

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7086 of 2016

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1. Rakesh Kumar Das Son of Dev Narayan Das, resident of village and P.S.-
Bibiganj, District- Kishanganj

.... Petitioner/s

Versus

1. The State of Bihar through District Magistrate, Kishanganj
2. The District Magistrate-cum-District Election Officer, Kishanganj
3. The Election Officer-cum-Sub Divisional Officer, Kishanganj
4. The Circle Officer, Terhagachh, Kishanganj
5. The State Election Commission, Patna through the Secretary
6. The Secretary, State Election Commission, Bihar, Patna
7. Khosi Debi, wife of Dinesh Lal Harijan, resident of village- Harhariya, P.S.-
Terhagachh, District- Kishanganj

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Utsav Kumar, Adv.
For the Respondent/s : Mr. Abbas Haider, S.C. 16
Mr. Ravish Chandra, A.C. to S.C.16
For the S.E.C. : Mr. Amit Srivastav, Adv.
Mr. Sanjeev Nikesh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 29-04-2016

Heard Mr. Utsav Kumar, learned counsel for the petitioner,
learned counsel for the State and learned counsel for the State
Election Commission.

The grievance of the petitioner is against the cancellation of his
nomination filed for the post of Member, Zila Parishad, Kishanganj
Constituency No.2 which has been rejected following the cancellation
of his caste certificate on a complaint received in this regard.

Mr. Utsav Kumar, learned counsel for the petitioner has raised
the following issues to question the cancellation:-

(a) The order of cancellation of caste certificate is ex parte and without reasonable opportunity of hearing to the petitioner; and

(b) In the summary exercise undertaken by the Sub Divisional Officer, the petitioner was precluded to lead evidence in support of his claim.

The facts of the case briefly stated is that the nomination for the post of Member, Zila Parishad was filed by the petitioner on 10.3.2016. A complaint was filed on 15.3.2016 questioning his caste status. A report on the complaint was received on 16.3.2016. An enquiry/proceeding ensued and final orders have been passed on 18.3.2016, a copy of which has been placed on record in the counter affidavit of the State as well as the State Election Commission passed by the Sub Divisional Officer, Kishanganj. The Sub Divisional Officer has relied upon a Khatian relatable to land falling in Thana No.126 Khata No. 161 Khesra No. 111/1297, and Revisional Khatian published in the year 1958 of Mauza Kalpir, Thana No. 126 Khata No. 252 Khesra No. 393/1574, copies of which has been enclosed at Annexure-B series as well the family geneology at Annexure-C of the counter affidavit of the State to buttress that Parshuram Das was the grand father of the petitioner and the caste of Parshuram Das son of Mohi Lal Das is mentioned as 'Halwae'. The



order passed by the Sub Divisional Officer placed on record in the counter affidavit also shows that the petitioner filed his appearance on 16.3.2016 and since it was the argument of Mr. Utsav Kumar that the petitioner was denied opportunity that this Court directed for production of the records relating to the hearing as well as the nomination process and which have been produced by the Sub Divisional Officer, Kishanganj in a sealed cover. The sealed cover has been opened in the presence of learned counsel for the parties for their perusal.

The proceedings initiated on the complaint filed questioning the caste certificate clearly records on 15.3.2016 that papers were to be handed over to the petitioner. The order passed on 16.3.2016 also shows that the petitioner appeared before the Sub Divisional Officer and submitted the caste certificate issued in 2003 by the Circle Officer as well as the letter of the Sub Divisional Officer written to the Chief Judicial Magistrate on 19.1.2010. The order also records that the petitioner was given time until 18.3.2016 to file any further papers in this regard. The order passed on 18.3.2016 records that the petitioner did not file any further documents to support this contention.

Now while it is argued by Mr. Utsav Kumar that the petitioner was denied opportunity to support his claim but the records speak otherwise inasmuch as the documents discussed in the order dated



16.3.2016 viz. the caste certificate of 2003 issued by the Block Development Officer and the letter of the Sub Divisional Officer dated 19.1.2010 are very much part of the records and thus the contention advanced by the petitioner regarding denial of reasonable opportunity is difficult to be accepted.

Another factor which does not persuade this Court to grant indulgence to the issue raised in exercise of extra ordinary jurisdiction, is the admission for the petitioner in his rejoinder regarding the entry in the Khatiyani holding his caste as 'Halwae', which he has tried to avoid under an explanation that he had no information regarding the entry in the Khatiyani. The petitioner does not dispute the entry in the revisional Khatiyani which is of the year 1958. Now where the revisional Khatiyani reflects the caste of the petitioner as 'Halwae', then any certificate issued subsequently and that also on basis of local inspection obviously would have to give way to the entry present in the Khatiyani of 1958 and this is exactly what the Sub Divisional Officer has done.

The rejoinder filed by the petitioner introduces a new Chapter where now the petitioner argues that the grand father of the petitioner Parshuram Sah son of Mohi Lal Sah had adopted his father Dev Narain Sah and that his biological grand father is one Bhuwan Lal Sah whose caste is 'Bouri.' Mr. Utsav Kumar has enclosed certain



khatiyani to support his contentions but then it creates more impediments for the petitioner for now he not only has to prove his adoption story but also has to seek appropriate corrections in the Khatiyani entry of 1958. The issue is debatable and an adjudication has been done by the Sub Divisional Officer. Rule 39(1)(h) of the Rules vests jurisdiction in the Returning Officer to satisfy himself as to the entries made in the nomination paper and even if in the present case, the Sub divisional Officer has exercised twin jurisdiction but they are not overlapping and has been separately exercised. In fact considering that the conclusion drawn by the Sub Divisional Officer on the issue of caste of the petitioner rests on the admitted entries in the khatiyani of the year 1958 which is uncontested and the Sub Divisional Officer has proceeded to cancel the caste certificate of the petitioner which was contrary to the Revisional khatiyani, no fault can be found in the jurisdiction exercised by the Sub Divisional Officer either for cancellation of the caste certificate or in the cancellation of the nomination of the petitioner. No cause for indulgence thus is made out by the petitioner.

In my opinion, the petitioner is yet not remediless for he can yet question the cancellation of nomination by raising an election dispute and in so far as the finding on the caste certificate is concerned, the petitioner would be at liberty to question the same before the District

Magistrate, Kishanganj or before any other appropriate forum as advised, for establishing his caste but in the disputed circumstances discussed above I am not persuaded to grant indulgence in the matter. The opinion formed by this Court stands supported by the judgments of this court reported in:

- (1)2010(3)PLJR 578 (N.S. Madhavan Vs. Shyamdeo Prasad)
- (2)2014(1)PLJR 562 (Md. Alamgir Vs. The State of Bihar & Ors.)
- (3)2014(3)PLJR 6 24 (Md. Shakil Vs. The State of Bihar & Ors.)

The writ petition is accordingly disposed of with the liberty aforementioned.

Let the records of the proceedings in the certificate cancellation case as well as nomination matter be returned to the State counsel after sealing the same.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	
CAV DATE	
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