

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1589 of 2017

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Musharat Khatoon wife of Md. Hasiruddin, resident of village and P.O.- Biratpur,
P.S.- Sonebarsa, District-Saharsa, presently Mukhiya of Gram Panchayat Raj,
Biratpur, Block-Sonebarsa, District-Saharsa.

.... Petitioner/s

Versus

1. The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel
Path, Patna through the State Election Commissioner.
2. The State Election Commissioner, the State Election Commission (Panchayat),
Sone Bhawan, Birchand Patel Path, Patna
3. The secretary, the State Election Commission (Panchayat), Sone
Bhawan, Birchand Patel, Path, Patna
4. The District Magistrate-Cum-District Election Officer (Panchayat), Saharsa,
District-Saharsa.
5. The Sub-Divisional Officer, Sadar Saharsa, District-Saharsa,
6. The Executive Magistrate, Sadar Saharsa, District-Saharsa.
7. The Circle Officer, Sonebarsa, District-Saharsa.
8. The District Magistrate-Cum-District Election Officer (Panchayat), Khagaria,
District-Khagaria.
9. The Circle Officer, Alauli Block, District-Khagaria.
10. Shambhu Singh, son of Late Suresh Prasad Singh, resident of village and P.O.-
Biratpur, P.S. -Sonebarsa, District-Saharsa.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.B.K.Manglam, Advocate
: Mr. Ravi Ranjan, Advocate
: Mr. Bhagwati Prasad, Advocate

For Respondent nos. 1 to 3 : Mr. Amit Srivastava, Advocate
: Mr. Girish Pandey, Advocate



For respondent no.10 : Mr. Ram Kumar Singh, A.O.R.-0154

For the State : Mr. Dharendra Kumar, A.C. to A.A.G.-6

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 30-11-2017

Heard learned counsel for the parties.

2. The petitioner has preferred the present writ petition for quashing of the complaint filed by the respondent no.10 before the State Election Commissioner on the ground that the petitioner had contested election for the post of Mukhiya of Gram Panchayat Raj, Biratpur, Sonebarsa Block, District- Saharsa on the basis of fraudulently obtained caste certificate.

3. Mr. S.B.K.Manglam, learned counsel for the petitioner submitted that the petitioner is the elected Mukhiya of Gram Panchayat Raj, Biratpur in Sonebarsa Block in the district of Saharsa. After election the respondent no.10 has filed election petition, vide Election Petition No.01 of 2016, under Section 137 of the Bihar Panchayat Raj Act, 2006 (for short 'the Act') on 04.06.2016. Subsequent to filing of the election petition, the petitioner has filed a complaint before the State Election Commissioner for disqualification of the petitioner under Section 136 of the Act on the ground of being elected on the basis of a caste certificate obtained by playing fraud



upon the authority, which is impermissible in law. He submitted that it is for the party to decide as to which forum he or she shall approach as both are available. If an election petition has already been filed before the Munsif under Section 137 of the Act, it would not be open for the person to approach the State Election Commissioner for second alternative forum for the same relief. He submitted that there is no dispute to the fact that the election petition was filed prior in time and, thus, the complaint made before the State Election Commissioner is not maintainable.

4. Per contra, Mr. Amit Srivastava, learned counsel appearing for the respondent State Election Commissioner submitted that there is no legal bar for seeking disqualification under Section 136 of the Act of an elected member on some other ground after filing an election petition under Section 137 of the Act challenging the election of a candidate. He submitted that in the present case the ground on which the election petition has been filed is that the name of the petitioner does not find place in the electoral list whereas the complaint on which his disqualification has been sought is on the ground that he got elected on a reserved seat for Extremely Backward Caste on the basis of fraudulently obtained caste certificate. He submitted that even otherwise the Election Commissioner would have entertained the complaint, as the issue of getting elected on the basis



of illegally obtained caste certificate, has not only been raised by the respondent no.10 Shambhu Singh but also a similar complaint has been made by one Manoj Kumar Yadav, who was not a party in the election petition. He submitted that there was no illegality in initiating an enquiry on the basis of complaint made either by respondent no.10 or by aforesaid Manoj Kumar Yadav.

5. I have heard learned counsel for the parties and perused the record.

6. The undisputed facts of the case are that the post of Mukhiya of Gram Panchayat Raj, Biratpur, under Sonebarsa Block in the district of Saharsa was reserved for Extremely Backward Class. The petitioner had obtained a caste certificate from the Circle Officer, Sonebarsa of Extremely Backward Class (Bhathiyara Musalman), vide certificate dated 02.03.2016 and, on the basis thereof, she filed her nomination to contest for the post of Mukhiya of Gram Panchayat Raj, Biratpur. There was no challenge of caste status of the petitioner prior to scrutiny of nomination paper and the same was accepted by the Returning Officer and her name was published in the list of validly nominated candidates for the post of Mukhiya of the Gram Panchayat Raj, Biratpur. After counting of votes, she was declared elected as Mukhiya of Gram Panchayat and certificate was issued in her favour accordingly. After the petitioner was declared elected by



the Returning Officer, the respondent no.10 along with one Unita Devi, who contested election against the petitioner filed an election petition in the Court of Munsif, Saharsa challenging the election of the petitioner on the ground that even though she was not a voter in the Gram Panchayat, she has contested and won election in violation of statutory provisions prescribed under Section 135 of the Act. The said election petition is pending for adjudication before the learned Munsif, Saharsa. Subsequent to filing of the election petition, two complaints, one by the respondent no.10 and the other by one Manoj Kumar Yadav, were filed before the State Election Commissioner alleging therein that the petitioner has contested the said election for the post of Mukhiya on the basis of fraudulently obtained Extremely Backward Class certificate though she does not belong from Extremely Backward Class. It has been stated in the complaint filed by respondent no.10 that the Khatian existing in the name of petitioner's grand father shows that he was 'Eraky' (Raky) by caste, which comes under Anneuxe-II of the list of Backward Classes. Therefore, she was disqualified to contest the election and, her election, be set aside.

7. In view of nature of dispute raised in the present writ petition, it would be relevant to extract herein the provisions of Sections 135, 136 and 137 of the Act, which read 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 Schedule 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 behavior 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 a Member of Panchayat at any level including Mukhiya of Gram Panchayat, Pramukh of Panchayat Samiti or Adhyaksh of Zila Parishad or Sarpanch of Gram Katchahry or Punch of Gram Katchahry 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.



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) **“Parties to the petition—A petitioner shall join as a respondent to his petition—**

- (a) Where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidates has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and
- (b) any other candidate against whom allegations of any corrupt practice are made in the petition.

8. From a reading of Section 135 of the Act it would appear that every person whose name is in the list of voters of any Panchayat constituency would be qualified to be elected as a member or office bearer of the Panchayat unless he or she is disqualified under the Act. Section 136(1) of the Act prescribes different clauses under which a person shall be disqualified for election or after election for holding the post of Mukhiya, member of the Gram Panchayat, Sarpanch,



Panch of the Gram Katchahry, member of the Panchayat Samiti and member of Zila Parishad. In Section 136(2) of the Act, as it originally existed, there was no specific provision for the State Election Commissioner to enter into the question of disqualification under Section 135 of the Act. However, the said provision was specifically introduced by the Amendment Act of 2009. The intent of the legislature would thus be evident that in case of disqualification before the election or incurred after the election, if any question arises, which by its nature would be a disqualification inhering in a candidate as mentioned in Section 136(1) of the Act, if brought to the notice of the State Election Commission would be considered by the State Election Commissioner. Section 137 of the Act specifically provides that the election of any office of a Panchayat or of Gram Katchahry shall not be called in question except by an election petition as prescribed.

9. It would be evident from the aforesaid provisions of the Act that an election petition can be filed only by a limited number of persons, i.e., who is voter in such constituency. However, the same does not hold true with respect to question of disqualification to be considered and decided by the State Election Commissioner under Section 136(2) of the Act wherein it is clearly provided that not only such matter of disqualification can be brought to the notice of the



State Election Commissioner or information by any person or authority but the Commission may take suo motu cognizance of disqualification. Thus, scope to challenge under Section 136 of Act is much wider than Section 137 of the Act.

10. In view of such legal proposition, I do not find any merit in the challenge made by the petitioner in the present case. The provisions prescribed under Sections 136 and 137 of the Act are separate and distinct and are not dependant on each other.

11. As noticed hereinabove, the challenge in the election petition is limited to the extent that the petitioner being not a voter of particular Panchayat was not entitled to contest the election whereas the challenge in the complaint made before the State Election Commissioner is with respect to getting elected on the basis of a caste certificate obtained by playing fraud upon the authority.

12. There is statutory provision which prohibits filing of a complaint for disqualification before the State Election Commission after filing of an election petition.

13. Moreover, in the present case, the State Election Commissioner has proceeded on the basis of complaint made by the respondent no.10 as well as complaint made by one Manoj Kumar Yadav, who is not even a party in the election petition.

14. In view of the discussions made above, I see no merit in



the present writ petition. It is dismissed accordingly.

15. The interim order dated 2nd August, 2017 stands vacated.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
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