

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.65 of 2014

IN

Civil Writ Jurisdiction Case No. 7593 of 2013

- =====
1. Smt. Kavita Devi W/O Sadan Kumar Das Mukhiya, Gram Panchayat Himmat Nagar, Prakhand Kochadhaman, P.S. Kochadhaman, Distt. Kishanganj
 2. Smt. Radhika Devi W/O Suresh Lal Das Sarpanch, Gram Panchayat Himmat Nagar, Prakhand Kochadhaman, P.S. Kochadhaman, Distt. Kishanganj

.... Appellants

Versus

1. The State of Bihar Through The Chief Secretary, Bihar, Patna
2. State Election Commission, Bihar Through State Election Commissioner
3. Deputy Secretary, State Election Commission, Bihar
4. District Magistrate-Cum-District Election Officer (Panchayat) Kishanganj
5. District Magistrate-Cum-District Election Officer (Panchayat) Purnia
6. Prakhand Vikash Padadhikari, Kochadhaman, Distt. Kishanganj
7. Nideshak, Lekha Prashasan And Swaniyojan, Zila Gramin Vikas, Abhikaran, Kishanganj
8. Zila Panchayat Raj Padhadikari, Kishanganj
9. Smt. Bulu Devi W/O Khushi Lal Ram, Resident of Village Sahpur, Panchayat Himmat Nagar, Prakhand and P.S. Kochadhaman, Distt. Kishanganj
10. Chameli Devi W/O Sri Lalo Rishi Resident of Village Sahpur, Panchayat Himmat Nagar, Prakhand and P.S. Kochadhaman, Distt. Kishanganj
11. Smt. Geeta Devi W/O Sri Sadanand Paswan, Resident of Village Sahpur, Panchayat Himmat Nagar, Prakhand and P.S. Kochadhaman, Distt. Kishanganj

.... Respondents

with

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Letters Patent Appeal No. 470 of 2014

IN

Civil Writ Jurisdiction Case No. 7593 of 2013

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1. State Election Commission, Bihar Through State Election Commissioner
 2. Deputy Secretary, State Election Commission, Bihar

.... Appellant/s

Versus

1. Smt. Kavita Devi W/O Sadan Kumar Das Mukhiya, Gram Panchayat Himmat Nagar, Prakhand Kochadhaman P.S. Kochadhaman, District- Kishanganj
2. Smt. Radhika Devi W/O Suresh Lal Das Sarpanch, Gram Panchayat Himmat Nagar, Prakhand Kochadhaman P.S. Kochadhaman, District- Kishanganj
3. The State Of Bihar Through The Chief Secretary, Bihar, Patna
4. District Magistrate Cum District Election Officer (Panchayat) Kishanganj
5. District Magistrate Cum District Election Officer (Panchayat) Purnia
6. Prakhand Vikas Padadhikari, Kochadhaman, District- Kishanganj
7. Nideshak, Lekha Prashasan And Swani Yojan, Zila Gramin Vikas, Adhikaran Kishanganj
8. Zila Panchayat Raj Pradhikari, Kishanganj
9. Smt. Bulu Devi W/O Khashi Lal Ram

10. Chameli Devi W/O Sri Lalo Rishi

11. Smt. Geeta Devi W/O Sri Sadanand Paswan All Resident Of Village Sahpur Panchayat Himmat Nagar, Prakhand And P.S. Kochadhaman, District- Kishanganj

.... Respondent/s

Appearance :

(In LPA No. 65 of 2014)

For the Appellant/s : Mr. Ashok Kumar Sinha, Sr. Advocate
M/s Anupa Nand Jha, Santosh Kumar Singh,
Munish Om Prakash Singh

For the Election Commissioner : Mr. Amit Srivastava

For the State : Mr. Nawal Kishore Singh, SC 2

(In LPA No. 470 of 2014)

For the Appellant/s : M/s Amit Srivastava, Girish Pandey

For the State : Mr. Nawal Kishore Singh, SC 2

Mr. Kamlesh Prasad, AC to SC 2

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 05-02-2015

Admit.

The appellants herein have been elected in the year 2011 as Mukhiya and Sarpanch, respectively, against the seats reserved in favour of Scheduled Caste candidates. in the Gram Panchayat Raj Himmat Nagar, Block Kochadhaman, in the District of Kishanganj, The unsuccessful candidate, i.e. Bulo Devi, the 9th respondent, filed an application before the State Election Commissioner, 2nd respondent, under Section 136 of the Bihar Panchayat Raj Act alleging that the caste certificates obtained by the appellants are not correct. The State Election Commissioner, the 2nd respondent, entertained the application and issued direction to the

District Magistrate, Purnea, i.e. 5th respondent, to verify the correctness of the caste certificates of the appellants. In his proceeding the District Magistrate expressed doubt as to the correctness of the caste certificates. Taking into account of the same, the 2nd respondent passed order dated 8.3.2013 disqualifying the petitioners, from holding their offices.

Aggrieved by that order, the petitioners filed CWJC No. 7593 of 2013. The learned Single Judge dismissed the same through order dated 2.12.2013. Hence these two appeals.

We heard Mr. Ashok Kumar Sinha for the appellants, Mr. Amit Srivastava, learned counsel appearing for the Election Commission and Mr. Nawal Kishore Singh, learned counsel representing the State.

Prima facie, we find that the State Election Commission can disqualify a candidate, only when the status of the concerned candidate with reference to Clauses (a) to (j) of Section 136(1) of the Panchayat Raj Act has already been decided or when there is no doubt about it. A complaint before the State Election Commission cannot be the basis for determining the disputed facts, for the first time. At any rate, the caste certificate issued to the appellants has not been cancelled and mere expression of doubt as to the genuineness cannot be a factor to disqualify the appellants. It is fairly well settled that it is only when the law and the corresponding facts are clear, and are free from doubt, that an elected candidate can be displaced.

Though reliance is placed upon the judgment of this Court dated 17.9.2013 passed in LPA No.1158 of 2012 (Sushila Devi vs. State of Bihar & Ors.), we are, prima facie, of the view that their Lordships did not deal with the power of Election Commission under

Section 136 of the Act, to decide a question as to the disqualification, for the first time.

We, therefore, suspend the operation of the order dated 8.3.2013 passed by the State Election Commission and the appellants-petitioners shall be entitled to continue in the office until further orders.

Since the matter pertains to an election, post these Letters Patent Appeals for hearing in the 2nd week of April 2015. By that time, Registry shall ensure that notices are served.

(L. Narasimha Reddy,CJ)

(Vikash Jain, J)

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