

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9788 of 2017

=====

Arvind Kumar Mandal, S/o Late Ambika Prasad Mandal, Resident of Village-Baniachak, P.S. Gardhawar, District-Banka.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, State of Bihar, Patna.
2. Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. Joint Secretary, General Administration Department, Government of Bihar, Patna.
4. State Election Commissioner, State Election Commission, Bihar, Patna.
5. Deputy Secretary, State Election Commission, Bihar, Patna.
6. District Magistrate-cum-Collector, Bhagalpur.
7. District Magistrate cum District Election Officer (Panchayat), Banka.
8. Sub Divisional Officer Cum Election Officer (Panchayat), Banka
9. Block Development Officer cum Block Election Officer, Barahat, Banka.
10. Circle Officer, Jagdishpur, Bhagalpur.
11. Circle Officer, Barahat, Banka.
12. Circle Officer, Rajoun, Banka.
13. Onkar Prasad Rai, S/o Jyotish Prasad Rai, Resident of Village-Makhna, P.S. Jagdishpur, District Bhagalpur at Present residing at Vijayhat, P.S. Barahat, District Banka and at Present Elected Mukhiya of Gardhawar Panchayat Within Barahat Circle, District Banka.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Pankaj Kumar Sinha, Advocate
Mr. Rajiv Kumar Singh, Advocate
For the State : Mr. S. Parasmani, AC to GP-7
For State Election Commission: Mr. Amit Shrivastava, Advocate
Mr. Girish Pandey, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 03-01-2018



Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the State Election Commission.

2. In the present writ petition, the petitioner has made the following prayers :-

“(i) Issuance of an appropriate writ including a writ in the nature of writ of certiorari quashing Gyapank 2032 Patna dated 29.04.2017 passed in Case No. 42 of 2016 (Annexure-11) by the State Election Commissioner, State Election Commission, Patna and also quashing the order dated 03.09.2016 (Annexure-09) passed by the District Magistrate cum District Returning Officer (Panchayat) Banka.

(ii) Issuance of an appropriate writ including a writ in the nature of writ of mandamus commanding the respondents to remove respondent no. 13 from the post of Mukhiya, Gardhawar Panchayat, Barahat Block, Banka immediately because he was elected on the post of Mukhiya on the basis of forged caste certificate while he belongs to the caste of ‘Kurmi’.

(iii) Issuance of any other appropriate writ(s), order(s), direction(s) as may be deemed fit and proper in the facts and circumstances of the case.”

3. The petitioner and respondent no. 13 were rival



candidates for the post of post of Mukhiya, Gardhawar Panchayat, Barahat Block, Banka, which was reserved for Extremely Backward Caste. The nomination paper of the respondent no. 13 was accepted after scrutiny by the Election Officer without any objection. Respondent no. 13 Onkar Prasad Rai got elected in the said election whereafter the petitioner filed a complaint before the District Magistrate-cum-Returning Officer, Banka making allegation that though respondent no. 13 is Kurmi by caste, which belongs to Backward Caste, he contested the election claiming himself to be Dhanuk by caste. The petitioner also filed a complaint before the State Election Commission in this regard in which he had also alleged that while filing nomination paper, the respondent no. 13 had suppressed facts about pendency of criminal case against him. The State Election Commission called for an enquiry report from the District Magistrate, Banka on the complaint made by the petitioner. Thereafter, the District Magistrate, Banka issued notice to the parties and after affording an opportunity of hearing to the petitioner and respondent no. 13 as also concerned officials of the district, he submitted his report dated 03.09.2016 to the State Election Commission stating therein that from the documents produced by the respondent no. 13, it would be manifest that he is Dhanuk by caste and there is no merit in the complaint made by the petitioner against



respondent no. 13 in respect of his caste. Having received the report dated 03.09.2016 submitted by the District Magistrate, after hearing the parties, the State Election Commission vide its order dated 27.04.2017 held that election of respondent no. 13 as Mukhiya claiming himself to be Dhanuk by caste is legal and valid and there is no ground to cancel his election in exercise of powers conferred under Section 135 and 136(2) of the Bihar Panchayat Raj Act, 2006 (for short 'the Act').

4. As the petitioner had also alleged in his complaint that the respondent no. 13 had suppressed relevant information regarding pendency of criminal case against him while filing his affidavit at the time of submitting nomination paper, the State Election Commission gave a direction to the District Magistrate, Banka to make inquiry into the matter and if the allegation is found true to institute criminal complaint against the respondent no. 13 under the provisions of Section 125 A (1) and (3) of the Act.

5. Learned counsel for the petitioner submitted that the impugned order passed by the State Election Commission is bad in law. He submitted that the respondent no. 13 is Kurmi by caste, which caste comes under the backward category, but he contested the election for the post of Mukhiya on a seat reserved for extremely backward class wrongly claiming himself to be Dhanuk by caste. He



submitted that in support of his claim, the petitioner had furnished Khatiyan before the District Magistrate, which was wrongly appreciated by him and the District Magistrate gave an erroneous finding in favour of respondent no. 13.

6. On the other hand, learned counsel appearing from the State and the State Election Commission submitted that in course of inquiry conducted by the District Magistrate, the respondent no. 13 had produced unimpeachable documents in support of his claim that he is Dhanuk by caste. He submitted that in view of the documents brought on record by respondent no. 13 authenticity of which were duly supported by the State officials, who participated in the inquiry, the District Magistrate has rightly come to the conclusion that there was no truth in the allegation made by the petitioner that respondent no. 13 is Kurmi by caste. He also submitted that in case, the petitioner is aggrieved by the election of respondent no. 13 as Mukhiya on the ground that the respondent no. 13 is guilty of misrepresentation of facts at the time of filing his nomination, it was open to the petitioner to seek cancellation of his election by filing an election petition under Section 137 of the Act, but he did not choose to do so. He submitted that in such circumstance, the State Election Commission has rightly directed the District Magistrate to inquire into the allegation of misrepresentation of facts and, if it is found



true, to lodge a criminal complaint in accordance with law.

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

8. It would be manifest from the inquiry report submitted by the District Magistrate, Banka that in support of his claim, the respondent no. 13 had produced Khatian of 1905, which goes to suggest that his predecessors were Dhanuk by caste. He also produced the inquiry report submitted by the Halka Karmchari and Circle Inspector on the basis of Khatian, which corroborates that respondent no. 13 is Dhanuk by caste. In matriculation certificate produced by respondent no. 13 also, his caste is mentioned as Dhanuk. In other certificates issued in the name of predecessors of respondent no. 13 and his family members also, their caste name is mentioned as Dhanuk.

9. In view of such unimpeachable documents, if the District Magistrate opined that respondent no. 13 is Dhanuk by caste, no fault can be found with the inquiry report on the basis of which, the State Election Commission came to a finding that respondent no. 13 is Dhanuk by caste and rejected the complaint of the petitioner in this regard.

10. I also find substance in the submissions made by the learned counsel for the State Election Commission that if the



petitioner was aggrieved on account of misrepresentation of facts at the time of filing nomination paper by respondent no. 13, he ought to have raised objection before the Election Officer at the time of scrutiny of the nomination paper or filed an election petition before the Munsif under Section 137 of the Act for cancellation of election of respondent no. 13. As no such step was taken by the petitioner, no illegality can be found with the order passed by the State Election Commission whereby he has directed the District Magistrate to verify the allegation made by petitioner in respect of information regarding pendency of criminal case against respondent no. 13 and, if found true, lodge complaint against him under sub-sections (1) and (3) of Section 125-A of the Act.

11. Accordingly, the writ petition, being devoid of any merit, is dismissed.

12. There shall be no order as to costs.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.01.2018
Transmission Date	NA

