

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5136 of 2020

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Rukhsana Praveen daughter of Md. Shahjahan resident of Village- Majrhi,
P.S.- Bhargama, District- Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayat Raj Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Panchayat Raj Department, Govt. of Bihar, Patna.
3. The State Election Commissioner, Sone Bhawan, Birchand Patel Path, Patna.
4. The Secretary, State Election Commission, Sone Bhawan, Birchand Patel Path, Patna.
5. The Collector, Araria.
6. Khusboo Ara Wife of Naurej resident of Village- Bishariya, P.O.- Akarthapa, P.S.- Bhargama, District- Araria presently elected as Mukhiya of Gram Panchayat Raj Bishariya, Block- Bhargama, District- Araria.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Navjot Yesu
For the Respondent/s : Mr.Ajay (GA 5)
For the Election Commission : Mr.Amit Srivastava with Mr. Sanjeev Nikesh
For the Private Respondent : Mr.Shashi Bhushan Kumar Mangalam

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 14-12-2020

The seat of the *Mukhiya* of Gram Panchayat Raj Bishariya (Block Bhargama) in the district of Araria was reserved for EBC (female category) for the election held in 2016, claiming her caste status as '*Sheikhra*', which falls in EBC category. On the basis of caste certificate issued by the Circle Officer, Shankarpur, Madhepura, dated 05.02.2016, the respondent no. 6, being a female, had contested the election and was returned as a successful



candidate for the post of *Mukhiya*. This cannot be disputed that only members belonging to EBC category (female) had the qualification, to contest the election for the said seat.

2. There are certain undisputed facts. The petitioner, an elector of the said Gram Panchayat is said to have raised an objection over the candidature of respondent no. 6 for the said seat of *Mukhiya* of Gram Panchayat Raj Bishariya (Block Bhargama) of district Araria. Immediately after the election was held, the petitioner raised grievance before the Circle Officer, Shankarpur, Madhepura, by whom, the caste certificate was issued in favour of respondent no. 6, complaining that respondent no. 6 belonged to '*Sheikh*' caste. She accordingly requested the Circle Officer, Shankarpur, Madhepura for cancellation of the said caste certificate dated 05.02.2016 and for taking appropriate legal action against her. The said representation of the petitioner is at Annexure-6 of the writ application. Subsequently, on 22.07.2016, a detailed representation was filed, enclosing *Khatian* of the ancestors of respondent no. 6, before the Circle Officer, Shankarpur, Madhepura, to substantiate that caste of respondent no. 6 was '*Sheikh*' and, therefore, caste certificate of '*Sheikhra*' was wrongly obtained by her. The Circle Officer, Shankarpur, Madhepura, had put respondent no. 6 on notice, in view of the



complaint, made by the petitioner, through show-cause notice dated 13.06.2016. The petitioner approached the State Election Commission, Patna also invoking the provision Section 136 (2) of the Bihar Panchayat Act, 2006 (hereinafter referred to as the act), seeking a declaration that respondent no. 6 was disqualified even before the election, for the post of *Mukhiya*, as she did not belong to a caste, falling in EBC category, in favour of which, the seat was reserved. Acting on the petitioner's complaint made under Section 136 (2) of the Act, the State Election Commission vide its letter no. 5492 dated 23.06.2016, requested the District Magistrate-cum-District Panchayati Raj Officer (Panchayat), Araria to enquire into the allegation of the petitioner and pass a reasoned order, after hearing all concerned. In pursuance of the Commission's letter dated 23.06.2016, the District Magistrate noticed all concerned, including respondent no. 6. It is significant to note that whereas respondent no. 6 had presented caste certificate issued by a Circle Officer in the district of Madhepura, the Gram Panchayat for which, she had contested the election, fell within the district of Araria. This is the background in which, the District Magistrate-cum-District Panchayati Raj Officer (Panchayat), Araria was asked by the State Election Commission to enquire into the allegation, in respect of caste status of respondent no. 6.



3. During the pendency of the enquiry before the District Magistrate-cum-District Panchayati Raj Officer, Araria, the Circle Officer, Shankarpur, Madhepura, cancelled the caste certificate of respondent no. 6 by an order dated 25.10.2016. The Circle Officer noted in his order dated 25.10.2016 (Annexure 9 to the writ application) that in support of her caste status, respondent no. 6 had relied on genealogical table certificate, issued by Bhargama Block Office in the district of Araria and *Khatiyani* in respect of certain lands falling in the district of Araria. The Circle Officer further noted that father of respondent no. 6, had very recently settled in Shankarpur Anchal of Madhepura district, where there was no *Khatiyani* in his name nor his genealogical table could be enquired by the officers in the district of Madhepura. In the aforesaid background, he cancelled the caste certificate dated 05.02.2016 in which respondent no. 6 was certified to be belonging to '*Sheikhra*' caste falling under EBC category.

4. Thus, the certificate issued by the Circle Officer, dated 05.02.2016, which was the foundation for respondent no. 6, to claim her caste status under EBC category (female), stood cancelled by the Circle Officer by his order dated 25.10.2016.

5. In the enquiry conducted by the District Magistrate-cum-District Panchayati Raj Officer, Araria, in compliance of the



letter of the State Election Commission, Patna, respondent no. 6 was noticed. It may be noted at this stage that General Administrative Department, Government of Bihar vide its notification dated 08.03.2011 published in the Official Gazette of the State of Bihar, has prescribed the procedure including the basis for issuance of caste certificate, income certificate, certification in relation to residence and non-creamy layer certificate, which provides *inter alia* that caste certificate shall be issued on the basis of revenue documents.

6. The District Magistrate-cum-District Panchayati Raj Officer, Araria, on conclusion of enquiry, came to specific finding that respondent no. 6 belonged to caste '*Sheikh*', which falls under general category. Since the caste certificate, issued in favour of the respondent no. 6 by the Circle Officer, Shankarpur in the district of Madhepura, was already cancelled, the Collector, Araria recorded his opinion that there was no further requirement of cancellation of the caste certificate at this level. This is to be kept in mind at this stage that the District Magistrate-cum-District Panchayati Raj Officer, Araria was asked by the State Election Commission, Patna to make an enquiry, in respect of caste status of respondent no. 6. The District Magistrate-cum-District Panchayati Raj Officer, Araria recorded a conclusive finding in his report dated 20.12.2016



that respondent no. 6 belonged to ‘*Sheikh*’ caste. Respondent no. 6 questioned the said finding of the District Magistrate, recorded in the order dated 20.12.2016, by filing a writ application before this Court, which gave rise to C.W.J.C. 18987 of 2016. A co-ordinate Bench of this Court, while declining to interfere with the finding recorded by the District Magistrate-cum-District Panchayati Raj Officer, Araria, disposed of the writ application in following terms:-

“After hearing the parties, in the considered opinion of the Court, since the District Magistrate is the competent authority to issue a caste certificate, inter alia, he is also entitled in law to cancel the same. However, such decision is always amenable to review before the competent court/authority/forum. Moreover, for coming to any conclusive finding as to what is the caste of a particular person, evidence has to be adduced, both oral as well as documentary, in support thereof. The Court does not find that writ court would be the appropriate forum to adjudicate such issue where appreciation of facts and giving findings thereon is required. In view thereof, the writ petition stands disposed off with liberty to the petitioner to move before the appropriate forum, in accordance with law, for getting a declaration with regard to her caste. If the petitioner invokes the said forum, the same shall be considered on its own merits, in accordance with law, without being prejudiced by any past finding recorded in any proceeding and a reasoned order shall be passed after taking into consideration all issues, which may be raised in the proceeding, by the forum concerned.”



7. Utilizing the liberty granted to the petitioner to approach appropriate forum for getting a declaration with respect to her caste, as indicated in the order dated 24.08.2017, as noted above, the petitioner approached the 'State Level Caste Scrutiny Committee', constituted for determination of caste, headed by Principal Secretary, General Administration Department, Government of Bihar. As is evident from letter issued vide Memo no. 6036 dated 11.05.2018 (Annexure 14 to the writ application) that the State Level Caste Scrutiny Committee recorded following two findings in no uncertain terms:-

- (i) **Respondent no. 6 did not produce any document or evidence in support of her plea that she belonged to 'Sheikhra' caste and**
- (ii) **Respondent no. 6 in fact belonged to 'Sheikh' caste, which is not in the notified list of reserved class.**

Claim of respondent no. 6 of belonging to 'Sheikhra' caste and thus an EBC category was completely rejected by the State Level Caste Scrutiny Committee.

8. The matter before the State Election Commission, Patna on the petitioner's complaint, on the point of disqualification of respondent no. 6, had remained pending despite cancellation of the caste certificate issued by the Circle Officer, Shankarpur, Madhepura and subsequent report of the District Magistrate-cum-District Panchayati Raj Officer, Araria clearly



recording that the respondent no. 6 belonged to the caste 'Sheikh' and not 'Sheikhra'. The conclusions and findings recorded by the District Magistrate-cum-District Panchayati Raj Officer, Araria and that recorded by the State Level Caste Scrutiny Committee remained unaltered. As a matter of fact, the petitioner did not question the correctness of clear finding recorded by the State Level Caste Scrutiny Committee. She filed another writ application before this Court giving rise to C.W.J.C. No. 11445 of 2018, questioning the jurisdiction of the State Election Commission, Patna to entertain the grievance raised by the petitioner, in respect of the caste status of respondent no. 6.

9. Be it noted here that the scope of jurisdiction of the State Election Commission, Patna under Section 136 (2) of the Act was referred to a Full Bench of this Court in L.P.A. No. 566 of 2017. The writ application filed by respondent no. 6 i.e. C.W.J.C. No. 11445 of 2018 was also listed before a Full Bench of this Court along with L.P.A. No. 566 of 2017. The Full Bench answered the reference in its decision rendered in case of ***Rajani Kumari v. The State Election Commission*** since reported in **2019 (4) PLJR 673** in following terms:-

183. "I, therefore, find that the cumulative impact of the entire discussion in the separate judgments would take us to answer the reference in the following terms:-



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?*

184. 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?

185. 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?*

186. 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 aground 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."

10. The writ application filed by respondent no. 6 being C.W.J.C. No. 11445 of 2018 was subsequently disposed of by a Division Bench of this Court by an order dated 22.10.2019, in terms of Full Bench decision of this Court rendered in case of ***Rajani Kumari*** (supra). The Division Bench required the parties of C.W.J.C. No. 11445 of 2018 to appear before the State Election Commission, Patna on 18.11.2019 and the State Election Commission, Patna was in turn directed to decide the issues raised before them in terms of the Full Bench decision in case of ***Rajani Kumari*** (supra) within a period of forty five days from the date of first appearance of the parties.

11. The State Election Commissioner, Patna by his order dated 28.12.2019, has rejected the claim of the petitioner on the ground that unimpeachable materials were not available for holding respondent no. 6 disqualified for the post of *Mukhiya* of Gram Panchayat Raj Bishariya (Block Bhargama), Araria. The State Election Commissioner, Patna has recorded, referring to the opinion recorded by the State Level Caste Scrutiny Committee



that there were materials for and against both regarding caste status of respondent no. 6 i.e. whether she belonged to '*Sheikhra*' caste or '*Sheikh*' caste. He has doubted the correctness of the finding recorded by the State Level Caste Scrutiny Committee, which finding was accepted by respondent no. 6 herself inasmuch as she did not question the correctness of the finding recorded by the State Level Caste Scrutiny Committee.

12. In my opinion, the State Election Commission, Patna has made an unnecessary observation in the impugned order while deciding the representation of the petitioner, questioning the very eligibility of respondent no. 6 to contest the election for the seat of *Mukhiya* of Gram Panchayat Raj Bishariya (Block Bhargama), Araria. The very basis of respondent no. 6 to contest the election for the seat of *Mukhiya* Gram Panchayat Raj Bishariya (Block Bhargama), Araria was a caste certificate issued by the Circle Officer, Shankarpur, Madhepura, which has admittedly been cancelled. There is clear finding of District Magistrate-cum-District Panchayati Raj Officer, Araria in his order dated 20.12.2016 that respondent no. 6 did not belong to '*Sheikhra*' caste. The said finding is based on enquiry entrusted by the Election Commission, Patna to the District Magistrate-cum-District Panchayati Raj Officer, Araria. This Court exercising



power of judicial review refused to interfere with the finding recorded by the District Magistrate-cum-District Panchayati Raj Officer, Araria by disposing of C.W.J.C. No. 18987 of 2016 by order date 24.08.2017. In view of the liberty granted by this Court in the said order, the petitioner had approached the State Level Caste Scrutiny Committee, which had recorded clear finding that the respondent no. 6 belonged to '*Sheikh*' caste and not '*Sheikhra*' and, therefore, she could not be said to belonging to EBC category. The respondent no. 6 by her conduct accepted conclusive finding recorded by the State Level Caste Scrutiny Committee.

13. Caste status of respondent no. 6 in the present case goes to the very root of the matter, as the seat of *Mukhiya* of Gram Panchayat Raj Bishariya (Block Bhargama), Araria was reserved for a candidate belonging to EBC category. As has been noticed above, it has been concurrently held by the District Magistrate-cum-District Panchayati Raj Officer, Araria and State Level Caste Scrutiny Committee that the respondent no. 6 belongs to '*Sheikh*' caste and not '*Sheikhra*'. Respondent no. 6 could not question the correctness of the said finding in the proceeding before the State Election Commission, Patna nor before this Court, the finding of the State Level Caste Scrutiny Committee having been accepted



by her and thus having attained finality. In the background of admitted facts available before the State Election Commission, Patna, the State Election Commission, Patna ought not to have gone into the correctness of finding recorded by the State Level Caste Scrutiny Committee in the absence of any challenge to it by respondent no. 6 herself.

14. The finding recorded by the State Level Caste Scrutiny Committee on the question of caste status of respondent no. 6, had attained finality and become unimpeachable, as respondent no. 6 herself did not question the correctness of the said finding. In view of the discussions, as noted above, in my opinion, the impugned order dated 28.11.2019 passed by the Chief Election Commissioner, Patna in Complaint case No. 3 of 2017 as contained in Memo No. 2366 dated 30.12.2019, requires interference. The order is accordingly set aside. The Chief Election Commissioner, Patna is directed to pass an order afresh within fifteen days from the date of receipt/production of a copy of this order, treating the finding recorded by the State Level Caste Scrutiny Committee to be final and unimpeachable material, the same having been accepted by respondent no. 6 as regards her own caste status.



15. Since the Court has noticed that respondent no. 6 suffered from inherent lack of eligibility to contest the election in the backdrop of the above noted discussion, the Court in the interest of justice, restrains respondent no. 6 from functioning as *Mukhiya* of Gram Panchayat Raj Bishariya (Block Bhargama), Araria till an order is passed by the Chief Election Commissioner, Patna in the light of the observations made hereinabove in the present order. The District Magistrate-cum-District Panchayati Raj Officer, Araria is directed to consider registration of F.I.R. against respondent no. 6, who appears to have fraudulently portraying herself to EBC (female) category candidate contested the election in question.

16. This application is allowed with the aforesaid observation and direction.

(Chakradhari Sharan Singh, J)

AKASH/-

AFR/NAFR	
CAV DATE	14.12.2020.
Uploading Date	
Transmission Date	

