

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2111 of 2013

With

Interlocutory Application No. 4042 of 2015

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Md. Wasim Raza son of Shamshul Haque, resident of Village: Dhanpura, Block: Jokihat, Panchayati Raj: Patharbari, District Araria at present Mukhiya of Gram Panchayat Raj Patharbari

.... Petitioner/s

Versus

1. The State of Bihar Represented through the Chief Secretary, Government of Bihar, Patna
2. The District Magistrate, Araria
3. The District Panchayati Raj Officer, Araria
4. The Block Development Officer, Jokihat Block, District Araria
5. The Circle Officer, Jokihat Circle, Block: Jokihat, District Araria
6. The State Election Commission represented through the Chief Election Commissioner, Sone Bhawan, Birchand Patel Marg, Patna
7. Wasima Khatoon daughter of Nazir Ansari and wife of Md. Isha, resident of Mahadevi, Block and P.S. Jokihat, Post: Patharbari, District: Araria

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Advocate Mr.Sanjay Kumar Sharma, Advocate Mr.Samir Kumar, Advocate Mr.Sanket, Advocate
For the Respondent Nos. 1 to 5	:	Mr. Ashok Kumar, SC 11 Mr.Amaresh, AC to SC 11
For the Respondent No. 6	:	Mr.Amit Shrivastava, Advocate Mr.Girish Pandey, Advocate
For the Respondent No. 7	:	Mr.Satish Chandra Mishra, Advocate Mr.Md.Z.Quamar, Advocate Mr.Md.Shamshad Alam, Advocate Mr.Manish Kumar, Advocate Mr.Ajay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
CAV JUDGMENT

Date: 05 -02-2016

The petitioner originally filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 07.01.2013 passed in Misc.Case No. 08 of 2011-12 by the respondent District Officer/District Magistrate-cum-District Election Officer (Panchayat), Araria (respondent no.2), as



contained in Annexure-3 to the writ petition, whereby and whereunder on the basis of direction issued by the respondent State Election Commission, Bihar, Patna, after holding an enquiry and after giving an opportunity of hearing to the petitioner, besides others, it was held that the petitioner belongs to 'Rocky' caste and thus, is a member of Backward Class, Annexure-II, as per notification of the State Government, and he does not belong to 'Iraime' caste and thus, is not a member of Extremely Backward Class, and accordingly, the caste certificate no. 357 dated 19.02.2011 issued in favour of the petitioner showing him as a member of Iraime caste was cancelled. The petitioner also prayed for quashing the entire proceeding of Case No. 118 of 2011, which was instituted by the respondent State Election Commission, Bihar, Patna on the basis of a complaint filed by the private respondent no.7 Wasima Khatoon. However, during the pendency of the writ petition, the respondent State Election Commission, Bihar, Patna passed the final order dated 08.03.2013 in the aforesaid Case No. 118 of 2011, whereby in exercise of its powers under Section 135 read with Section 136 (2) of The Bihar Panchayat Raj Act, 2006 (as amended) (hereinafter to be referred to as the Act, 2006) as also under Rule 117 of The Bihar Panchayat Election Rules, 2006 (as amended) (hereinafter to be referred to as the Rules, 2006) the petitioner's election on the post of Mukhiya was declared void and post of Mukhiya of Gram Panchayat Pathrabari in the district of Araria was declared to be vacant and direction was issued for filling up the same in accordance with law. By the aforesaid order dated 08.03.2013, a criminal proceeding/departmental proceeding

was directed to be initiated against the guilty personnel. In above view of the matter, the petitioner filed I.A.No. 2126 of 2013 seeking amendment in the writ petition and seeking permission of this Court to assail the validity and correctness of the aforesaid order dated 08.03.2013 passed by the respondent State Election Commission, Bihar, Patna, which was brought on the record as Annexure-1 to the aforesaid I.A.No. 2126 of 2013.

2. By order dated 21.03.2013 passed by a Bench of this Court (Coram: Jayanandan Singh,J., since superannuated), the aforesaid I.A.No. 2126 of 2013 was allowed and the petitioner was permitted to challenge the validity and correctness of the aforesaid order dated 08.03.2013 passed in Case No. 118 of 2011. By the aforesaid order dated 21.03.2013, while issuing notice to the private respondent no.7, it was directed that till further orders by this Court, the petitioner shall not be disturbed from functioning as Mukhiya pursuant to the order passed by the respondent State Election Commission, Bihar, Patna.

3. On receipt of the notice, the respondent no.7 entered appearance through her counsel and filed her counter affidavit contesting the claims raised on behalf of the petitioner in the writ petition and supported the impugned orders. Apart from that, the respondent no.7 also filed I.A.No. 4042 of 2015 for vacating the interim order dated 21.03.2013 passed by a Bench of this Court.

4. The brief facts for the purposes of disposal of the present proceeding may be noticed as under:

In the Gram Panchayat election held in the year 2011 for Gram Panchayat Pathrabari under Jokihat



Block/Anchal in the district of Araria, the post of Mukhiya was reserved for Extremely Backward Class category candidates. The writ petitioner and the respondent no.7, besides others, contested the aforesaid election for the post of Mukhiya by claiming to be members of Extremely Backward Class and finally the writ petitioner was declared successful. The petitioner for laying his claim that he is a member of Extremely Backward Class, he produced caste certificate no. 357 dated 19.02.2011 (Annexure-2) issued by the Anchal Adhikari, Jokihat showing therein that the petitioner belongs to 'Raine' caste and therefore, he was allowed to contest the aforesaid election, in which he ultimately succeeded. The respondent no.7 filed a complaint in terms of Sections 135 read with 136 (2) of the Act, 2006 before the respondent State Election Commission, Bihar, Patna taking a plea that the petitioner does not belong to Extremely Backward Class, therefore, he was not qualified to contest the aforesaid election for the post of Mukhiya of the Gram Panchayat in question. It was specifically pleaded that he belongs to Backward Class (Annexure II category).

5. On the basis of aforesaid complaint filed by the respondent no.7, Case No. 118 of 2011 was instituted by the respondent State Election Commission, Bihar, Patna. The respondent State Election Commission, Bihar, Patna in the aforesaid background issued a direction to the respondent District Officer/District Magistrate-cum-District Election Officer (Panchayat), Araria to hold an inquiry and pass an appropriate order with respect to caste certificate issued in favour of the petitioner showing him to be a member of 'Iraine' caste. In view of the aforesaid direction of the



respondent State Election Commission, Misc.Case No.08 of 2011-12 was instituted by the respondent District Officer/District Magistrate-cum-District Election Officer (Panchayat), Araria and notices were issued to all concerned including the petitioner and the respondent no.7. After hearing the parties and on consideration of the materials including the enquiry report/reports available on the record, the respondent District Officer/District Magistrate-cum-District Election Officer (Panchayat), Araria passed the impugned order dated 07.01.2013 (Annexure-3) cancelling the earlier caste certificate issued in favour of the petitioner and declaring him to be a member of 'Rocky' caste, and thus a member of Backward Class, Annexure-II, as per the notification issued by the State Government. It was further directed for initiating a criminal proceeding/departmental proceeding against the guilty personnel as also the present petitioner. In the light of the aforesaid order dated 07.01.2013, the respondent State Election Commission passed its final order dated 08.03.2013, after giving an opportunity of hearing to the petitioner and all other concerned persons, declaring the petitioner to be disqualified for holding the post of Mukhiya of the Gram Panchayat in question and the post of Mukhiya of the Gram Panchayat in question was declared to be vacant and consequently steps were directed to be taken for filling up the vacant post of Mukhiya. As indicated above, the aforesaid order dated 08.03.2013 has been brought on record as Annexure-1 to I.A.No. 2126 of 2013 and amendment sought for on behalf of the petitioner was allowed by a Bench of this Court by order dated 21.03.2013.



6. The matter has been contested by the respondents. Two sets of separate counter affidavits; one on behalf of the respondent nos. 2 to 5 and the other on behalf of the respondent no.7, have been filed controverting the claims raised on behalf of the petitioner that he belongs to Extremely Backward Class. It has been asserted on behalf of the respondents that, in fact, the petitioner does not belong to Extremely Backward Class, rather he belongs to Backward Class, Annexure II category and therefore he was not qualified to contest the election for the post of Mukhiya of the Gram Panchayat in question, which was reserved for a candidate belonging to Extremely Backward Class.

7. At this stage, it would be relevant to mention here that this matter was heard on different dates and finally judgment was reserved by order dated 07.07.2015. However, the learned counsel appearing on behalf of the parties were granted liberty to file their respective written submissions. Accordingly, the learned counsel appearing on behalf of the petitioner filed a voluminous written submissions enclosing the copies of almost all the judgments on which reliance was placed by him. The learned counsel appearing on behalf respondent no.6, the State Election Commission, Bihar, Patna as also the learned counsel appearing on behalf of the respondent no.7 have also filed their separate comprehensive written submissions and they have also enclosed the copies of those judgments upon which they have placed reliance in support of their cases in the present proceeding.

8. The learned counsel appearing on behalf of the petitioner by referring to the provisions contained in Sections 135, 136 (1) & (2), 137 and 138 (b) of The Bihar



Panchayat Raj Act, 2006 submitted that if a candidate does not belong to a particular class for which the seat of the Gram Panchayat is reserved, then he may not be qualified for contesting the election for that particular seat, but once election is held and such candidate is declared successful for that particular seat, then he cannot be disqualified by the respondent State Election Commission by exercising its powers under Section 136 (2) of the Amending Act, 2006. According to him, once a candidate is elected for a particular seat, his election can be challenged only by filing an appropriate election petition as envisaged under Section 137 of the Act, 2006 on the grounds enumerated in Section 139 of the Act, 2006, as bar created under Section 138 (b) shall be operational and the Election Commission will have no authority/power to disqualify such returned candidate. It was contended that in the present case, the petitioner was allowed to contest the election for the post of Mukhiya of the Gram Panchayat in question and he was declared successful, therefore, his election could have been challenged only by filing an election petition before the Election Tribunal, but the respondent State Election Commission could not have declared the petitioner disqualified for holding the post of Mukhiya of the gram Panchayat in question and could not have declared the post of Mukhiya to be vacant. Hence, it was pleaded that the impugned order dated 08.03.2013 passed by the respondent State Election Commission, Bihar, Patna, as contained in Annexure-1 to I.A.No. 2126 of 2013, is fit to be set aside and quashed by this Court. To buttress his aforesaid submissions, the learned counsel appearing on behalf of the petitioner has drawn an analogy from the



provisions of The Representation of the People Act, 1951 as also certain provisions of the Constitution of India including Article 329 (b). In support of his above contentions, he has placed reliance on several judgments of this Court as also the Hon'ble Apex Court, which all have been enclosed with the written submissions filed by him. The judgments referred to by the learned counsel appearing on behalf of the petitioner shall be dealt with at an appropriate place (s).

9. Au-contraires, the learned counsel appearing on behalf of the respondent no.6, while taking a lead in advancing the arguments on behalf of the respondents, submitted that all the issues raised on behalf of the petitioner in the present writ petition stand concluded by a judgment of a co-ordinate Bench of this Court in the case of **Md.Alamgir Vs.The State of Bihar and others [2014 (1) PLJR 562]**. It was further contended that the ratio laid down in the aforesaid judgment by a learned Single Judge have its affirmation/approval by judgments/orders passed by different Division Bench of this Court including that by judgment/order dated 17.09.2013 passed in **LPA No. 1158 of 2012 [Shushila Devi Vs.The State of Bihar and others]**, order dated 25.06.2014 passed in **LPA No. 1615 of 2013 and its analogous appeals [Md. Shakil Vs. The State of Bihar and others]** as also order dated 19.01.2015 passed in **LPA No. 1657 of 2014 [Bibi Shabnam @ Shabnam Khatoon Vs. The State Election Commission and others]** and, therefore, the writ petition is liable to be dismissed in view of the aforesaid binding precedent of this Court. It was next contended that in view of the amendment brought in Section 136 (2) by Amending Act, 2009, the State Election



Commission became empowered to adjudicate the issue of qualification under Section 135 of the Act, 2006. The question of qualification/disqualification as contemplated under Section 135 read with Section 136 of the Act, 2006 are not required to be taken to the Election Tribunal, therefore, the bar created under Section 138 (b) of the Act, 2006 shall not be applicable and for deciding the issue of disqualification, no election petition is required to be filed in terms of Section 137 of the Act, 2006.

10. The learned Standing Counsel 11 appearing on behalf of the respondent nos. 1 to 5 and the learned counsel appearing on behalf of the respondent no.7 also advanced their submissions and asserted that the petitioner does not belong to 'Iraime' caste and he, not being a member of Extremely Backward Class, was not qualified to contest the election for the post of Mukhiya of the Gram Panchayat in question. According to them, the caste certificate of the petitioner has rightly been cancelled by the respondent District Officer/District Magistrate-cum-District Election Officer (Panchayat), Araria after holding fresh enquiry and getting fresh reports as also after giving opportunity of hearing to the petitioner, besides others, and consequently the petitioner has validly been disqualified for holding the post of Mukhiya of the Gram Panchayat in question. They have also placed reliance on certain judgments in support of their submissions and practically adopted the other submissions advanced by the learned counsel appearing on behalf of the respondent no.6.

11. Before reverting to the rival submissions advanced on behalf of the parties, it would be appropriate to

re-produce Sections 135, Section 136 (1) & (2), Section 137 (1) and Section 138 (b) of the Act, 2006 as also Rule 117 of the Rules, 2006. Relevant provisions of the Act, 2006 are as under :

“135. Qualification for Membership.- Every person whose name is in the list of voters of any Panchayat constituency shall, unless disqualified under this Act or under any other law for the time being in force, be qualified to be elected as a member or office bearer of the Panchayat.

Provided that in the case of seats reserved for Scheduled Castes or Scheduled Tribes or Backward Classes or Women, no person who is not a member of any of the Scheduled Castes or Scheduled Tribes or Backward Classes or is not a woman, as the case may be, shall be qualified to be elected to such seat.”

“136. Disqualification for Membership.-(1) Notwithstanding anything contained in this Act, a person shall be disqualified for election or after election for holding the post as Mukhiya, member of the Gram Panchayat, Sarpanch, Panch of the Gram Katchahri, member of the Panchayat Samiti and member of Zila Parishad, if such person –

- (a) is not a citizen of India;
- (b) is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State:

Provided that no person shall be disqualified on the ground that he is less than twenty five years of age, if he has attained the age of twenty one years;

- (c) is in the service of Central or State Government or any local authority;
- (d) is in service of any such institution receiving aid from Central or State Government or any local authority;



- (e) has been adjudged by a competent court to be of unsound mind;
- (f) has been dismissed from the service of Central or State Government or any local authority for misconduct and has been declared to be disqualified for employment in the public service;
- (g) has been sentenced by a criminal court whether within or out of India to imprisonment for an offence, other than a political offence, for a term exceeding six months or has been ordered to furnish security for good behaviour under Section 109 or Section 110 of the Code of Criminal Procedure, 1973 (Act 2, 1974) and such sentence or order not having subsequently been reversed;
- (h) has under any law for the time being in force become ineligible to be a member of any local authority;
- (i) holds any salaried office or office of profit under the Panchayat;
- (j) has been found guilty of corrupt practices:

Provided that on being found guilty of corrupt practices, the disqualification shall cease after six years of general election.

- (2) If any question arises as to whether Member of Panchayat at any level including Mukhiya of Gram Panchayat, Parmukh of Pachayat Samiti or Adhyaksh of Zila Parishad or Sarpanch of Gram Kutchahry or Panch of Gram Kitchahry was disqualified before election or has incurred disqualification after election as provided in Article 243-F of Constitution of India and subject to any disqualifications mentioned in Section 135 or sub-Section (1) of Section 136, the question shall be referred for the decision of State Election Commissioner. The matter of disqualification before or after election may be brought to the notice of State



Election Commission in the form of complaint, application or information by any person or authority. The State Election Commission may also take suo-motu cognizance of such disqualification and decide such matters expeditiously after allowing sufficient opportunity to the affected parties of being heard:

Provided that the State Election Commission shall not be entitled to entertain any complaint or petition subject matter of which is purely an election dispute such as corrupt practice, wrongful rejection of nomination etc. in accordance with Article 243-O of the Constitution of India read with Section 137 of the Act.”

- (3)
.....
- (4)
.....

137. Election Petition.-(1) The election to any office of a Panchayat or a Gram Katchahry shall not be called in question except by an election petition as prescribed:

Provided that if an election to any office of a Gram Panchayat or Gram Katchahry is under dispute, the election petition shall lie before such Munsif within whose jurisdiction such Gram Panchayat or Gram Katchahry is situated and if the election to any office of Panchayat Samiti or to a Zila Parishad is under dispute, the election petition shall lie before such sub-judge within whose jurisdiction such Panchayat Samiti or Zila Parishad, as the case may be, is situated.”

- (2)
.....

“138. Bar to interference by Courts in electoral matters.-Notwithstanding any thing contained in this Act-

- (a)
.....

(b) no election to any Panchayat shall be called in question except by an election petition presented to the prescribed authority under this Act.”

Rule 117 of The Bihar Panchayat Election Rules, 2006 is as follows:

“117. Decision of disqualification: - The State Election Commission shall be the competent authority to decide any question of disqualification mentioned in sub-section (1) of Section 136 of the Act. The matter of disqualification of a person shall be brought before the Commission by any person or officer in a form of an application, complain or notice. The State Election Commission itself may take such cognizance suo-motu. After giving reasonable opportunity of hearing to the parties concerned, the State Election Commission shall make a decision at the earliest.”

12. It would further be relevant to mention here that in view of the judgments of this Court rendered in the cases of **Sri Bhagwan Singh Vs.The State of Bihar [2004 (4) PLJR 482]**, **Kahkashan Parveen Vs. State of Bihar [2007 (1) PLJR 616]** and **Kiran Kumari alias Kiran Devi Vs.The State of Bihar [2007 (4) PLJR 442]**, the State Legislature brought amendment in the year 2009 in Act, 2006, which is known as The Bihar Panchayat Raj (Amendment) Act, 2009. By the aforesaid amendment, sub-section 2 of Section 136 of the Act, 2006 was substituted by bringing a radical change in the existing provisions and substituted provisions came into operation with effect from 10th April, 2006 itself. The aforesaid amending provisions of Section 136 are as follow:

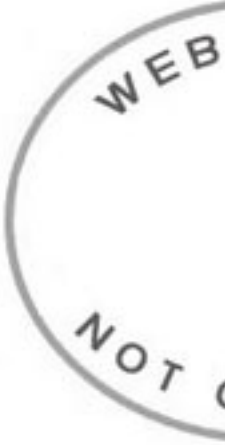
16. Amendment of Section-136 of Bihar Act, 6 of 2006-Sub-Section- (2) of Section-136 shall be substituted

as follows and shall be deemed to have been substituted w.e.f. 10th of April, 2006:-

“If any question arises as to whether Member of Panchayat at any level including Mukhiya of Gram Panchayat, Pramukh of Panchayat Samiti or Adhyaksh of Zila Parishad or Sarpanch of Gram Kutchahry or Panch of Gram Kutchahry was disqualified before election or has incurred disqualification after election as provided in Article 243-F of Constitution of India and subject to any disqualifications mentioned in Section-135 or Sub-section- (1) of Section- 136, the question shall be referred for the decision of State Election Commissioner. The matter of disqualification before or after election may be brought to the notice of State Election Commission in the form of complaint, application or information by any person or authority. The State Election Commission may also take suo motu cognizance of such disqualification and decide such matters expeditiously after allowing sufficient opportunity to the affected parties of being heard;

Provided that the State Election Commission shall not be entitled to entertain any complaint or petition subject matter of which is purely an election dispute such as corrupt practice, wrongful rejection of nomination etc. In accordance with Article 243-O of the Constitution of India read with Section-137 of the Act.”

13. From the conjoint reading of Sections 135 and 136 (2) of the Act, 2006 (as amended), it is apparent that if a seat in the Gram Panchayat election has been reserved for a particular class then the candidate for such reserved seat must belong to that particular class, otherwise he is not qualified for being elected for such post. The issue of such qualification/disqualification is well within the





jurisdiction/authority of the State Election Commission in view of the amendment brought in Section 136(2) of the Act, 2006. The candidates who are not qualified for contesting the election on such reserved seats can necessarily be held to be disqualified for holding such post on such reserved seats, even after his/her election, by the State Election Commission by exercising its powers under Section 136 (2) of the Act, 2006, as amended by the Amending Act, 2009, reproduced above, read with rule 117 of the Rules, 2006. However, pure election dispute such as corrupt practices, wrongful rejection of nomination papers, wrongful acceptance of nomination papers, improper reception or rejection of any votes etc. which require recording some sort of evidence cannot be gone into by the State Election Commission by exercising its powers under Section 136 (2) of the Act, 2006 (as amended). For getting an adjudication on such issues, an election petition is required to be filed under Section 137 of the Act, 2006 and only thereafter such issues can be determined by the Election Tribunal and not otherwise, but that is not the case in the present proceeding.

14. In the present case, indisputably the seat of Mukhiya was reserved for a candidate belonging to Extremely Backward Class. After holding an inquiry and after giving an opportunity of hearing to the petitioner, the District Officer/District Magistrate-cum- District Election Officer (Panchayat), Araria has passed the final order dated 07.01.2013 (Annexure-3) cancelling the caste certificate no. 357 dated 19.02.2011 (Annexure-2) of the petitioner, which was wrongly obtained by him. The respondent District Magistrate has directed for initiating a criminal/departmental



proceeding, as the case may be, against the guilty personnel as also the petitioner. Once it has been held that the petitioner does not belong to Extremely Backward Class, necessary conclusion is that he was not qualified for contesting the election for the post of Mukhiya of the Gram Panchayat in question. Therefore, the respondent State Election Commission, Bihar, Patna was well within its powers/authority to disqualify the petitioner for holding the post of Mukhiya by passing the impugned order dated 08.03.2013. For this, no election petition was required to be filed.

15. Admittedly, for holding gram panchayat election, the provisions of The Representation of the People Act, 1951 are not applicable, though by drawing an analogy with the provisions of the Representation of the People Act, 1951 as also the provisions of the Constitution of India, the learned counsel appearing on behalf of the petitioner has tried to assail the impugned final order dated 08.03.2013, but all the issues raised by him have been aptly answered by a co-ordinate Bench of this Court in the case of **Md.Alamgir. Vs. The State of Bihar (supra)**, as noticed earlier, and the ratio laid down there by the learned Single Judge have its approval by three different Division Bench of this Court, in the cases referred to above. Therefore, in the considered opinion of this Court, the judgments cited by the learned counsel appearing on behalf of the petitioner are not relevant for the purposes of the decision of the present case, though there is no quarrel about the ratio laid down in those judgments either by the High Court or by the Hon'ble Apex Court.

16. Following the judgment of a co-ordinate Bench of this Court in the case of **Md.Alamgir Vs. The State of Bihar (supra)** as also the ratios laid down by the three different Division Bench of this Court by order dated 17.09.2013 passed in **LPA No. 1158 of 2012 [Shushila Devi Vs.The State of Bihar and others]**, order dated **25.06.2014** passed in **LPA No. 1615 of 2013** and its analogous appeals [**Md. Shakil Vs. The State of Bihar and others**] as also by order dated 19.01.2015 passed in **LPA No. 1657 of 2014 [Bibi Sabnam @ Sabnam Khatoon Vs. State Election Commission and others]**, this Court is left with no option but to reject the pleas raised on behalf of the petitioner in the present writ petition. Consequently, the writ petition has to fail and is, accordingly, dismissed, but there shall be no order as to costs. I.A. No. 4042 of 2015 stands accordingly disposed of.

(Birendra Prasad Verma, J)

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