
(2009) 04 PAT CK 0084
In the Patna High Court
Case No : CWJC No. 9830 of 2006

Vijay Kapari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Bihar Panchayat Election Rules, 2006 — Rule 95, 96
Bihar Panchayat Raj Act, 2006 — Section 137, 40(4)
Constitution of India, 1950 — Article 226

Citation : AIR 2009 Patna 127 : (2009) 57 BLJR 2529 : (2010) 8 RCR(Civil) 2732

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Advocate : Ranjan Kumar Jha, Prem Kr. Thakur and Bindeshwar Kumar, for the Appellant; Brijita Prakash, AC to GP 9, Bamdeo Pandey, Jitendra Pandey for Resp. No. 5, R.S. Pradhan Rajeev Lochan and Sanjeev Nikesh for Resp. No. 2, for the Respondent

Final Decision : Allowed

Judgement

Ramesh Kumar Datta, J.

I.A. No. 1083 of 2009

1. The interlocutory application has been filed for addition of prayer to declare the election of respondent No. 5 as Pramukh of Sangrampur Panchayat Samiti null and void and further to declare the petitioner as elected Pramukh of the said Panchayat Samiti.

2. The writ application was initially filed for quashing of the order dated 3.8.2006 passed by the State Election Commissioner by which he has held that the Commission was not competent to interfere once the results of the election to the post of Pramukh or Up-Pramukh is declared and any such matter can be considered by filing an election petition before the Sub Judge. As per the contention of learned Counsel for the petitioner no such election petition being maintainable before the Subordinate Judge and no mechanism for redressal of

election dispute relating to Pramukh and Up-Pramukh having been prescribed u/s 40(4) of the Bihar Panchayat Raj Act, 2006 by the State Election Commission, the petitioner has no statutory remedy except to approach this Court for the said reliefs.

3. On a consideration of the facts and circumstances, the prayer for addition of relief is allowed.

4. I.A. No. 1083 of 2009 is accordingly disposed of.

5. Heard learned Counsels for the parties.

6. The petitioner is aggrieved by the order dated 3.8.2006 passed by the State Election Commission by which he has refused to entertain the petition filed before him for declaring the election of respondent No. 5, Pramod Kumar Singh as Pramukh of Sangrampur Panchayat Samiti null and void, on the ground that he had no jurisdiction in the matter and the remedy was by filing an election petition before the competent Subordinate Judge. The further prayer of the petitioner is to declare the election of respondent No. 5 as Pranukh of the Sangrampur Panchayat Samiti null and void and further to declare the petitioner as elected Pramukh of the said Panchayat Samiti.

7. The facts relevant for the decision of the present matter are that the petitioner and respondent No. 5 both contested the election to the post of Pramukh of Sangrampur Panchayat Samiti having filed their nomination on 20.7.2006. The said Panchayat Samiti had 13 directly elected members who were entitled to participate in the said election of the Pramukh. The date of election was first fixed on 28.6.2006 by the Sub-Divisional Officer for conducting the election in the BDO's office but according to the petitioner, the SDO with ulterior motive in order to support respondent No. 5 cancelled the meeting and thereafter fixed the date on 20.7.2006 in violation of the guidelines of the Commission to fix the same within five days and the venue was also changed to the office of the SDO. It is further allegation against the Sub-Divisional Officer that he had deliberately not arranged the video-recording of the election process so that there would be no evidence of the wrongs committed by him in order to favour respondent No. 5 in the said process. The main contention however, is that out of 13 members only six members cast their votes in favour of respondent No. 5 whereas seven members cast their vote in favour of the petitioner; however, the vote of one of the members was declared by the SDO as invalid on the ground that the cross mark (X) by the said member was put adjoining to the name of the petitioner and it was not put in the column after the oblique line in front of the name of the petitioner where it is normally supposed to be recorded. The case of the petitioner is that there could be no doubt at all as to the intention of the member who cast vote in favour of the petitioner and yet the same has been rejected by the Sub-Divisional Officer in order to help respondent No. 5. The said vote in the column of the petitioner has not been denied in either of the counter affidavits filed on behalf of the State-respondents as also the respondent No. 5. Thereafter

since there was equality of votes between the petitioner and respondent No. 5 the matter was determined by the draw of lot and here the allegation of the petitioner is that the lottery process was adopted surreptitiously and the name of the petitioner was not shown in the lottery and cunningly the SDO asked the henchman of respondent No. 5 to pick up the lottery paper who picked up it and without showing the same, the SDO declared the respondent No. 5 elected as Pramukh although request in this regard was made.

8. Aggrieved by the said action of the Sub-Divisional Officer, the petitioner approached the State Election Commission for declaring the election of respondent No. 5 as invalid and to declare the petitioner as elected which was rejected by the aforesaid impugned order dated 3.8.2006.

9. Learned Counsel for the petitioner does not seriously challenge that part of the order of the State Election Commissioner by which he has held that he has no jurisdiction to entertain an election dispute relating to the election to the post of Pramukh of the Panchayat Samiti. It is submitted by learned Counsel that u/s 40(4) of the Bihar Panchayat Raj Act the election of Pramukh and Up-Pramukh, filling up vacancies in the said offices and determination of disputes relating to such election shall be in accordance with such rules or procedure as may be prescribed by the State Election Commission, but in the present matter the State Election Commission has failed to perform its statutory duty of framing such rules for the determination of disputes relating to such election and for the said reasons the petitioner had initially approached the State Election Commission itself to decide the matter. However, it is now contended that the said provision by itself does not authorize the Election Commission to hear the dispute but only to prescribe the rules in this regard and therefore, to that extent the order dated 3.8.2006 of the Election Commission may not be open to challenge. It is however, contended that the dispute of the present nature being specifically referred to in Section 40(4) of the Act, the same does not come in the category of any election petition u/s 137 of the Bihar Panchayat Raj Act which is concerned only with respect to election disputes relating to directly elected members to the various Panchayats and not of such in-house indirect elections as in the instant case which is specifically provided u/s 40(4) of the Act. For the said reasons, it is submitted by learned Counsel that there being no statutory rules prescribed by the Commission under the said provision the petitioner has no remedy in the matter except by way of approaching this Court in its writ jurisdiction under Article 226 of the Constitution of India.

10. On the merits of the matter, it is submitted by learned Counsel that Rule 96 of the Bihar Panchayat Election Rules, 2006, which is specifically with respect to election, inter alia, to the post of Pramukh, lays down five grounds on which a ballot paper shall be treated as invalid. It is submitted that none of those grounds apply in the present matter. The grounds mentioned in Clause (c) of Rule 96 states that the ballot paper shall be considered as invalid if the mark has been made in such a manner that it cannot be ascertained as to which candidate

the vote has been cast. It is contended that from the ballot paper in question it is evident that the mark has been made against the name of petitioner though not in the exact place where it should have been put but it could not be said from the manner in which the mark has been made that it cannot be ascertained as to for which candidate the vote has been cast. The said facts being admitted it is urged by learned Counsel that none of the five grounds as provided in Rule 96 for declaring the vote as invalid being available, it was not open to the SDO-cum-Election Officer to have created a new ground for rejecting the vote cast in favour of the petitioner.

11. In this regard, learned Counsel also relies upon the guidelines dated 11.8.2006 (Annexure-4) issued by the State Election Commission which relates specifically with respect to certain disputes relating to election, inter alia, on the post of Pramukh and clearly provides that if the cross mark (X) of any ballot is not against the name of a candidate in the column prescribed for the same, but has been put on the name of the candidate or next to it, from which it is clear that the voter had voted in favour of the said candidate then such ballot will not be treated as invalid rather the same would be treated as valid. It is contended by learned Counsel that in view of the specific guidelines issued by the Commission which are in keeping with the provisions of Rule 96 also, the vote cast in favour of the petitioner by the 7th voter could not have been rejected and thus in the said circumstances, there would be no occasion for any draw of lot and the petitioner would have to be declared elected by seven votes to six.

12. Learned Counsel for respondent No. 5 on the other hand, seeks to rely upon the provisions of Rules 95 and 96 of the Bihar Panchayat Election Rules stating that as per Rule 95, a member is required to exercise his/her vote by putting the cross mark (X) against the name of the candidate given in the ballot paper and the same must be put at the place prescribed for putting the cross mark and not anywhere else. If, as in the present matter, there is cross mark put at any other place than the prescribed one the same has to be rejected as invalid and the SDO has rightly rejected the said vote in the present matter. It is submitted by learned Counsel that the statutory rules must be specifically followed and the same being clear the question of intention is wholly immaterial.

13. Learned Counsel also assails the challenge made to election of respondent No. 5 before the Election Commission or even in the writ jurisdiction in view of the provisions of Section 137 of the Bihar Panchayati Raj Act which provides that the election to any office of Pramukh shall not be called in question except by an election petition as prescribed and the said election petition in the case of election to the Panchayat Samiti shall lie before the Subordinate Judge in whose jurisdiction the said Panchayat Samiti is situated. In view of the said provisions of Section 137 of the Act, it is argued by learned Counsel that his election could have been challenged only by filing election petition under such provision and not before any other forum. Learned Counsel has also denied the allegations regarding collusion between respondent No. 5 and the Sub-Divisional Officer and

it is contended by him that all those allegations are after thoughts and not having been made at the earliest stage when the election process itself was on and no protest was filed against the same.

14. Learned Counsel for the State on the basis of the statements made in the counter affidavit also supports the actions of the respondent-SDO on the basis of the above rules and denies any collusion between the Sub-Divisional Officer and the respondent No. 5.

15. Learned Counsel for the State Election Commission, on the other hand supports the order of the State Election Commissioner on the ground that he has no jurisdiction to directly entertain a dispute relating to election of a Pramukh although it is admitted that any such dispute has to be resolved in the manner provided under the rules prescribed for the said purpose u/s 40(4) by the State Election Commission. He however, states that as per his instructions no such rules have been framed up till now. It is also the stand of learned Counsel for the State Election Commission that in terms of Rule 96 as also the guidelines dated 11.8.2006 issued by the State Election Commission for casting vote, if cross mark (X) is made at any place on the name or near the name of a candidate as in the present matter, then the same ought not to be declared invalid since the main concern of an Election Officer should be to see that where such intention is clearly expressed then on mere technicalities such vote should not be rejected.

16. On a consideration of the rival submissions this Court finds substantial force in the submission of learned Counsel for the petitioner.

17. This Court is not going into the issue regarding collusion of the Sub-Divisional Officer with the respondent No. 5 but it must be observed that where there is a requirement of video-recording of the election process and the same is not done and a dispute of the present nature arises in the said matter then a reasonable suspicion is cast on the fairness of the election officer concerned. The Sub-Divisional Officer in the present matter does not appear to have acted in the manner required by him and he ought to have ensured that there was video-recording of the entire election process so that no such allegation as in the present matter is raised at a subsequent stage by the candidates.

18. So far as the issue of forum for consideration of election dispute relating to the office of Pramukh is concerned, it is evident that the same is not covered by Section 137 of the Bihar Panchayat Raj Act, 2006 since specific provision has been made by Section 40(4) of the Act with respect to determination of disputes relating to such election and in that regard the rules and procedures are to be prescribed by the State Election Commission. Unfortunately, such rules have not been framed after three years of coming into force of the said Act, which has unnecessarily led to such litigations finding their way to this Court. It is expected that the State Election Commission shall take appropriate steps in this matter as expeditiously as possible.

19. In this regard if the submission of learned Counsel for respondent No. 5 is

accepted and the challenge to election to the post of Pramukh is to be made only by filing of election petition u/s 137 of the Act then the provisions of Sub-section (4) of Section 40 would become a futile and redundant provision. A statute cannot be so interpreted as to make any part of it redundant, rather the attempt of the Court should be to read the various provisions of the Act harmoniously so as to give effect to each part of the Act. In view of the specific provisions with respect to determination of election dispute to the office of Pramukh and Up-Pramukh made by Sub-section (4) of Section 40, by providing for framing of rules in that regard by the State Election Commission, it is evident that such disputes are not to be determined in accordance with the provisions of Section 137 of the Act and the same would evidently not lie before the Sub Judge concerned. In the said circumstances, since no statutory rules have been framed, the aggrieved party would be left with no remedy at all and, therefore, it would be permissible to invoke the writ jurisdiction of this Court under Article 226 of the Constitution.

20. On the merits of the matter, it is evident that the powers of any Election Officer with respect to election on the post of Pramukh would be determined by the specific rules framed in this regard and cannot extend beyond the same. The ballot paper can be treated as invalid only on the grounds specified in any of the Clauses (a) to (e) of Rule 96 of the Rules. In this regard reliance by learned Counsel for the respondents on the provisions of Rule 95 is wholly irrelevant as that is a general rule which provides that the cross mark (X) is to be made against the name of a candidate on the ballot paper by the member entitled to vote. The grounds on which the ballot paper can be treated as invalid are to be found only under Rule 96 and the Election Officer while exercising his jurisdiction to declare the ballot paper invalid, has to see whether it comes under any of the clauses of Rule 96; if not so covered, he has no option but to consider the said vote as a valid one.

30. In the instant matter respondents have not been able to show that there is any application of Clauses (a) to (e) since it is admitted that a cross mark (X) was made on the ballot paper and the only ground for rejection is that the same was not made in the exact column prescribed against the name of the petitioner rather it has been made adjacent to the name of the petitioner. That being the admitted position even the application of Clause (c) of Rule 96 will not come into play as the said clause applies only where it cannot be ascertained from the manner in which the mark has been made as to for which candidate the vote has been cast. In the present matter, there is no dispute that the mark has been made in the block of column in which the name of the petitioner appears and no part of the said mark was made against the name of respondent No. 5. There being thus no question of any doubt as to in whose favour the member had intended to cast his vote, it could not have been rejected.

31. The aforesaid conclusion of this Court is further supported by the guidelines dated 11.8.2006 issued by the State Election Commission which makes the point

further clear for the benefit of the Election Officer. The said guidelines, though issued subsequently to the date of rejection by the S.D.O., are clearly in accordance with the provisions of Rule 96 of the Act which clearly lays down that where the cross mark (X) has been put either on the name of the candidate or near his name then it should be accepted as valid and not as invalid.

32. In the light of the aforesaid discussions, it is evident, that the respondent No. 4, SDO-cum-Election Officer has seriously erred in declaring the vote cast by the thirteenth member as invalid. The said vote is held to have been validly cast in favour of the petitioner. That being the position, seven votes would be considered as having been cast in favour of the petitioner as against only six votes in favour of the respondent No. 5. In the said circumstances, there would be no occasion for the draw of lot to determine the elected candidate and therefore the subsequent draw of lot made after the counting process is also held to be illegal and invalid.

33. In the above circumstances, the writ application is allowed. The election of respondent No. 5 to the post of Pramukh of Sangrampur Panchayat Samiti is declared to be invalid and the petitioner is declared as the validly elected candidate.