

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15698 of 2016

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Rina Devi, Wife of Sri Ramji Singh, Resident of Village and P.O. Teri, PS
Mehandia District Arwal, Presently Mukhiya of Gram Panchayat Raj, Teri, Block -
Kaler District Arwal.

.... Petitioner

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 Deputy Secretary, the State Election Commission(Panchayat), Sone Bhawan, Birchand Patel Path, Patna
5. Ram Ayodhya Singh Son of Sri Shyam Jeevan Singh Resident of Village and P.O. Teri, PS. Mehandia, District Arwal.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. S. B. K. Mangalam, Advocate
Mr. Ravi Ranjan, Advocate
For respondent nos. 1 to 4: Mr. Amit Shrivastava, Advocate
Mr. Girish Pandey, Advocate
For respondent no. 5 : Mr. Abhay Kumar , Advocate
Mr. R. C. Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 10-05-2018

Heard Mr. S. B. K. Mangalam, learned counsel for the
petitioner, Mr. Amit Shrivastava, learned counsel for the State



Election Commission and Mr. Abhay Kumar, learned counsel for respondent no. 5.

2. Though several prayers have been made in the present application, learned counsel for the petitioner submitted that the petitioner would confine his prayer so far as challenge to the order dated 05.12.2016 passed by respondent no. 2 vide Memo No.7252 dated 05.12.2016 is concerned whereby and whereunder respondent no. 2 has declared the petitioner disqualified to hold her elected post of Mukhiya on the ground that on the date she had filed her nomination paper, her resignation from the post of Anganwari Sevika was not accepted by the competent authority.

3. The admitted facts of the case, in brief, are that the petitioner was appointed as Anganwari Sevika and was working as such since before filing of her nomination to contest the election for the post of Mukhiya of Gram Panchayat Raj, Teri on 10.03.2016. She had tendered her resignation from the post on 08.03.2016 i.e. two days before filing of her nomination. After she was declared elected by the Returning Officer, respondent no. 5 filed a petition before the State Election Commission (for short 'Commission') on 31.05.2016 to declare her disqualified to hold the post on the ground that she had contested the election while working as Anganwari Sevika. The complaint filed by the respondent no. 5 was treated as a



complaint under Section 136(2) of the Bihar Panchayat Raj Act, 2006 and vide letter no. 4969 dated 01.06.2016, the District Magistrate-cum-District Election Officer (Panchayat), Arwal was directed to hold an inquiry and submit a report in this regard to the Commission. Thereafter, the District Magistrate got an enquiry conducted by the District Programme Officer, Arwal and the Returning Officer-cum-Block Development Officer and pursuant to the report of the aforesaid officers, the District Magistrate-cum-District Election Officer, Arwal submitted his report to the Commission on 09.07.2016 whereby it was reported that the petitioner contested the election without getting her resignation accepted. On receipt of the report of the District Magistrate, the State Election Commissioner issued notice dated 25.07.2016 to the petitioner whereby he was directed to appear before him on 12.08.2016 for the purpose of hearing. On the date and time fixed, the petitioner entered her appearance through a lawyer and a prayer was made to adjourn the case for filing her written statement. Subsequently, a detailed written statement was filed on behalf of the petitioner wherein it was pleaded that the status of Anganwari Sevikas, nature of their service, etc. were the subject matter for consideration before the Supreme Court in the matters of **State of Karnataka vs. Ammerbi [(2007) 11 SCC 681]** and **Anokh Singh**



vs. Punjab State Election Commission [(2011) 11 SCC 181]

wherein it was held that Anganwari Sevikas are free to contest election since they do not hold a civil post.

4. The petitioner had pleaded before the Commission that she was not holding a civil post and was not being paid any salary and whatever was being paid to her was a fixed amount of honorarium and nothing more was admissible.

5. Learned counsel for the petitioner submitted that though a detailed written statement was filed, the impugned order dated 05.12.2016 whereby the petitioner has been declared disqualified to hold her elected post of Mukhiya has been passed solely on the ground that she had filed her nomination papers while working on the post of Anganwari Sevika. He submitted that from perusal of the order impugned, it would be manifest that before passing the impugned order, the State Election Commissioner did not consider the grounds taken by the petitioner in her written statement at all. He submitted that no reason has been assigned by the State Election Commissioner for arriving at the conclusion whereby the petitioner has been disqualified from holding the post of Mukhiya. According to him, the order passed by the State Election Commissioner is not sustainable in the eye of law as it does not comply with the principle of natural justice. In support of his submission, he has also placed



reliance on the decisions of the Supreme Court in **G. Vallikumari vs. Andhra Education Society & Ors. [(2010) 2 SCC 497]** and **Kranti Associates Private Limited & Anr. vs. Masood Ahmed Khan & Ors. [(2010) 9 SCC 496]**.

6. *Per contra*, Mr. Amit Shrivastava, learned counsel for the Commission submitted that the facts of the case of the petitioner are not identical to the facts of the case in **State of Karnataka vs. Ammerbi** (Supra) and **Anokh Singh vs. Punjab State Election Commission** (Supra). The statutory provisions prescribed for disqualification in Karnataka and Punjab are not identical to the statutory provisions prevailing in the State of Bihar. Hence the ratio laid down by the Supreme Court in those decisions would not be applicable in case of the petitioner. He submitted that the case of the petitioner is squarely covered by a Division Bench judgment of this Court in **Champa Devi @ Champa Kumari vs. State of Bihar & Ors. [2007 (4) PLJR 619]**. However, on query, after being confronted with the impugned order, he conceded that the order impugned does not assign any reason for arriving at the conclusion. He admitted that from perusal of the order impugned, it would be evident that no discussion has been made on the points raised in written statement filed by the petitioner.

7. Learned counsel for respondent no. 5, however,



submitted that even if, reasons have not been assigned for arriving at the conclusion, the conclusion arrived at by the State Election Commissioner in holding the petitioner disqualified cannot be assailed for the reason that there is no dispute to the fact that when the election was held, the petitioner was working as Anganwari Sevika.

8. Having heard rival contentions advanced by the parties and perused the record, instead of going into the merits of the case, this Court would like to consider as to whether the respondent no. 2 has assigned any reason while exercising his power under quasi-judicial proceeding.

9. On perusal of the order impugned, I do find that save and except recording that a detailed written statement has been filed by the petitioner, no discussion has been made regarding the objections raised by the petitioner in her written statement. Though, the State Election Commissioner has recorded in his order that the written statement filed by the petitioner is not acceptable, there is no whisper why the grounds taken in the written statement were not acceptable. The orders passed by an authority without giving sufficient details of facts, application law and reasoning are called cryptic orders and such orders create difficulty in further consideration by the Superior Court. In view of possibilities of



further proceedings, it is imperative that any order passed by a quasi-judicial authority must give facts, reasons and decision in speaking terms.

10. The necessity of giving reasons by a body or authority in support of its decision has been considered by the Supreme Court in several cases. In **Kranti Associates Private Limited & Anr. vs. Masood Ahmed Khan & Ors.** (Supra) after taking into consideration earlier decisions, the Court summarized necessity of assigning reasons while exercising judicial, quasi-judicial or administrative power in the following words :-

“Summarizing the above discussion, this Court holds:

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- b. A quasi-judicial authority must record reasons in support of its conclusions.
- c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- e. Reasons reassure that discretion has been



exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision-making



process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain (1994) 19 EHRR 553, EHRR at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405 (CA), wherein the Court referred to [Article 6](#) of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a



vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

11. In **G. Vallikumari vs. Andhra Education Society & Ors.** (Supra), the Supreme Court held that the requirement of recording reasons by every quasi judicial or even an administrative authority entrusted with the task of passing an order adversely affecting an individual and communication thereof to the affected person is one of the recognized facets of the rules of natural justice and violation thereof has the effect of vitiating the order passed by the concerned authority.

12. In view of the above noted judgments of the Supreme Court, since no reason has been assigned by the State Election Commissioner while passing the impugned order, I set aside the impugned dated 05.12.2016 passed by respondent no. 2 and remand the matter to the State Election Commissioner for deciding the matter afresh after affording opportunity of hearing to the parties concerned. Since, more than 17 months have elapsed from the date of passing of the order, the State Election Commissioner shall decide the matter as early as possible, preferably within a period of six weeks from the date of receipt/production of a copy of this order.



13. It is made clear that *lis* between the parties is remanded to the State Election Commissioner for hearing on merits as this Court has not examined the merits of the case.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
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