

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.775 of 2024

In
Civil Writ Jurisdiction Case No.7622 of 2024

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Biltu Ray @ Bilat Ray @ Bilat Prasad Yadav S/o Late Rambhajju Rai @
Bhajju Rai, resident of Vill.- Larakwa, Panchayat- Bhaluaha, P.S.- Sonbarsa,
Dist- Sitamarhi, Bihar.

... .. Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Panchayati Raj Department, Government of Bihar, Bailey Road, Veerchand Patel Road, Patna- 800015.
2. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Bailey Road, Veerchand Patel Road, Patna- 800015.
3. The State Election Commission of Bihar, Patna through its Secretary State Election Commission Bihar, Sone Bhawan, Veerchand Patel Path, Patna.
4. The State Election Commissioner, State Election Commission of Bihar, Patna, Sone Bhawan, Veerchand Patel Path, Patna.
5. The District Election Officer (Panchayat)-cum- District Magistrate Sitamarhi, Bihar.
6. Mukesh Kumar Sah, S/o- Ram Nandan Sah, Resident of- Ward No.- 6, Sonebarsa, Parsakhurd, P.O.- Kanhauli, P.S.- Kanhauli, Dist.- Sitamarhi, Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Abhinav Srivastava, Advocate
		Mr. Kundan Kumar Ojha, Advocate
		Mr. Dhananjay Kumar, Advocate
For the EC	:	Mr. Ravi Ranjan, Advocate
For the Respondent/s	:	Mr. Amit Srivastava, Sr. Advocate
		Ms. Malika Mazumdar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)



Date : 12-09-2024

The appeal challenges the order of the learned Single Judge which confirmed the order of disqualification of the appellant; the writ petitioner, from holding the post of Mukhiya. The disqualification was on the ground; the petitioner while he contested to the post of Mukhiya of Gram Panchayat Bhaluaha, Sonebarsa Block of Sitamarhi District, was not a citizen of India since he had voluntarily accepted the citizenship of a foreign country; i.e. Nepal.

2. Sri Abhinav Srivastava, learned Counsel for the appellant took us through Part II of the Constitution of India; dealing with citizenship and the provisions of the Citizenship Act, 1955 (hereinafter referred to as 'Act of 1955') as also the Citizenship Rules, 2009 (hereinafter referred to 'Rules of 2009') to contend that the dispute is not one which could have been considered by the State Election Commission and it ought to have been referred to the Central Government under Schedule III of the Rules of 2009. It is argued that the appellant is living in a District within the State of Bihar, bordering Nepal and is a naturalized citizen of India. It is common that the residents



of the border villages cross over to Nepal, where they have various interests including financial and familial ties and vice-versa also happens.

3. The appellant was carrying on a business in Nepal and it is the specific contention that he had never applied for a citizenship in Nepal. Due to a huge mass movement in Nepal in the year 2006-07, large number of public records were burnt and the Government of Nepal constituted a ground level survey to obtain data of citizens; by reason of which he was included in the electoral rolls. While contending that the mere inclusion in the electoral roll would not result in a citizenship, it is also asserted that there was never an application made by the appellant for a citizenship in Nepal; which alone would constitute a voluntary acquisition of citizenship. Only a voluntary acquisition of citizenship could lead to termination under Section 9 of the Act of 1955. Article 9 of the Constitution of India also provides for cessation of citizenship only when a person, who is a citizen of India by virtue of Article 5, voluntarily acquires the citizenship of a foreign State. The petitioner is a naturalized citizen by virtue of Section 5 and



the mere inclusion of his name in the voters list in Nepal cannot result in the cessation of such citizenship.

4. The learned Single Judge, according to the learned Counsel, clearly erred in relying on a Division Bench of this Court in ***Kiran Gupta v. State Election Commission; (2021) 1 PLJR 9***. Section 9(2) of the Act of 1955 is specifically read over to argue that a dispute regarding cessation of citizenship under sub-section (1) of Section 9 can only be adjudicated by such authority prescribed in this behalf. The Rules of 2009 by Schedule III provide for a decision to be arrived at by the Central Government; which makes the decision of the Election Commission *non-est* in law. Reliance is also placed on ***Dipak Babaria and Another v. State of Gujrat and Others; (2014) 3 SCC 502*** to contend that when the law requires that a particular thing should be done in a particular manner, it must be done in that manner and not in any other manner.

5. Sri Amit Srivastava, learned Senior Counsel appearing for the complainant before the Election Commission; who lost the elections to the appellant, contends that there is sufficient evidence to find that the



petitioner had accepted the citizenship of Nepal. The cessation of citizenship is an automatic consequence of such acceptance of citizenship by the rigor of Section 9(1) of the Act of 1955. The Election Commission was entitled to look into the aspect of disqualification, as has been held by a Full Bench of this Court in ***Rajani Kumari v. State Election Commission; (2019) 4 PLJR 673.***

6. Sri Ravi Ranjan, learned Standing Counsel appearing for the State Election Commission would adopt the arguments of the learned Senior Counsel and point out that the learned Single Judge was perfectly correct in having upheld the order of the Commission. It is stated that, even as admitted by the appellant, he had a business in Nepal and his name was also included in the voters list. In the year 2006, he had applied for withdrawal of cancellation of his citizenship which was carried out only in the year 2023. The elections were held in the year 2021 and the appellant could not have stood for the elections by reason of the disqualification visited on him under the Bihar Panchayat Raj Act, 2006. A person who is not a citizen of India is disqualified for membership under Section 136 of



the Act. The very fact that the petitioner had sought for cancellation of his citizenship in Nepal and obtained it, indicates that his citizenship in India has ceased to exist. The mere cancellation of the citizenship of Nepal would not result in revival of his citizenship in India. The learned Counsel also relied on ***Kiran Gupta (supra)*** to further buttress his arguments.

7. Admittedly, the appellant is a naturalized citizen of India by virtue of Article 5(3) of the Constitution of India. Having been born within the territory of India and having parents who were both born in the territory of India, the question is only with respect to the cessation of Indian citizenship by reason of his name having appeared in the electoral roll of Nepal; a foreign country and whether it results in the finding of a citizenship of Nepal and if it does, whether it is one voluntarily acquired.

8. We would first look at the decisions to correctly put in perspective the law on the subject. ***Izhar Ahmad Khan and Others v. Union of India and Others*** reported in ***AIR 1962 SC 1052*** considered the challenge to the constitutional validity of Section 9 of the Citizenship



Act and Rule 30 of the Citizenship Rules, 1956. The legislative authority was traced to Entry 17 of List I and the provisions of Article 11 of Part II of the Constitution of India. Acquisition of citizenship was found to be provided in Sections 3 to 7, while Sections 8 to 10 dealt with the termination of citizenship. As per Section 9, the voluntary acquisition by an Indian Citizen of a citizenship of another country was found to terminate the citizenship of India provided the voluntary acquisition had taken place between 26.01.1950 and the commencement of the Act or has taken place thereafter. It was held that, whereas Article 9 of the Constitution dealt with the acquisition of citizenship of a foreign State which had taken place prior to the commencement of Constitution, Section 9 of the Act of 1955 deals with acquisition of foreign citizenship, subsequent to the commencement of the Constitution (sic para 12).

9. Rule 30, which was upheld in *Izhar Ahmad (supra)* is in *pari materia* to Rule 40 of the Rules of 2009. Rule 30 of the Rules of 1956, as does Rule 40 of the Rules of 2009; provide that any question arising as to whether,



when or how any person has acquired the citizenship of another country; for the purpose of Section 9(2), the Central Government has to determine the issues. Schedule III of the Citizenship Rules, 2009 delineates the procedure, as is provided under Rule 40(2).

10. It is with this specific authority and the procedure prescribed for deciding the questions arising under Section 9 (2) of the Act of 1955; that the decisions relied on by the learned Single Judge has to be considered. ***Rajani Kumari (supra)***, a Full Bench decision generally considering the power of the State Election Commission to consider disqualification of a candidate, after elections; in the Epilogue penned by the Hon'ble Chief Justice, who headed the Bench, found consensus in the three different judgments delivered by all the Hon'ble Members of the Full Bench. We extract paragraph 183 and the answer to the question framed hereunder :-

Question No. 1 - 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?

Answer - 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 fact 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.

11. The Full Bench, while holding that the State Election Commission shall entertain and consider the disqualification issued on the basis of unimpeachable materials placed before it; as long as it is not a purely election dispute, also made a caveat insofar as finding that disputed questions of facts and contentious issues brought before the Commission would require relegation of the parties to a competent Court or Tribunal or a fact finding



body competent to decide such contentious issues after taking evidence. It is also declared that in such an event, the Commission shall not take a decision on the complaint either *suo motu* or otherwise.

12. *Kiran Gupta (supra)* according to us, was in a totally different context. Therein, the appellant was a citizen of Nepal who solemnized her marriage with an Indian and started permanently residing with him in India. She had also got her name entered in the voters list. She had an account with a bank in India, was issued with PAN Card and Aadhar Card and the names of her children were also registered in India; under the Registration of Births and Deaths Act, 1969. The question arose whether these aspects would lead to her being declared a citizen of India. It was held that the petitioner failed to register herself as a citizen under Section 5 of the Citizenship Act and all her documents including her Voter ID would not be proof of citizenship in India; even though she had voluntarily relinquished her Nepali citizenship in 2016. The question was not a cessation of citizenship under Section 9. The issue agitated in the cited case was as to whether without a proper



registration having been taken, a foreign national could claim Indian citizenship by reason of having residence, maintaining bank account, being included in the voters list and having lived in India for very many years; without the person being registered as a citizen of India.

13. As we noticed at the outset, in the present case, there is no dispute whether the appellant was a naturalized citizen of India or not. The contention taken by the complainant before the Election Commission was also that his name was included in the voters list of Nepal and hence, he should be deemed to have relinquished his citizenship under Section 9 of the Act of 1955. We are of the opinion that the Election Commission would not be empowered to decide the question even going by the Full Bench decision of this Court in ***Rajani Kumar (supra)***.

14. We also extract paragraphs 11 to 13 from a three Judge Bench decision of the Hon'ble Supreme Court in ***State of U.P. v. Rehmatullah; (1971) 2 SCC 113*** hereunder:-

11. In Shuja-Ud-Din v. Union of India [CA No. 294 of 1962, decided on October 30, 1962] this Court speaking through Gajendragadkar, J., as he then was, said:



“It is now well-settled that the question as to whether a person who was a citizen of this country on January 26, 1950, has lost his citizenship thereafter, has to be determined under the provisions of Section 9 of the Citizenship Act, 1955 (57 of 1955). There is also no doubt that this question has to be decided by the Central Government as provided by Rule 30 of the Rules framed under the Citizenship Act in 1956. The validity of Section 9 as well as of Rule 30 has been upheld by this Court in the case of Izhar Ahmad Khan v. Union of India. It has also been held by this Court in State of Madhya Pradesh v. Peer Mohd. (Cri. Appeal No. 12 of 1961 decided on September 28, 1962) that this question has to be determined by the Central Government before a person who was a citizen of India on January 26, 1950, could be deported on the ground that he has lost his citizenship rights thereafter under Section 9 of the Citizenship Act. Unless the Central Government decides this question, such a person cannot be treated as a foreigner and cannot be deported from the territories of India.”

12. In Abdul Sattar Haji Ibrahim Patel v. State of Gujarat [Cr.A.No. 153 of 1961, decided on February 17, 1964 : AIR 1965 SC 810 : (1964) 2 SCJ 461 : (1965) CrLJ 759] Gajendragadkar, C.J., speaking for a Bench of five Judges approved the decisions in the cases of Izhar Ahmad Khan and Syed Mohd. Khan, it being emphasised that the decision of the Government of India is a condition precedent to the prosecution by the State of any person on the basis that he has lost his citizenship of India and has acquired that of a foreign country. That an inquiry under Section 9 of the Citizenship Act can only be held by the Central Government was again reaffirmed by this Court in Mohd. Ayub Khan v. Commissioner of Police, Madras [(1965) 2 SCR 884] .

13. In view of these decisions it seems to us to be obvious that till the Central Government determined the question of the respondent having acquired Pakistan nationality and had thereby lost Indian nationality, he could not be treated as a foreigner and no penal action could be taken against him on the basis of his status as a foreigner, being national of Pakistan. It is not the appellant's case before us that any directions under the law governing foreigners were given to the respondent after November 5, 1964, which



were disobeyed entailing his prosecution, and indeed it is admitted that he was not even informed of the decision of the Central Government till March 29, 1965. It is also noteworthy that at the time when the Central Government determined his nationality he was being tried in this country by the criminal court after having been arrested and bailed out, and he was not free to leave this country for proceeding to Pakistan. In the background of these facts it appears to us that the wide charge as framed against him was misconceived and he could not be convicted of overstaying in this country at least till he was duly found to be a Pakistani national and to have ceased to be an Indian citizen. The order of the Central Government is clearly final, and it has remained unchallenged by the respondent even after he was informed of this order on March 29, 1965. We have seen the proceedings of the Central Government and we find that the respondent had been given full opportunity of putting forth his case. The binding nature of that order was not, and indeed it could not be, questioned before us. The determination by the Central Government in this case would not have the effect of retrospectively rendering a penal offence an act which was not so at the time of its commission. The respondent even though held to be a Pakistani, and therefore a foreigner, before the charge was framed against him is entitled to the protection of our laws.

15. As we noticed, Rule 30 referred to in the above extract, is in *pari materia* to Rule 40 of the Rules of 2009. The issue, hence, has to be decided by the Central Government to whom the Election Commission should refer the dispute. We set aside the order of the Election Commission and the judgment of the learned Single Judge which confirmed it. We direct the State Election Commission to refer the dispute to the Central Government



for consideration as to whether the petitioner had acquired the citizenship voluntarily and can be visited with the consequence of cessation of Indian citizenship under Section 9(1) of the Act of 1955.

16. The appeal stands allowed and as a consequence of our reasoning, the order of the State Election Commission, impugned in the writ petition, stands set aside. Till a decision is taken by the Central Government, the appellant would be entitled to continue in the post of Mukhiya and thereafter, subject to the decision taken.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree

(Partha Sarthy, J)

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