

Krishna Ballabh Prasad Singh

Vs.

Sub-Divisional Officer Hilsa-Cum-Returning Officer and Others

Petition for Special Leave to Appeal (Civil) No. 7822 of 1985

(R.S. Pathak, Sabyasachi Mukharji JJ)

12.08.1985

JUDGMENT

PATHAK, J. -

The petitioner and the fourth respondent contested an election to the Bihar Legislative Assembly seat from the Islampur Assembly Constituency in March 1985. After the votes had been polled, the counting of votes was taken up on March 6, 1985. Pursuant to allegations made by the parties, the Election Commission of India ordered re-polling in sixty stations. On the conclusion of the re-poll the votes were counted and the petitioner was found to have secured more votes than the fourth respondent. The fourth respondent applied for a recount of the votes but the returning officer rejected the application and announced that the petitioner had been duly elected to the Assembly. A certificate of election in Form 22 under Rule 66 of the Conduct of Elections Rules, 1961 was granted to the petitioner. It seems that the declaration in Form 21-C was not prepared under clause (a) of Rule 64 of the Conduct of Elections Rules, 1961 and sent to the authorities required thereunder. The returning officer, on discovering that the ballot papers of one booth had not been counted, took those votes into account and thereafter issued a notice canceling the election of the petitioner and declaring the fourth respondent to be the successful candidate. A declaration in Form 21-C was then prepared declaring the fourth respondent to be the elected candidate, and a fresh certificate in form 22 was issued.

2. The petitioner filed a writ petition in the Patna High Court challenging the declaration made in favour of the fourth respondent. A Division Bench of two Judges of the High Court heard the writ petition and on a difference between the two the case was referred to a third Judge of the High Court. The third Judge agreed with the view taken by one of the Judges of the Division Bench that the writ petition must fail because of the bar imposed by clause (b) of Article 329 of the Constitution and that an election petition was the proper remedy.

3. In this petition for special leave against the majority judgment of the High Court, the only question is whether the bar enacted in clause (b) of Article 329 operates against the writ petition. Learned counsel for the petitioner urged that the petitioner is entitled to maintain the writ petition and to contend that the returning officer had no power to cancel the election of the petitioner and declare the fourth respondent elected. It is submitted that the process of election was completed as soon as the counting of votes was concluded and a certificate of election in Form 22 was granted to the petitioner certifying that he had been elected, and therefore no question arose of the petitioner filing an election petition. What is challenged, says the petitioner, is the declaration by the returning officer thereafter that the fourth respondent, and not the petitioner stood elected. We see no force in this contention.

4. The process of election set fourth in the Representation of the People Act, 1951 consists of several stages and towards the end it requires a declaration of the result of the election. Section 66 of the Act provides that when the counting of votes has been completed the Returning Officer must declare forthwith the result of the election "in the manner provided in this Act or the Rules made thereunder". Thereafter, under Section 67 the result of the election is reported by the Returning Officer to the authorities specified therein and the declaration is published in the Official Gazette. It may be mentioned that according to Section 67-A of the Act the date on which the candidate is declared by the Returning Officer under Section 66 to be elected is regarded as the date of election of the candidate. Now, as contemplated by Section 66 the declaration of the result of the election must be in the manner provided by the Act or the Rules made thereunder. The procedure for declaring the result of the election is set fourth in Rule 64 of the Conduct of Elections Rules, 1961. Rule 64 provides :

64. Declaration of result of election and return of election. - The returning officer shall, subject to the provision of Section 65 if and so far as they apply to any particular case, then -

(a) declare in Form 21-C or Form 21-D, as may be appropriate, the candidate to whom the largest number of valid votes has been given, to be elected under Section 66 and send signed copies thereof to the appropriate authority, the Election Commission and the chief electoral officer; and

(b) complete and certify the return of election in Form 21-E and send signed copies thereof to the Election Commission and the chief electoral officer.

It is plain that the declaration envisaged by the law that a candidate has been elected is the declaration in Form 21-C or Form 21-C or Form 21-D. The declaration in Form 21-C is made in a general election and the declaration in Form 21-D is made when the election is held to fill a casual vacancy. It is now settled law that the right to vote, the right to stand as a candidate for election and the entire procedure in relation thereto are created and determined by statute. Accordingly, when Section 66 of the Representation of the People Act, 1951 provides that the result of the election shall be declared in the manner provided by the Act or the Rules made thereunder, the declaration can be effected in that manner only. The manner is clearly expressed in Rule 64 of the Conduct of Elections Rules, 1961. There is no other manner. There must be a declaration in Form 21-C or Form 21-D. The announcement by the Returning Officer that the petitioner had been elected has no legal status because the declaration in Form 21-C had not yet been drawn up. Even the grant of the certificate of election in Form 22 to the petitioner cannot avail him because Rule 66 contemplates the grant of such certificate only after the candidate has been declared elected under Section 66, which refers us back to Rule 64 and therefore to Form 21-C. There having been no declaration in Form 21-C at the relevant time, the grant of the certificate of election in Form 22 to the petitioner was meaningless.

5. We are of opinion that the process of election came to an end only after the declaration in Form 21-C was made and the consequential formalities were completed. The bar of clause (b) of Article 329 of the Constitution came into operation only thereafter and an election petition alone was maintainable. The writ petition cannot be entertained.

6. Learned counsel for the petitioner contends that it was not open to the returning officer to antedate the Form 21-C drawn up by him by placing on it the date on which he originally announced the result of the election. That is a ground bearing on the merits of the dispute between

the parties, which as we have observed must properly be the subject of an election petition.

7. The petition for special leave fails and is rejected.

</html