

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12879 of 2016

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Shri Devi, wife of Sri Sunil Prasad, Resident of Village and P.O. Telhara, P.S. Telhara, District- Nalanda at Biharsharif, presently Mukhiya of Gram Panchayat Raj, Keshopur, Block- Ekangarsarai, District- Nalanda at Biharsharif.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The District Magistrate, Nalanda at Biharsharif, District- Nalanda at Biharsharif.
4. The Block Development Officer, Ekangarsarai, District- Nalanda at Biharsharif.
5. Parmanu, son of Kapildeo Prasad, Resident of Village- Tandper, Telhara, P.O Telhara, P.S. Telhara, District- Nalanda at Biharsharif.
6. The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
7. The State Election Commissioner, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
8. The Secretary, the State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
9. The District Magistrate, Gaya.
10. The Senior Superintendent of Police, Gaya, Distt.- Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S. B. K. Mangalam, Advocate Mr. Ravi Ranjan, Advocate
For the State	:	Mr. Mrigendra Kumar, AC to GA-4
For the State Election Commission	:	Mr. Amit Shrivastava, Advocate Mr. Sanjeev Nikesh, Advocate
For the respondent no. 5	:	Mr. Sanjay Kumar Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 17-03-2017

Heard learned counsel for the petitioner, the State, the
State Election Commission and the respondent no. 5.

The petitioner has challenged the order of the District
Magistrate, Nalanda dated 26.07.2016 by which the caste certificate
issued to the petitioner showing her to belong to Teli caste dated



25.01.2016 has been cancelled.

The petitioner had contested the election for the post of Mukhiya of Gram Panchayat Raj Keshopur in Ekangarsarai Block in the District of Nalanda which was reserved for an Extremely Backward Caste Female candidate. Learned counsel submitted that she having a caste certificate showing her belonging to Extremely Backward Caste i.e., Teli, had contested the election and had also been successful. Subsequently, husband of one of the candidates i.e., respondent no. 5, filed an application before the State Election Commission (Panchayat) raising dispute that the petitioner belonged to Kushwaha caste, which is a Backward Caste and not Extremely Backward Caste and that her election should be set aside. The State Election Commission in turn asked the District Magistrate, Nalanda to submit a report and the District Magistrate, Nalanda by the impugned order has cancelled the caste certificate dated 25.01.2016 in favour of the petitioner on the basis of which she had contested and won the election. The same is impugned in the present writ application.

Learned counsel for the petitioner submitted that, though initially before the District Magistrate, Nalanda she was noticed and she had also appeared, but lastly on 11.07.2016, she had only filed her written defence and thereafter the final order has been passed which is based on the report submitted by the Sub Divisional Officer dated



15.07.2016, which is against the petitioner, but reliance on the same, after the parties had submitted their written defence and without being given notice of such report, the order impugned is fit to be set aside. Learned counsel submitted that even the enquiry which was held was without any notice or participation of the petitioner and, thus, reliance on the same in passing an order against the petitioner is impermissible. Learned counsel submitted that the basic requirement of natural justice has to be fulfilled and in the present case, there has been patent violation of the same as neither the enquiry which was conducted was with notice or hearing to the petitioner nor the impugned order which was passed relying on such enquiry report was after giving a copy of the report to the petitioner to comment or give her defence relating to such enquiry. Learned counsel submitted that even the defence taken before the District Magistrate, Nalanda by the petitioner has not been considered while passing the impugned order cancelling the caste certificate issued to her. Learned counsel submitted that the law is clear that reasons have to be given with regard to any order, especially if it has civil and penal consequences, but in the present case, the same not having been done, the impugned order should be interfered with by this Court. For such proposition, learned counsel relies upon a decision of the Hon'ble Supreme Court in the case of **Kranti Associates (P) Ltd. v. Masood Ahmed Khan**



reported as **(2010) 9 SCC 496** and also the decision in the case of **Mohinder Singh Gill v. Chief Election Commissioner** reported as **(1978) 1 SCC 405**, the relevant being at paragraph no. 8. Learned counsel submitted that even after this Court, by order dated 04.02.2017, having directed the District Magistrate, Gaya and the Senior Superintendent of Police, Gaya, though an enquiry was conducted, but the same is also without notice to the petitioner, as only her brother is said to have been examined and other co-villagers but nowhere was the petitioner either noticed or heard. Learned counsel submitted that even pursuant to such direction by this Court, in the present case, though an exercise has been done of an enquiry, but the same again does not fulfill the basic requirement of the principles of natural justice and is thus, not fit to be relied upon.

Learned counsel for the State submitted that initially the District Magistrate, Nalanda by the impugned order had cancelled the caste certificate issued to the petitioner based on the detailed report of the Sub Divisional Officer, Hilsa, Nalanda dated 15.07.2016, which on facts is detailed and discloses cogent and well founded grounds for inferring that the caste certificate issued to the petitioner was not proper. Learned counsel submitted that even in the present writ application, the petitioner has not controverted the findings of fact contained in the enquiry report dated 15.07.2016 so as to indicate,



before this Court at least, that such findings are incorrect. Learned counsel submitted that in terms of the order of the Court dated 04.02.2017, the second enquiry done by five officials namely, the Sub Divisional Officer, Sadar, Gaya; Block Development Officer, Town, Gaya; Incharge Block Inspector, Town Circle, Gaya; S.H.O. Delha, Gaya as well as S.H.O. Chandauti, Gaya clearly indicates that even the caste certificate issued in favour of the petitioner on 05.07.2016 and subsequently another one on 13.10.2016 were improper as besides the local Mukhiya, who had initially recommended for issuance of such certificate, has stated that he was incorrectly informed by Lakshman Prasad due to which he has made such recommendation, and five other co-villagers, as well as the local Chowkidar, had given statement which indicate that the petitioner was not the daughter of Lakshman Prasad and even the fact that the mother of the petitioner was one of the wives of Lakshman Prasad, has not been corroborated by any of the witnesses. Learned counsel submitted that ample opportunity was granted for Lakshman Prasad to appear before the enquiry team and despite his son namely, Deepak Kumar having been asked to inform his father i.e., Lakshman Prasad, to be present, on three dates, he had not appeared and when the team had gone to his house, it was found locked and no person was available at the site. Learned counsel submitted that the petitioner clearly does not belong



to the Teli caste and just because her husband belonged to said caste, she has initially managed to get the certificate of the caste of her husband, but later on when such illegality became known and complaint made, upon due, proper and detailed enquiry, such certificate has been cancelled and even subsequently, the certificates issued in the District of Gaya were also cancelled by the Circle Officer, Town, Gaya dated 21.12.2016. He further submitted that as far as the issue raised by learned counsel for the petitioner that no notice was given to her even in the second enquiry conducted by the Gaya authorities, the same was pursuant to the order of the Court dated 04.02.2017, which was passed in the presence of learned counsel for the petitioner and thus, she was aware that the enquiry was to be held. He further submitted that admittedly Deepak Kumar, who claims to be the step-brother of the petitioner was informed and if he had not informed his sister, it further shows that there is no relationship between Deepak Kumar and the petitioner.

Learned counsel for the respondent no. 5, who has also filed a counter affidavit, submitted that there is clinching evidence to show that the petitioner is the daughter of Lakhan Mahto and not Lakshman Prasad. Learned counsel has drawn the attention of the Court to a sale deed executed by the mother of the petitioner dated 05.02.2015, in which she has described herself to be the wife of



Lakhan Mahto and the petitioner is also one of the witnesses on the sale deed. Learned counsel has also drawn the attention of the Court to a *fardbeyan* submitted by the petitioner to the S.H.O., Telhara Police Station dated 01.10.2007 in which she had alleged that extortion demand was being made by Subodh Prasad, son of Baldeo Sao for the reason that she did not belong to his caste. Learned counsel submitted that Subodh Prasad is Teli by caste and thus, admittedly the petitioner was not one and that is why she was being threatened by persons belonging to the Teli caste as she was trying to build a house in such locality. Learned counsel has drawn the attention of the Court to a Government of Bihar document that is SECC- 2011 Final List Rural which is a Social Economic Survey done by the State Government, procured by the respondent no. 5 under the Right to Information Act, in which the name of the father of the petitioner is mentioned as Lakhan Mahto. Learned counsel has drawn the attention of the Court to copy of the Aadhar Card, Pan Card and the Affidavit which was submitted regarding her caste in which different dates of birth have been mentioned and further in the Pan Card in place of the name of father, the name of the husband is mentioned. He submitted that this shows the conduct of the petitioner inasmuch as, she has not come with clean hands and has tried to take advantage of the situation by taking a different stand, with regard to



her parentage, her caste as well as her age, before the different authorities, for procuring different certificates. Learned counsel submitted that the petitioner was married to Sunil Prasad, which was an inter-caste marriage of self choice. Learned counsel submitted that since the husband of the petitioner was Teli by caste and had been the Mukhiya under Extremely Backward Caste Category last time, and during the election in which the petitioner participated, the seat was reserved for Extremely Backward Caste Female candidate, the petitioner, with the ulterior motive for contesting such seat, had procured all the certificates which have been found, after due enquiry, to be based on false claim.

Learned counsel for the State Election Commission submitted that the petitioner has not been fair to the Court inasmuch as, when her caste certificate, copy of which has been made Annexure-6 to the writ petition, was cancelled on 08.11.2016, such information should have been brought to the notice of the Court in the present proceeding.

Having considered the rival contentions, in the opinion of the Court, though the order impugned of the District Magistrate, Nalanda dated 26.07.2016 is based on a report dated 15.07.2016, copy of which may not have been given to the petitioner, but for various reasons to be discussed later on, the Court could not like to interfere



in the matter. Firstly, the right to contest an election is a statutory right and once under the statute, a seat is reserved for a particular category/caste, only a person belonging to such category/caste has the right to contest such election. In the present case, the seat was reserved for Extremely Backward Caste Female. Thus, unless the petitioner belongs to such category, she had no right even to contest the election. The law with regard to determination of caste is also settled, where the caste of the person concerned is based upon his or her birth and not on the family to which he or she may have been married. In the present case, the requirement of law for obtaining a caste certificate is that the petitioner has to show that she took birth in a family belonging to Teli caste. The certificate obtained by her based on the caste of her husband, who may be a Teli, is not a definite proof of the petitioner also belonging to the Teli caste. Initially, the form of the petitioner was accepted as she had submitted a certificate obtained from the District of Nalanda which itself was based on the caste certificate issued to her husband, and she was allowed to contest the election and upon being victorious was also given such certificate and is thus holding the post of Mukhiya. However, the law also requires that when a controversy or complaint is made, the issue shall be decided on the basis of determination of the caste of a person as per the parental side. In the present case, initially, there was a report of



the Sub Divisional Officer, Hilsa which is a detailed report based on field enquiry recording the statement of various persons who were examined, which clearly indicates that the petitioner was married in an inter-caste marriage and that she was the daughter of Lakhan Mahto, who belonged to the Kushwaha caste, which is under the Backward Class category. Further, pursuant to the order of this Court dated 04.02.2017, an enquiry having been held by a team of five officers headed by the Sub Divisional Officer, Sadar, Gaya, the statement of various witnesses, including the Mukhiya, having been recorded and the so called brother of the petitioner namely, Deepak Kumar being also examined and thereafter the father of Deepak Kumar i.e., Lakshman Prasad despite being asked to be present in the enquiry, and two dates being fixed and attempts made to interview him, he was not available and in fact had locked up his house and the whole family had moved out. Even the report of the local Mukhiya who had initially recommended for issuance of the caste certificate to the petitioner has stated that only on the basis of what had been told to him by Lakshman Prasad, he had made recommendation but later on, he was made aware that the claim of Lakshman Prasad that he had a first wife i.e., Daha Devi, who is the mother of the petitioner, appears to be suspicious. Further, the witnesses who knew Lakshman Prasad for about 15-20 years have stated that never before they had either



heard about or seen the petitioner or her mother. Moreover, a report has also been submitted by the Sub Divisional Officer, Tekari, Gaya which also states, on the basis of the enquiry made after recording the statement of the villagers, that Lakshman Sao (Prasad) was the son of late Jethan Sao, who had two wives and further that Lakshman Sao (Prasad) had never married twice. Thus, in view of the fact that Deepak Kumar, whom the petitioner claims to be the step-brother had stated that from his mother there were six sisters and two sons and that his mother was not the mother of the petitioner, the evidence that Lakshman Sao (Prasad) had no second wife, the claim of the petitioner cannot be sustained. The reason why the Court is persuaded not to interfere in the matter is primarily on the documentary evidence brought on record on behalf of the respondent no. 5 in his counter affidavit, copy of which was served on learned counsel for the petitioner on 23.02.2017 itself. However, till date, no rejoinder to the same has been filed and thus, the facts stated and the copies of document brought on record, not having been controverted, stand admitted.

Having considered the matter in totality, in view of the overwhelming evidence to show that the petitioner is daughter of Lakhan Mahto and not Lakshman Prasad and Lakhan Mahto belonging to the Kushwaha caste, which comes under the Backward



Caste and the petitioner claiming himself to be Teli, which comes under the Extremely Backward Caste category, this Court is of the opinion that the petitioner has not been fair and clean in her conduct. The other aspect which also goes against the conduct of the petitioner is the fact that once having procured a caste certificate in the District of Nalanda in January, 2016, she again applied for and got a caste certificate on 05.07.2016 in the District of Gaya and after three months thereafter, i.e., on 13.10.2016, again obtained a caste certificate from the District of Gaya, though from a different Block, such repeated attempt of the petitioner to get one caste certificate after the other also indicates that the petitioner does not belong to the caste to which she claims i.e., Teli. The Court having come to a *prima facie* conclusion that there are overwhelmingly admissible records to indicate that the caste of the petitioner is Kushwaha and not Teli, would not interfere in the matter on a purely technical ground which would result in the petitioner continuing on the post of Mukhiya, which was reserved for a female candidate of the Extremely Backward Caste category to which the petitioner does not seem to belong.

For the reasons aforesaid, this Court is not inclined to invoke its extraordinary prerogative writ jurisdiction under Article 226 of the Constitution of India in the present matter.



Accordingly, the writ petition is dismissed.

The stay granted under order dated 04.02.2017 stands vacated.

(Ahsanuddin Amanullah, J.)

P. Kumar

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