
Ram Badan Rai Vs Rajiv Ranjan Singh

Election Petition No. 3 of 2009

Court: Patna High Court

Date of Decision: Sept. 23, 2010

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V.N. Sinha, J.

Sole Respondent has filed application, Flag-1 raising preliminary objection for summary dismissal of the election petition

under Sub-section (1) of Section 86 of the Representation of the People Act, 1951 (hereinafter referred to as the "Act") asserting non-compliance

of the mandatory provisions of Sub-section (1)(a), (b) of Section 83 of the Act, as according to the sole Respondent the election petition does not

disclose complete cause of action, is fit to be dismissed under Order VII, Rule 11 of the Code of Civil Procedure. During hearing of the

preliminary objection as also in the written submissions filed in support of the preliminary objection it has been submitted that election-Petitioner

alleged in the election petition that sole Respondent captured booth as also solicited, procured help from the officials for success in the election but

the election petition, according to the sole Respondent, miserably failed to disclose, alleged against the sole Respondent material facts and full

particulars constituting the serious allegation of booth capturing and procuring help from the officials for winning the election, for noncompliance of

the mandatory provisions contained in Sub-section (1)(a), (b) of Section 83 of the Act, the election petition is fit to be dismissed under Order VII,

Rule 11 of the Code of Civil Procedure. In this connection it is submitted on behalf of the sole Respondent that the contents of paragraphs 9 to 16

of the election petition are vague, general in nature not constituting any specific allegation of booth capturing or procuring help from the officials

made out against the Respondent, in the circumstances, the election petition is fit to be dismissed summarily for not disclosing any cause of action.

As regards allegations made out in paragraph 17 of the election petition it is submitted that thereunder Superintendent of Police, Lakhisarai is

alleged to have captured Booth Nos. 62 to 72 of Lakhisarai Vidhan Sabha Constituency preventing the genuine voters from casting their votes but

according to sole Respondent the allegations contained in the said paragraph-17 does not constitute the charge of booth capturing against the sole

Respondent as in the entire election petition no where it has been alleged that Superintendent of Police, Lakhisarai while capturing Booth Nos. 62

to 72 of Lakhisarai Vidhan Sabha Constituency was either acting as an agent of the sole Respondent or had captured those booths with his

consent. The allegation of booth capturing by the Superintendent of Police, Lakhisarai without the consent of the sole Respondent will not

constitute the allegation of booth capturing against the sole Respondent. In this connection reliance is placed on the provisions contained in Sub-

section (8) of Section 123 of the Act read with its explanation as also on the provisions contained in Section 100(1)(d)(ii) of the Act and it is

submitted that the overt act of capturing booth Nos. 62 to 72 of Lakhisarai Vidhan Sabha Constituency by the Superintendent of Police,

Lakhisarai did not materially affect the result of the election as the margin of victory of Respondent is more than one lac votes and capturing of

eleven booths by the Superintendent of Police, Lakhisarai had no bearing on his election. In this connection, it is further submitted that in the entire

election petition Petitioner has not given even the name of a single elector who was prevented from voting on account of the booths being captured

by the Superintendent of Police, Lakhisarai and others, as such, by not furnishing the name of the electors prevented from coming to the booth for

exercising their franchise, election Petitioner has failed to furnish material fact(s) and he has only submitted allegations by quoting the provision of

law and, thus, election petition suffers from material facts and is fit to be dismissed summarily. In support of the aforesaid contention learned

Counsel for the Petitioner has relied on the judgment of the Hon"ble Supreme Court in the case of Samant N. Balkrishna and Another Vs. V.

George Fernandez and Others, paragraph-29, Azhar Hussain Vs. Rajiv Gandhi, and Ram Sukh Vs. Dinesh Aggarwal,

2. Counsel for the election-Petitioner has opposed the prayer and in support of his contention has also filed written submission. During the hearing

of the preliminary objection it was submitted by the election-Petitioner with reference to the averments made in the election petition in paragraphs 8

to 13 that at the relevant time Respondent was the State-President of the ruling party and had ensured change of the entire set-up of the district

administration in the entire Munger Parliamentary Constituency and officers of particular caste/his choice were posted in the Munger Parliamentary

Constituency to brighten the election prospect of sole Respondent. It is also stated in the election petition that during the election campaign the

workers of the election Petitioner was being harassed by the police administration of Lakhisarai, Munger district(s). Information about the

harassment caused to the Petitioner and his political workers and supporters by the district administration as also by the micro observer was given

to the Chief Election Commissioner and others by the election agent of the Petitioner under representation dated 25, 29-4-2009, Annexures 4 and

3. Election agent of the Petitioner, further informed the District Magistrate, Munger under representation dated 28-4-2009, Annexure-5 that he has

learnt that a call has been given by the naxalites to boycott the polls in Dharhara Block and Bangalwa area of 166 Jamalpur Vidhan Sabha

Assembly Constituency and Para Military Forces be deputed in the Dharhara Block and Bangalwa area of 166 Jamalpur Vidhan Sabha

Constituency so as to enable the voters of the Constituency to participate in the poll. Under representation dated 26, 27, 29-4-2009, as contained

in Annexure-6 series the Chief Election Commissioner was requested by the election agent of the Petitioner to deploy Para Military Forces on

booth Nos. 4 to 10, 13 to 23 of Pipariya Block, booth Nos. 35 to 37, 50 to 52, 57, 58, 62, 96, 97, 101, 102, 110 to 112, 149 to 151, 154,

166, 183, 187 to 189, 201 to 205, 207 to 210 of Suryagarha Block, Booth Nos. 211, 228, 229 of Lakhisarai Block of 167 Suryagarha

Assembly Constituency, booth Nos. 9, 19 to 23, 25 to 43, 46 to 59, 62 to 73, 80 to 86, 88 to 93 of Barahia Block, booth Nos. 96 to 99, 103,

104, 106, 109, 110, 117, 118, 124, 125, 132 to 136, 191 to 194, 207, 208, 211, 212, 215, 226, 237 to 240, 243 to 246, 261, 268 to 270,

296, 298, 302, 311, 312, 330, 331 of Lakhisarai Block of 168 Lakhisarai Assembly Constituency, booth Nos. 50 to 58, 60 to 66, 68 to 73, 80,

81, 96, 97, 101, 102, 107, 133 to 135, 152, 153, 176, 180 to 184, 195, 196, 202, 203, 220, 221 of 179 Barh Assembly Constituency, booth

Nos. 3, 4, 23, 24, 58 to 68, 100 to 103, 105 of 178 Mokama Assembly Constituency as election Petitioner apprehended booth capturing on

those booths by the antisocial elements with the help of civil and police administration and, accordingly, requested that the booths be declared

sensitive and given under the charge of the Para Military Forces for ensuring fair poll but the request contained in the representation was not acted

upon result being that the booths were captured and 62-75% votes were polled on those booths in favour of the Respondent although on the other

booth(s) of the constituency the polling was 45%. In paragraph 14 it has been asserted by the election-Petitioner that he learnt about the deep

rooted conspiracy hatched by the Respondent and his men to influence and interfere with the free and fair polling on the day of poll throughout the

constituency by capturing the polling booths.

3. In paragraphs 16 and 17 of the election petition, election Petitioner has asserted that on the date of poll i.e. 30-4-2009 there was large scale

booth capturing by the supporters and men of Respondent with the aid and active support of the Government officials deputed at those booths and

the Superintendent of Police, Munger and Lakhisarai actively participated in capturing booths. Highlighting the activity of the Respondent and the

officials, election-Petitioner himself submitted as many as ten representation dated 30-4-2009 to the Chief Election Commissioner, which is

contained in Annexure 8 series. Perusal of Annexure-8 series would indicate that election Petitioner gave details of the booth which were captured

to brighten the election prospect of the Respondent. Vide representation dated 30-4-2009, Annexure-8 and 8/1, election Petitioner and his

election agent informed the Chief Election Commissioner, Election Commission of India, New Delhi that anti social elements with the help of local

administration and the policemen posted at the booth had taken control of booth Nos. 193, 194 to 196, 198, 199 in 179 Barh Assembly Segment

and booth Nos. 141, 142, 185, 186, 178 in 178 Mokama Assembly Segment and were preventing the voters of the weaker sections from

exercising their franchise by resorting to violence. Having informed the aforesaid fact Petitioner and his election agent also requested the Chief

Election Commissioner to ensure free and fair poll by immediately deploying Para Military Forces at the aforesaid booths so that free and fair poll

may be conducted at the aforesaid booths. Under representation dated 30-4-2009, Annexure-8/2 election Petitioner informed the Chief Election

Commissioner that his polling agent is not allowed to enter the polling booth of booth No. 100 in Salona village and booth Nos. 132 and 133 in

Nagar Palika, Lakhisarai of 168 Lakhisarai Assembly Segment and bogus polling is continued on those booths preventing the voters of the weaker

section from casting their votes and having given such information election Petitioner requested the Chief Election Commissioner to ensure free and

fair poll on the aforesaid booths by deploying Para Military Forces immediately so that his polling agent on the aforesaid booths may observe free

and fair poll. Under representation dated 30-4-2009, Annexure-8/3 election agent of the election Petitioner informed the Chief Election

Commissioner that booth Nos. 25 to 55 of 168 Lakhisarai Assembly Segment has been captured by anti social elements in connivance with the

administration. On booth Nos. 74, 124 of the same assembly segment the voters of weaker section have been deprived from casting their votes by

the anti social elements. In the same representation election agent also informed that his apprehension expressed in representation dated 26, 27,

29-4-2009, Annexure-6 series that the polling booths of 168 Lakhisarai Assembly Segment and 167 Suryagarha Assembly Segment shall be

captured has come true. He also stated in the same representation that booth No. 128 of Suryagarha Assembly Segment has been captured by

Home Guard Jawans and genuine voters are not allowed to exercise their franchise. At booth No. 170 his polling agent is not even allowed to sit

during the poll. Having given aforesaid information the election agent requested to immediately deploy Para Military Forces for ensuring peaceful

poll so that his polling agent may at least sit at the booth and observe free and fair poll. Under representation dated 30-4-2009, Annexure-8/4

election Petitioner informed that booth No. 273 of 168 Lakhisarai Assembly Segment has been captured by miscreants. Booth Nos. 242 to 245

has been captured by anti social elements and booth Nos. 290 to 292 has been captured by the administration itself where 80 per cent votes have

been cast. In the same representation he further informed that booth Nos. 100, 101, 110, 212 of 167 Suryagarha Assembly Segment has been

captured by anti social elements. Booth No. 222 of 165 Munger Assembly Segment has been captured and at booth No. 141 of the same

segment the administration is harassing and preventing the genuine voters from casting their votes. In the same representation Petitioner further

informed that in 178 Mokama Assembly Segment booth Nos. 9, 164 has been captured and at booth Nos. 171 to 174 voters of the weaker

section have been deprived from exercising their franchise. Having given aforesaid information election Petitioner requested the Chief Election

Commissioner to look into the matter and to do the needful to contain and check the role of the administration for ensuring free and fair poll. Under

representation dated 30-4-2009, Annexure-8/5 the election Petitioner informed the Chief Election Commissioner that booth Nos. 935, 936 of 165

Munger Assembly Segment has been captured by the local administration and the Presiding Officer and genuine voters are being deprived of their

voting right. In 166 Jamalpur Assembly Segment booth Nos. 124, 133, 152 administration is harassing and torturing the voters of the weaker

section. In 178 Mokama Assembly Segment at booth No. 143 supporters of a particular candidate are only allowed to vote by the local

administration and booth No. 15 of Lakhisarai Assembly Segment has been captured by anti social elements with the help of the administration.

Having informed the Chief Election Commissioner about the aforesaid misconduct in conducting the election on the booths the election Petitioner

requested the Election Commissioner to do the needful for protecting the voting rights of the bona fide voters. Under representation dated 30-4-

2009, Annexure-8/6 election Petitioner informed the Chief Election Commissioner that in 168 Lakhisarai Assembly Segment booth Nos. 62 to 72

has been captured by the Superintendent of Police, Lakhisarai himself and in 167 Suryagarha Assembly Segment voting on booth Nos. 61, 96, 97

was boycotted by the voters of the locality in response to the announcement of the naxalites but polling staff and administration themselves voted

on the three booths. Having given aforesaid information Petitioner requested the Chief Election Commissioner to do the needful to protect the faith

of the masses in election process by restoring normalcy at the booths. Under representation dated 30-4-2009, Annexure-8/7 election Petitioner

informed the Chief Election Commissioner that at 168 Lakhisarai Assembly Segment booth Nos. 78, 91, 101, 102 the administration is harassing

the genuine voters and has virtually handed over the aforesaid booths to the miscreants. Booth Nos. 109, 110, 230, 254, 255, 256 has been

captured by the anti social elements with the help of administration. In 178 Mokama Assembly Segment at booth Nos. 111(ka), 111(kha), 115,

186, 187, 195 administration is harassing the genuine voters as also pressurizing them to vote for particular candidate. In 167 Suryagarha

Assembly Segment at booth Nos. 50 to 52, 57 to 60 the administration is not acting fairly and working for a particular candidate and genuine

voters are not allowed to vote and the booth has been captured. In 166 Jamalpur Assembly Segment at booth Nos. 138 to 140 voters of the

weaker section are tortured and not allowed to vote. At booth Nos. 31, 32 administration is working for a particular candidate. After giving

information about the aforesaid facts to the Chief Election Commissioner, election Petitioner requested the Election Commissioner to ensure free

and fair polling by deploying Para Military Forces immediately to ensure peaceful polling. Under representation dated 30-4-2009, Annexure-8/8

election Petitioner informed the Chief Election Commissioner that at booth Nos. 65, 66, 71, 138 to 104, 214 of 166, Jamalpur Assembly Segment

local administration is not allowing the supporters of other candidates except one whose name is open secret to exercise their franchise. He further

informed that booth No. 78 of 167 Suryagarha Assembly Segment has been captured by miscreants with the support of the administration while

the voters of booth Nos. 22, 23 are purposely harassed by the local administration. In 179 Bath Assembly Segment booth Nos. 39, 193, 197,

199, 207, 211 to 214 have been captured by supporters and armed personnel of a ruling party M. L. A. and in the same representation election

Petitioner further informed that booth Nos. 5 to 7, 78, 79, 132, 133, 207, 260, 261, 270, 309, 311, 312, 316, 318 of 168 Lakhisarai Assembly

Segment have been captured by the miscreants with the support of the local administration. It was also stated in the said representation that local

administration not only remained silent but supported the anti social elements and thereby free and fair poll became a mockery and having given

such information request was made to the Chief Election Commissioner to look into the matter and to do the needful so that public faith in the

election system is restored. Under representation dated 30-4-2009, Annexure 8/9 Petitioner informed the Chief Election Commissioner that in 165

Munger Assembly Segment booth Nos. 3, 4, 7 has been captured by administration itself and booth Nos. 185, 186, 222 was captured by the

miscreants. In 167 Suryagarha Assembly Segment booth Nos. 61, 96, 97 was captured by the polling staff with the help of administration. At

booth No. 128 Homeguard Jawan polled maximum vote of the booth while booth Nos. 78, 100, 101, 110 to 112, 129 and 167 was captured by

anti social elements. In 168 Lakhisarai Assembly Segment booth Nos. 124, 178, 179, 290 to 292 was captured by police personnel. Booth Nos.

62 to 72 was captured by Superintendent of Police, Lakhisarai himself. Booth Nos. 5, 6, 7 and 29 to 55, 90, 91, 98 to 100, 109, 110, 132, 133,

139, 208, 209, 230, 242 to 245, 260, 270, 273, 318, 320 and 321 has been captured by anti social elements. In 178 Mokama Assembly

Segment Both No. 178 was captured by police personnel and Both Nos. 9, 85, 109, 164, 186, 187 has been captured by miscreants. In 179

Barh Assembly Segment booth Nos. 39, 40, 111 to 113, 139, 140, 193 to 199, 207, 211 to 214 has been captured by anti social elements

including supporters of ruling party M. L. A. and thereby the genuine voters of weaker sections were deprived of their voting rights and the election

process in the entire parliamentary constituency became a mockery on account of failure of the administration to ensure free and fair poll. Having

given such information election Petitioner under the same representation requested the Chief Election Commissioner to personally look into the

matter and cancel the poll held on the aforesaid 290 booths and order fresh polling after making necessary arrangement so that the genuine voters

may exercise their franchise and faith of the people in the election process may be restored. It was also asserted in paragraph-17 that the party

workers of the election-Petitioner videographed the booth capturing activity on the day of poll i.e. 30-4-2009 and video cassette shall be

produced during the hearing of the petition with the permission of the Court.

4. In view of the pleadings aforesaid learned Counsel for the election-Petitioner submitted that there was large scale booth capturing on 290

booths on the date of poll i.e. 30-4-2009 by the anti social elements led by the district administration Superintendent of Police, Lakhisarai,

Munger, as would appear from the representation dated 30-4-2009 filed by the election-Petitioner and his agent, contained in Annexure-8 series

which has materially affected the election of the Respondent and, thus, the election petition is fit to be tried by this Court and if the allegation of

booth capturing, as has been asserted in Annexure-8 series is found proved, the election of the Respondent has to be set aside.

5. Learned Counsel for the election-Petitioner further submitted that booth capturing by any person including the officials of the district

administration policemen, anti social elements is a corrupt practice within the meaning of Sub-section (8) of Section 123 of the Act and by such

large scale booth capturing, as is evident from representation, Annexure-8 series the election of Respondent has been materially affected and even

if the name of the genuine voters prevented from voting has not been furnished by the election Petitioner in the election petition or the annexures

appended thereto the election petition should not be dismissed summarily as during the trial it has to be found whether the allegation of large scale

booth capturing by the anti social elements officials of the district administration including the Superintendent of Police, Lakhisarai and Munger is

correct or not and if after the trial such large scale booth capturing by the anti social elements, officials of the district administration, Superintendent

of Police, Lakhisarai, Munger is found proved the election of the Respondent from Munger Parliamentary Constituency has to be set aside. Failure

to furnish the name of the genuine voters who were prevented from exercising their franchise is not fatal to establish large scale booth capturing on

the booths mentioned in the representation, Annexure-8 series. In any case, the name of the voters prevented from casting vote can always be

furnished by the election-Petitioner upon such terms as to cost or otherwise, as is deemed fit by the High Court in terms of Sub-section (5) of

Section 86 of the Act. In this connection, learned Counsel further stated that allegation of booth capturing by the anti social elements, against the

officers of the district administration led by the Superintendent of Police, Lakhisarai, Munger has been clearly stated in the different paragraphs of

the election petition and Annexure-8 series appended thereto, the names of the voters prevented can always be furnished subsequently under the

orders of the High Court. Reliance in this connection was placed over the judgment of the Hon"ble Supreme Court in the case of Raj Narain Vs.

Indira Nehru Gandhi and Another,

6. Learned Counsel for the election Petitioner further submitted that the stage to prove the ingredients of the offence of booth capturing as

provided in the explanation to Section 135A of the Act shall arise during the trial of the election petition or during the trial of the offence of booth

capturing and for punishment. For the present those ingredients are not required to be looked into while considering the petition of the Respondent

to dismiss the election petition for not disclosing the cause of action.

7. It was also submitted by the learned Counsel for the election Petitioner that at this stage the election petition is required to be read alone as it is

well settled that in cases of preliminary objection it is to be seen whether the relief prayed for could be granted if the averments made in the election

petition are proved to be true. For the purpose of considering the preliminary objection the averments in the petition should be assumed to be true

and the Court has to find out whether the statement in the petition and annexure appended therewith disclose a cause of action or triable issue as

such. In support of the aforesaid contention learned Counsel for the election Petitioner relied on the judgment of the Hon"ble Supreme Court in the

case of D. Ramachandran Vs. R.V. Janakiraman and Others,

8. Having heard counsel for the sole Respondent, election-Petitioner as also having perused the election petition and the written submission filed on

behalf of the parties, I am of the view that Petitioner has alleged in paragraphs 8 to 13, 16 and 17 the manner in which a deep rooted conspiracy

was hatched to secure posting of officials of a particular caste of the choice of the Respondent in the Munger Parliamentary Constituency to

brighten his election prospect and the officials of the district administration including the Superintendent of Police, Lakhisarai, Munger and other

policemen indulged in large scale booth capturing together with anti social elements on the date of poll i.e. 30-4-2009, as is evident from the

allegation set-out in the representation dated 30-4-2009, Annexure-8 series submitted by the election-Petitioner to the Chief Election

Commissioner, Election Commission of India, contained in Annexure-8 series and the number of booths which are alleged to have been captured

on the date of poll being 290 in number, may have materially affected the poll held on 30-4-2009 in favour of the Respondent. As such, a triable

issue has been raised in the election petition and the annexures appended thereto which is required to be gone into during the trial of this election

petition. The name of the voters who were prevented during the booth capturing as also the manner in which the booths were captured by the

officials can always be furnished under the orders of the High Court in terms of Sub-section (5) of Section 86 of the Act.

9. In view of my findings above, the petition raising preliminary objection at Flag-1 is rejected. Respondent is directed to file his written statement

within four weeks from today.