

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9477 of 2023

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Mushrat Khatun Wife of Hasiruddin, Resident of village and P.O. Biratpur,
Ward No.12, P.S. Sonebarsa, District - Saharsa.

... .. Petitioner/s

Versus

1. The State Election Commission (Panchayat) Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
2. The State Election Commissioner, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
3. The Secretary, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
4. The State of Bihar Through the Chief Secretary, Government of Bihar, Patna.
5. The Additional Chief Secretary, General Administration Department, Government of Bihar, Patna.
6. Rinku Devi Wife of Ranjeet Das, Resident of Village and P.O. Biratpur, P.S. Sonebarsa, District- Saharsa.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 9732 of 2023

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Md. Riyaz Alam Son of Md. Hanif Chaudhary, Resident of village- Bareta,
Ward No.3, P.O. Maina, P.S. Mahishi, District - Saharsa.

... .. Petitioner/s

Versus

1. The State Election Commission (Panchayat) Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
2. The State Election Commissioner, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
3. The Secretary, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
4. The State of Bihar Through the Chief Secretary, Government of Bihar, Patna.
5. The Additional Chief Secretary, General Administration Department, Government of Bihar, Patna.
6. Baijnath Kumar Bimal Son of Ram Pukar Sah, Resident of Village- Naya Tola, Birgaon P.O.L. Tarahi, P.S. Mahishi, District- Saharsa.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 9477 of 2023)

For the Petitioner/s	:	Mr. S. B. K. Manglam, Advocate Mr. Awnish Kumar, Advocate
For the Respondent/s	:	Mr. P.K. Verma, AAG-3 Mr. Saroj Sharma, AC to AAG-3



For the SEC : Mr. Sanjeev Nikesh, Advocate
Mr. Girish Pandey, Advocate
(In Civil Writ Jurisdiction Case No. 9732 of 2023)
For the Petitioner/s : Mr. S. B. K. Manglam, Advocate
Mr. Awnish Kumar, Advocate
For the Respondent/s : Mr. P.K. Verma, AAG-3
Mr. Saroj Sharma, AC to AAG-3
For the SEC : Mr. Sanjeev Nikesh, Advocate
Mr. Girish Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 03-10-2023

Heard the parties.

2. Since the issue involved in both these writ petitions are one and the identical, thus the same are being taken up and heard analogously and being disposed of by this common order, with the consent of the parties.

3. The challenge made in both the writ petitions is/are the orders of the State Election Commissioner (respondent no. 2), both dated 15.06.2023 by which the matter has been relegated to the Caste Scrutiny Committee of the General Administration Department for determination of caste/social status of the petitioners. The petitioners also sought a declaration that the State Election Commissioner, while exercising his quasi judicial power, was/is under obligation to decide the dispute under Section 136 (2) of the Gram Panchayat Raj Act, 2006 only on the basis of unimpeachable evidence produced by the parties and the State Election Commissioner cannot collect the evidence against an elected representative



when a vague complaints unsupported by clinching and unimpeachable evidence is filed before it.

4. The short facts, as gleaned from the record, leading to filing of the present writ petitions are enumerated hereinunder.

5. The petitioner in CWJC No. 9477 of 2023 was elected as *Mukhiya* in the year 2021 for Gram Panchayat Raj, Biratpur under Sonebarsa Block of Saharsa district. It is contended that the post was reserved for female of Extremely Backward Classes and during the course of scrutiny of her nomination paper and during entire election, at no point of time, any objection was raised by anyone against the nomination of the petitioner. However, after having been declared successful, a complaint was filed by the respondent no. 6 before the State Election Commission that the petitioner doesn't belong to Extremely Backward Class and, as such, she cannot be permitted to continue on the post, since she is disqualified to contest the election under Section 135 of the Gram Panchayat Raj Act, 2006 (hereinafter referred to as "Act, 2006" for the sake of brevity).

6. On receipt of the complaint, so filed, Case No. 03 of 2022 was registered and a report was called for from the District Magistrate, Saharsa, whereupon an enquiry was



conducted by the District Planning Officer, Saharsa who submitted his report to the District Magistrate, Saharsa vide Letter No. 370 dated 26.05.2022.

7. On the basis of the report of the District Planning Officer, Saharsa, the District Magistrate, Saharsa submitted his report to the Deputy Secretary of the State Election Commissioner vide Letter No. 246 dated 15.02.2023, disclosing the caste of the petitioner as 'Bhathiyara'.

8. Despite the report of the District Magistrate, Saharsa having been found in favour of the petitioner, suggesting her caste as 'Bhathiyara' which comes under Extremely Backward Classes, the respondent no. 2 vide its order dated 15.06.2023 in Case No. 03 of 2022 requested the Caste Scrutiny Committee to decide the social status of the petitioner, irrespective of the fact that at the time of hearing of case or before that, no evidence was produced on behalf of the complainant to overcome the report of the District Magistrate, Saharsa.

9. Further, so far the petitioner in CWJC No. 9732 of 2023 is concerned, he was elected as member of Mahishi Block Panchayat Samiti from Mahishi Block Panchayat Samiti Territorial Constituency No. 25, which was reserved for Extremely Backward Classes. On being elected as member of



Mahishi Block Panchayat Samiti, the petitioner further successfully contested for the post of *Pramukh* of Mahishi Block Panchayat Samiti, which was also reserved for members of Extremely Backward Classes. It is submitted that, at no point of time, any objection was raised by any person or candidate against the candidature of the petitioner during the process of scrutiny of petitioner's nomination. However, only after the petitioner was elected as *Pramukh* of Mahishi Block Panchayat Samiti, a complaint was filed by the respondent no. 6 to declare the petitioner disqualified to hold the post of *Pramukh* on the ground of he being not a member of Extremely Backward Classes.

10. On the basis of the aforementioned complaint, Case No. 77 of 2022 was instituted in the State Election Commission and a report was called for from the District Magistrate – cum – District Election Officer, Saharsa. Simultaneously, notice was issued to the petitioner for his appearance and filing of written statement. The District Panchayati Raj Officer, Saharsa enquired the matter and submitted his report to the District Magistrate, Saharsa vide Letter No. 270 dated 20.02.2023.

11. It is the case of the petitioner that the report, as mentioned above, clearly opined that in different Khatiyans, different castes of the petitioner's family and close relatives are



mentioned, therefore, a local enquiry for determination of the caste of the petitioner was also made and in this process, the statement of the villagers were recorded and on the basis of the enquiry, the petitioner has been found to be 'Bhathiyara' by caste.

12. The complainant had not produced a single chit of paper to belie the aforementioned reports, however, instead of closing the proceeding, the respondent no. 2 vide his order dated 15.06.2023 requested the Caste Scrutiny Committee of General Administration Department for determination of social status of the petitioner.

13. In the backdrop of the facts, enumerated hereinabove, Mr. S B K Manglam, learned counsel for the petitioners contended that whenever a disputed question of law and a contentious issue is brought before the Commission as a ground to render the 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 issue after taking evidence until such time, commission should not take a decision on such complaint either suo moto or otherwise.

14. He, thus, submitted that admittedly the complaint(s) was/were filed by the private respondent(s)



without enclosing any evidence of unimpeachable character. Furthermore, the report submitted by the District Administration did not support the complaint case and thus, in view of the law laid down by the Full Bench of this Hon'ble Court in the case of ***Rajani Kumari Vs. The State of Bihar and Others*** reported in ***2019 (4) PLJR 673***, no option was available for the State Election Commissioner, save and except to dismiss the complaint petition in view of the report submitted by the District Administration.

15. He next submitted with all his vehemence that the power of State Election Commission has been precisely dealt with by the Full Bench of this Hon'ble Court in ***Rajani Kumari*** (supra) and if their Lordships of Full Bench of this Court had categorically held that the Commission would not decide any contentious issue and he would relegate the parties to a fact finding body, it is not legally justifiable for State Election Commission itself to approach the Caste Scrutiny Committee for determination of social status of the petitioner, as if, he is a party. The action of the State Election Commissioner is thoroughly illegal and without jurisdiction, in view of the provisions contained under Section 136 (2) of Act, 2006, coupled with the law laid down by the Full Bench of this Court in ***Rajani Kumari*** (supra). He, thus, submitted that the State



Election Commission could not be a party to the lis and college the materials to support the complaint.

16. Per contra, Mr. Sanjeev Nikesh, learned counsel for the State Election Commission while refuting the contention of the petitioners submitted that the Caste Scrutiny Committee has been constituted under General Administration Department, Bihar, Patna in the light of the decision of the Honb'le Supreme Court in ***Kumari Madhuri Patil and Another Vs. Additional Commissioner, Tribal Development and Others*** reported in ***1994 (6) SCC 241***. It would be worth mentioning here that the Hon'ble Supreme Court in the case of ***Kumari Madhuri Patil*** (supra) enunciated guidelines to streamline the procedure for social status certificates, their scrutiny and approval and for the aforesaid purposes, a directives have been issued that all the State Governments shall constitute a Committee of 3 officers, namely, (i) an Additional or Joint Secretary or any Officer higher in rank of the Director of the Department concerned, (ii) The director social welfare/Tribunal welfare/Backward Classes Welfare, as the case may be, and (iii) in the case of Scheduled Caste another officer, who has intimate knowledge in the verification and issuance of social status certificate. In the case of the Scheduled Tribes, the Research Officer, who has intimate knowledge in identifying the tribes, tribal communities, part of



or a groups of tribal communities. In case of any doubt regarding the social status of a candidate, the State Election Commission is empowered under the law as provided under Section 136 (2) of the Act, 2006 to relegate the parties before the caste scrutiny committee, which is the Apex facts finding body of the State level.

17. In both the cases, the reports submitted by the District Election Officer (Panchayat) – cum – District Magistrate, Saharsa, the caste of the petitioners were in dispute, thus direction of the State Election Commission for identification of the caste/social status of the petitioners is in complete confirmity with law. He has further drawn the attention of this Court to the judgment rendered by the learned Division Bench of this Court in the case of ***Baidhnath Singh Vs. State of Bihar and Ors.*** reported in ***2022 (4) BLJ 638***, especially paragraph nos. 11 to 13, which reads as under:

11. In the State of Bihar, the caste certificate is issued by Revenue Authorities. After the judgment of the Hon'ble Supreme Court in Kumari Madhuri Patil (supra), it has been settled that caste certificate duly issued by the Revenue Authorities who have been delegated with such power cannot be cancelled by the authority who has issued the caste certificate.

12. In the above view of the matter, it would be evident that the Circle Officer was not the competent authority to cancel the caste certificate of the petitioner rather it was the Scrutiny Committee constituted by the State Government which was



empowered to do so. In these circumstances, the impugned order dated 16.10.2021 passed by the Circle Officer, Dighwara, Saran as contained in Annexure-5 to the present application is hereby set aside.

13. It would be open to the Circle Officer or any other authority of the State to approach the Scrutiny Committee formed pursuant to the direction issued by the Hon'ble Supreme Court in Kumari Madhuri Patil (supra) for verification of the caste certificate of the petitioner and cancellation thereof. In case, such a dispute is raised before the Scrutiny Committee, it shall be required to examine the matter and decide the same in accordance with law as early as possible and preferably, within a period of three months.

18. Mr. Nikesh, appearing for the State Election Commission further submitted that the learned co-ordinate Bench of this Court while considering the identical issue in case of ***Manoj Prasad Vs. The State Election Commission and Others (CWJC No. 14258 of 2022)*** has found no fault in the action of the respondent State Election Commission in directing the Caste Scrutiny Committee to verify the caste/social status of a person, if the same is put to challenge by any person/complainant.

19. This Court has given anxious consideration to the materials available on record and the submissions advanced on behalf of the respective counsels.

20. The question posed before this Court, is as to whether action of the respondent State Election Commission in relegating the matter to the Caste Scrutiny Committee is



contrary to the provisions contained under Section 136(2) of the Gram Panchayat Raj Act, 2006 coupled with the law laid down by a Full Bench of this Hon'ble Court in ***Rajani Kumari*** (supra).

21. In other words, in view of the law laid down in the case of ***Rajani Kumari*** (supra) holding that whenever, a disputed question of facts and 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; thus, instead of relegating the parties, any request made by the State Election Commissioner or relegating the matter straightway to the Caste Scrutiny Committee is not without jurisdiction and contrary to the law declared by the Full Bench of this Court.

22. In order to answer the aforementioned question, it would be proper to quote section 136(2) of the Bihar Panchayat Raj Act, 2006.

136 (2) If any question arises as to whether a Member of a Panchayat at any level or Mukhiya of Gram Panchayat or



Sarpanch of Gram Katchahri was before election or has become after election subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of State Election Commissioner. The matter of disqualification may be brought to the notice of State Election Commission in the form of a complaint, application or information by any person or authority. The State Election Commission may also take suo-motu cognizance of such matters and decide such matters expeditiously after allowing sufficient opportunity to the affected parties of being heard.

23. There is no iota of doubt that the State Election Commission has empowered under the aforementioned provision of the Act, 2006 to consider the issue of pre or post election disqualification of a candidate, subject to case(s) in the nature of purely election dispute, which cannot be decided without aducement of evidence by a competent Court or authority, in accordance with law.

24. The learned Full Bench of this Court in the case of **Rajani Kumari** (supra) taking note of the aforesaid provisions further clarified in its penultimate paragraph no. 184 of the judgment as follows:

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.

25. So far the principle of statutory interpretation of a provision of statute is concerned, any construction that result in injustice, absurdity and anomaly leads to inconsistency and friction in the system, which the statute purports to regulate has to be rejected, preference should be given, which avoids such results.

26. The Court has not only to take a pragmatic view while interpreting a statutory provision, but must also consider the practical aspect of it [*Union of India Vs. Ranbaxy*



Laboratories Limited and Others, reported in (2008) 7 SCC 502].

27. *In Narashimaha Murthy Vs. Susheelabai (Smt) and Others* reported in (1996) 3 SCC 644, the Hon'ble Supreme Court held: "the purpose of law is to prevent brooding sense of injustice. It is not the law, but the spirit and eternal sense of it, that makes the law meaningful."

28. In view of the aforesaid facts and the settled proposition of law, this Court fails to understand as to when the State Election Commission is empowered to take cognizance of an issue of disqualification, even 'suo motu' and decides such matter expeditiously after allowing sufficient opportunity to the affected parties of being heard, how the Commission is denude from its power to relegate the matter before the Caste Scrutiny Committee, which is a Apex facts finding body constituted in terms of the mandate of the Hon'ble Supreme Court in Kumari Madhuri Patil's case.

29. Once the legislature has empowered the State Election Commission to decide the issue of disqualification of a candidate raised before it under Section 136(2) of the Act, 2006, on the complaint/application/information of any person or authority and, all the more the State Election Commission may also take suo moto cognizance it defies any logic that the



Commission cannot relegate the matter to the Caste Scrutiny Committee, barring the matter which is purely based on election dispute.

30. The submission of the petitioner that relegating the matter to the Caste Scrutiny Committee would amount to becoming a Judge of his own cause and thus, the State Election Commission cannot be made party to the lis and college the materials to support the complaint is wholly misconceived in law as well as on facts. Once the State Election Commission has couched with the power to take cognizance of such disqualification either in the form of complaint, application or information by any person or authority or even the Commission may take suo moto cognizance of such disqualification, relegating the matter for verification of caste/social status of a candidate cannot be said to be contrary to the provisions under Section 136 (2), coupled with the law laid down by a Full Bench of this Court, that too, when the State Caste Scrutiny Committee is the apex facts finding body of the State level.

31. It would be worth noted that the Apex Court in the case of ***Kumari Madhuri Patil*** (supra) in its paragraph nos. 13(11) and 13(13) held as follows:

13(11) The order passed by the Committee shall be final and conclusive only subject to the



proceedings under Article 226 of the Constitution.

13(13) The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

32. It is needless to observe that judgment of the Full Bench (Rajani Kumari) cannot be read in a restrictive sense rather the same is to be read harmoniously in the intent and spirit of the provisions of law to achieve its object and purpose.

33. In the opinion of this Court, only on account of relegating a matter to the fact finding body or the Court or authority to decide the contentious issue after taking evidences, the Commission cannot become party to the lis or college the materials to support the complaint, that too, in absence of any allegation of malafide duly supported by any substantive evidence, all the more, when the Caste Scrutiny Committee is an independent fact finding body constituted in terms of the order of the Hon'ble Apex Court.

34. This Court does not find any error in the order(s) of the State Election Commission in relegating the matter to the Caste Scrutiny Committee in the light of the judgment of the



learned Division Bench rendered in the case of **Baidhnath Singh** (supra). The order(s) impugned do not merit any interference.

35. Accordingly, both the writ petitions, sans merit, stand dismissed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.10.2023.
Transmission Date	NA

