
(2001) 11 PAT CK 0060

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10736 of 2001

Uma Sharan Gupta and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-11-2001

Acts Referred:

Citation : (2001) 11 PAT CK 0060

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—Two writ petitioners have filed the present writ petition for quashing the order of the State Election Commission (for short "the Commission") dated 11-4-2001, issued under the signature of the Secretary of the Commission addressed to the District Magistrate-cum-District Election Officer (Panchayat), Nawadah, cancelling the election of all the office bearers of the Narhat Gram Panchayat and directing to take steps for fresh election, and for quashing the consequential order dated 12-4-2001 issued by the District Magistrate-cum-District Election Officer, (Panchayat), Nawadah, addressed to the Election Officer, Narhat Prakhanda informing about the aforesaid order dated 11-4-2001 of the Commission and also for quashing the decision of the Commission dated 23-7-2001, issued under the signature of the Secretary of the Commission giving direction for holding a fresh election of the different posts of the aforesaid Gram Panchayat. Copies of the said directions/orders have been appended as Annexures 3, 4 and 5, respectively, to the writ petition.

2. In accordance with the provisions contained in the Bihar Panchayat Raj Act, 1993 (for short "the Act") and the Rules framed thereunder, a decision was taken to hold election of the office-bearers of the different Gram Panchayats in the State of Bihar.

3. The matter in this writ petition relates to election of office-bearers of Narhat Gram Panchayat within the district of Nawadah. According to the election schedule, a notice in Form 5 was published on 10-2-2001. The date for filing nomination papers was from 15-2-2001 to 17-2-2001. The date for scrutiny of

the nomination papers was fixed as 19-2-2001 and the date for withdrawal of the candidature was 20-2-2001. The date of poll was 15-4-2001. These two writ petitioners filed their nomination papers for their election to the post of member of Narhat Gram Panchayat from Wards No. 7 and 10, respectively. No other candidate filed nomination paper for the aforesaid wards. The petitioners were declared elected uncontested under Rule 51(1) of the Bihar Panchayat Election Rules, 1995 (for short "the Rules").

4. It appears that during the course of election process complaints were received setting up of polling stations with regard to Narhat Gram Panchayat. It was alleged that the polling booths have been arranged in gross violation of the direction issued by the Commission to benefit a particular candidate. Thereafter, an enquiry was entrusted by the Commission and a report was called for from the Commissioner, Magadh Division, Gaya. It further appears that a detailed enquiry was conducted at the local level. During the course of enquiry, representations were also received by other groups saying that the polling booths were arranged in accordance with the Rules and there was no violation of any provision. The Commission after having considered the rival claims of the different groups and the report submitted by the local authorities, passed the impugned order cancelling the election of the petitioners to the offices of the Gram Panchayat and ordered for re-election.

5. Learned Counsel for the petitioners submitted only one point that once the petitioners have been declared elected, the Commission has no power to cancel their election and order for re-election.

6. Learned Counsel appearing for the Commission, on the other hand, submitted that the Commission has been constituted for the purpose of superintendence, direction and control of the preparation of the electoral rolls for and conduct of all the elections to the Panchayats in accordance with the provisions contained in the Act and the Rules. In exercise of the said power, the Commission, on receipt of the complaints with regard to illegality in the conduct of the election can cancel the election and order for fresh poll.

7. The only question for consideration in this writ petition is as to whether a decision taken by the Commission is beyond its power. So far as the factual matrix is concerned, the fact remains that these two petitioners were declared elected uncontested by the Election Officer. The Commission received complaints with regard to setting up of polling booths to extend benefit to a particular candidate. It was brought to its notice that in many cases wards have been constituted without there being any voters in the said wards. Taking into consideration the various reports submitted by the various authorities, the Commission came to the conclusion that the fixation of the polling booths and the constitution of the wards were not done in accordance with the Act and the Rules and, accordingly, passed the impugned order.

8. Part IX was inserted in the Constitution by the Constitution (Seventy-third

Amendment) Act, 1992. Article 243K provides that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in the State Election Commission consisting of the State Election Commissioner to be appointed by the Governor. Sub-article (4) of the said Article provides that subject to the provisions of the Constitution, the Legislature of a State may, by law, make provisions with respect to all matters relating to, or in connection with elections to the Panchayats.

9. The State Government enacted the Bihar Panchayat Raj Act, 1993, in conformity with the provisions contained In Part IX of the Constitution. Section 136 provides for Constitution of State Election Commission by the Governor for superintendence, direction and control of the preparation of electoral rolls for, and the conduct of all elections to the Panchayat bodies in the State. Section 140 of the Act provides that the election to any office of a Panchayat of a Gram Katchahry shall not be called in question except by an election petition as prescribed and provisions have been made under the Rules for presentation of the election petition. Section 143 (b) of the Act provides that no election to any Panchayat shall be called in question except by an election petition presented to the prescribed authority under the Act.

10. Bihar Panchayat Election Rules, 1995, contains detailed procedures with regard to constitution of wards, constitution of the Gram Panchayat, Zila Parishad etc. preparation of electoral rolls, provisions with regard to conduct of election and the challenge to the same by filing an election petition.

11. Part XV of the Constitution deals with the elections to the Parliament and Legislative Assembly of the State. Article 324 of the Constitution provides for the superintendence, direction and control of elections to be vested in an Election Commission. The said provision is *pare materia* with Article 243K of the Constitution as inserted by the amendment aforementioned. Article 329 of the Constitution creates bar to interference by Courts in electoral matters and it also provides that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition. Similar provision has been incorporated in Article 243O, Part IX of the Constitution and the same has also been incorporated in Section 143 of the Act as detailed above.

12. Thus, it is clear from the provisions contained in Articles 243K and 243-O of the Constitution and the provisions of the Act and the Rules mentioned above, that the State Election Commission has been vested with the power of superintendence, direction and control of the preparation of electoral rolls for, and conduct of all elections to the Panchayat bodies in the State. Once it comes to the notice of the Election Commission that the provisions of the Act and the Rules have not been followed, it can pass an appropriate order so that free and fair election is held.

13. The Apex Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, dealing with the provisions of Articles 324 and 329 of the Constitution, which, as stated above, are similar to the provisions dealing with the Panchayats, held that the Chief Election Commissioner has to pass appropriate orders on receipt of reports from the returning officer with regard to any situation arising in the course of an election and power cannot be denied to him to pass appropriate orders. It was further held that any decision taken by the Election Commission cancelling the poll and directing for a fresh poll, is an integral part of the electoral process and if during the process of election, at an intermediate or final stage, the entire poll has been wrongly cancelled and a fresh poll has been wrongly ordered, that is a matter which may be agitated after declaration of the result on the basis of the fresh poll, by questioning the election in the appropriate forum by means of an election petition in accordance with law. The aggrieved person may have a remedy to question every step in the electoral process and every order that has been passed in the process of the election including the countermanding of the earlier poll. The writ is not an appropriate remedy in such a case.

14. Thus, under Article 243K of the Constitution, the State Election Commission has power to issue direction as has been issued in this case. The said direction was issued on the basis of an enquiry report and as such the order impugned in this writ petition cannot be termed either as mala fide or arbitrary. The order was passed during the course of election process as no final declaration was made with regard to all the posts in the Gram Panchayat in question by virtue of the reason that the final date of poll was 15-4-2001 and before that the impugned order cancelling the election was passed. The writ is not the appropriate remedy and the petitioner, if so advised, may challenge the order after the election is over by taking recourse to an election petition as provided under the Act and the Rules.

15. For the reasons aforementioned, I find no merit in this writ petition and it is, accordingly, dismissed.