

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19109 of 2019

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Kiran Gupta W/o Sri Ashok Prasad Gupta Resident of Ward No. 10, North Panchayat Manik Chouk, P.O. and P.S.- Manik Chouk, Block- Runisaidpur, Distt.- Sitamarhi.

... .. Petitioner/s

Versus

1. The State Election Commission through the Secretary, Veer Chand Patel Marg, Sone Bhawan, Patna, Bihar
2. The State Election Commissioner, State Election Commission, Veer Chand Patel Marg, Sone Bhawan, Patna, Bihar
3. The Joint Election Commissioner, State Election Commission, Veer Chand Patel Marg, Sone Bhawan, Patna, Bihar
4. The Deputy Secretary, State Election Commission, Veer Chand Patel Marg, Sone Bhawan, Patna, Bihar
5. The District Magistrate Sitamarhi, P.S. and Distt.- Sitamarhi
6. The Sub Divisional Officer, Sadar Sitamarhi, Distt.- Sitamarhi
7. The Block Development Officer Runnisaidpur, Distt.- Sitamarhi
8. Ranjit Kumar Rai @ Ranjit Rai, S/o Sri Musafir Rai, Resident of Village and P.O.- Manik Chauk, P.S.- Runnisaidpur, Distt.- Sitamarhi

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar Singh, Advocate. Mr. Ranjeet Chaubey, Advocate Mr. Jainandra Pradhan, Advocate
For the State	:	Mr. Kumar Alok, S.C. 7
For SEC	:	Mr. Amit Shrivastava, Advocate Mr. Sanjeev Nikesh, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 21-01-2020

Heard learned counsel for the parties.

2. What is not in dispute and what has been admitted by the petitioner is that she was born in Nepal and she was married to Mr. Ashok Prasad Gupta, a citizen of India and a resident of Manik Chowk, Block Runnisaidpur, in the



District of Sitamarhi. She had surrendered her Nepali citizenship No.97962576 on 24.02.2016, which according to her, was accepted by the Administrative Officer of Sarlahi District of Nepal. The acceptance of the petitioner's surrender, according to her, has been communicated to her, copy of which, has been brought on record by way of Annexure-P/4, which is in Nepalese language.

3. In the voter list of 2008 Assembly Elections, according to her, her name figured as an elector. She contested *Panchayat* election for *Gram Panchayat Manik Chowk*, under the District of Sitamarhi, which was reserved for a female candidate, in 2018, and was declared successful. She took oath of affirmation as prescribed under the law.

4. Respondent No. 8, admittedly, an Elector of the said *Gram Panchayat*, made a complaint before the State Election Commission under Section 136 (2) of Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the 'Act'), with a plea that the petitioner was disqualified for election, and for holding the post of *Mukhiya*, she not being a citizen of India and sought a declaration accordingly. The said complaint was registered as Complaint Case No. 07 of 2019. The State



Election Commissioner, invoking his power under sub section (2) of Section 136 of the Act, by an order dated 30.08.2019 has held the petitioner disqualified to hold the post of *Mukhiya*, she being not a citizen of India. The said order dated 30.08.2019 has been challenged by the petitioner in the present writ application under Article 226 of the Constitution of India.

5. The plea, which the petitioner has taken to assail the impugned order is that, it is not within the jurisdiction of Election Commission to decide the status of the petitioner with reference to her citizenship under Section 136 (1) of the Bihar Panchayat Raj Act, 2006. Reliance has been placed on a Division Bench decision of this Court reported in **2012 (1) PLJR 296 (Dhanwanti Devi Vs. The State Election Commission (Panchayat) and Others)**. Reliance has also been placed on a Single Bench decision, reported in **2017 (2) PLJR 62 (Vandana Devi Vs. State of Bihar)**.

6. It is to be noted that the petitioner has stated in paragraph-4 that she is a citizen of India. When the matter was taken up on 10.12.2019, the Court had required the petitioner to justify the said statement made in paragraph-4 of the writ



application. It is in the light of the said order of this Court that a supplementary affidavit has been filed stating the background of which she claims her status as a citizen of India.

7. Mr. Rajesh Kumar Singh, learned counsel appearing on behalf of the petitioner has placed heavy reliance on Division Bench decision of this Court in case of ***Dhanvanti Devi*** (supra).

8. The facts as noted above, are admitted. The petitioner was not a citizen of India, as according to her own case, admittedly she surrendered her citizenship of Nepal before the authorities of Nepal. Sections 3 to 6 of the Indian Citizenship Act, 1955, deals with acquisition of citizenship of India. Whereas a person acquires citizenship of the country by birth as contemplated under Section 3 of the Act, Section 4 deals with acquisition of citizenship by descent. A person can acquire citizenship by registration as contemplated under Section 5 of the Act, on an application made in this behalf, if such person, not being an illegal migrant, is not already such citizen by virtue of the Constitution or any other provisions or the Act, if he/she belongs to the following categories:-



- “(a) a person of Indian origin who are ordinarily resident in India for seven years before making an application for registration;
- (b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;
- (c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;
- (d) minor children of persons who are citizens of India;
- (e) a person of full age and capacity whose parents are registered as citizens of India under clause (a) of this sub-section or sub-section (1) of section 6;
- (f) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and [is ordinarily resident in India for twelve months] immediately before making an application for registration;
- (g) a person of full age and capacity who has been registered as an [Overseas Citizen of India Card holder] for five years, and who [is ordinarily resident in India for twelve months] before



making an application for registration.”

9. Explanation (1) appended to sub section (1) declares that for the purposes of clauses (a) and (c), an applicant shall be deemed to be ordinarily resident in India, if he/she has resided in India throughout the period of 12 months immediately before making an application for registration, and he has resided in India during 8 years, immediately preceding the said period of 12 months, for a period of not less than 6 years. Sub-section (5) of Section 5 clarifies that a person registered under Section 5 of the Act, shall be a citizen of India by registration, as from the date he so registered.

10. The petitioner has admittedly not acquired citizenship of India under either of the provisions noted above, even if plea which she has taken in the writ application and supplementary affidavit is treated to be correct. The statement, which the petitioner has made in paragraph-4 of the writ application, that she is a citizen of India is thus incorrect.

11. This application has been filed under Article 226 of the Constitution of India, which reads as under:-



“226. Power of High Courts to issue certain writs - (1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose].

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without-



(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32.”

On plain reading of Article 226 (1) of the Constitution of India, it can be seen that the directions, orders



or writs can be issued by the High Court exercising power under the said provision for “enforcement of any of the rights conferred by part-III” of the Constitution or for “any other purpose”.

12. Whether, in the factual background noted above, the petitioner can be said to have established any breach of her fundamental rights or legal rights, is one of the primordial questions. Language of Article 226 of the Constitution of India is clear. This Court has jurisdiction to issue directions etc. in case of breach of fundamental rights and for any other purpose. The expression “any other purpose” has wide connotation and in appropriate cases, the Court may issue directions for a purpose which must be legal and valid. In my opinion, none of the fundamental rights as guaranteed under Part-III of the Constitution of India can be said to have been breached because of the declaration made by the Election Commission in respect of her status as a citizen of India.

13. I must consider now, in fairness to the submission advanced on behalf of the petitioner with reference to Division Bench decision of this Court in case of



Dhanwanti Devi (supra). The said decision contains a short order and reads thus:

“1. The present Letters Patent Appeal arise out of order dated 17.7.2008 passed in C.W.J.C. No. 4352 of 2008. The main contention raised before this Court is that as to whether the State Election Commission is vested with the power to decide the status of the appellant with reference to her Citizenship u/s 136(1) of the Bihar Panchayat Raj Act, 2006 who was elected to the post of Mukhiya, on the basis of a complaint lodged by respondent no. 7.

2. The learned Single Judge has dismissed the writ application holding that merely because the appellant had married with an Indian Citizen and set up her house in India and also managed to get herself enrolled in the electoral roll and on the basis of which she came to be elected to the post of Mukhiya she does not become an Indian Citizen.

3. It has been contended before us that the State Election Commission is not a competent authority to decide the Citizenship of the appellant on the basis of a complaint lodged u/s 136(1) of the Bihar Panchayat Raj Act, 2006. The State Election Commission



would have only directed the appellant to get her declared with regard to Citizenship before the competent authority as it has been held that the appellant is not a Citizen of India.

4. We had also occasion to go through the provisions of Section 136(1) of the Panchayat Raj Act which envisaged that a person shall be disqualified for election or after election for holding the post as Mukhiya on the ground that she/he is not a citizen of India. We are of the opinion that in view of provision of Section 136(1) of the Act the State Election Commission should have given a direction to the appellant to get her declared with regard to citizenship from the appropriate authority as the State Election Commission has no power or jurisdiction to decide the question of citizenship. The law of citizenship governs a particular field.

5. Under the above circumstance, we set aside the order of the learned Single Judge and leave the question upon the appellant with regard to declaration of her citizenship. With the above observation this L.P.A. stands allowed.”

14. Part-IX of the Constitution of India contains provisions relating to Panchayats, Article 243F



whereof lays down that a person shall be disqualified for being chosen as, and for being, a member of a Panchayat, if he is so disqualified by or any other law for the time being in force. Article 173 of the Constitution of India declares that a person shall not be qualified to fill a seat in the legislature of a State, unless he is a citizen of India.

15. On conjoint reading of Articles 243F and Article 173 of the Constitution of India, it can be easily culled out that for a person to be elected or for a person to be chosen as, and for being a member of *Panchayat*, he/she must be a citizen of India. As has already been noticed, the petitioner has not been able to substantiate her own statement made in paragraph-4 of the writ application that she is a citizen of India. Since there is no dispute about the petitioner's status that she is not a citizen of India, there would be no question of seeking a declaration about her citizenship. It is true, in the light of the Division Bench decision of this Court in case of ***Dhanwanti Devi*** (supra) that Election Commission has no power or jurisdiction to decide the "question of citizenship". If there is no question involving any dispute is there at all about the citizenship of a person and no adjudication is required as



to whether a person is citizen of India or not, in my opinion, the State Election Commission may exercise his powers conferred under Sub-section (2) of Section 136 of Bihar Panchayat Raj Act, 2006. If a person is indisputably not a citizen of India, he/she is disqualified for election or after election, for holding the post as *Mukhiya*, member of *Gram Panchayat*, *Sarpanch*, *Panch of the Gram Kachhary*, member of *Panchayat Samity* and member of *Zila Parishad*. Sub-section (2) of Section 136 states that if any question arises as to whether member of *Panchayat* at any level including *Mukhiya* of *Gram Panchayat*, *Pramukh of Panchayat Samity* or *Adhyakch* of *Zila Parishad* or *Sarpanch of Gram Kachhary* or *Panch of Gram Kachhary* was disqualified for election or has incurred disqualification after election as provided in Article 243F of the Constitution of India and subject to any disqualification mentioned in Section 135 or sub-section (1) of Section 136, the questions shall be referred for the decision of the State Election Commission. It further stipulates that the matter of disqualification before or after election, may be brought to the notice of the State Election Commission in the form of a complaint /application or



information by any person or authority. It confers power on the State Election Commission, to take *suo motu* cognizance of such disqualification and decide such matters expeditiously, after allowing sufficient opportunity to the effective party of being heard. Restrictions have been imposed by the *proviso* to sub-section (2) of Section 136 of the Act, which disentitles the State Election Commission to entertain any complaint or petition, subject matter of which is, 'purely of election dispute such as corrupt practices, wrongful rejection of nomination etc. in accordance with Article 243-O of the Constitution of India read with Section 137 of the Act'. Question of adjudication on the issue of citizen of the petitioner would have been there, had there been any dispute about her status. She apparently did not acquire citizenship under the provisions of the Indian Citizenship Act, 1955.

16. In view of the uncontroverted and admitted facts noted above, since the petitioner has failed to establish her status before this Court as a citizen of India, even *prima facie*, she was clearly disqualified for election as Mukhiya not only by virtue of Section 136(1) of the Act, but



by Constitutional provision under Article 243F of the Constitution of India.

17. As Section 136 (2) requires, the private respondent No. 8 had made a complaint before the State Election Commission. Facts before the State Election Commissioner were admitted whereafter he has declared the petitioner disqualified to hold the post of *Mukhiya* of the *Gram Panchayat*.

18. Coming back to the jurisdiction of State Election Commission to decide the citizenship dispute while exercising power under Section 136(2) of the Act, in the facts and circumstances of the present case, in my view the plea taken on behalf of the petitioner is not tenable. There was no dispute before the Commission. Facts were admitted, touching the issue of citizenship of the petitioner. The Commission, in such situation was justified in passing the impugned order in exercise of power under Section 136(2) of the Act. Any interference with the impugned order by this Court in the present proceeding will result into perpetuating illegality.



19. For the aforesaid reason, I do not find any merit in this writ application, which is, accordingly, **dismissed.**

(Chakradhari Sharan Singh, J)

S.Ali/-

AFR/NAFR	
CAV DATE	N.A.
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