

Arun Kumar Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jul-07-2004

Judge : Chandramauli Kumar Prasad, J.

Appeal No. : CWJC No. 598 of 2003

Appellant : Arun Kumar

Respondent : The State of Bihar and ors.

Advocate for Def. : Ram Balak Mahto, Senior Adv. for the respondent No. 4 and Mahesh Prasad, GP III

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

Disposition : Application allowed

Judgement :

Chandramauli Kr. Prasad, J.

1. This application has been filed for quashing the order dated 27.11.2002 passed by the Munsif, Sheikhpura in election petition No. 6 of 2001 whereby he has allowed the application filed by respondent No. 4 for exhibiting the ballot papers of booth Nos. 58 to 70.

2. Short facts giving rise to the present application are that the petitioner as also respondent No. 4 contested the election for the office of the Mukhiya of Diha Gram Panchayat. In the said election, petitioner, hereinafter referred to as the returned candidate, was declared elected. Respondent No. 4 Dinesh Prasad, hereinafter referred to as the election petitioner, challenged the election of the returned candidate by filing an election petition before the Munsif, Sheikhpura which was registered as election petition No. 6 of 2001.

3. In the election petition, election petitioner filed an application dated 13.11.2001 for marking the ballot papers as exhibits. In the application, it was stated that by order dated 10.7.2001, the ballot papers of booth Nos. 58 to 70 were called for and as such, they be exhibited as exhibits. By the impugned order, the learned Munsif has accepted the prayer of the petitioner.

4. Mr. S.N.P. Sharma, Senior Advocate appearing on behalf of the petitioner submits that the direction to exhibit the ballot papers by Election Tribunal trying an election petition, is unknown to law as the same will expose the secrecy of the ballot papers. He submits that even for the purpose of recounting of the votes, certain conditions are required to be satisfied but the learned Munsif had directed for exhibiting the ballot papers without recording his satisfaction in regard thereto.

5. Mr. Ram Balak Mahto, Senior Advocate, appearing on behalf of respondent No. 4 submits that the learned Munsif may not be right in directing for exhibiting of the ballot papers but he certainly possesses power to pass order for the recounting of the votes which implies the power to get the ballot exhibited and as such, the order impugned cannot be said to be illegal.

6. Having considered the rival submission, I find substance in the submission of Mr. Sharma. Direction to exhibit the ballot papers and recounting of votes is not one and the same thing. Exhibiting the ballot paper would expose its secrecy till perpetuity. Hence the impugned order is absolutely illegal which cannot be allowed to stand.

7. The learned Munsif has not applied its mind nor any application seems to have been filed for recounting of the votes. Hence, in case, in future, the election

petitioner satisfied the Court that the facts of the present case justified recounting of the votes, the learned Munsif shall consider the same in accordance with law.

8. Needless to state that in case, such an order is passed, the party aggrieved shall be at liberty to assail the same in accordance with law.

9. In the result, application is allowed. The order dated 27.11.2002 passed by the learned Munsif, Sheikhpura in election petition No. 6 of 2001 directing for exhibiting the ballot papers, is quashed with the observation aforesaid.

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