

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11820 of 2010

=====

TAPENDRA KUMAR SINGH S/O Sri Dineshwar Prasad Singh R/O Vill.-
Saidpur, P.S. Mansi, Distt.- Khagaria

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. The State Election Commission, Bihar, Patna
3. The District Magistrate-Cum-Collector, Khagaria
4. Smt. Punam Devi W/O Sri Bijendra Kumar R/O Vill.- Ekanja, P.S. Mansi,
Distt.- Khagaria

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Ms. Manisha Singh, Adv
For the Respondent/s : Mr. Pawan Kumar AC to AG.

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 18-08-2020

Heard the learned counsel for the petitioner and learned
counsel for the respondents.

Petitioner has prayed for following relief:-

“ The present writ application is being filed
challenging the constitutional validity of Section
136(1) (g) and 136 (2) of the Panchayat Raj Act,
2006 by which the Election Commission has been
given a power to un-seat a member of the
panchayat even in case of disqualification matter
related to prior to the election..”

Respondent no.4 was removed from the post of up-
pramukh by a no confidence motion and thereafter she filed a
complaint before the State Election Commission to disqualify
petitioner from holding the post as he suffered imprisonment for



18 months under N.D.P.S. Act and to initiate proceeding under section 136(i)(g) of Bihar Panchayat Raj Act, 2006 upon which State Election Commission registered case No. 6/09 and notices were issued to petitioner and after hearing both the parties by order dated 08.07.2009 dismissed the preliminary objection of the petitioner that State Election commission is not empowered to disqualify an elected candidate and as such present petition was filed challenging the constitutional validity of section 136(1)(g) and 136(2) of the Bihar Panchayat Raj Act, 2006, by which the Election Commission has been given power to disqualify the a member of panchayat even in case of disqualification matter is related prior to the election.

The issue raised by the petitioner is no more *res integra* as same has been decided by a Full Bench of this Court in the case of **Rajani Kumari and Ors. Vs. The State Election Commission, Bihar and Ors** since reported in **2019 (4) PLJR673**, relevant portion whereof reads as follows:-

“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?

We are in agreement that the State Election Commission has got power under subsection (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.”

The writ petition is, accordingly, dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

