

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.11960 of 2018**

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Indira Sinha, Wife of Prabhu Lal Mahto, Resident of Village- Saidpur, P.O. Rahimpur, P.S.- Sonepur, Block- Sonepur, District- Saran at Chapra.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Law Secretary, Law Department, Government of Bihar, Patna.
3. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
4. The State Election Commission (Panchayat), Sone Bhawan Birchand Patel Path, Patna through the State Election Commissioner.
5. The State Election Commissioner, the State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
6. The Secretary, the State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
7. The District Magistrate-cum-District Election Officer, Saran at Chapra, District- Saran at Chapra.
8. Sadhu Sah, Son of Late Haribansh Sah, Resident of Village- Gheghtha, P.S. Sonepur, District- Saran at Chapra.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Anita Kumari, Advocate

For the Respondent/s : Mr. Pushkar Narayan Shahi –AAG 6

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date: 28-06-2018**

Challenge in the present writ application is to the provision as contained under section 136(2) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as ‘the Act’) on the grounds *inter alia* that the said provision is an ultra-vires to Article 243(O) of the Constitution of India. It is also submitted that Section 136(2) of the Act is inconsistent with the provisions under Section 137 of the



Act which provides that election to any office of Panchayat or Gram Kutchhari shall not be called in question except by election petition as prescribed. The petitioner also wants a declaration that if on adjudication of the facts stated in the present writ application as also in other writ petitions, the full bench of this Hon'ble Court comes to a conclusion that the State Election Commission has no jurisdiction under section 136(2) of the Act to declare an elected representative disqualified, the order dated 09.08.2016 passed by the State Election Commission in case No. 16 of 2016 which was the subject matter of challenge before this Court in C.W.J.C. No. 12897 of 2016 would be rendered infructuous and the petitioner would be entitled for her reinstatement to her elected post which she was holding when the order dated 09.08.2016 came to be passed by the State Election Commissioner.

The narration of facts in the writ application would show that the earlier vide order dated 09.08.2016 (Annexure P-3), the State Election Commissioner, Bihar in exercise of its power, under section 136(2) of the Act disqualified the petitioner from holding the post of the member of Zila Parisad. Against this order (Annexure – P 3 ) the petitioner moved this court in Civil Writ Jurisdiction Case No. 12897 of 2016. The said writ application was disposed of vide judgment dated 18.04.2017 allowing the petitioner to withdraw the writ application with liberty to the petitioner to approach the Civil Court of



competent jurisdiction for a declaration with regard to her caste being Dangi. The petitioner, thereafter, sought modification of the order dated 18.04.2017 by filling a Misc. Jurisdiction case No. 2027 of 2017. The petitioner informed the Learned Writ Court that even though the petitioner had sought permission to withdraw the writ application with liberty to move before the Civil Court of competent Jurisdiction but in fact, the petitioner has two other options; one of moving before the Caste Scrutiny Committee and the other before the authority which in law is empowered to issue the caste certificate.

The learned Writ Court modified its order by passing another order dated 08.11.2017 (Annexure P-5) by which liberty was granted to the petitioner to move afresh before the authority itself which issues the caste certificate.

It is a matter of record that the petitioner has thereafter, submitted her representation before the Circle Officer, Sonapur. At this stage, State Election Commission has vide Annexure P-7 sent its' proposal to the State Government to hold bye-election in Saran Zila Parishad Territorial Constituency.

In the aforementioned background, in our considered opinion, the petitioner cannot maintain the present writ application. By filing the present writ application the petitioner is only trying to nullify the effect of the order earlier passed by the learned Writ Court which was later on reviewed at the instance of the petitioner. We



agree with the submission of learned counsel representing the respondents that the issue which is now being sought to be raised by the petitioner was required to be raised at the earliest opportunity when the petitioner had challenged the order as contained in Annexure P-3. If the petitioner did not pray for the reliefs on the grounds with regard to vires of the provisions of section 136(2) of the Act and having failed to persuade the learned Writ Court herself chose to withdraw the writ application and opted to seek her remedy before the Circle Officer, Sonapur, she cannot be allowed to move this writ petition on such grounds which were not raised at the earlier opportunity. In our considered opinion principles of ‘*constructive res judicata*’ would come into play against the petitioner. The petitioner, in the garb of this writ petition, is in fact seeking review of the order passed by learned Writ Court in earlier round of proceedings.

This writ application is, thus devoid of merit and is dismissed accordingly.

**(Rajendra Menon, CJ)**

**(Rajeev Ranjan Prasad, J)**

Sanjeev/Mukesh

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