

Ajit Singh Vs. the State of Bihar and ors.

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Court : Patna

Decided On : May-04-2005

Judge : V.N. Sinha, J.

Acts : Bihar Panchayat Raj Act, 1993 - Sections 140; Representation of People Act, 1951 - Sections 80A(2), 81, 82, 83, 86 and 117; G.P. Act, 1993; G.P. Rules; [Code of Civil Procedure \(CPC\) , 1908](#)

Appeal No. : CWJC No. 11349 of 2002

Appellant : Ajit Singh

Respondent : The State of Bihar and ors.

Advocate for Def. : Rajeshwar Prasad, G.P. 6

Advocate for Pet/Ap. : S.N.P. Sharma Adv.

Disposition : Appeal dismissed

Prior history : V.N. Sinha, J. 1. Heard Sri S.N.P. Sharma, learned counsel for the petitioner, Sri Rajeshwar Prasad, G.P. 6 for the State of Bihar and its functionaries, State Election Commission and its functionaries and private Respondents, who have filed their counter affidavit. 2. By the impugned order dated 3.9.2002, Annexure-1, the preliminary objection of the Return Candidate that the election petition filed under Section 140 of the Bihar Panchayat Raj Act, 1993 without impleading all the contesting

Judgement :

V.N. Sinha, J.

1. Heard Sri S.N.P. Sharma, learned counsel for the petitioner, Sri Rajeshwar Prasad, G.P. 6 for the State of Bihar and its functionaries, State Election Commission and its functionaries and private Respondents, who have filed their counter affidavit.

2. By the impugned order dated 3.9.2002, Annexure-1, the preliminary objection of the Return Candidate that the election petition filed under Section 140 of the Bihar Panchayat Raj Act, 1993 without impleading all the contesting candidates is not maintainable, has been overruled.

3. Petitioner assails the said order on the ground that the impugned order is contrary to law as has been laid down by this Court in the Case of Md. Zakir Hussain v. Hareshwar Prasad Singh and Ors., reported in 2002 (1) BLJR 103, whereunder his Lordship, while considering the similar situation, has held as follows :

'True it is that; the general law says that the plaintiff is dominus-lit is and is entitled to join the party of his own choice but this right of the plaintiff is not absolute. The opposite party in a civil suit can always raise an objection regarding misjoinder or non-joinder of the party. The question relating to misjoinder of the parties cannot be equated with non-joinder of the parties as the same does not affect the jurisdiction of the court and the court at the time of final disposal of the matter may not award any relief to the plaintiff against the persons unnecessarily joined. But in a case of non-joinder of a person required to be joined as a party, the Court would be left with no option but to dismiss the suit because no effective decree or order can be passed in such a matter.

In the present case allegation of the election petitioner are that the results of the election were managed. Number of the votes which were undoubtedly cast in favour of the election petitioner were not counted in this favour. It is trite law that in case of corrupt practices, and recounting of the votes, the persons who had

contested the election are necessary parties.'

The aforesaid legal position enunciated in the said Judgment is correct so far the provisions of Sections 82, 83 and 86 of the Representation of People Act, 1951 is concerned which provides for parties of the election petition and the consequences of the non/mis-joinder of parties. For ready reference those provisions are quoted hereinbelow :

'82. Parties of the petition.--A petitioner shall join as respondents to his petition--

(a) where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.

83. Contents of petition.--(1) An election petition--

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice;

(c) and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings :

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

86. Trial of election petitions.--(1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section

117.

(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under Sub-section (2) of Section 80A.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.'

No provision similar to that of Sections 82, 83 and 86 of the Representation of People Act, 1951 is incorporated in G.P. Act, 1993 or the Rules framed thereunder, thus the law laid down in the case of Md. Zakir (supra) has no application to the provision of G.P. Act, 1993 and the Election petition filed

thereunder.

4. This being the position, there does not appear to be any illegality in the impugned order dated 3.9.2002, Annexure-1 and the writ application is, accordingly, dismissed, however, with observation that objection other than on mis-joinder of parties be raised and considered during the hearing of the election petition.

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