

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17340 of 2017

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Karuna Kumari, wife of Sri Amit Kumar and daughter of Sri Ram Dahin Prasad,
Resident of Village- Sriram Bigha, P.O. P.S. and Block- Gurua, District- Gaya.

.... Petitioner

Versus

1. The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna through the State the Election Commissioner.
2. The State Election Commissioner, State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
3. The Secretary, State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
4. The Joint Election Commissioner, State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
5. The District Magistrate-cum-District Election Officer (Panchayat), Gaya, District- Gaya.
6. The Circle Officer, Gurua, District- Gaya.
7. The Circle Officer, Wazirganj, District- Gaya.
8. Sri Umesh Prasad, son of Late Ram Chandra Prasad, Resident of Village, P.O. and P.S. Banke Bazar, District- Gaya.
9. Smt. Laxmi Devi, Wife of Sri Mahendra Kumar, Daughter of Late Manki Sao, Resident of Village- Bumer, P.O. Jaigir Barachatti, P.S. and Block Barachatti, District- Gaya.

.... Respondents

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Appearance:

For the Petitioner : Mr. S.B.K. Manglam, Adv.
For the Election Commission : Mr. Amit Shrivastava, Adv.
Mr. Girish Pandey, Adv.
For the State : Mr. Ajay, G.A.-5
Mr. Pratik Kr. Sinha, A.C. to G.A.-5

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 28-11-2017

Heard learned counsel for the petitioner, learned



counsel for the State and learned counsel for the State Election Commission.

2. In this case, the petitioner is challenging the letter no.4393 dated 16.11.2017, whereby and where-under direction has been given to hold the election of Chairman of Zila Parishad, Gaya on 29.11.2017 as the post has been declared vacant on account of the order passed by the State Election Commission in case no.36 of 2017 in between Umesh Prasad and Laxmi Devi vs. Karuna Kumari, who is the present petitioner, wherein the present petitioner has been declared member of '*koery*' caste, declared her election of Zila Parishad, Gaya, is illegal.

3. In the present case, the petitioner is challenging the action of authority to hold the election of Chairman of Zila Parishad, Gaya, on the ground that she belongs to the '*Dangi*' caste as her father was issued the caste certificate on 16.06.2017 by the Circle Officer, Wazirganj, where the father of the petitioner has been declared as '*Dangi*' caste (Annexure-13) and after that the petitioner had applied for the caste certificate, which was issued on 22.07.2017 (Annexure-14).

4. The petitioner is an elected member of the Zila



Parishad, Gaya, and later on, was elected as Chairman of the Zila Parishad, Gaya, but a complaint was made by one Dr. Umesh Prasad and Laxmi Devi and on that basis a proceeding under Section 136(2) of the Bihar Panchayat Act, 2006 was initiated to declare the petitioner to have wrongly been elected on the strength of '*Dangi*' caste. The notice was issued to the petitioner, who participated in the proceeding and ultimately, the State Election Commission has arrived to a finding that she does not belong to '*Dangi*' caste but she belongs to '*Koeri*' caste and that order is under challenge in C.W.J.C. No.14976 of 2017. An Interlocutory Application No.8372 of 2017, by way of amendment, has been filed, whereby the notification dated 16.11.2017 (Annexure-22) for holding fresh election has been challenged. The counsel for the petitioner submits that he has filed this writ petition on the basis of observation made in C.W.J.C. No.14976 of 2017.

5. The basic issue with regard to the status of the petitioner is pending before this Court in the aforesaid writ petition. The action for holding election is a subsequent and consequential action in pursuance of the order dated 10.10.2017 (Annexure-21) passed by the State Election Commission, which is under challenge in this case. The letter dated 16.11.2017 has been issued as because post of Chairman has been declared vacant, the present action is the



outcome of the order of the Election Commission, which is subject matter of consideration in the aforesaid writ petition. If this Court passes any order staying the operation of letter dated 16.11.2017, it amounts to staying the order passed by the State Election Commission, who has declared her caste '*koery*' not '*dangi*', in subsequent collateral proceeding passing interim order staying the operation of order of the State Election Commission will be impermissible interference in the election process. When the petitioner has already been declared not belonging to '*Dangi*' caste, if this Court stays the operation of the letter, it amounts to staying the order passed by the State Election Commission, it will be an abuse of process of judicial review, crossing boundary of the *laxman rekha*.

6. Learned counsel for the petitioner submits that the competent authority has issued the caste certificate, which was cancelled, challenged before this Court and this Court intervened and relegated the matter for giving hearing to the petitioner and take decision in accordance with law. The learned counsel for the petitioner submits that, as stated above, after issuance of the letter dated 16.11.2017 the petitioner filed an Interlocutory Application no.8372 of 2017, challenged the impugned letter.



7. It is very much clear that if this Court straightway quashed the letter dated 16.11.2017, it amounts to staying the order of the State Election Commission and unnecessary interference in the election process as in that writ application the issue of caste of petitioner belonging to the '*Koeri*' caste not '*Dangi*' caste is under adjudication. The present impugned letter is result of the order of the State Election Commission. In such view of the matter, unless the order of the State Election Commission is set aside, this Court cannot tinker in any way the subsequent action that has been taken for the purposes of election of the Chairman of the Zila Parishad, Gaya.

8. In such view of the matter, this Court does not find any merit in this writ application. Accordingly, this writ application is dismissed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	30.11.2017
Transmission Date	N/A

