging the subsequent election (of Respondent No. 5), Section 140 of the Act provides a complete remedy and the Petitioner can effectively challenge the election of Respondent No. 5 by filing an election petition.

17. For the reasons discussed above, no relief can be granted to the Petitioner. This writ petition is dismissed but with no order as to costs.