

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8853 of 2013

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Akriti Raj Wife of Anand Raj Resident of Village and P.O. Mohara Ghat, P.S. Alauli, District- Khagaria, Presently Mukhiya pf Gram Panchayat Raj, Chera-Khera, Block- Alauli, District- Khagaria

.... Petitioner/s

Versus

1. The State Election Commission (Panchayat) through the State Election Commissioner, Sone Bhawan, Birchand Patel Path, Patna
2. The State Election Commissioner, the State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna
3. The Secretary, the State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna
4. The District Magistrate-cum-District Election Officer (Panchayat), Khagaria, District- Khagaria
5. The District Panchayat Raj Officer, Khagaria, District- Khagaria
6. Yogendra Mahto, son Of Late Nand Lal Mahto resident of Village- Dakshini Boharwa, P.O. Chera-Khera, P.S. Aaluli, District- Khagaria

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.B.K. Manglam, Adv.
	:	Mr. Ravi Ranjan, Adv.
For the Respondent-State	:	Mr. Kundan Bahadur Singh, SC-22
For the S.E.C.	:	Mr. Amit Shrivastava, Adv.
	:	Mr. Sanjeev Nikesh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 18-12-2015

Mr. S.B.K. Manglam, learned counsel for the petitioner, learned counsel for the State and Mr. Sanjeev Nikesh for the State Election Commission are present and have been heard. Though served and having appeared through counsel, there is no representation on behalf of the respondent no.6

The petitioner is aggrieved by the order dated 18.4.2013 passed



by the State Election Commission in case no. 144 of 2011 whereby the State Election Commission has set aside the election of the petitioner as Mukhiya, Gram Panchayat, Chera Khera in Alauli Block in the district of Khagaria *inter alia* on grounds of being under age. The State Election Commission while setting aside the election of the petitioner has also directed for institution of criminal case and following which an FIR has been instituted at the instance of the District Magistrate, Khagaria.

This matter was heard on 15.5.2013 and when an order was passed by this Court directing for enquiry into the claim of the petitioner which order of this court was questioned by this petitioner in LPA No. 697 of 2013 and the Division Bench vide order passed on 24.6.2013 has been pleased to set aside that part of the order dated 15.5.2013 passed in the present proceeding whereby enquiry had been directed.

Mr. Manglam, while contesting the impugned order on merits admits that the FIR has since been instituted against the petitioner and even fresh election has taken place whereunder a new Mukhiya has been elected. He also makes a statement at the Bar that the age matter was enquired by the Superintendent of Police and the petitioner was medically assessed to be more than 21 years of age on the date of election. He further submits that since the election has taken place in

the meanwhile hence as instructed he would not pray to disturb the election of the returned candidate but would be contesting the finding of the State Election Commission on the age issue. He further seeks liberty to question the FIR in appropriate proceedings.

Mr. Manglam, with reference to the report of the District Magistrate, present at Annexure-4 submits that whereas in the first report, the District Magistrate has opined that there is no connection in between Poonam Kumari and Akriti Raj and has also expressed doubts over the certificate issued in respect of Poonam Kumari, it is following the directives issued by State Election Commission that a second report was submitted on 5.5.2012 by the District Magistrate present at Annexure-10 whereby the District Magistrate has reviewed his opinion and held that Poonam Kumari and Akriti Raj are one and the same person and that the certificate of date of birth belonged to the petitioner. He thus submits that the very fact that there are two different opinion given by the District Magistrate in the backdrop of the documents on record itself reflected that the issue was contentious and beyond jurisdiction of the State Election Commission.

I have learned counsel for the parties and I have perused the records.

The order passed by the State Election Commission holding the petitioner underage is on the basis of School Leaving Certificate

issued in respect of one Poonam Kumari and it is on the basis of material available that the State Election Commission has concluded that the petitioner namely Akriti Raj and Poonam Kumari are one and the same person.

In my opinion, in absence of any authentic piece of document which would certify the actual age of the petitioner, if at all there was any confusion prevailing in the mind of the Commission as regarding the age of the petitioner the best course available to the Commission was to get a medical assessment of age of the petitioner but in view of rival contentions and document reflecting divergent opinions, certainly, the Commission in my opinion was not equipped enough to adjudicate on the matter by drawing his conclusion in favour of any one of the parties. In my opinion until such time that the evidence is without doubt, confirmed and authenticated, there is no jurisdiction vested in the Commission to weigh the evidence and adjudicate on contentious issues.

In the present case there is no convincing piece of evidence on record to show that the petitioner was underage on the date of election rather it is merely on the basis of the documents supplied by the complainant and the report of the District Magistrate which has led to the impugned opinion.

The issue whether or not the petitioner was within the age or

was under age at the time of contesting the Mukhiya election is an issue of fact to be supported by evidence and the State Election Commission is not equipped enough to either weigh the evidence or adjudicate on disputed claims and for which the correct forum would be the Election Tribunal constituted under 'the Act'.

As noted above, it is the stand of Mr. Manglam that an enquiry was got conducted by the Superintendent of Police, Khagaria as to the age of the petitioner and the petitioner has been medically assessed to be more than 21 years of age at the time when she contested the election to the post of Mukhiya.

In the circumstances discussed above, I am of the considered opinion that in the contentious circumstances the Commission should not have entered into the dispute rather should have allowed the matter to be resolved by the civil court of competent jurisdiction.

In result the order dated 18.4.2013 passed by the State Election Commission in Case No. 144 of 2011 cannot be upheld and is accordingly set aside. However, since there is no challenge to the election of the new Mukhia and in view of the concession expressed by Mr. Manglam that he shall not be questioning the re-election of the Mukhiya, this Court even while quashing the order impugned of the State Election Commission would not pass any order restoring the petitioner to her post.

In so far as the criminal case is concerned, the petitioner would be at liberty to question the same in appropriate proceedings.

The writ petition is allowed with the observations and directions aforementioned.

(Jyoti Saran, J)

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