

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10059 of 2023

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Pooja Kumari Daughter of Mithilesh Prasad, Resident of Village -Kataiya,
P.O. Siur, Block and P.S. Roh, District-Nawada.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, Patna.
3. The District Magistrate, Nawada, District-Nawada.
4. The District Panchayat Raj Officer, Nawada, District-Nawada.
5. The Block Development Officer, Roh, District-Nawada.
6. The Block Panchayat Raj Officer, Roh, District-Nawada.
7. The Circle Officer, Roh, District-Nawada.
8. The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
9. The State Election Commissioner, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
10. The Officer on Special Duty, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
11. Aarti Devi, Wife of Ashok Rout, Resident of Village-Siur, P.O. Siur, P.S. Roh, District Nawada.

... .. Respondents

with

Civil Writ Jurisdiction Case No. 12148 of 2023

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Jagannath Pauddar Son of Jayavir Pauddar Resident of Village-Wari, Ward
no.8, P.O. Wari P.S. Singhia, District-Samastipur.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Panchayat Raj Department, Government of Bihar, Patna.
3. The Distirct Magistrate, Samastipur District-Samastipur.
4. The District Panchayati Raj Officer, Samastipur District -Samastipur.
5. The Block Development Officer, Singhiya, District-Samastipur.
6. The Block Panchayat Raj Officer, Singhiya, District-Samastipur.
7. The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner,



8. The State Election Commissioner, the State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
9. The Officer on Special Duty, the State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
10. Ram Krishna Pandit Son of Late Sahdeo Pandit Resident of Village-Jamua, P.O. Wari, P.S. Singhiya, Distret-Samastipur.

... .. Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 10059 of 2023)

For the Petitioner/s : Mr. S.B.K. Manglam, Advocate

Mr. Awnish Kumar, Advocate

For the Respondent/s : Mr. Kumar Alok, SC-7

Ms. Rashmi Ranjan, Advocate

Mr. Anu Priyadarshi, Advocate

For the Resp No.11 : Mr. Ranjeet Choubey, Advocate

For the SEC : Mr. Sanjeev Nikesh, Advocate

Mr. Girish Pandey, Advocate

(In Civil Writ Jurisdiction Case No. 12148 of 2023)

For the Petitioner/s : Mr. Awnish Kumar, Advocate

For the Respondent/s : Ms. Rashmi Ranjan, Advocate

Mr. Anu Priyadarshi, Advocate

For the SEC : Mr. Sanjeev Nikesh, Advocate

Mr. Girish Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 24-11-2023

Since the issue(s) 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.

2. Heard Mr. S.B. K. Manglam, learned counsel duly assisted by Mr. Awnish Kumar, learned counsel appearing on behalf of the petitioners, Mr. Sanjeev Nikesh, learned counsel duly assisted by Mr. Girish Pandey, learned counsel for the Bihar State Election Commission, Ms. Rashmi Ranjan, learned counsel for the State and Mr. Ranjeet Choubey, learned counsel



for the respondent no.11 (in C.W.J.C. No. 10059 of 2023).

3. The petitioners in both the writ petitions are elected Mukhiya of Gram Panchayat Raj Siur under Roh Block of Nawada district and Gram Panchayat Raj Wari under Singhiya Block of Samastipur district, respectively. On being aggrieved by the order(s) issued by the respondent/the State Election Commissioner, Bihar, Patna, filed these writ petitions assailing the order(s), whereby the petitioners have been declared disqualified to hold the post of Mukhiya on the ground that the petitioners' social status as has been determined by the General Committee (Caste Scrutiny Committee) of General Administration Department are not that of the social status, for which the post(s) of Mukhiya of concerned Gram Panchayat Raj was/were reserved. The petitioners also sought for a declaration that in view of the law laid down by the Hon'ble Supreme Court in **Kumari Madhuri Patil and Another Vs. Additional Commissioner, Tribal Development and Others reported in 1994 (6) SCC 241**, the order passed by the Caste Scrutiny Committee is not final and remedy of a writ petition under Article 226 of the Constitution of India has been provided by the judgment itself. Thus, in view of the full Bench judgment of this Court in **Rajni Kumari Vs. The State**



of Bihar and Others reported in 2019 (4) PLJR 673, since there was no unimpeachable evidence before the State Election Commissioner as the order passed by the General Committee of General Administration Department had already been challenged by the petitioners before this Court, the impugned order(s) passed by the respondent/State Election Commissioner is/are without jurisdiction.

4. The short facts which led to the filing of the writ petition(s) is/are that the posts of Mukhiya of Gram Panchayat Siur under Roh Block of Nawada district as well as Gram Panchayat Raj Wari under Singhiya Block of Samastipur district were reserved for the Members of Extremely Backward Classes. The petitioners claiming themselves to be Members of Extremely Backward Classes, had filed their nomination to contest for the post of Mukhiya of the afore-noted Gram Panchayats. It is the specific case of the petitioners that there was no challenge to their candidature of their caste certificates by any candidate or any voter whatsoever either at the time of nomination or at the time of the scrutiny of the nomination paper by the returning officer. The petitioners, therefore, contested the election and after counting of votes, they were declared elected by the returning officer.



5. After declaration of result of election in favour of the petitioners, defeated candidate(s) had approached the State Election Commission by filing a complaint under Section 136(2) of the Bihar Panchayat Raj Act, 2006 (for short 'the Act of 2006') with a prayer to declare the petitioners disqualified to hold the post of Mukhiya of respective Gram Panchayat Raj on the ground of they being not the Members of Extremely Backward Class for which the posts were reserved.

6. Mr. S.B.K. Manglam, learned counsel for the petitioners submits that though according to the law laid down by the full Bench of this Court in **Rajani Kumari (supra)**, the State Election Commission has been authorized to entertain a complaint under Section 136(2) of the Act of 2006, only when a party approaches the State Election Commission with the evidence of unimpeachable character. However, in the cases in hand, after filing the complaint(s) by the defeated candidates, the State Election Commission acted mechanically and even when the complaint(s) was not maintainable, Case Nos. 97 of 2021 and 32 of 2022 were registered in the office of the State Election Commission (Panchayat) and notices were issued to the petitioners. In response thereto, they entered their appearances and filed their written statements refuting the



stand of the complainant as alleged in their complaint petitions. Simultaneously, after receipt of the complaints, the respondent/State Election Commissioner in C.W.J.C. No.10059 of 2023 has referred the matter to the Caste Scrutiny Committee, whereas in C.W.J.C. No. 12148 of 2023, referred the matter for inquiry by the District Magistrate-cum-District Election Officer (Panchayat) and, in turn, the said Authority had submitted its report to the State Election Commissioner. The matter was also enquired by other authorities in relation to the caste status of the petitioner and they also submitted its report, which was forwarded to the State Election Commission. Finally, the State Election Commissioner having found variances in the reports submitted by the different authorities, referred the matter to the Caste Scrutiny Committee. After receipt of the recommendation from the State Election Commission, the General Administration Department placed the matter before the Caste Scrutiny Committee. The matter was duly enquired by the Criminal Investigation Department. The petitioners also submitted their show-cause/written statement and have also produced their supporting documents for consideration by the Committee. However, without looking into the perversity of the report of the different authorities and



the documents placed on record by the petitioners along with their written statement, the Caste Scrutiny Committee unanimously approved the report of the Committee constituted by the Criminal Investigation Department and rejected the case of the petitioners.

7. It is the case of the petitioners that the order(s) passed by the Caste Scrutiny Committee have since been challenged by the writ petitioners by filing C.W.J.C. No. 9348 of 2023 and C.W.J.C. No. 9607 of 2023, respectively and the matter(s) is/are pending consideration before this Court, therefore, the State Election Commissioner should wait till the final adjudication of the writ petitions before passing the final order(s), impugned herein.

8. Mr. Manglam, further contends that since the decisions of the General Committee/Caste Scrutiny Committee of the General Administration Department have already been challenged by the petitioners before this Court by filing a writ petition under Article 226 of the Constitution of India and in view of the law laid down by this Court in **Rajani Kumari (supra)**, the decision of the General Committee/Caste Scrutiny Committee has not attained finality and, therefore, cannot be said to be an unimpeachable material against the petitioners for



declaring them disqualified to hold the post under Section 136(2) of the Act of 2006. A prayer has been made before the State Election Commissioner for grant of reasonable time to enable the petitioners to persuade the Hon'ble Court for out of turn hearing of their writ petitions, wherein the decisions of the General Committee/Caste Scrutiny Committee is/are under challenge but the requests of the petitioners were outrightly rejected and the impugned orders came to be passed by the respondent/State Election Commissioner, whereby the petitioners have been declared disqualified to hold the post of Mukhiya of respective Gram Panchayats on the ground that the petitioners have been declared ineligible by the General Committee/Caste Scrutiny Committee to contest the Panchayat Election, 2021 for the post of Mukhiya of the said Gram Panchayat(s), which was reserved for the Members of Extremely Backward Classes.

9. While assailing the impugned orders, Mr. Manglam, submits with all his vehemence that since the impugned orders are in the teeth of the law declared by the full Bench of this Court in **Rajani Kumari (supra)** and the respondent/State Election Commissioner has declared the petitioners disqualified to hold the post when the writ petitions



filed by the petitioners before this Court challenging the decision of General Committee/Caste Scrutiny Committee is/are pending. Thus, in any view of the matter, the impugned order(s) are not sustainable in the eyes of law and are fit to be set aside. He further submits that undoubtedly in view of the law laid down by the full Bench of this Court in **Rajani Kumari (supra)**, the State Election Commission can proceed under Section 136(2) of the Act of 2006 only on production of evidence of unimpeachable character. However, the moment the order(s)/decision(s) of the General Committee/Caste Scrutiny Committee were challenged by filing the writ petitions, the same cannot be termed as unimpeachable, and as such, the orders passed by the State Election Commissioner is/are without jurisdiction, if he has proceeded on the basis of the order(s)/decision(s) which was/were already under challenge before this Court in C.W.J.C. No. 9348 of 2023 and C.W.J.C. No. 9607 of 2023, respectively by the petitioners.

10. *Per contra*, Mr. Sanjeev Nikesh, learned counsel for the State Election Commission while refuting the contention of the petitioners submits 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 (supra)**. It would be worth mentioning here that the Hon'ble Supreme Court in the aforesaid case 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 competent authorities. By referring to the judgment of the Full Bench of this Court in **Rajani Kumari (supra)**, he further submits that wherever any dispute with regard to the social status/caste of a candidate is to be questioned under Section 136(2) of the Act of 2006 before the State Election Commission, the dispute is to be resolved on the basis of a decision taken by the Caste Scrutiny Committee, which is an apex facts finding body constituted in terms of the verdict rendered in **Kumari Madhuri Patil (supra)** by the Apex Court.

11. He further submits that the full Bench of this Court in the case of **Rajani Kumari (supra)**, has categorically held in para-184 that 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. The moment a decision has been taken by the General Administration/Caste Scrutiny Committee, which is an apex facts finding body, the State Election Commission is under obligation to pass the consequential order. He lastly submits that since the order(s)/decision(s) of the General Administration/Caste Scrutiny Committee is/are under challenge and unless the same is set aside by a competent court, the order(s)/decision(s) cannot lose its finality. Thus, the order(s) impugned have been passed in consonance with the full Bench judgment of this Court in **Rajani Kumari (supra)**. Reliance has also been made of a judgment rendered by the learned co-ordinate Bench of this Court in **Khushboo Ara Vs. State of Bihar & Ors.[2023 (5) BLJ 114]** as well as **Manoj Kumar Vs. State of Bihar & Ors.[2023 (5) BLJ 669]**.

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

13. It is needless to observe that the State



Government under the General Administration Department had constituted a Caste Scrutiny Committee in the light of the judgment of the Hon'ble Supreme Court in **Kumari Madhuri Patil (supra)**, with an object to put a quietus to the dispute relating to the caste of a candidate. For better appreciation, it would be apposite to quote the paragraphs 13(11) and 13(13) which reads as under:

“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.”

14. The full Bench of this Court in the case of **Rajani Kumari (supra)**, while answering the reference to a question as to 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, in its penultimate paragraph no. 184 of the judgment held as



follows:

“184. 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 subsection (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.”

15. From the reading of the mandate of the full Bench as quoted hereinabove, indubitably the State Election Commission shall proceed to consider the matter only on the basis of an unimpeachable evidence.

16. Now the question posed before this Court is as to whether the decision taken by the General Committee/Caste Scrutiny Committee is of unimpeachable character since the same has put to challenge and pending before this Court and till date it has not attained finality.

17. It is worth noted here that mere questioning the legality of a decision or mere filing an appeal against the order passed by a competent authority or a court, does not amount to stay of the operation of the order impugned or the appealed.

18. It is well settled that any order passed by a competent authority or a court does not lose its effect unless it is set aside by the higher authority or the competent court.

19. Furthermore, the identical issue has been brought



before the learned co-ordinate Bench of this Court in the case of **Khushboo Ara (supra)**, wherein the learned single Judge while taking note of the similar submissions made on behalf of the petitioner, has come to the conclusion “that the finding of the Committee is an unimpeachable evidence unless it is set aside by a competent court. Once the Committee came to a definite conclusion that she does not belong to Extremely Backward Classes, she cannot get any benefit(s) on the basis thereof.” The learned single Judge has found that the Commission was fully justified in passing the order, disqualifying the petitioner from the post of Mukhiya, which she was holding and the decision of the Commission was also found strictly in line with the full Bench judgment of this Court in **Rajani Kumari (supra)**.

20. This Court further finds it relevant to observe that in **Baidhnath Singh Vs. State of Bihar and Ors.** reported in **2022 (4) BLJ 638**, the learned Division Bench of this Court has directed the Caste Scrutiny Committee to inquire and conclude the matter within the stipulated period. For better appreciation of the matter, it would be apposite to quote paras-11 to 13, which reads as follows:

“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.”

21. In view of the aforesaid facts and circumstances and the discussions made hereinabove as well as in the light of



the settled legal position, this Court does not find any merit in the writ petitions. Accordingly, the writ petitions stand dismissed.

22. There shall be no order as to cost(s).

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	09-10-2023
Uploading Date	25-11-2023
Transmission Date	

