

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.73 of 2021

In

Civil Writ Jurisdiction Case No.5136 of 2020

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Khusboo Ara, Wife of Naurej, Resident of Village-Bishariya, P.O.-Akarthapa,
P.S.-Bhargama, District-Arara presently elected as Mukhiya of Gram
Panchayat Raj Bishariya, Block-Bhargama, District-Araria.

... .. Appellant/s

Versus

1. Rukhsana Praveen, daughter of Md. Shahjahan, Resident of Village-Majrhi,
P.S.-Bhargama, District-Araria.
2. The State of Bihar through the Principal Secretary, Panchayat Raj
Department, Government of Bihar, Patna.
3. The Principal Secretary, Panchayat Raj Department, Government of Bihar,
Patna.
4. The State Election Commissioner, Sone Bhawan, Birchand Patel Path,
Patna.
5. That Secretary, State Election Commission, Sone Bhawan, Birchand Patel
Path, Patna.
6. The Collector, Araria.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. S.B.K.Manglam, Advocate Ms. Anita Kumari, Advocate Mr. Awnish Kumar, Advocate
For the Respondent/s	:	Mr. Sanjeev Nikesh, Advocate Mr. Girish Pandey, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-06-2023

The question agitated in the appeal is as to whether the
appellant, who was a contestant in an election and who was also
appointed as a Mukhiya, was disqualified from holding the post of
Mukhiya especially when there was no challenge to the caste



category asserted by the appellant at the time of election. The appellant asserted that she belonged to the Extremely Backward Community namely “Sheikhra” and contested from a reserved constituency; reserved for Extremely Backward Communities to the Gram Panchayat as a Mukhiya. The first respondent contested the claim by filing a complaint before the State Election Commission on the allegation that the appellant belongs to the “Sheikh” community which does not fall under the Extremely Backward Community category. The State Election Commission relegated the matter to the District Magistrate, who declared the appellant to be belonging to the “Sheikh” community. The appellant challenged the order before this Court and this Court relegated the appellant again to the Caste Scrutiny Committee, Government of Bihar. The Caste Scrutiny Committee passed an order declaring the appellant to be belonging to “Sheikh” community.

2. The appellant, having continued as Mukhiya, the first respondent filed a writ petition before this Court, in which the impugned order was passed. The appellant, on the basis of certificate of the Caste Scrutiny Committee, was found to be belonging to “Sheikh” community. The learned Single Judge having found that the appellant lacked the eligibility to contest the election, to the post of Mukhiya of the Gram Panchayat-Bisharia, Block Bhargama,



Araria, restrained the appellant from functioning as the Mukhiya. The Chief Election Commissioner, Patna was also directed to pass a fresh order. The learned Single Judge further directed the District Magistrate-cum-District Panchayat Raj Officer, Araria to consider registration of FIR against respondent No.6, who appears to have fraudulently portrayed herself to be an EBC Female category candidate for the purpose of contesting the election to a reserved constituency and post.

3. We have heard the appellant and the learned Advocate for the State Election Commission. The appellant at this stage does not stake a claim to the post of Mukhiya. But, she still asserts that she belongs to the Extremely Backward Class Community. In fact, after the impugned judgment, the declaration made by the Caste Scrutiny Committee was challenged in C.W.J.C. No. 2408 of 2021. Another learned Single Judge found that the decision taken by the Caste Scrutiny Committee was without following the principles of natural justice. The declaration made by the Caste Scrutiny Committee was set aside and it was directed that a fresh consideration be made. It is admitted by the learned counsel for the appellant that a fresh consideration was made and the caste category of the appellant was reiterated as “Sheikh”; thus, again not coming withing the EBC category. It is also pointed out that the appellant



had filed another writ petition numbered as C.W.J.C. No. 202 of 2022, which is pending consideration before a learned Single Judge of this Court.

4. In the context of the caste certificate, subsequently issued also, the appellant can not even stake a claim to the reserved category. However, it is submitted that the continuation of the criminal proceedings, as directed by the learned Single Judge, would prejudice the appellant insofar as the writ petition is pending with respect to the caste category, against the findings of the Caste Scrutiny Committee.

5. We notice that by order dated 17.11.2021 in this notification, another Division Bench of this Court had noticed that the FIR in terms of the impugned judgment already stood registered. Still the learned Division Bench granted a *status quo* order as on that date. Hence, no further proceedings were taken. Even at this point, the declaration of caste as made by the Caste Scrutiny Committee is challenged before this Court.

6. In such circumstances, we are of the opinion that the criminal proceedings shall be subject to the result of the writ petition now filed by the appellant. We, hence, direct the *status quo* order to be continued till the disposal of C.W.J.C. No. 202 of 2022 and later



appropriate proceedings shall be taken depending upon the final disposal of the writ petition.

7. The appeal, hence, would stand dismissed with the above observations.

8. It is also pointed out by the learned counsel for the appellant that after the disposal of C.W.J.C. No. 2408 of 2021, she was again issued with a caste certificate of Extremely Backward Community and she again contested the election to the post of Mukhiya and won. But when the later declaration was made by the Caste Scrutiny Committee challenged in C.W.J.C. No. 202 of 2022, again the Election Commissioner disqualified her. As of now, she is not holding the post. The learned counsel only requests that if the challenge made is accepted by this Court, she may be restored to the post. We make it clear that it would be subject to the term of the Elected Body and, if it expires, definitely there can be no restoration.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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