

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11230 of 2018

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Yogendra Kumar @ Yogendra son of Late Hira Prasad, resident of Village-
Dihuri, P.O. Bauri Beldari, P.S. Hulasganj, District Jehanabad.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Panchayati Raj Department, Government of Bihar, Patna.
3. The State Election Commission Panchayat, Sone Bhawan, Bir Chand Patel Path, Patna through the Stat
4. The State Election Commissioner, the State Election Commission Panchayat, Sone Bhawan, Bir Chand Path
5. The Secretary, the State Election Commission Panchayat, Sone Bhawan, Bir Chand Patel Path, Patna.
6. The District Magistrate-cum- District Election Officer Panchayat, Jehanabad, District- Jehanabad.
7. Om Prakash Suman, son of Tulsi Ram, resident of Village- Budhanpur, P.O. Bauri Beldari, P.S. Hulasganj, District- Jehanabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.B.K. Manglam, Advocate Ms. Anita Kumari
For the Commission	:	Mr. Amit Shrivastava, Advocate Mr. Girish Pandey, Advocate
For the State	:	Ms. Deepanjali Gupta, AC to GP-10
For the respondents	:	Mr. Siya Ram Shahi, Advocate Mr. Kuber Pathak, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 02-12-2019

Heard Mr. S.B.K. Manglam, learned counsel for
the petitioner, Mr. Siya Ram Shahi, learned Advocate for
Private Respondent No. 7, Mr. Amit Shrivastava, learned
Advocate for the State Election Commission and Ms.
Deepanjali Gupa (AC to GP-10) for the State.



The sole issue in this writ petition is whether the State Election Commissioner had the authority to pass an order which has been impugned in the present writ petition, with respect to a disputed question of fact regarding the specific caste of the petitioner, by virtue of which, he contested the election and was returned successful.

The short facts which would be necessary for deciding this writ petition is that prior to the elections, which were held in the year 2016, a complaint was lodged by the Private Respondent No. 7 before the Circle Officer, Hulasganj with respect to the falsity of the claim of the petitioner being of "*Pasi*" caste. The Circle Officer gave a report that in the records of the circle, there was no document available to conclusively decide about the caste of the petitioner. Nonetheless, in the past, the petitioner was found to have taken advantage of the concessions doled out by the State for most backward caste category. By taking reference to a directive issued by the State



Government with respect to the modus of deciding such dispute which inter alia suggested that the first preference has to be given to the records available and in the absence of such records, the spot verification about the caste of a particular person is required to be made. Taking this directive to its logical conclusion, the Circle Officer came to the finding that in the absence of any evidence to the contrary and the petitioner having been found to have worked as a domestic servant in the house of one Gopal Sharma and that there was an unregistered deed of gift of the year 1999, he came to the conclusion that the petitioner was of "*Pasi*" caste.

The matter rested there till the elections were held and the petitioner was declared successful.

Post the elections, another complaint by Private Respondent No. 7 was filed before the State Election Commissioner with respect to the same issue, namely, the petitioner having projected himself of a wrong caste for contesting the election.



The State Election Commissioner in his wisdom directed the District Magistrate to inquire and find out about the correctness or otherwise of the claim of the petitioner to be falling in "*Pasi*" caste. *Prima facie*, the District Magistrate in the absence of any report, either for or against the claim of the petitioner, suggested that it would be advisable to have the opinion of the General Administration Department for conclusively determining the caste of the petitioner. The General Administration Department referred the matter to the State Level Cast Scrutiny Committee, which took the evidence in the shape of statements from the persons of the locality and came to the conclusion that it would be more advisable to treat the petitioner as a person of most backward class rather than specifically of "*Pasi*" caste.

This opinion appears to have weighed with the State Election Commissioner in holding that the petitioner stood disqualified and the post for which he was returned successful would be deemed to be vacant.



The order of the State Election Commissioner has been challenged on the sole ground that his opinion is not based on any unimpeachable evidence.

It has been urged that provisions contained in Sections 135 and 136 of the Bihar Panchayati Raj Act, 2006 do not provide any space to the State Election Commissioner to delve into such matters, which is not based on any evidence of unimpeachable character either pre or post election because such issues are to be decided by adducing of evidence by the respective parties in any election petition. The fact that the report of the Circle Officer was not accepted by the State Election Commissioner to be a clincher, the matter should have rested there. However, even when the issue was inquired into and ultimately it was found that there could be some dispute with respect to the correctness of the claim of the petitioner, the opinion of the authorities were not concrete but only tentative.



In that view of the matter, whatever documents have been relied upon by the State Election Commissioner in accepting the claim of private-respondent no. 7, is of a character which could be debated or disputed.

The powers of the State Election Commissioner under the Bihar Panchayat Raj Act, 2006 and relevant provisions of the Constitution of India have been clearly dealt with in the Full Bench decision of this Court in ***Rajani Devi Versus the State Election Commission and others with analogous cases [2019(4) PLJR 673 (FB)]***. It would not be necessary to extract the referral order which led to the formation of the Full Bench. However, it can shortly be stated that the Full Bench categorically resolved the issue of dispute, viz the powers of the State Election Commissioner in deciding such issue, pre or post election, by holding that the State Election Commissioner has the authority to entertain and consider the disqualification issues on the basis of “unimpeachable” materials placed before him.



It was clarified that when a complaint is brought before the Commission through any source, the Commission would be entitled to inquire whether or not it is a purely election dispute and only when it is found that the dispute is not a purely election dispute, the Commissioner shall proceed to consider the same on the basis of "unimpeachable" materials.

The thrust in the answer to the aforesaid poser is on the unimpeachability of the evidence which is claimed by a party and which is disputed by the other.

The order impugned suffers from another vice of the same not disclosing the reasons for accepting the reports of the State Level Caste Scrutiny Committee.

Apart from noting down the submissions of the parties, no opinion / reason has been rendered by the State Election Commissioner for holding the report of the Circle Officer given in the year 2013 to be incorrect and the report of the State Level Caste Scrutiny Committee to



be the correct proposition with respect to the caste of the petitioner.

At this stage, Mr. Amit Shrivastava, learned Advocate for the State Election Commission submitted that the Circle Officer actually relied upon a superseded direction of the government and a fresh circular in that regard had already been issued on 08.03.2011 which has not at all been taken into account.

This also does not improve the case of the petitioner for the reason that for good or bad reasons, the Circle Officer had come to a conclusive opinion which was only doubted by the other authorities.

The certificate issued by the Circle Officer had been challenged by Respondent No. 7 before this Court vide C.W.J.C. No. 10469 of 2016, which was dismissed for non-prosecution.

It has been reiterated by the learned counsel for the petitioner, which in the estimation of this Court is justified, that the materials before the State Election



Commissioner, did not have the character of the “unimpeachable” material and the second report was not conclusive with respect to the incorrectness of the claim of the petitioner. Thus the State Election Commissioner holding this would not have been passed the impugned order.

The order thus appears to be faltering for two reasons, viz (1) that the order is not speaking order in the appropriate sense of the term as this Court is not in a position to understand whether the State Election Commissioner has only endorsed the report of the State Level Caste Scrutiny Committee which is only an opinion with some doubt; and (2) what transpired in the mind of the Commissioner in accepting the tentative report of the State Level Caste Scrutiny Committee and rejecting the conclusive report of the Circle Officer pre elections.

For the aforesaid, the order impugned in the petition cannot be sustained in the eyes of law and the same is set aside.



The matter is remitted to the State Election Commissioner to write out a fresh order after giving opportunity of hearing to the parties and after giving due consideration to the argument whether the office of the State Election Commission would have the authority to entertain such an issue and if the answer is in the positive, the reasons for accepting the report of the Caste Scrutiny Committee which has rendered the projection of the petitioner as a person of "Pasi" caste. The aforesaid order shall be passed within a reasonable period of time, preferably within a period of eight weeks from the date of production/receipt of a copy of this order.

This Court has further been informed that after the order of the State Election Commissioner was passed, the elections were again notified, which is under challenge in this writ petition. In the elections, private-respondent no. 7 has been returned as the successful candidate.

Mr. Mangalam, learned counsel for the petitioner vehemently argued that the result was published post the



Full Bench decision referred to above. Nonetheless, the fact remains that there was no stay on the process of election after the Full Bench decision was delivered.

In that view of the matter, the result of the fresh elections which have been held in which the private-respondent no. 7 has been returned successful would ultimately be subject to the decision by the State Election Commission.

The writ petition stands disposed off accordingly.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
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