

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1893 of 2018

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Palak Bharti W/o Alok Kumar Ram R/o Village- Siktaul, P.O.- Harpur, P.S.-
Chautarwa, District- West Champaran, Mukhiya, Gram Panchayat -Kolhua
Choutarwa, P.S. Chautarwa, Block- Bagaha-1, District- West Champaran.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The District Magistrate Bettiah District- West Champaran.
3. The Sub- Divisional Officer, Narkatiyaganj, District - West Champaran.
4. The Deputy Election Officer Panchayat-Cum-District Panchayat Raj Officer,
District- West Champaran.
5. The State Election Commission Panchayat, Sone Bhawa, Bir Chand Patel, Bihar
Patna through the Stat
6. The State Election Commissioner, the State Election Commission Panchayat,
Sone Bhawan, Bir Chand P
7. The Secretary, the State Election Commission Panchayat, Sone Bhawan, Bir
Chand Patel, Bihar, Patna
8. The Deputy Secretary, the State Election Commission, Panchayat, Sone
Bhawan, Bir Chand Patel, Biha
9. Nand Kishor Ram S/o late Ramjit Ram R/o Villag- Kolhua Chautarwa, Via-Ram
Nagar, Block- Bagaha- 1, District- West Champaran.
10. The Circle Officer, Gaunaha, District - West Champaran, Bettiah.

... ... Respondent/s

The petitioner was declared disqualified under **Bihar Panchayat Raj Act, 2006, under section 136 (2)** as contested and elected Mukhia on the Schedule Caste female seat. Father of the petitioner belongs to “Tharu” Caste which is under S.T category and her mother belongs to SC category. At this juncture the petitioner will come under S.T category because the caste of children will be determined on the ground of the caste of his/her father taking plea that her father lived with her mother in S.C category. They should be considered as Schedule Caste rejected. Thus the petitioner was not entitled to file nomination for a seat which is reserved for Schedule Caste female candidate. After the Enquiry Report provided by the District Administration, the Commission after hearing all the parties including petitioner it was held that she belongs to S.T category and thus could not have contested from a S.C female seat. The petition is dismissed

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Ram Nagar, Block- Bagaha- 1, District- West Champaran.
10. The Circle Officer, Gaunaha, District - West Champaran, Bettiah.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rohit Kumar Tripathi, Advocate
For the Respondent no.9	:	Mr. Vijay Kumar Singh, Advocate
For the State	:	Mr. Prem Ranjan Rai, AC to SC 7
For State Elections Commission	:	Mr. Sanjeev Nikesh, Advocate Mr. Girish Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
C.A.V. JUDGMENT

Date : 05-07-2023

Heard the parties.

2. The petitioner has preferred the present
 petition for the following reliefs:

(i) for issuance of an appropriate writ / order /
 direction quashing the order dated 08.01.2018 passed by the
 respondent-State Election Commissioner, Bihar in case no.



65/2017 by which he has declared the petitioner as disqualified under section 136 (2) of the Bihar Panchayat Raj Act, 2006 (henceforth for short 'the 2006 Act') and also has directed the Respondent District Magistrate, West Champaran, Bettiah to cancel the caste certificate issued to the petitioner;

(ii) further prayer is for issuance of an appropriate writ / order / direction staying the operation of the order dated 08.01.2018 and also restraining the Respondent District Magistrate from canceling the caste certificate of the petitioner during the pendency of this writ application.

3. The matrix of facts giving rise to the writ petition is/are enumerated hereinbelow:

4. The petitioner, Palak Bharti contested and was elected "Mukhiya" of Gram Panchayat Raj Kolhua Choutarwa in Block- Bagaha-1 in the district of West Champaran, on the Scheduled Caste female seat.

5. One Nand Kishor Ram (respondent no. 9) submitted an application before the State Election Commissioner, Bihar, Patna stating therein that the petitioner belongs to Scheduled Tribe category as she is daughter of Budhai Mahto, who belongs to 'Tharu' caste which comes under the Scheduled Tribe category.



6. The State Election Commissioner referred the said complaint to the District Magistrate, West Champaran on 02.03.2016 and sought a report on the matter (Annexure-3 series to the writ petition).

7. Subsequently, the District Magistrate, West Champaran directed the Sub-Divisional Officer, West Champaran vide letter no. 364/panchayat/Bettiah dated 30.06.2017 asking him to submit an enquiry report.

8. Pursuant thereto, enquiry was held and the Circle Officer, Gaunaha vide letter no. 1169 dated 18.09.2017 submitted a report stating that the father of the petitioner, namely, Budhai Mahto belongs to 'Tharu' caste which comes under the Scheduled Tribe category. It was further informed by the Circle Officer, Gaunaha that the caste consideration of a person is on the basis of the caste of the father.

9. The said report was forwarded by the Sub-Divisional Officer, Narkatiyaganj vide letter no. 465 dated 18.10.2017 with his own observation that normally the caste of a person is fixed on the basis of the caste of his/her father.

10. The Collector, West Champaran, Bettiah thereafter vide letter no. 126/panchayat dated 24.10.2017 submitted its report to the Joint Secretary, State Election



Commissioner in which it was informed that the enquiry report of the Sub-Divisional Officer, Narkatiyaganj, Land Reforms Deputy Collector, Narkatiyaganj is/are being forwarded for necessary action. The State Election Commission (henceforth for short 'the Commission') thereafter put the petitioner and the respondent no. 9 on notice and the proceedings in case no. 65 of 2017 started.

11. On 08.01.2018, vide a reasoned order, 'the Commission' came to the conclusion that the father of the petitioner, Budhai Mahato belongs to 'Tharu' caste which comes under Scheduled Tribe category. Accordingly, the caste of the petitioner (Palak Bharti) will also be that of the Scheduled Tribe ('Tharu' caste). As such, her election to the post of 'Mukhiya' on a female Scheduled Caste seat is not valid.

12. Thus, under Bihar Panchayat Raj Act, 2006 under Section 136 (2) of 'the 2006 Act' the petitioner was declared disqualified as the 'Mukhiya' of Gram Panchayat Raj Kolhua Choutarwa in Block- Bagaha-1 in the district of West Champaran and the seat was declared vacated.

13. Simultaneously, the District Magistrate-cum-District Election Officer (Panchayat), West Champaran was also directed to take steps for the cancellation of the caste certificate



of the petitioner (Annexure-8 to the writ petition).

14. Aggrieved, the present petition was preferred by the writ petitioner.

15. Heard learned counsel for the parties.

16. The case as presented by the learned counsel for the petitioner is that after the marriage of her mother, Indu Devi who belongs to Scheduled Caste category with Budhai Mahto, her father shifted to his wife's place where the birth of the two children, namely, Munni Kumari and Palak Bharti (petitioner herein) took place and accordingly in all the documents, they were shown as Scheduled Caste.

17. It is his further submission that as per the Circle Officer's letter no. 1675 dated 08.12.2016, 'Gaunaha' has been shown as the residence of the father and the petitioner's husband's residence is at Kolhua Choutarwa in Block- Bagaha-1 in the district of West Champaran from where she was elected.

18. The ground that has been taken by the learned counsel for the petitioner is that since the marriage of her mother with her father who belongs to 'Tharu' Caste (Scheduled Tribe) was not accepted by the 'Tharu' tribe, he started living with her mother in the Scheduled Caste colony, was known as Budhai Mahato and thus, they also became



Scheduled Caste.

19. The further submission is that all the educational documents of her as also that of her sister reflects that they belong to Scheduled Saste category. The further submission is that her husband belongs to the same caste as that of her mother.

20. The submission of the learned counsel for the petitioner is that all these factors were not taken into account when the order in question was passed by 'the Commission' disqualifying her from the post of 'Mukhiya' with further direction to the District Magistrate, West Champaran, Bettiah to cancel her caste certificate.

21. The last submission is that 'the Commission' could not have directed the District Magistrate to take steps for cancellation of her caste certifice.

22. Per contra, Mr. Sanjeev Nikesh, learned counsel appearing for 'the Commission', submits that once the report of the District Magistrate, West Champaran on the basis of enquiry conducted regarding the caste of the petitioner was with 'the Commission'; it was duty bound to act in accordance with law and since there was finding of the said Committee that she does not belong to Scheduled Caste category, 'the



Commission' rightly passed the order as communicated vide Complaint No. 65 of 2017 dated 08.01.2018 (Annexure-8).

23. He further submits that pursuant to the decision of the Hon'ble Apex Court's order in **Kumari Madhvi Patil vs. Additional Commissioner** reported in **(1994) 6 SCC 241**, now the State Government under the General Administration Department has constituted a Caste Scrutiny Committee and the petitioner is well advised to move before it and get her caste declared by the said Committee. He concludes by submitting that there is no infirmity in the finding and the writ petition is fit to be rejected.

24. The State has also also echoed the submissions put forward by the learned counsel for 'the Commission' and further submitted that there is/are unimpeachable evidence to show that the petitioner's father belongs to 'Tharu' caste which comes under the Scheduled Tribe category and as such, her caste comes under Scheduled Tribe. Thus, she could not have contested from a seat which was reserved for Scheduled Caste female. As such, upon complaint by the respondent no. 9, when the Enquiry Committee came to the said conclusion, 'the Election Commission' was fully justified in passing the order in question. He concludes by



submitting that the writ petition be dismissed.

25. Mr. Vijay Kumar Singh I, learned counsel appearing for the respondent no. 9 submits that the petitioner belongs to the Scheduled Tribe category, wrongly contested the election on Scheduled Caste seat and as such he rightly made complaint before 'the Commission' which after the enquiry report submitted by the District Administration heard the concerned parties and passed the order which is fully justified and the writ petition is fit to be dismissed.

26. Having heard the parties at length, this Court finds force in the submissions put forward by the learned counsel for 'the Commission' as also the State.

27. The admitted fact is that :

(i) the father of the petitioner, Budhai Mahto belongs to the 'Tharu' caste which comes under the Scheduled Tribe category;

(ii) he married Indu Devi (mother of the petitioner), who belongs to a caste which comes under the Scheduled Caste category;

(iii) however, the fact remains that when her father was a Scheduled Tribe, the two children of the couple (Munni Kumari and Palak



Mahto) naturally will come under the Scheduled Tribe category as the caste of the children will be determined on the basis of the caste of his/her father;

(iv) the contention of the petitioner only that only because her father resided with her mother in the Scheduled Caste colony, they should be treated as Scheduled Caste, is nothing but an imagination of mind which is fit to be rejected.

(v) further as she belongs to 'Tharu' caste under Scheduled Tribe category by virtue of her father being a 'Tharu' caste, she was not entitled to file nomination for a seat which is reserved for Scheduled caste female ;

(vi) respondent no. 9 objected the same before 'the Election Commission';

(vii) 'the Commission', in turn, sought an enquiry report from the District Administration;

(viii) once the District Administration provided the enquiry report, 'the Commission' took up the matter and only after



hearing all the parties including the petitioner herein and being satisfied that she belongs to Scheduled Tribe category and thus could not have contested from a Scheduled Caste female seat, passed the order in question;

(ix) the same is fully justified.

28. Further, it has right been submitted by the learned counsel for 'the Commission' that pursuant to the constitution of the Caste Scrutiny Committee, the petitioner has the liberty to move before it and get her caste declared from the said committee.

29. In the considered view of the Court, having chosen to by-pass Caste Scrutiny Committee, the petitioner cannot expect the Writ Court to come to her rescue when unimpeachable evidences are there to prove that she belongs to 'Tharu' caste under the Scheduled Tribe category by virtue of being daughter of Budhai Mahto, who admittedly is a 'Tharu' caste (Scheduled Tribe category).

30. Further a Bench of this Court (Hon'ble Mr. Justice Ahsanuddin Amanullah, as his Lordship then was) in a related matter in **C.W.J.C. No. 12879 of 2016 (Shri Devi Vs. The State of Bihar & Ors.** held that the right to contest the



election is a statutory right and once under the statute, a seat is reserved for a particular category/caste, only a person belonging to such category/caste has the right to contest such elections.

31. This Court would like to put on record the observation made in **Shri Devi Vs. State (supra)** which is as follows:

“Having considered the rival contentions, in the opinion of the Court, though the order impugned of the District Magistrate, Nalanda dated 26.07.2016 is based on a report dated 15.07.2016, copy of which may not have been given to the petitioner, but for various reasons to be discussed later on, the Court could not like to interfere in the matter. Firstly, the right to contest an election is a statutory right and once under the statute, a seat is reserved for a particular category/caste, only a person belonging to such category/caste has the right to contest such election. In the present case, the seat was reserved for Extremely Backward Caste Female. Thus, unless the petitioner belongs to such category, she had no right even to contest the election. The law with regard to determination of caste is also settled, where the caste of the person concerned is based upon his or her birth and not on the family to which he or she may have been married. In the present case, the requirement of law for obtaining a caste certificate is that the petitioner has to show that she took birth in a family belonging to Teli caste. The certificate obtained by her based on the caste of her husband, who may be a Teli, is not a definite proof of the petitioner also belonging to the Teli caste. Initially, the form of the petitioner



was accepted as she had submitted a certificate obtained from the District of Nalanda which itself was based on the caste certificate issued to her husband, and she was allowed to contest the election and upon being victorious was also given such certificate and is thus holding the post of Mukhiya. However, the law also requires that when a controversy or complaint is made, the issue shall be decided on the basis of determination of the caste of a person as per the parental side. In the present case, initially, there was a report of the Sub Divisional Officer, Hilsa which is a detailed report based on field enquiry recording the statement of various persons who were examined, which clearly indicates that the petitioner was married in an inter-caste marriage and that she was the daughter of Lakhan Mahto, who belonged to the Kushwaha caste, which is under the Backward Class category. Further, pursuant to the order of this Court dated 04.02.2017, an enquiry having been held by a team of five officers headed by the Sub Divisional Officer, Sadar, Gaya, the statement of various witnesses, including the Mukhiya, having been recorded and the so called brother of the petitioner namely, Deepak Kumar being also examined and thereafter the father of Deepak Kumar i.e., Lakshman Prasad despite being asked to be present in the enquiry, and two dates being fixed and attempts made to interview him, he was not available and in fact had locked up his house and the whole family had moved out. Even the report of the local Mukhiya who had initially recommended for issuance of the caste certificate to the petitioner has stated that only on the basis of what had been told to him by Lakshman Prasad, he had made recommendation but later on, he was made aware that the claim of



Lakshman Prasad that he had a first wife i.e., Daha Devi, who is the mother of the petitioner, appears to be suspicious. Further, the witnesses who knew Lakshman Prasad for about 15-20 years have stated that never before they had either heard about or seen the petitioner or her mother. Moreover, a report has also been submitted by the Sub Divisional Officer, Tekari, Gaya which also states, on the basis of the enquiry made after recording the statement of the villagers, that Lakshman Sao (Prasad) was the son of late Jethan Sao, who had two wives and further that Lakshman Sao (Prasad) had never married twice. Thus, in view of the fact that Deepak Kumar, whom the petitioner claims to be the step-brother had stated that from his mother there were six sisters and two sons and that his mother was not the mother of the petitioner, the evidence that Lakshman Sao (Prasad) had no second wife, the claim of the petitioner cannot be sustained. The reason why the Court is persuaded not to interfere in the matter is primarily on the documentary evidence brought on record on behalf of the respondent no. 5 in his counter affidavit, copy of which was served on learned counsel for the petitioner on 23.02.2017 itself. However, till date, no rejoinder to the same has been filed and thus, the facts stated and the copies of document brought on record, not having been controverted, stand admitted.

Having considered the matter in totality, in view of the overwhelming evidence to show that the petitioner is daughter of Lakhan Mahto and not Lakshman Prasad and Lakhan Mahto belonging to the Kushwaha caste, which comes under the Backward Caste and the petitioner claiming himself to be Teli, which comes under the Extremely Backward Caste category, this



Court is of the opinion that the petitioner has not been fair and clean in her conduct. The other aspect which also goes against the conduct of the petitioner is the fact that once having procured a caste certificate in the District of Nalanda in January, 2016, she again applied for and got a caste certificate on 05.07.2016 in the District of Gaya and after three months thereafter, i.e., on 13.10.2016, again obtained a caste certificate from the District of Gaya, though from a different Block, such repeated attempt of the petitioner to get one caste certificate after the other also indicates that the petitioner does not belong to the caste to which she claims i.e., Teli. The Court having come to a prima facie conclusion that there are overwhelmingly admissible records to indicate that the caste of the petitioner is Kushwaha and not Teli, would not interfere in the matter on a purely technical ground which would result in the petitioner continuing on the post of Mukhiya, which was reserved for a female candidate of the Extremely Backward Caste category to which the petitioner does not seem to belong.

For the reasons aforesaid, this Court is not inclined to invoke its extraordinary prerogative writ jurisdiction under [Article 226](#) of the Constitution of India in the present matter.

Accordingly, the writ petition is dismissed.

The stay granted under order dated 04.02.2017 stands vacated.”

32. Aggrieved, the said writ petitioner, **Shri Devi** preferred **LPA 703 of 2017** and the Division Bench vide an



order dated **08.05.2017** chose not to interfere with the writ Court's order which read as follows :-

“Having heard learned counsel for the parties, we find that in the matter of cancellation of caste certificate of the petitioner interference by the Writ Court was not called for and the learned Writ Court has rightly refused to interfere into the matter as it was based on a finding of fact recorded in an enquiry conducted.

*That apart now with regard to the social status of the petitioner, in case the petitioner has any grievance, the petitioner should raise the issue before the Caste Scrutiny Committee constituted by the State Government in accordance to the law laid down by the Supreme Court in the case of **Kumari Madhuri Patil vs. The Additional Commissioner Tribal Development and others (1994) 6 SCC 241** and in case the petitioner raises a complaint or files a representation before the Scrutiny Committee, the Scrutiny Committee shall proceed to decide the claim of the petitioner and determine the social status of the petitioner in accordance to law after hearing all concerned within a period of one month.*

That apart the prayer made by the petitioner for restraining the State



Election Commission from proceeding in the matter, the same cannot be considered at this stage as the State Election Commission has already ceased of the matter and has not passed any final order in a proceeding pending before it under Section 136(2) of the Gram Panchayat Raj Act. The petitioner's cause of action for the same will accrue after final order was passed by the State Election Commission. At this stage, this question need not be looked into.

In case a favourable decision is taken by the Caste Scrutiny Committee, the petitioner shall have the liberty to approach the State Election Commission for reconsideration.

With the aforesaid observations and liberty to the petitioner, the appeal stands disposed of.”

33. Thus the Division Bench clearly observed that in case of grievance, the petitioner can move before the Caste Scrutiny Committee.

34. Having been convinced with the averments put forward by ‘the Commission’ and the State and the facts/documents on record, this Court do not find any merit in the petition.

35. The petitioner, if so advised, always have



liberty to approach the Caste Scrutiny Committee for declaration of her caste and the consequences will automatically follow. However, till the Caste Scrutiny Committee takes a decision, the enquiry report submitted by the District Administration (which led ‘ the Commission’ to pass the order) will hold ground.

36. The writ application stands dismissed.

(Rajiv Roy, J)

Jagdish/Kiran/-

AFR/NAFR	AFR
CAV DATE	28.06.2023
Uploading Date	05.07.2023
Transmission Date	

