

Nasimuddin Vs. State of Bihar and ors.

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Court : Patna

Decided On : Sep-01-2005

Judge : Barin Ghosh, J.

Acts : Code of Civil Procedure (CPC) ; [Constitution of India](#) - Article 143O

Appeal No. : CWJC No. 6446 of 2005

Appellant : Nasimuddin

Respondent : State of Bihar and ors.

Advocate for Def. : Dharendra Kumar, JC (GP 3) and Abhay Singh, Sr. Adv.

Advocate for Pet/Ap. : Arshad Jameel Hashmi and L.N. Das, Advs.Sanjeev Nikesh, JC

Disposition : Petition allowed

Judgement :

Barin Ghosh, J.

1. A voters list was prepared and on the basis of that voters list, the private respondent tried his luck at the election and lost. Subsequently he turned around and in the election petition contended that the voters list was wrong and the learned Munsif has accepted such contention and rejected the votes obtained by

the petitioner, who was declared elected. It is surprising that the Munsif even did not try to ascertain who were those persons whose names were wrongly entered in the voters list. It is even more surprising that before curtaining the voters from the list, the Munsif did not try to ascertain who were those and accordingly rejected the genuine votes. The Munsif, it seems by reading of the judgment wanted to declare the private respondent as winner and has passed a judgment which cannot stand the test of law even for one second. It did not dawn on to the Munsif that a person, who had participated in the election on the basis of the voters list and has tried his luck on the basis thereof, after losing cannot challenge the voters list.

2. The learned counsel for the private respondent contended that there cannot be any dispute that there is a discrepancy in between the census and the voters list. On the basis of the census, the election was not held. The census may be the basis of preparation of the voters list but before the voters list is prepared, a provisional voters list is made and published calling upon the people to submit objections in relation thereto. It is the duty of the people then to approach the authority obliged to prepare the voters list so as to make the voters list a correct voters list. After having had failed to discharge such obligation when the private respondent permitted the voters list to reach finality and thereupon took a chance on the basis of such voters list to win the election, he cannot contend that the voters list was bad or that the voters list, as prepared, is discrepant with that of the census. In any event, whether the voters list was correct or whether the census was correct is not the question. The question is whether by taking the steps, as complained of in the writ petition, the private respondent could at all interfere with the legal right which accrued in favour of the petitioner upon the declaration that he has won the election after counting of votes cast on the basis of the said voters list on the basis whereof the private respondent too contested the election.

3. The learned counsel for the private respondent then submitted on the basis of a judgment rendered by the Supreme Court in the case of National Sewing Thread Co. Ltd. v. James Chadwick and Bros. Ltd., reported In : [1953]4SCR1028 , that the petitioner has alternative remedy of preferring an appeal and accordingly the writ petition should not be entertained. The judgment, which is the subject matter

of challenge in this writ petition is so obnoxious and perverse that even if an alternative remedy is available, the writ Court will as a duty should interfere in these matters and quash these judgments as quickly as possible so that they do not remain in the records even for one second. I, however, do not think that there is any other alternative remedy at all.

4. Article 143(0) of the [Constitution of India](#) directs that no election to any panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the legislature of a State. The constitutional mandate, therefore, is that the election disputes shall be sorted out only through election petition presented to an authority, as may be prescribed by the legislature. The legislature of this State by Section 140 of the Act has directed that such election petition shall be presented before the Munsif and not to the Court of Munsif. The Munsif was therefore the persona designata. By rules, the State has provided that the Code of Civil Procedure will apply in so far as the election petitions as are heard by the Munsif. The disputes by way of election petition are sorted out by the Munsif in his capacity as the prescribed authority in terms of the constitutional mandate and the disputes come to an end the moment he pronounces the judgment. The Act does not authorize preferring of an appeal. The question is whether in terms of the judgment of the Supreme Court, referred to above, the moment election petition comes before the Munsif for its adjudication, the Officers in the higher judicial hierarchy automatically becomes entitled to entertain the same. In the case before the Supreme Court, they were not concerned with the election petition nor they were concerned with a constitutional mandate. In that case they were concerned with a right guaranteed by a statute to prefer an appeal before the High Court and not to a persona designata. The Supreme Court was concerned with the question when a right to appeal was granted to the High Court and when such right was exercised before a Single Judge of the High Court, whether a further appeal by reason of the provisions contained in the Letters Patent could be preferred before a Division Bench of the High Court. That has no bearing in relation to an election petition to be decided by a person designated and not by a designated Court. In that case, the appeal was entertainable by the High Court. The question was whether a further appeal in the self-same High Court was maintainable or not. In

case of election petition it is the dispute in relation to election which go before the Munsif and the matter ends there. Nothing further survives for in terms of the constitutional mandate the election disputes must be decided by the authority prescribed by the legislature, and the authority prescribed in the instant case is the Munsif. I, therefore, reject the contention of the private respondent that the petitioner has any other alternative remedy, far less efficacious remedy. The writ petition accordingly is allowed and the impugned order is set aside.

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