

CASE NO.:
Appeal (civil) 1551 of 2006

PETITIONER:
Arun Singh @ Arun Kumar Singh

RESPONDENT:
State of Bihar AND Ors.

DATE OF JUDGMENT: 07/03/2006

BENCH:
S.B. Sinha & P.K. Balasubramanyan

JUDGMENT:
JUDGMENT

S.B. SINHA, J.

Leave granted.

This appeal is directed against the judgment and order dated 4.10.2004 passed by a Division Bench of the Patna High Court in CWJC No. 3205/2003, whereby and whereunder the writ petition filed by the 6th respondent herein, questioning an order dated 29.1.2003 passed by the State Election Commission, was allowed. The basic facts are not in dispute. The appellant was elected as a member of Nauhatta Panchayat Samiti from Ward No. 17, in that Panchayat in an unreserved seat in an election held on 11.4.2001. He was granted an election certificate by the competent authority on 14.5.2001. It is not in dispute that respondent No. 6 herein has filed an election petition in the Court of the Subordinate Judge, Saharsa, as Election Petition No. 6/2001, inter alia, praying for setting aside the declaration of the appellant herein as a member of Panchayat Samiti and for a declaration of himself as elected instead.

In the said election petition it was categorically stated that the O.P. No. 2 was a Dafadar and he was discharged from his post for his illegal and irregular conduct and against the order of discharge, O.P. No. 2 filed a writ petition in the High Court of Patna and the same was dismissed. Indisputably the said election petition is still pending.

The Legislature of the State of Bihar enacted Bihar Panchayat Raj Act, 1993. Section 139(1) (f) of the said Act reads thus:

“Disqualifications- (1) Notwithstanding anything contained in this Act, a person shall be disqualified for election or after election for holding the post as Mukhia, member of the Grampanchayat, Sarpanch, Panch of the Gram Katchahri, member of the Panchayat Samiti and member of Zila Parishad, if such person:

(a)

(f) Has been dismissed from the service of Central or State Government or any local authority for misconduct and has been declared to be disqualified for employment in the public service;”

The Bihar Panchayat Election Rules were framed thereunder. Rule 122 of the said Rules was amended on 28.2.2002, whereby and whereunder the State Election Commission was empowered to determine the question as to whether a member of the Panchayat, at any level, had disqualified himself on any ground enumerated in various sub-clauses therein. Such a power could be exercised by the State Election Commission either suo muto or on the relevant facts being brought to its notice.

Rule 122 of the said Rules reads as under:

"Rule 122: Under provisions of section 139(2) of the Bihar Panchayat Raj Act; 1993, the State Election Commission shall be the competent authority to decide whether a member of a Panchayat at any level has become subject to any of the disqualifications mentioned in section 139(1) of the Act. The matter of disqualification may be brought to the Commission in the form of a complaint, application or information by any person or authority. The State Election Commission may also take suo motu cognizance of such matters and decide such matters expeditiously after allowing sufficient opportunity to the affected parties of being heard."

It is furthermore not in dispute that the State Election Commission at the instance of respondent No. 6 considered the question as to whether the appellant herein stood disqualified having regard to the fact that the appellant was dismissed from service. It is not in dispute that the appellant was appointed as a Dafadar in a temporary capacity. He was allegedly dismissed from service by the Superintendent of Police, Saharsa, by an order dated 9.8.1980.

Respondent No. 6, despite the fact that his election petition was pending in which the issue in question was whether the appellant herein stood disqualified by reason of the order of dismissal dated 9.8.1990, filed an application before the State Election Commission purported to be in terms of Rule 122 of the Rules. By an order dated 29.1.2003 the said application was dismissed. The State Election Commission had noticed that the order of dismissal passed as against the appellant herein did not indicate that the same was for commission of a misconduct. The District Magistrate appears to have taken a view that as his appointment was illegal and as the likely appointment of his successor was illegal, the order of dismissal/discharge was justified in law. It was further noticed that the writ petition filed by the appellant herein questioning the said order of the District Magistrate, as CWJC No. 10394/1996 was dismissed by the Patna High Court by order dated 27.2.1997.

In his order the State Election Commissioner held:

"Report of the SP, Saharsa dated 24.01.2003 and G form No. 3/79 of Nauhatta Police Station have been received. A perusal of these documents indicates that the OP has been removed from service for not doing his duty properly. The Deputy Superintendent vide his endorsement dated 24.01.1980 on G Form No. 3/79 addressed to the SP has remarked that the OP may be discharged. Thus what appears from the relevant documents is that the OP who was appointed as Dafadar for a temporary period was to be discharged from the job for not doing his duty properly. The documents do not indicate any act of misconduct on the part of the OP and, therefore, the provisions of clause (f) of sub-section (1) of Section 139 of the Act is not attracted in this case."

Respondent No. 6 filed a writ petition questioning the validity of the said order. The said writ petitioner was heard together with other writ petitions wherein the vires of Section 139(1) of the Act and Rule 122 were in question. A Division Bench of the High Court, upholding the validity of the said provisions, opined that even though the writ applications filed against the orders of the State Election Commissioner were maintainable, such elections which were vitiated by fraud cannot be allowed to stand. The High Court thereafter considered in brief the merit of each of the writ petitions filed before it. In regard to the writ petitions filed by respondent No. 6, it was opined that the Election Commission had taken an erroneous view in its order in so far as it failed to take into consideration that as the appellant herein had absented himself from duty and the said allegation had been proved, the same would constitute a misconduct. On that premise, a writ of quo warranto was directed to be issued and a further declaration was made that the appointment of the appellant as a member of the Panchayat Samiti was not legal and valid and

he cannot continue to function as such. We cannot agree with the findings of the High Court.

Section 139(1) (f) of the Act which provides for a disqualification, must be construed strictly. The disqualification set down in Section 139(1) (f) would be attracted when the requirements laid down therein are fulfilled, which would mean that the elected candidate should have been dismissed from service of the Central or State or other local authority (i) for commission of misconduct; and (ii) he has been declared disqualified for employment in public service.

The State Election Commissioner in his order noticed that the order of dismissal passed as against the appellant herein did not indicate that the same was for any misconduct committed by him, the order of the District Magistrate revealed that his services were dispensed with only because his appointment was found to be illegal whereas the order passed by the Superintendent of Police indicated that the appellant had been dismissed/removed from service for not doing his work properly. No finding of fact was arrived at either by the Superintendent of Police or the District Magistrate or for that matter, by the State Election Commissioner that prior to the issuance of the said letter, a disciplinary proceeding was initiated against the appellant and he was found to have committed any misconduct within the meaning of the provisions of the Bihar Civil Services Classification Appeal Rules or otherwise.

The order imposing penalty was not before the High Court. There was nothing to show that the said order fulfilled the conditions precedent for invoking the provisions of Section 139(1) (f) of the Act. The High Court therefore, in our opinion, completely misdirected itself in holding that as the appellant had absented himself from duty the same constituted misconduct and thus his election was void. The High Court did not go into the correctness or otherwise of the order of the State Election Commission. On what premise the power of judicial review was exercised by the High Court is not indicated. No cogent or sufficient reasons have been given by the High Court for setting aside the well considered order of the State Election Commission. Furthermore, issuance of a writ of quo warranto is discretionary and such a writ should be issued only upon a clear finding that the appointment to a public office was contrary to the statute. For the said purpose it was obligatory on the part of the High Court to arrive at a finding that the disqualifying clause contained in section 139(1) (f) was squarely attracted in the case of the appellant, in the light of the order of the State Election Commission. Evidently, the appellant was not disqualified.

For the foregoing reasons the impugned judgment cannot be sustained and it is accordingly set aside. The appeal is allowed. In the facts and circumstances of the case, respondent No. 6 shall bear the costs of this appeal. Counsel fee is assessed as Rs. 5,000.