

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.566 of 2017

In

Civil Writ Jurisdiction Case No.3265 of 2017

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Rajani Kumari, daughter of Sri Paras Kumar Yadav, Resident of Village-
Maulaganj, Aslemur, Panchayat, P.S.- Konch, Dist.- Gaya.

... .. Appellant

Versus

1. The State Election Commission, Bihar, Patna, through its Secretary, State Election Commission, Bihar, Sone Bhawan, Veerchand Patel Path, Patna.
2. The Election Commissioner, State Election Commission, Bihar Sone Bhawan, Veerchand Patel Path, Patna
3. The District Magistrate cum District Election Officer, Gaya.
4. The Sub-Divisional Officer, Gaya.
5. The Block Development Officer, Cum Returning Officer, Konch Gaya.
6. Chitranjan Kumar Singh, Son of Sri Babu Ram Singh, resident of Village Snghara, P.O.- Budhai, P.S.- Konch, Dist.- Gaya.
7. Archana Devi, Wife of Chitranjan Kumar Singh, resident of Village-Singhara, P.O.- Budhai, P.S.- Konch, Dist.- Gaya.

... .. Respondents

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Appearance :

For the Appellant/s	:	Mr. Y.V. Giri, Senior Advocate Mr. Ashok Kumar, Advocate
For the Election Commission:		Mr. Amit Shrivastava, Advocate Mr. Girish Pandey, Advocate
For the State	:	Mr. Mritunjay Kumar, A.C. to AAG-8

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)

Date : 22-10-2019

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



2. In the present case, challenge is to the order dated 20.02.2017 passed by the Commissioner, State Election Commission, Bihar, by which he, in exercise of his power under Section 136(2) of the Bihar Panchayat Raj Act, 2006, declared the appellant-original petitioner as disqualified candidate and treated the place of Mukhiya of that Panchayat to be vacant.

3. The matter relates to election of Mukhiya of Aslempur Gram Panchayat, Block- Konch, District- Gaya. The election was conducted, the appellant-original petitioner was declared successful. Accordingly, she became Mukhiya of that Gram Panchayat. An application was filed by respondent nos. 6 and 7, one of the unsuccessful candidates, to declare the appellant incompetent to fight the election of Mukhiya on the ground that she was below 21 years when she filed the nomination paper. In various writ petitions, the power of the Commission and its contour came for consideration before the Division Bench. On account of various views on the power and jurisdiction of the Election Commission, several Letters Patent Appeals and writ petitions were referred before the Full Bench for resolution. Three issues were placed for consideration before the Full Bench, which are as follows:-

(i) Whether the State Election Commission will



have power to consider disqualification of a candidate after election as such Election commission is constituted only for conduct of elections ?

(ii) Whether the provisions of Section 476 read with Section 479 of the Bihar Municipal Act, 2007 can be rendered redundant or otiose, if the State Election Commission is conferred power to disqualify a candidate after election, as the disqualification of a candidate is a ground on which election petition can be filed ?

(iii) Whether the Election commission will have power to declare a candidate disqualified when the limitation for filing the election petition has come to an end, meaning thereby in stead of adopting an alternative statutory remedy, the State Election Commission can nullify the election ?

4. The judgment has been culled out and summary has been given in paragraph no.72 of the Full Bench Judgment, which are as follows:-

“Question No.1- Whether the State Election Commission will have power to consider disqualification of a candidate after election as



such Election Commission is constituted for conduct of elections?

We are in agreement that the State Election Commission has got power under sub-section(2) of Section 18 of the Bihar Municipal Act, 2007 and sub-section(2) of Section 136 of the Bihar Panchayat Raj Act, 2006 to consider an issue of pre or post election disqualification of a candidate subject to a caution which we have pointed out in our judgments in respect of a case which is in the nature of a purely election dispute and then a matter which cannot be decided without adducement of evidence by a competent court and authority in accordance with law. The State Election Commission shall entertain and consider the 'disqualification' issues on the basis of the unimpeachable materials placed before him. Whether a complaint brought before the Commission either suo-moto or by any other person, the Commission shall at the first instance enquire whether it is a purely election dispute and only when it is found that the dispute brought before it is not a purely election dispute, the Commission shall proceed to consider the same on the basis of unimpeachable materials. Whenever a disputed question of facts and a contentious issue is brought before the Commission as a ground and basis to render a candidate disqualified, the Commission would be required to relegate the parties to a competent court/tribunal or a fact finding body



competent to decide such contentious issues after taking evidences and till such time the Commission shall not take a decision on such complaint either suo-moto or otherwise.

Question No. II- Whether the provisions of Section 476 read with Section 479 of the Bihar Municipal Act, 2007 can be rendered redundant or otiose, if the State Election Commission is conferred power to disqualify a candidate after election, as the disqualification of a candidate is a ground on which election petition can be filed?

We have come to a conclusion that the provisions of Section 476 and 479 of the Bihar Municipal Act, 2007 would not be rendered redundant or otiose if the State Election Commission declares a returned candidate disqualified on the basis of pre or post election disqualification. Save and except pure election disputes, the Commission has been empowered by the Statute to decide a reference on the issue of 'disqualification' of a returned candidate. We, however, hold that a person pursuing an election petition on the ground of a 'disqualification' that was existing on the date of election of the returned candidate, cannot simultaneously pursue a complaint before the State Election Commission as two parallel statutory remedies cannot be applied and proceeded with at the same time.

Question No. III- Whether the State Election



Commission will have power to declare a candidate disqualified when the limitation for filing the election petition has come to an end, meaning thereby instead of adopting an alternative statutory remedy, the State Election Commission can nullify the election?

We have held that the State Election Commission does have the power to declare a candidate disqualified on the ground of pre or post disqualification but a pure election dispute which may be raised only by filing an election petition cannot be a matter of reference before the State Election Commission. Since the post-election 'disqualification' is not a ground to challenge the election before the election tribunal and a pre-election disqualification may come to the notice of the State Election Commission either suo-moto or through a complaint after expiry of the period of limitation for filing the election petition, we hold that the State Election Commission shall be competent to declare a candidate 'disqualified' by entertaining a complaint or suo-moto acting on the basis of an information even after limitation for filing of an election petition has come to an end"

5. In the present case, the question has been raised by the appellant that the Commissioner has not applied his mind, rather he has referred the matter to the Collector for adjudication on the age of the appellant, on whose report, he recorded a



finding without giving his independent finding, inasmuch as, he has not adjudicated the dispute independently. Other issues have also been raised in terms of the judgment of the Full Bench and tried to impress upon us that the Election Commission does not have jurisdiction to decide such issue, which has been raised in the present case, which has been seriously disputed by learned counsel for the Election Commission and submitted that the Election Commission is well within the power to decide the issue involved in the present case. However, all the parties have agreed that the matter should be remanded back for fresh adjudication.

6. In such view of the matter, the order dated 20.02.2017 passed by the Commissioner, State Election Commission, Bihar, is set aside. The matter is remanded back to the Commissioner, State Election Commission, Bihar, to decide the case on its merit and in accordance with law but, while deciding the issue, the Commissioner will also consider the view that has been taken by the Full Bench in present case and other analogous cases. Accordingly, the order of the learned Single Judge dated 16.03.2017 passed in C.W.J.C. No. 3265 of 2017 is also set aside.



7. As we have set aside the order of the Commissioner, State Election Commission, Bihar, the natural consequences will follow. We direct both the parties to appear before the Commissioner, State Election Commission, Bihar, on 18.11.2019 at 4:00 P.M. and the Commissioner would decide the case within 45 days from the first appearance of the parties. If the parties would fail to appear before the Commissioner, the Commissioner will have a liberty to decide the case on its merit.

8. With the aforesaid observations and directions, this Letters Patent Appeal is allowed to the extent as indicated hereinabove.

(Shivaji Pandey, J)

(Partha Sarthy, J)

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