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Court : Patna

Decided On : Sep-12-2002

Judge : Aftab Alam, J.

Appeal No. : C.W.J.C. No. 13193 of 2001

Appellant : Arun Kumar

Respondent : State of Bihar and ors.

Disposition : Writ Petition Dismissed

Judgement :

Aftab Alam, J.

1. The petitioner was declared elected to the post of Mukhiya of Diha Gram Panchayat in the district of Sheikhpura. Respondent No. 4 challenged his election in a petition under Section 140 of the Bihar Panchayat Raj Act, 1993 before the learned Munsif, Sheikhpura. The election case remains pending but in the meanwhile the petitioner has come in this Court challenging the order, dated 28.8.2001 passed by the Munsif in the election case. By the impugned order the Munsif declined to finally decide certain preliminary objections raised by the petitioner regarding the maintainability of the election petition and observed that he would decide the question of maintainability along with the other issues framed in the suit. The learned Munsif pointed out that the proceedings were at an advanced

stage. The evidence of the election applicant (respondent No. 4) was already over and now it was the turn of the petitioner to lead his evidence after which parties will make their arguments on all the issues including the issue of maintainability of the suit.

2. The petitioner is not satisfied by this order and he has come to this Court in this writ petition, seeking a direction to the learned Munsif to first decide the issue of maintainability of the election petition before proceeding further with the suit. The maintainability of the election petition is questioned primarily on two grounds. One is that all the contesting candidates were not made parties to the suit and, therefore, the suit was incompetent to proceed for non-joinder of the parties. It is further stated that in the suit the election applicant had challenged the election result alleging that ballot boxes from six polling booths were looted away by the supporters of the petitioner while those boxes were being taken for safe deposit. According to the petitioner, this ground for challenging the election was no longer available inasmuch as repoll were held on all those six polling booths. Respondent No. 4 did not challenge the repoll and hence, he cannot maintain the election petition on the basis of a cause of action (the looting away of the ballot boxes) which was superseded by the subsequent event and was therefore, no longer in existence.

3. Mr. S.N.P. Sharma, learned Sr. Counsel appearing in support of this writ petition argued at length that the learned Munsif was obliged to first determine the preliminary objections raised by the petitioner regardless of the stage at which those objections were raised. Learned Counsel submitted that had the Munsif considered the petitioner's objections correctly and properly he would have found that the election petition filed by respondent No. 4 was incompetent and not maintainable and that finding would have saved the Court's time and the time, energy, and expenses of the petitioner. Mr. Sharma relied upon a Supreme Court decision in *Udhav Singh v. Mahadav Rao Scindia* : [1976]2SCR246 in support of his submission that preliminary objections could be raised at any stage in the proceeding and once raised by the party, it was obligatory upon the Court to first decide those objections before proceeding any further with the suit.

4. Mr. Sharma further submitted that the event/allegation of looting away of the ballot boxes had become irrelevant and academic in view of the subsequent repoll on those booths and, therefore, the suit could not proceed as a Court of law would not decide an issue only academically. In support of his submission he relied upon a decision of the Supreme Court in Loknath Padhan v. Birendra Kumar Sahu : [1974]3SCR114 .

5. Mr. Ram Balak Mahto, learned Sr. Counsel appearing for respondent No. 4 submitted that the learned Munsif had rightly proceeded with the suit, observing that he could hear and decide all issues, including the preliminary objections raised by the petitioner together. Mr. Mahto pointed out that the decisions relied upon by Mr. Sharma were rendered in cases arising out from the Representation of the People Act and submitted that the procedure for the trial of an election case under the R.P. Act was governed by the extremely rigorous and stringent provisions contained inter alia in Section 81 of 86 of the Act. Mr. Mahto submitted that there were no similar provisions in the Bihar Panchayat Raj Act or the rules framed thereunder. On the contrary Rule 111 stated that an election petition filed under Section 140 of the Act will be heard in the manner prescribed by the Civil Procedure Code, 1908.

6. Mr. Mahto submitted, and in my opinion quite rightly, that Rule 111 of the Bihar Panchayat Raj Rules read with the provision of Order XIV Rule 2 clearly required the Court to pronounce the judgment on all issues. Rule 2 of Order XIV of the Code of Civil Procedure reads as follows:

2. Court to pronounce judgment on all issues--(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of Sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates.

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by an law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues untill after that issue has been determined, and may deal with the suit in accordance whit the decision on that issue.

7. In the light of the above, it, most be held that the learned Munsif was quite right in taking the view that he should decide the objections raised by the petitioner regarding maintainability along with the other issues framed in the suit.

8. In reply to Mr. Manto's submission, Mr. Sharma stated that even though non-compliance with the provisions of Section 83 of the R.P. Act was not a ground for rejection of the election petition under Section 86 of the Act. In the case of Azhaf Hussain v. Rajiv Gandhi : [1986]2SCR782 , the Supreme Court upheld the rejection of the election petition for violation of the provisions of Section 83 read with the provisions of Civil Procedure Code. He also relied upon a decision in Samant N. Balakrishna etc. v. George Fornandez and Ors. : [1969]3SCR603 . The simple answer to Mr. Sharma's contention is that in the Panchayat Election Rules there is no provision comparable to Section 43 of the R.P. Act.

9. Mr. Sharma, submitted that the provision of Section 110 of the Bihar Panchayat Election Rules can be said to be comparable to Section 83 of the R.P. Act. This, to my mind, is an argument of desperation. There can be no comparison between the rigour and stringency of Section 83 of the R.P. Act with the provision of Section 110 of the Bihar Panchayat Election Rules relating to the verification of facts of election petition.

10. For the reasons discussed above, I am unable to accept the submission made on behalf of the petitioner and I find no infirmity in the order passed by the learned Munsif. This writ petition is accordingly dismissed with costs quantified at Rs. 220/- payable to the Counsel on record for respondent No. 4.