

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No. 17586 of 2016**

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Malti Devi, Wife of Ashok Gupta, Resident of Village-Nayagaon, P.O. Nayaganj, P.S. Desri, District-Vaishali at Hajipur, Presently Mukhiya of Gram Panchayat Raj, Nayagaon West, Block-Sahdei Bujurg, District-Vaishali at Hajipur.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The District Magistrate Vaishali at Hajipur, District-Vaishali at Hajipur
3. The Sub-Divisional Officer, Mahnar, District-Vaishali at Hajipur.
4. The Deputy Election Officer (Panchayat)-Cum-District Panchayat Raj Officer, Vaishali at Hajipur, District-Vaishali at Hajipur. (deleted vide order dated 17.02.2017)
5. The State Election Commission (Panchayat), Sone Bhawan, Bir Chand Patel, Bihar, Patna through the State Election Commissioner. (deleted vide order dated 17.02.2017)
6. The State Election Commissioner, the State Election Commission (Panchayat), Sone Bhawan, Bir Chand Patel, Bihar, Patna. (deleted vide order dated 17.02.2017)
7. The Secretary, the State Election Commission (Panchayat), Sone Bhawan, Bir Chand Patel, Bihar, Patna. (deleted vide order dated 17.02.2017)
8. The Deputy Secretary, the State Election Commission, (Panchayat), Sone Bhawan, Bir Chand Patel, Bihar, Patna. (deleted vide order dated 17.02.2017)
9. Rita Devi Wife of Sunil Kumar Mahto, Resident of Village-Nayagaon, P.O. Nayaganj, P.S. Desri, District-Vaishali at Hajipur.

.... .... Respondent/s

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**Appearance :**

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| For the Petitioner/s           | : | Mr. S. B. K. Mangalam, Advocate       |
| For the Respondents No. 1 to 3 | : | Mr. Patanjali Rishi, A.C. to A.A.G. 6 |
| For the Respondent No. 9       | : | Mr. S. K. Thakur, Advocate            |

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**  
**ORAL JUDGMENT**

**Date: 21-06-2017**

Heard learned counsel for the petitioner, State and  
respondent no. 9 (Rita Devi).

2. The petitioner has approached the Court for the  
following reliefs:

*(I) For issuance of an appropriate writ in  
the nature of CERTIORARI for quashing the letter  
no. 6348 dated 29.08.2016 whereby and where under*



*the State Election Commission had directed the Respondent no. 2 to hold an enquiry about the complaint made by the Respondent no. 9 and submit a report to the Commission on the ground that if pursuant to the judgment of the Hon'ble Supreme Court in Kumari Madhuri Patil Case since reported in SCC-(1994)6-241, the State Government had already constituted a case scrutiny Committee to resolve all dispute and challenges made against a case certificate of a Extremely Backward Class and other Backward Class, the State Election Commission can vest such jurisdiction in the District Magistrate.*

*(II) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the order dated 03.10.2016 passed by the Respondent no. 2 and issued under Memo no. 2598 dated 03.10.2016, whereby and where under the Respondent no. 2 has been pleased to cancel the caste certificate of the petitioner of Extremely Backward Class on the ground that if such power has been conferred upon Caste Scrutiny Committee constituted by the State Government, the respondent no. 2 has no jurisdiction to hold an enquiry and cancel the caste certificate of the petitioner.*

*(III) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”*

3. The basic issue involved is that the petitioner was elected as Mukhiya of Gram Panchayat Raj, Nayagaon West, which was reserved for Extremely Backward Caste Female on the basis of declaring her caste as ‘Sinduriya Baniya’. Later on a controversy arose on a complaint filed by the respondent no. 9 before the State Election Commission that the petitioner belonged to the caste ‘Umar Vaishya’ which was an unreserved category whereas the petitioner on



the basis of her caste certificate of '*Sinduriya Baniya*' had won the election on a post reserved for Extremely Backward Caste Female. The State Election Commission upon the said complaint directed for enquiry by the respondent no. 2, who in turn, after hearing the parties has cancelled the caste certificate issued in favour of the petitioner showing her to be '*Sinduriya Baniya*'. The petitioner has challenged the same in the present writ application.

4. Counter affidavit has been filed on behalf of respondent no. 9 and the matter has been contested.

5. Learned counsel for the petitioner submitted that though at the time of hearing before the respondent no. 2, materials were produced but further materials in support of the claim of the petitioner that she belonged to '*Sinduriya Baniya*' could be procured by the petitioner only later on and thus, were not considered but the same can show that the petitioner has not played any fraud. It was submitted that the report takes note of the caste certificate issued to the full brother of the petitioner of Backward Class cannot be held against the petitioner as it is for him to justify how he got such certificate and further him having got employment of such certificate, he cannot be expected to assist or cooperate with the petitioner by providing documents to substantiate her claim that she belonged to '*Sinduriya Baniya*' caste.



6. Learned counsel for the respondent no. 9 submitted that in any view of the matter, the decision to cancel the caste certificate of petitioner by the respondent no. 2 is based on cogent reason and when such view was possible, the interference by this Court is not required and further such disputed questions of fact can only be adjudicated by the Civil Court of competent jurisdiction.

7. At this stage, learned counsel for the petitioner drew the attention of the Court to an order passed by a Division Bench of this Court in **L.P.A. No. 703 of 2017** in the case of **Shri Devi vs. The State of Bihar and another** dated 08.05.2017, in which the Court has observed that though the decision of the writ Court refusing to interfere in the matter being based on a finding of fact recorded in an enquiry conducted needed no interference, but there was an observation that the petitioner was free to move before the Caste Scrutiny Committee which has been constituted in terms of the order of the Hon'ble Supreme Court in the case of **Kumari Madhuri Patil vs. The Additional Commissioner Tribal Development and others** reported as **(1994) 6 SCC 241**. He further referred to the observation of the Division Bench where it was indicated that in case a favourable decision is taken by the Caste Scrutiny Committee, the petitioner shall have liberty to approach the State Election Commission for reconsideration. He prays that the case be disposed off in the



aforementioned terms.

8. Responding to the submissions of learned counsel for the petitioner, learned counsel for the State as well as respondent no. 9 agree to such proposition.

9. In view thereof, the writ petition stands disposed off with liberty to the petitioner to approach the aforesaid Caste Scrutiny Committee with regard to getting a declaration relating to the caste of the petitioner. It goes without saying that in case a favourable decision is taken by the Caste Scrutiny Committee, the petitioner shall be at liberty to approach the State Election Commission for reconsideration, if so required.

10. The ad interim stay granted on 17.02.2017 stands vacated.

11. It goes without saying that the respondent no. 9 shall also be heard by the Caste Scrutiny Committee in the matter, if she so desires. The Court would also observe that the Caste Scrutiny Committee shall expeditiously hear the matter and decide the issue, preferably within four weeks.

**(Ahsanuddin Amanullah, J.)**

P. Kumar

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