

PATNA HIGH COURT

Umakant Singh

Vs

Binda Choudhary

Misc. Judicial Cases Nos. 95, 112, 119, 345 and 462 of 1964

(V. Ramaswami, C.J. and N.L. Untwalia, J.)

17.12.1964

JUDGMENT

N.L. Untwalia, J.

1. In all these live cases the election under clause (iii) of Section 5 of the Bihar Panchayat Samitis and Zila Parishads Act, 1961 (Bihar Act 6 of 1962). hereinafter called the Act, of the representatives of the different Co-operative Societies in the different Blocks by the Secretaries thereof from amongst themselves to the various Panchayat Samitis. has been challenged on two grounds : (i) that rule 3 of the Bihar Panchayat Samitis and Zila Parishads (Elections, Co-options and Election Petitions) Rules, 1963, hereinafter called the Rules, prescribing the manner of the election under the said provision of the Act, as it stood at the relevant time, was constitutionally invalid; and (ii) that the Returning Officer did not obtain a list of Secretaries from the Assistant Registrar of Co-operative Societies as required by the said rule for the purpose of convening a meeting for election of the representatives specified in clause (iii) of Section 5 of the Act.

2. There have been many amendments in the Act and the Rules in the year 1964. But since we are concerned in all these five cases with the elections which were held in the year 1963, I shall refer to the relevant provisions of the Act and Rules as they stood prior to the amendments. Section 5 of the Act providing for composition of Panchayat Samitis in various blocks stated :

"Every Panchayat Samitis shall consist of the following members, namely :-

* * * * *

(iii) three representatives of the different co-operative societies in the Block other than a Central Co-operative Bank to be elected by the secretaries thereof from amongst themselves in the prescribed manner;"

In exercise of the powers conferred by Section 75 of the Act, the State Government made Rules

prescribing the manner of the said election, and rule 3 of the Rules read as follows :-

"For election of the members specified in clause (iii) of Section 5 by the Secretaries of the different co-operative societies in the Block (hereinafter referred to as 'electors' in this chapter) other than a Central Co-operative Bank the Sub divisional Officer or any other officer appointed by the Collector in this behalf shall act as "the Returning Officer" and such Returning Officer shall after obtaining a list of Secretaries from the Assistant Registrar of Co-operative Societies, convene a meeting for such election on such date, time and place as may be fixed by him within the Block and shall preside over such meeting."

Rule 4 said :-

"The Returning Officer shall in the meeting referred to in rule 3, call for nomination papers of candidate desirous of being elected as members of the Panchayat Samiti."

Rules 5 and 6 prescribed the manner of the filing and scrutiny of the nomination papers for election of the members of the Panchayat Samiti by the Secretaries of the different Cooperative Societies in the Block. Rules 7 to 11 provided the procedure of declaring the result of uncontested candidates and, in case of contest, the manner of taking the poll and declaration of the results after the contest. Under clause (viii) of rule 2 of the Rules " 'elector' means a person who is entitled to vote in a particular election". It is manifest that for the purposes of electing three representatives of the different Co-operative Societies in the Block to be elected by the Secretaries thereof from amongst themselves, the whole and sole basis of a person being an elector for the purposes of the said election was the list of Secretaries obtained by the Returning Officer from the Assistant Registrar, Co-operative Societies. No procedure was prescribed for filing of any objection before any authority for the purpose of challenging the correctness of the list supplied by the Assistant Registrar, in respect of which various kinds of disputes could and did crop up, to wit. (i) whether a particular Cooperative Society and its Secretary were included in the list or not; (ii) whether the person mentioned as the Secretary of the particular Co-operative Society was its Secretary or not or whether somebody else was its Secretary; and so on and so forth. No manner and forum were prescribed for the raising of any kind of dispute, which was bound to creep in regard to the list of electors, which, to all intents and purposes, was the electoral roll for the purposes of election of 3 representatives of the different Co-operative Societies in the Block. In such a situation, relying upon the principle of law laid down by the Supreme Court in the case of Chief Commissioner of Ajmer v. Radhey Shyam Dani, AIR 1957 SC 304, it must be held that rule 3 of the Rules, as it was, was defective and invalid. Bhagwati, J., delivering the judgment on behalf of the Court, has said :

"It is of the essence of these elections that proper electoral rolls should be maintained and in order that a proper electoral roll should be maintained It is necessary that after the

preparation of the electoral roll opportunity should be given to the parties concerned to scrutinise whether the persons enrolled as electors possessed the requisite qualifications. Opportunity should also be given for the revision of the electoral roll and for the adjudication of claims to be enrolled therein and entertaining objections to such enrolment. Unless this is done, the entire obligation cast upon the authorities holding the elections is not discharged and the elections held on such imperfect electoral rolls would acquire no validity and would be liable to be challenged at the instance of the parties concerned. It was in our opinion, therefore, necessary for the Chief Commissioner to frame rules in this behalf, and in so far as the rules which were thus framed omitted these provisions they were defective".

3. Learned Government Advocate appearing for respondents 6 to 8, the elected representatives, in M. J. C. 462 of 1964, submitted that, although there was no express provision made in the Rules for the filing and settlement of objections to the electors list supplied by the Assistant Registrar of Co-operative Societies, the Returning Officer, at the time of the scrutiny of the nomination papers or the taking of the poll, could entertain and decide the objections, if any, in regard to the list of secretaries obtained from the Assistant Registrar". In my opinion, the argument is wrong and cannot be accept ad. Prom the practical as well as from the point of view, a procedure for the filing of the objections and their settlement in regard to the electors' list for any election has got to be prescribed before the electors are called upon to file the nomination papers and to cast their vote at the poll, if necessary. In all kinds of elections parliamentary, municipal or of gram Panchayats such procedures were prescribed and to obviate unnecessary expenses and time in preparing duplicate electoral rolls for gram Panchayat and municipal elections in Bihar relevant portions of the electoral rolls of the parliamentary constituencies, which are prepared in accordance with the elaborate procedure provided and prescribed in the Representation of the People Act, 1950 and the Rules framed thereunder, have been adopted for the purposes of those elections. It is difficult to imagine of a valid election without prescribing the procedure and the forum for the filing and settlement of objections to the electors' list. To say that such steps could be reasonably and validly taken at the time of the filing of the nomination papers or the poll is not correct. I may add that learned Additional Standing Counsel appearing for the State did not advance any such argument to support the validity of rule 3 of the Rules.

4. Reference was also made by the learned Government Advocate during the course of his argument to an unreported decision of this Bench in Raghav Jha v. Registrar. Co-operative Societies, M. J. C. 226 of 1961, D/d. 06-07-1961 (Pat) wherein it has been held that election disputes relating to the election of the Managing Committee or the Directors of Cooperative Societies under the Bihar and Orissa Co-operative Societies Act. 1935 (Bihar Act 6 of 1935) are disputes referable to the Registrar of Co-operative Societies under Section 48 of the said Act as they touch the business of registered societies. Counsel submitted that disputes in regard to the list of secretaries obtained by the Returning Officer from the Assistant Registrar of Co-operative Societies could be referred to, and decided by, the Registrar of Co-operative Societies under

Section 48 of Bihar Act 6 of 1935. I must confess I could not follow this argument at all. What is referable to the Registrar, Co-operative Societies, under the said provision of law is the election disputes relating to the election of the Managing Committee or the Directors of the Co-operative Societies and that can be determined by the Registrar, but the dispute in regard to the list of secretaries supplied by the Assistant Registrar, Co-operative Societies, will be largely of a different kind if not wholly. As for example, if a question arose as to whether a particular person being the secretary of a particular Co-operative Society was mentioned in the list or not, obviously this was a matter to be decided by some authority for the purposes of holding the election under the Rules, and could not be referred to the Registrar, Co-operative Societies, under Section 48 of Bihar Act 6 of 1935. Similarly, without raising any election dispute, if a person claimed that he was the secretary of a particular society and not the person who had wrongly been shown as such in the list supplied by the assistant registrar, the matter again would be subject of decision by the authority under the Rules and that authority for the purposes of holding the election may decide as to who was the secretary of a particular society on the materials placed before him. In some cases, a decision of the registrar given on such an election dispute having been raised before him earlier, may be referred to by the objector in support of his claim, I have, therefore, no hesitation in rejecting this argument also put forward by the learned Government Advocate.

5. To lend some support to the view I have expressed above. I may state that the Rules have been amended in 1964, and Rule 3 after the said amendment reads thus –

"(1) For election of the representatives specified in clause (iii) of Sub-Section (1) of Section 5 by the secretaries of the different cooperative societies or the members of the managing committee of the Vyapar Mandal (hereinafter referred to as "electors" in this chapter) in the Block. the Subdivisional Officer, or any other officer appointed by the Collector in this behalf, shall act as the Returning Officer.

(2) The Returning Officer appointed under sub-rule (1) shall obtain from the Assistant Registrar of Co-operative Societies having jurisdiction over the Block separate lists of the secretaries of the Co-operative Societies, mentioned in items (a) and (b) of clause (iii) of Sub-Section (1) of Section 5, registered up to the 30th day of June preceding the date on which a requisition is sent by the Returning Officer in this behalf, and members of the managing committee of the Vyapar Mandal in the Block, if any, and each such list shall be called draft list of electors

(3) The draft lists of electors shall be published on the notice-board of the Block for a period of not less than fifteen days along with a notice inviting claims and objections in respect thereto and mentioning the date on which such claims and objections shall be heard.

(4) The Returning Officer shall, after hearing the claims and objections, pass such orders as he may consider to be suitable and shall, if required, amend the draft lists of electors accordingly The draft lists shall then become final and shall be published on the notice-

board of the Block.

(5) The lists of electors shall be prepared in the manner laid down in sub-rules (1) to (4) whenever an election is held under this chapter ."

6. In the cases in which the second point arises, it is obvious that even if rule 3 of the rules could be held to be valid and not defective, the election by the Returning Officer after obtaining a list of secretaries not from the Assistant Registrar of Co-operative Societies, as required by the rule, but on the basis of a list supplied and signed by somebody else has got to be held that the Returning Officer had to obtain the list of secretaries from the Assistant Registrar which meant a list signed by him taking the responsibility of the accuracy and correctness of the list of electors. A list signed by some other officer or somebody else on behalf of the Co-operative Societies, even assuming it to have been physically supplied by the Assistant Registrar, as is stated to be the fact in some of these cases, was not sufficient and insubstantial compliance with the requirement of the rule. It must, therefore, be held that the election held upon the list of secretaries not obtained from the Assistant Registrar but in some other manner was bad on this ground also.

7-11. (His Lordship then considered the case in M. J. C. 462 of 1964 and M. J. C. 119 of 1964. held the election to be illegal and void and allowed the application).

12. M.J.C. 345 of 1964. In this case, it is not quite clear on the facts stated in the petition nr in the counter-affidavits filed on behalf of the various respondents as to whether three representatives were elected or only two namely. Gurudeyal Mahto and Md. Hemait Ansari. respondents 6 and 7 respectively. Petitioner No. 1 claims to be the Secretary of Anandi Multi-Purpose Co-operative Society of Ormanjhi Block in the district of Ranchi, and the claim of petitioner No. 2 is that he is the Secretary of Multi-purpose Co-operative Society No. 2 Baridih within the said Block. Petitioner No. 1 wanted to stand as a candidate at the election but his name was not in the list. Therefore he could not do so. The grievance of the petitioners is that the names of .some other persons also did not find place in the list, which ought to have been there. Election in this case was held on 12-12-63. The list of Secretaries, of the Co-operative Societies was not supplied by the Assistant Registrar. Mr. Shankar Kumar appearing for respondents 6 and 7 submit led that the election ought to have been challenged by following the machinery provided in rule 148 of the rules, and this Court, in exercise of its power under Article 226 of the Constitution, should not interfere with e election when a special machinery was provided for challenging it. I am unable to accept this argument, It is thy well settled view of the Court that if the entire election is challenged as having been held under statutes or statutory rules which are invalid or by committing illegalities which make the entire election void, it can be quashed by grant of a writ in the nature of certiorari.

13. In the result, this application is allowed, election of respondents 6 and 7 as representatives of the Co-operative Societies to the Panchayat Samiti in the Ormanjhi Block in the district of Ranchi is set aside by grant of a writ in the nature of certiorari under Article 226 of the

Constitution. I would make no order as to cost.

14-17. (After considering the cases in M. J. C. 95 of 1964 and 112 of 1964, his Lordship set aside the elections and allowed the applications).

Ramaswami, C. J.

15. I agree.

Applications allowed.