

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.82 of 2022

In

Civil Writ Jurisdiction Case No.2298 of 2021

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1. Mahendra Rishideo Son of Bodi Rishideo Resident of Village - Maura Jarkaha, P.S. - Shankarpur, District- Madhepura.
 2. Pramod Kumar Yadav Son of Shivnandan Yadav Resident of Ward No. 3, Village - Gadhiya, Garhia, P.S. Kumarkhand, District- Madhepura.
 3. Ashok Kumar Mehta Son of Kamleshwari Mehta Resident of Village - Rauta, Ward No. 12, P.S. - Kumarkhand, District - Madhepura.
 4. Bhola Sharma Son of Jagdish Sharma Resident of Village - Gopalpur, Ward No. 3, P.S. - Kumarkhand, District- Madhepura.
 5. Naresh Kumar Son of Late Fuleshwar Shah Resident of Village - Parmanandpur, Ward No. 8, P.S. - Shir Nagar Kumarkhand, District- Madhepura.
 6. Agam Lal Rishideo Son of Soti Rishideo Resident of Village - Bariyahi, Rampur Lahi, Ward No. 12, P.S. - Shankarpur, Bariyahi, District- Madhepura.
 7. Yadu Nandan Yadav Son of Saryug Yadav Resident of Ward No. 3, Gopalpur, P.S. - Kumarkhand, District- Madhepura.
 8. Binod Kumar Son of Biranchi Sharma Resident of Ward No. 6 Haribola, P.S. - Kumarkhand, District- Madhepura.

... .. Appellant/s

Versus

1. The Union of India Through the Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment, Govt., of India, Shastri Bhawan, New Delhi.
2. The Election Commission of India Through the Chief Election Commissioner, Nirwachan Sadan, Ashok Path, New Delhi - 110001.
3. The Chief Election Commissioner, Election Commission of India, Nirwachan Sadan, Ashok Path, New Delhi - 110001.
4. The State of Bihar Through the Principal Secretary, General Administration Department, Patna.
5. The Principal Secretary, General Administration Department, Bihar, Patna.
6. The District Magistrate, Madhepura.
7. The Sub Divisional Officer, Madhepura.
8. The Circle Officer, Block - Shankarpur, District- Madhepura.
9. The District Magistrate - Cum- Chief Election Officer, Madhepura.
10. The Returning Officer, 72, Singheshwar (Reserve), Bihar Legislative Assembly Constituency, Madhepura.
11. Chandrahash Chaupal Son of Baldev Chaupal Resident of Village - Raybhir, P.S. - Shankarpur, District- Madhepura, Returned Candidate, 72, Singheshwar (Reserve), Bihar Legislative Assembly Constituency, District-



Madhepura.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. P.K. Shahi, Sr. Adv.
For the ECI : Mr. Siddhartha Prasad, Adv.
Mr. Sonit Kumar, Adv.
For the UOI : Mr. Ravindra Kumar Sharma, Adv.
Mr. Lokesh, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 14-11-2022

Heard Mr. P.K. Shahi, learned senior Advocate for the appellants and Mr. Sonit Kumar for the Election Commission of India. The Union of India is represented by Mr. Lokesh.

The appellants are the voters of a particular Constituency from where the respondent no.11 has been declared elected as a M.L.A.

The appellants contend that the respondent no.11 won the election from a reserved Constituency, meant for scheduled caste candidate but, the respondent no.11 is not a person of scheduled caste candidate.

The respondent no.11 appears to have relied upon a certificate issued in his favour by the concerned District



Magistrate declaring that he belongs to "*Chaupal*" caste which is included in the State list of schedule castes.

It is the contention of the appellants that the State Government is not authorized to make any addition or alternation in the list of schedule castes, which is maintained by the Union in accordance with Article 341 of the Constitution of India.

When the appellants had approached the learned Single Judge for issuance of a writ of *quo warranto* against the respondent no.11, as he did not have the requisite caste qualification to contest the election from a constituency which was reserved for scheduled castes only, the learned Single Judge rejected the petition on the sole ground that the certificate of caste issued by the Collector, has not been cancelled and therefore the petition for issuance of *quo warranto* against the respondent no.11 would not be maintainable.

Mr. Shahi however has contended that the certificate issued by the Collector is *void ab initio* as he has issued the certificate without any jurisdiction. He further submits that the



respondent no.11 had earlier contested the election of Panchayat as an E.B.C. candidate. He therefore deduces that the respondent no.11 is also guilty of confabulating with the authorities in procuring a certificate of scheduled caste in order to enable him to contest the election from such reserved seat. The disqualification attached to the respondent no.11 operates *proprio-vigore* as he never was a member of the schedule caste and has staked this claim only on the basis of a certificate which was issued erroneously.

After having given anxious consideration to the arguments advanced on behalf of the appellants who are the voters of the Constituency, we have arrived at a view that assuming but not admitting that the certificate issued by the Collector was bad in the eyes of law, but it has yet not been cancelled. In no proceeding whatsoever has it been determined whether such certificate was issued on the false declaration by respondent no.11 about his caste.

We have also gone through the averments made in the writ petition in which, *interalia*, two simultaneous reliefs were sought viz. quashing of the certificate issued by the



Collector in favour of the respondent no.11 and issuance of a writ of *quo warranto* as no person not belonging to scheduled caste could not have contested the election from a reserved seat of scheduled caste and be declared elected. Such disqualification continues as long as the Constituency remains reserved for a scheduled castes.

We are thus of the view that one of the prayers made before the Writ Court would have required it decide the issue viz. the correctness of the certificate which would be been very different and distinct from any proceeding under writ of *quo warranto*. It is by now apodictic that a writ of *quo warranto* cannot be issued in a collateral proceedings; that is to say, an exercise is required to be done to hold the certificate, which is the basis of being elected, as bad and then only *quo warranto* notice can be issued to the respondent no.11 at the request of the appellants, who are, in the present case, the voters of the Constituency [refer to ***Bharati Reddy Vs. State of Karnataka and Others; 2018 (6) SCC 162***].

Tested on this principle, we do not find any fault with the order passed by the learned Single Judge, who has held that as long as the scheduled caste certificate issued by the



District Magistrate is not nullified/cancelled, the appellants would not be in a position to seek any direction for a declaration of the election of respondent no.11 to be bad in the eyes of law.

The learned Single Judge dismissed the petition but only after reserving the right to the appellants to approach the competent authority for cancellation of the caste certificate of the respondent no.11, which had purportedly been wrongly issued by the District Magistrate.

For the aforementioned reason, we are not inclined to interfere with the order passed by the learned Single Judge.

The appeal fails and is thus dismissed.

(Ashutosh Kumar, J)

(Nawneet Kumar Pandey, J)

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AFR/NAFR	AFR
CAV DATE	NA
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