

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16879 of 2013

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Kiran Devi, Wife of Jiwendra Maharaj, Resident of Village, Post Office and Gram Panchayat-Sangi, Police Station - Fulparas, Block - Bhoghardiha, District – Madhubani.

.... Petitioner/s

Versus

1. The State Election Commission through its Chairman/Secretary, Son Bhawan, Birchand Patel Path, Patna.
2. The District Magistrate Madhubani-Cum-District Panchayat Election Officer Madhubani.
3. The Block Development Officer Bhoghardiha, District Madhubani-Cum-Presiding Officer Panchayat Election.
4. Anand Kumar Mishra Son Of Sri Satanjeev Mishra Resident Of Village - Tharbitiya, Police Station - Fulparas, District – Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. J.K. Roy, Advocate
For the Respondent No.1 : Mr. Amit Shrivastava
Mr. Girish Pandey, Advocate
For the Respondent No.4 : Mr. Durganand Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

4 07-04-2016 Heard Mr. Jitendra Kumar Roy, learned counsel for the petitioner, learned counsel for the State and Mr. Durga Nand Jha, learned counsel appearing for the private respondent.

Although this writ petition was filed questioning the interlocutory order dated 17.7.2013 passed by the State Election Commissioner in Miscellaneous Case No.3 of 2013 whereby the preliminary objection raised by the petitioner was rejected but while the writ petition was pending before this Court that the final order has been passed in this case on 23.9.2013 and

which has been brought on record vide I.A. No. 8820 of 2013.

Mr. Jitendra Kumar Roy, learned counsel appearing for the petitioner in the changed circumstances seeks permission to modify his prayer in terms of the relief claimed in the interlocutory application.

Having heard learned counsel for the parties and considering the nature of the dispute raised herein as well as the fact that the final order has been passed, the prayer made in I.A. No. 8820 of 2013 is allowed and the petitioner is permitted to question the final orders passed in the election case in the present proceeding.

Re: **CWJC No. 16879 of 2013.**

I have heard learned counsel for the parties on the modified prayer made herein questioning the final order dated 23.9.2013 passed in Election Case No.3 of 2013 and I have perused the records.

Briefly enumerating, the election case was filed by the respondent no.4 charging the petitioner for suppression of material fact while filing her nomination papers inasmuch as according to the complainant, the petitioner had suffered imprisonment for more than six months and which should have been reflected in the nomination papers since the same

disqualifies her from contesting for the post of Mukhiya, Gram Panchayat, Sangi in the district of Madhubani.

The impugned order passed by the State Election Commission reflects that the petitioner was charged with possessing counterfeit currency and which charge was upheld by the Criminal Court at Nepal leading to imprisonment. While it is the case of the petitioner that the convicted person Ms. Kiran Devi Maharaj is not the petitioner rather some other person, it is the stand of the complainant that both person are one and same. The charge was contested before the Commission and has been upheld however, the State Election Commission taking note of the circumstance that the sentence of the criminal court did not result in imprisonment of more than six months did not order to disqualify the petitioner to continue as a Mukhiya but nonetheless for the charge of suppression of conviction part in the nomination form as mandated under section 125A (i) and (iii) of Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act'), the Commission directed for institution of Criminal Case.

According to the Commission, since the petitioner Ms. Kiran Devi Maharaj is a convicted person hence she should have disclosed this fact in her nomination paper even if it did



disqualify her from contesting. The Commission thus while not disturbing the petitioner from continuing as a Mukhiya, has directed the District Magistrate -cum- District Election Officer (Panchayat), Madhubani to institute a criminal case against the petitioner for suppression of material fact under section 125A (i) and (iii) of 'the Act' and under the relevant provisions of the Indian Penal Code. It is fairly submitted by Mr. Roy that the order has taken its effect and the F.I.R. has been instituted giving rise to Phulparas P.S. Case No.242 of 2013 dated 16.10.2013 registered for offences punishable under sections 419, 420, 467, 468 and 471 of the Indian Penal Code and section 125A (i) and (iii) of 'the Act' and in which charge-sheet has also been submitted.

Now whether the person convicted by the criminal court at Nepal namely Ms. Kiran Devi Maharaj is the same person as the petitioner or not, is an issue of fact which would be best left for deliberation by the criminal court in the criminal case so instituted against the petitioner and since the charge-sheet has been submitted hence this Court would refrain to offer any comment thereon. The petitioner would be at liberty to raise all issues as she endeavors to raise herein to contest the charge.

That the order impugned passed by the State Election Commission has taken its effect, no further orders needs to be passed in the present proceedings, save and except, that the parties herein would be at liberty to canvas their respective case before the Criminal Court arising from Phulparas P.S. Case No.242 of 2013 and the Court concerned shall proceed to dispose of the matter on its own merits without being prejudiced by the observations made by the Commission in Election Case No.3 of 2013.

The writ petition is disposed of accordingly.

(Jyoti Saran, J)

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