

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11733 of 2016

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Rajendra Thakur Son of Late Ram Shreshtha Thakur Resident of Village + P.O+
P.S.- Laukaha, District- Madhubani

.... Petitioner

Versus

1. The State of Bihar Through The Chief Secretary, Government of Bihar, Old Secretariat, Patna- 800001
2. The Bihar Election Commission Through The Chief Electoral Officer, Bihar, Sone Bhawan, 3rd Floor, Virchand Patel Path, Patna
3. The State Election Commissioner, Bihar, Sone Bhawan, 3rd Floor Virchand Patel Path, Patna
4. The District Magistrate-cum-District Electoral Officer, Madhubani, District- Madhubani
5. The Sub Divisional Officer-cum-Sub Divisional Electoral Officer, Phulparas, District- Madhubani
6. The Circle Officer, Khatauna Block, District- Madhubani
7. The Block Development Officer, Khutauna Block, Madhubani
8. The Head Master, L.N.J. High School, Laukaha, District- Madhubani
9. Amir Jafar @ Amir Zafar, Son of Md. Suhail Ahmad, Resident of Village+P.O.+P.S.- Laukhaha, District- Madhubani

.... Respondents

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Appearance :

For the Petitioner : Mr. Amalendu Shekhar Thakur, Advocate

For the State : Mr. Dr.Anil Kr.Upadhyaya, SC 2 and
Mr. Anurag Saurabh, AC to SC 2

For the Respondent : M/s Amit Shrivastava and
No. 2 and 3 Girish Pandey, Advocates

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 27-07-2016

Heard parties.

Through this writ application, the petitioner seeks cancelling of upcoming election for the post of Mukhiya, Gram Panchayat, Karmegh North, Block Khutauna, P.S. Laukaha, District Madhubani which is scheduled to be held on 28th July, 2016 on the ground that one of the contestant Amir Jafar @ Amir Zafar does not belong to BC I category but he had some how obtained such caste certificate and is now being allowed to contest. He further seeks quashing of the caste certificate issued by the respondent no. 6 in favour of respondent no. 9 as it is contended that in fact respondent no. 9 is of B.C II category.

So far his election is concerned the issue is no longer *res integra* as a Single Judge Bench of this Court vide Annexure 2, after considering the aforesaid fact regarding grant and the dispute with respect to the correctness of caste certificate on the ground of which the concerned was prevented from contesting the election, has held as follows:

“ Having heard learned counsel for the parties and considering the circumstances discussed where it is on a mere complaint of an interested party that the Block Development Officer, Khutauna –cum- Election Officer, has blindly and mechanically proceeded to cancel the nomination of the petitioner simply on grounds that the caste certificate of the



relatives of the petitioner has been cancelled, even when the caste certificate issued in favour of the petitioner present at Annexure-1 continues to hold good, it stands confirmed that the act of cancellation of nomination of the petitioner is an abuse of the statutory powers vested in the Block Development Officer as the Election Officer and which is accordingly set aside. The nomination of the petitioner as well as candidature of the petitioner to contest the post of Mukhiya, Gram Panchayat Raj, Karmegh North, Madhubani, is restored and the Block Development Officer –cum- Returning Officer, Khutauna as well as District Election Officer, Madhubani are directed to permit the petitioner to contest the election. The order having been passed in presence of Mr. Sanjeev Kumar Singh, learned A.C. to S.C.-12 and Mr. Sanjeev Nikesh, learned counsel for the State Election Commission, it is sufficient information to the Returning Officer –cum- Block Development Officer and the District Election Officer –cum- the District Magistrate, Madhubani, for taking necessary steps to permit the petitioner to contest the election to the post of Mukhiya, Gram Panchayat Raj, Karmegh North, district- Madhubani.”

So far caste certificate of the respondent no. 9 is concerned, it is contended that since the election was not held immediately and is being held after 2 – 3 months, it is incumbent upon the Circle Officer concerned to cancel the caste certificate of

respondent no. 9.

The aforesaid submission is noted only to be rejected for the reason that it is not a case that the petitioner had approached the competent authority for cancellation of the caste certificate of respondent no. 9 and, thereafter, no order is being passed. Apart from above, there is already a decision of a Single Judge Bench of this Court vide Annexure 2, allowing the respondent no. 9 to participate in the election. In my view, if the date has now been shifted, that would not create a fresh cause of action for the petitioner.

It is contended on behalf of the respondent State Election Commission that after that date of election was shifted to 28th July, 2016, as certain formalities were required to be done, the respondent no. 9 has been permitted to conclude the election under the aforesaid direction of this Court. The aforesaid order having not been altered / modified / set aside by any competent forum, holds good and is binding. Therefore, the election cannot be directed to be cancelled on such ground. Such direction cannot be issued at once by this Court without approaching the appropriate authority.

This Court finds substance in the aforesaid submission made on behalf of the Election Commission.

Accordingly, this writ application is dismissed.

However, it is made clear that if the petitioner

approaches a competent authority for cancellation of caste certificate of the respondent no. 9 then such authority would be required to take a decision on its own merit in accordance with law after granting reasonable opportunity to all the concerned persons. However, it is made clear that this Court has not expressed or formed any opinion regarding genuineness of the concerned caste certificate.

(Dr. Ravi Ranjan, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.09.2016
Transmission Date	NA