

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15530 of 2015

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Mithilesh Kumar Mitthu S/o Nandlal Das, Gram + Post- Ramnagar, Shahpur,
Thana- Gwalpada, Distt.- Madhepura, Bihar

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj
2. Station Election Commission, Bihar through the State Election Commissioner
3. State Election Commission, Bihar
4. The District Magistrate cum District Education Officer (Panchayat), Madhepura,
Bihar
5. Deputy Development Commissioner, Madhepura
6. District Panchayati Raj Officer, Madhepura
7. Sub Divisional Officer (S.D.D.), Uda Kishunganj, Madhepura
8. Block Development Officer (B.D.O.), Gwalpada, Madhepura
9. Circle Officer, Gwalpada, Madhepura

.... Respondent/s

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Appearance:

For the Petitioner/s	:	Mr. Gajendra Pratap Singh, Advocate
For the Respondent/s	:	Mr. Ashok Priyadarshi, G.A.-4
For the State E.C.	:	Mr. Amit Shrivastava, Advocate Mr. Sanjeev Nikesh, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 28-04-2016

Heard Mr. Mrigank Mauli for the petitioner, counsel for the
State, State Election Commission and counsel for the private
respondent.

The petitioner prays for issuance of a writ in the nature of
certiorari for quashing the order dated 16.3.2015 passed by the
Commissioner, State Election Commission, Bihar, Patna in Case No.
75 of 2011 whereby the Commissioner even while choosing not to
disqualify the petitioner from the post of Mukhiya, Gram Panchayat,

Shahpur in the district of Madhepura by giving a benefit of doubt yet has proceeded to hold that the petitioner by caste is a '*Vaishya Baniya*' and not a '*Sinduriya Baniya*'.

Mr. Mrigank Mauli has appeared for the petitioner, the State is represented by learned State counsel, the State Election is represented by Mr. Amit Shrivastava and Mr. Sanjeev Nikesh and the private respondent no. 10, namely, Satya Narayan Sharma is represented through Mr. Sunil Kumar Singh.

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

The facts of the case giving rise to the writ petition briefly stated is that the petitioner and the private respondent contested the post of Mukhiya in which the petitioner returned. The election of the petitioner was questioned on his caste status before the Commission in Case No. 75 of 2011 and the Commission by the impugned order passed on 16.3.2015 while not disturbing the writ petitioner from the post of Mukhiya, has proceeded to declare him as a '*Vaishya Baniya*'.

Mr. Mauli, learned counsel for the petitioner has submitted that even though the election of the petitioner has not been disturbed by the Commission but since the finding on the caste status of the petitioner has far reaching consequences because whereas '*Vaishya Baniya*' comes under the category of backward class, the '*Sinduriya*



Baniya’ falls in the extremely backward category hence such finding of the Commission would have an adverse affect in case the petitioner would intend to contest future elections. The short submission advanced by Mr. Mauli to question the impugned order of the Commission is that it is presumptuous and is based on no evidence. He submits that the very circumstance where the Commission has not been persuaded to disqualify the petitioner from the post of Mukhiya giving him the benefit of doubt on the caste status raised by the complainant, the same principle would equally govern the caste classification of the petitioner. According to Mr. Mauli in absence of any evidence in the possession of the Commission to give a conclusive finding on the caste status of the petitioner rather in view of the clear opinion expressed by the District Magistrate, there was no occasion for the Commission to give a presumptuous finding and the conclusion drawn is a conjecture.

Perusal of the order passed by the Commission impugned in this writ petition would manifest that the foundation for the complaint rested on the entry of Khata No. 3 and 15 of the Khatiyans so produced by the complainant which categorized the petitioner as a ‘Vaishya Baniya’. The Khatiyans were issued by the District Record Office at Madhepura. On the other hand, the petitioner has produced the records of the cadastral survey held in between 1905 and 1917 which



categorized him as a '*Sinduriya Baniya*'. Even in these disputed circumstances and even when the opinion of the district administration has been in favour of the writ petitioner to uphold his claim as '*Sinduriya Baniya*', the Commission proceeds to hold that the petitioner is a '*Vaishya Baniya*' and not a '*Sinduriya Baniya*'. It is rather surprising that although the Commission mentions that there are substantive evidence for reaching such conclusion but the impugned order discusses no such 'sound evidence' rather it is on a comparative appreciation of the evidence adduced by the parties that the conclusion has been reached. Annexure-2 of the writ petition is an order of the District Magistrate cum District Election Officer, Madhepura passed in consequence of the directions issued by the Commission in the proceedings in question. The District Magistrate has taken note of the rival contentions as also the evidence adduced by the parties and while rejecting the complaint filed by the complainant has upheld the claim of the writ petition as a '*Sinduriya Baniya*'.

The order present at Annexure-2 was passed by the District Magistrate, Madhepura on 17.9.2011, however, the Election Commission was not satisfied with the conclusion and again directed for an enquiry into the matter. A proceeding was initiated registered as Case No. 1 of 2015 by the District Panchayat Raj Officer present



at Annexure-3 and the conclusions drawn by the District Panchayat Raj Officer taking note of the evidence available at his disposal, is sufficient to uphold the claim of the writ petitioner. The order dated 04.2.2015 of the District Panchayat Raj Officer, Madhepura discusses the contest and the evidence led by the parties to the contest. The Panchayati Raj Officer has noticed that the caste status of the petitioner in the various khatiyans issued by the District Record Office varies. He has also taken note of the original cadastral survey khatian issued in the name of the grand father of the petitioner which categorized him as 'Sinduriya' and since the cadastral survey khatian was issued much before the revisional survey khatiyans hence the District Panchayat Raj Officer has rested his decision on its genuineness. The other document which was relied upon is a decree passed in Suit No. 200 of 1977 present at Annexure-4 dated 31.7.2004 which refers to the petitioner and his ancestors as 'Sinduriya'. It is rather surprising that even when the District Authorities who are vested with the jurisdiction for deciding on a caste status of an individual has opined in favour of the petitioner and have categorically held that the evidence so produced by the complainant is not sufficient enough to draw any other conclusion and to hold the petitioner as a '*Vaishya Baniya*' and even though the State Election Commission has also conceded that the benefit of doubt on the contest

goes in favour of the petitioner yet the Commissioner has proceeded to hold the petitioner as a ‘*Vaishya Baniya*’ even in absence of any conclusive evidence to such effect. As rightly contested by Mr. Mauli the order of the Commission impugned insofar as it declares the petitioner as a ‘*Vaishya Baniya*’ is based on no evidence and is a conjectural conclusion drawn by the Commission.

For the reasons discussed, the order passed by the State Election Commission in Case No. 75 of 2011 insofar as it proceeds to hold the petitioner as a ‘*Vaishya Baniya*’ cannot be upheld and is accordingly set aside. The order passed by the Commissioner stands modified to that extent.

In result, the writ petition is allowed.

(Jyoti Saran, J)

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