

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.14258 of 2022**

Manoj Prasad Son of Ramekbal Prasad, Resident of Village- Baghambarpur, P.O. Patjirwa, P.S. Shree Nagar, District- West Champaran at Bettiah, presently Mukhiya of Gram Panchayat Raj, Bagahi Baghambarpur, Block-Bairiya, District- West Champaran at Bettiah.

... .. 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. Santosh Kumar Son of Baidyanath Sah, Resident of Village- Bagahi, Ward No. 8, P.O. Patjirwa, P.S. Shree Nagar, District- West Champaran at Bettiah.
5. The State of Bihar through the Principal Secretary, General Administrative Department, Government of Bihar, Patna.

... .. Respondent/s

**Appearance :**

For the Petitioner/s	:	Mr. S.B.K. Mangalam, Advocate with Mr. Awnish Kumar, Advocate
For the Respondent No.4	:	Mr. Amit Srivastava, Senior Advocate Mr. Santosh Bharti, Advocate Mr. Apurva Kumar, Advocate
For the State	:	Mr. Sanjay Kumar Ghosarvey, Advocate
For the Election Commission	:	Mr. Sanjeev Nikesh, Advocate with Mr. Girish Pandey, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJIV ROY**

**C.A.V. JUDGMENT**

**Date : 09.08.2023**

Heard Mr. S.B.K. Mangalam, learned counsel  
for the petitioner, Mr. Amit Srivastava, learned Senior counsel



for the respondent no. 4, Mr. Sanjay Kumar Ghosarvey, learned AC to AAG -3 for the State and Mr. Sanjiv Nikesh for the State Election Commission, Bihar.

2. The petitioner has moved this Court for:

*(i) the issuance of an appropriate writ in the nature of certiorari for quashing of the order dated 15.07.2022 passed by the Respondent no.2, the State Election Commissioner in Case No.72 of 2022 (Santosh Kumar Vs. The State of Bihar and others) communicated to him vide memo no. 2900 dated 26.07.2022, whereby and whereunder the Respondent no.2 has referred the matter to the Caste Scrutiny Committee for determination of the caste of the petitioner when a complaint was filed before him by the Respondent no.4 to disqualify the petitioner from holding the post of 'Mukhiya' of Gram Panchayat Raj, Bagahi Baghambarpur under Section 136 (2) of the Bihar Panchayat Raj Act, 2006 (henceforth for short 'the Gram Panchayat Act');*

*(ii) for issuance of any other appropriate writ/writ, order/orders,*



*direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.*

3. Subsequently, vide **I.A. No. 01 of 2023**, the petitioner also wanted quashing of the:

*order dated 02.01.2023 passed by the Caste Scrutiny Committee, General Administration Department, Bihar, Patna communicated vide memo no. 863 dated 12.01.2023 by which it declared the petitioner to be a member of 'Koeri' (Kushwaha) Caste.*

4. The matrix of facts giving rise to the present writ petition is/are as follows:

5. The petitioner was elected as 'Mukhiya' in the year 2021 election from Gram Panchayat Raj, Bagahi Baghambarpur in the district of West Champaran. It was challenged by one Santosh Kumar (respondent no. 4) on the ground that he has contested the election from the seat reserved for Extremely Backward Class on forged certificate declaring himself as 'Dangi' caste although he actually belongs to 'Koeri' (Kushwaha) caste which comes under the Other Backward Class (Annexure-2).



6. Accordingly, the petitioner was put on notice and a case vide Case No. 72 of 2022 was registered by the State Election Commission, Bihar, Patna (henceforth for short 'the Commission').

7. The petitioner appeared before the respondent no. 2, "the Commission" armed with the documents in support of his case. However, vide impugned order dated 15.07.2022 communicated vide memo No. 2900 dated 26.07.2022, 'the Commission' was pleased to refer the matter to the Caste Scrutiny Committee, General Administration Department, Bihar, Patna (henceforth for short 'the Committee') for declaration of his caste status.

8. It is worth mentioning here that 'the Committee' has been constituted under General Administration Department, Bihar, Patna (henceforth for short 'the GAD') in the light of a decision of the Hon'ble Supreme Court in **Kumari Madhuri Patil vs. The Additional Commissioner, Tribal Development & Others** reported in (1994) 6 SCC 241.

9. Aggrieved by the said reference to 'the Committee', the present writ petition was filed.

10. During the pendency of the writ petition, 'the Committee' referred the matter to the Criminal



Investigation Department, Bihar, Patna (henceforth for short 'the CID') which after an enquiry submitted its report vide letter no. 1812 dated 18.10.2022 addressed to the Additional Director, General Police (weaker section), 'the CID'.

11. According to 'the CID', the team conducted inquiry on the following points :

(i) the statement of the prominent persons of the society who stated that the petitioner belongs to '*Koeri*' (*Kushwaha*) caste which comes under the other backward class and is not '*Dangi*' (extremely backward class);

(ii) the statement of the local citizen who also endorsed the view of the prominent persons of the society;

(iii) as per the Land Revenue Records, the ancestor of the petitioner, one late Bhagelu Mahato has been recorded as '*Koeri*' in the '*khatiyani*'

(iv) the '*Sarpanch*' in its letter head has given the details of the genealogy of the petitioner showing late Bhagelu Mahato as his ancestor;

(v) the verification of caste from Block/Circle office;

(vi) the Circle Office vide its letter no. 494 dated 09.09.2022 informed that the petitioner belongs to '*Koeri*'



caste;

(vii) the petitioner studied at Government Bipin Higher Secondary School, Bettiah (West Champaran) and according to its Principal, in the admission register of the year 1993, his caste has not been registered.

12. The Enquiry Team further took into account the letter no. 673 dated 08.03.2011 (the Gazette notification) issued by 'the GAD' and according to Clause -9 of the said letter, at the time of grant of caste certificate, the revenue records of the father/ancestor is/are one of the important criteria and only in its absence, the ground verification is/are to be made.

13. Accordingly, the Enquiry Team came to the conclusion that the petitioner belongs to the '*Koeri*' (*Kushwaha*) caste which comes under the Other Backward Class (Annexure-2).

14. 'The Committee' on receipt of the said enquiry report took up the matter and vide letter no. 1794 dated 08.11.2022 issued notice to the petitioner to file his written statement and further vide memo no. 23056 dated 21.12.2022 directed him to appear before 'the Committee' on 02.01.2023 for the purpose of hearing.



15. The petitioner appeared on 02.01.2023 along with his lawyer. The submissions put forward by him before 'the Committee' was/were that :

(i) the enquiry report has considered his caste as '*Koeri*' (*Kushwaha*) on the ground of the '*khatian*' showing his ancestor, late Bhagelu Mahato as '*Koeri*', which is not fair;

(ii) '*Dangi*' is a sub-caste of '*Koeri*' and it was included under the Other Backward Class in 1995 and as such any '*khatian*' prior to 1995 cannot have the said word;

(iii) the local representatives of Bagahi Baghambarpur have stated that he belongs to '*Dangi*' caste.

16. The petitioner also submitted documents in support of his claim and it was his further case that the letter issued by the Circle Office do not have the signature of the Revenue Assistant.

17. Thereafter, 'the Committee' took up the matter and came to the conclusion amongst other that :

(i) as per 'the Department's' letter no. 673 dated 08.03.2011, the revenue record/*khatian* is an important document to consider the caste of the person where the name of the ancestor of the petitioner late Bhagalu Mahato has been recorded as '*Koeri*';



(ii) so far as the claim of the inclusion of 'Dangi' caste in 1995 under the Backward Class is concerned, the same is fit to be rejected because '*Dangi*' caste was present long before but was only included in the Other Backward Class and thereafter under Extremely Backward Class;

(iii) as such had he belonged to the '*Dangi*' caste, the word '*Dangi*' must have been in the '*khatian*' of his ancestor, Bhagelu Mahto.

18. Accordingly, 'the Committee' concurred with the findings of the Enquiry Team of 'the CID' and held that the petitioner belongs to '*Koeri*' (*Kushwaha*) Caste which comes under Other Backward class.

19. The same was communicated to the petitioner vide memo no. 863 dated 12.01.2023.

20. The petitioner, thereafter, preferred I.A. No. 01 of 2023 challenging the said order dated 02.01.2023 of 'the Committee' communicated to him vide memo no. 863 dated 12.01.2023 (Annexure-P/14 to the writ petition).

21. The in I.A. No. 01 of 2023 was allowed on 25.01.2023 by the earlier bench.

22. The State filed counter affidavit and relevant paragraphs of the counter affidavit of respondent no. 5,



‘the GAD’ read as follows:-

“8. That the aforesaid Panchayat was reserved seat for the members of Extremely Backward Classes. But the petitioner elected the said Panchayat election by virtue of caste certificate of caste "Dangi" on the basis of caste certificate issued by the Circle Officer, Bairia and thus the petitioner is now holding the post of Mukhiya of the aforesaid mentioned Panchayat.

9. That in passage of time Sri Santosh Kumar filed a complaint before the State Election Commission to disqualify the petitioner as stating therein that the petitioner is caste by "Dangi" and hence the petitioner does not come in the list of Extremely Backward Classes.

10. That on receipt of the complaint of Sri Santosh Kumar, both of them were heard by the State Election Commission at Patna. But during the hearing of the complaint, the petitioner denied the complaint filed by Sri Santosh Kumar and in this context, the petitioner preferred a written statement in his defence. That the Respondent No. 2 i.e. the State Election Commission passed its order on the issue on 15.07.2022.

11. That whereby and whereunder their memo No.2900 dated 26.07.2022, the matter was referred to state level Scrutiny Committee to verify and determine the caste of the



*petitioner.*

*13. That in this context, it is further humbly and respectfully submitted that on the request of the State Election Commission, Bihar, Patna this answering department vide its letter No. 13864 dated 08.08.2022, requested the Inspector General of Police, Weaker Section, Crime Investigation Department, Bihar, Patna to verify the caste of the petitioner Sri Prasad.*

23. Further, paragraph 14 read as follows:-

*14. That in turn, of the request of made vide this department's letter so. 13864 dated 08.08.2022, the Crime Investigation Department vide its letter No. 1812 dated 18.10.2022 the report regarding the caste verification of the petitioner was made available to this answering department.”*

“पत्र संख्या- अनुसूचित जाति एवं अनुसूचित जनजाति  
संरक्षण कक्ष/24.02.2022/1812

**बिहार पुलिस मुख्यालय**  
(अपराध अनुसंधान विभाग एवं कमजोर वर्ग प्रभाग)

प्रेषक,

अपर पुलिस महानिदेशक कमजोर वर्ग  
अपराध अनुसंधान विभाग,  
बिहार, पटना।

सेवा में,

मो० सिराजुद्दीन अंसारी,  
सरकार के अवर सचिव,  
सामान्य प्रशासन विभाग,



बिहार, पटना।

प्रसंग: आपका पत्र सं०— 11/आ०जा०—04/2022  
सा०प्र० 13864 दिनांक 08.08.2022

विशय: श्री मनोज प्रसाद, पिता श्री रामएकबाल  
प्रसाद, ग्राम— बाघम्बरपुर, पो०—पटजिरवा,  
थाना श्रीनगर, प्रखंड बैरिया, जिला—  
पश्चिमी चम्पारण की जाति सत्यापन के  
संबंध में ।

उपर्युक्त प्रासंगिक विषयक श्री मनोज प्रसाद, पिता  
श्री रामएकबाल प्रसाद, ग्राम— बाघम्बरपुर, पो०— पटजिरवा,  
थाना श्रीनगर, प्रखंड बैरिया, जिला— पश्चिमी चम्पारण की  
जाति सत्यापन अफाक अख्तर अंसारी, पुलिस उपाधीक्षक  
कमजोर वर्ग के नेतृत्व में गठित त्रिसदस्यीय टीम के द्वारा  
कराई गई है। जांच टीम के द्वारा जांच प्रतिवेदन छः पृष्ठों  
में (08 अनुलग्नकों सहित) समर्पित किया गया है।

अतः जांच प्रतिवेदन अनुलग्नकों सहित प्रेषित की  
जा रही है।

अनुलग्नक— यथोपरि ।

ह०/— अस्पष्ट

18.10.22

अपर पुलिस महानिदेशक कमजोर वर्ग  
अपराध अनुसंधान विभाग,  
बिहार, पटना।”

सेवा में,

अपर पुलिस महानिदेशक, कमजोर वर्ग,  
अपराध अनुसंधान विभाग, बिहार, पटना।

प्रसंग— मो० सिराजुद्दीन अंसारी, सरकार के अवर सचिव,  
सामान्य प्रशासन विभाग, बिहार, पटना के पत्र  
सं० 11/आ०जा० —04/2022 सा०प्र० 13064  
दिनांक 08.08.2022

विषय:—श्री मनोज कुमार, पिता श्री रामएकबाल  
प्रसाद, ग्राम बाघम्बरपुर, पोस्ट पटजिरवा,  
थाना श्रीनगर, प्रखण्ड बैरिया, जिला  
पश्चिमी चम्पारण की जाति विनिश्चय करने  
के संबंध में।

महाशय,

उपरोक्त प्रासंगिक पत्र (अनुलग्नक सहित) में  
अंकित किया गया है कि:—

श्री संतोष कुमार के द्वारा श्री मनोज प्रसाद, पिता  
श्री रामएकबाल प्रसाद, ग्राम बाघम्बरपुर पोस्ट—



पटजिरवा, थाना – श्रीनगर, प्रखण्ड बैरिया, जिला पश्चिमी चम्पारण के विरुद्ध गलत जाति प्रमाण पत्र के आधार पर मुखिया के पद पर निर्वाचित होने की शिकायत राज्य निर्वाचन आयोग, बिहार पटना में दायर किया गया है। दायर बाद में यह उल्लेखित किया गया है कि श्री मनोज प्रसाद अपनी जाति का छुपाते हुए ग्राम पंचायत बगही –बाघम्बरपुर में दिनांक 29.11.2021 को मुखिया के पद पर निर्वाचित हुए हैं। मनोज प्रसाद के द्वारा मुखिया चुनाव नोमिनेशन पेपर में अपनी जाति दांगी अति पिछड़ा वर्ग(अनुसूचि-1) बताया गया है जबकि वास्तव में वे कोईरी /कुशवाहा जाति पिछड़ा वर्ग (अनुसूचि-2) के हैं।

उक्त प्रासंगिक पत्र के साथ राजस्व अधिकारी अंचल बैरिया, जिला पश्चिमी चम्पारण के कार्यालय से निर्गत प्रमाण पत्र सं० BCCO/2021/2477934 दिनांक 29.04.2021 की छायाप्रति (पृष्ठ-28 पर) संलग्न है जिसमें श्री मनोज प्रसाद पिता श्री रामएकबाल प्रसाद को कुशवाहा (कोईरी) समुदाय का सदस्य बताया गया है जो पिछड़ा वर्ग (अनुसूचि-2) के है।

राजस्व अधिकारी अंचल बैरिया, जिला पश्चिमी चम्पारण के कार्यालय से निर्गत प्रमाण पत्र सं० BCCO/2021/3036895 दिनांक 26.06.2021 की छायाप्रति (पृष्ठ संख्या 11 पर संलग्न) है जिसमें श्री मनोज प्रसाद, पिता श्री रामएकबाल प्रसाद को दांगी समुदाय का सदस्य बताया गया है जो अत्यंत पिछड़ा वर्ग (अनुसूचि-1) के है ।

मुखिया मनोज प्रसाद के पूर्वज भगेलू महतों (परदादा) के नाम से निर्गत खतिहान की छायाप्रति जिसमें उनकी जाति कोईरी अंकित है। (पृष्ठ संख्या-28 पर संलग्न)

मुखिया मनोज प्रसाद के द्वारा अपने चाचा नन्दलाल प्रसाद से दिनांक 27.09.2018 को खरीदी गयी जमीन से संबंधित केवाला दस्तावेज की छायाप्रति (पृष्ठ संख्या-27 पर संलग्न) जिसमें मुखिया मनोज प्रसाद की जाति कोईरी अंकित है।

तदनुसार सामान्य प्रशासन विभाग के प्रासंगिक पत्र में अपर पुलिस महानिदेशक, कमजोर वर्ग, अपराध अनुसंधान विभाग, बिहार पटना से श्री मनोज प्रसाद, पिता श्री रामएकबाल प्रसाद, ग्राम बाघम्बरपुर, पोस्ट-पटजिरवा थाना श्रीनगर, प्रखण्ड बैरिया, जिला पश्चिमी चम्पारण की जाति विनिश्चय करने का अनुरोध किया गया है।

अपराध अनुसंधान विभाग के अन्तर्गत जाति विनिश्चय हेतु त्रिसदस्यीय निगरानी कोषांग कार्यरत है। अपर पुलिस महानिदेशक कमजोर वर्ग, अपराध अनुसंधान विभाग, बिहार पटना के आदेश संख्या 1506 दिनांक 02.09.2022 द्वारा जांच हेतु गठित तृतीय टीम जिसके अध्यक्ष अफाक अख्तर अंसारी, अवेदक की जाति के संबंध में



जांचोपरांत संतुष्ट होना आवश्यक शर्त है।(प्रतिलिपि संलग्न) (अनुलग्नक-07)

**निष्कर्ष :-**

सामान्य प्रशासन विभाग, बिहार, पटना के पत्र सं० 11/आ०जा०-2022 सा०प्र० 13864 दिनांक 08.08.2022 के द्वारा प्राप्त पत्र जिसमें मनोज प्रसाद (वर्तमान मुखिया, ग्राम पंचायत बगही-बाघम्बरपुर पंचायत) पिता रामएकबाल प्रसाद, ग्राम बाघम्बरपुर, थाना श्रीनगर, प्रखण्ड-बैरिया, जिला पश्चिमी चम्पारण की जाति विनिश्चय करने का अनुरोध किया गया। वर्तमान मुखिया मनोज प्रसाद, ग्राम पंचायत बगही बाघम्बरपुर के द्वारा चुनाव नागिनेशन पेपर में अपनी जाति दांगी अति पिछड़ा वर्ग (अनुसूचि-1) बताया गया है जबकि उनकी जाति कोईरी कुशवाहा पिछड़ा वर्ग, (अनुसूचि-2) का होने का आरोप लगाकर राज्य निर्वाचन आयोग, बिहार, पटना में बाद दायर किया गया है। दायर वाद के साथ अनुलग्नक में राजस्व अधिकारी अंचल बैरिया, जिला पश्चिम चम्पारण के कार्यालय से निर्गत प्रमाण पत्र सं० BCCO/2021/2477934 दिनांक 29.04.2021 की छाया प्रति जिसमें श्री मनोज प्रसाद, पिता श्री रामएकबाल प्रसाद को कुशवाहा (कोईरी) समुदाय का सदस्य बताया गया है जो पिछड़ा वर्ग (अनुसूचि-2) के है। राजस्व अधिकारी अंचल बैरिया, जिला पश्चिमी चम्पारण के कार्यालय से निर्गत प्रमाण पत्र सं० BCCO / 2021 / 3036895 दिनांक 26.06.2021 की छायाप्रति जिसमें श्री मनोज प्रसाद, पिता श्री राम एकबाल प्रसाद को दांगी समुदाय का सदस्य बताया गया है। पत्र के साथ मुखिया मनोज प्रसाद के पूर्वज भगेलू महतो (परदादा) के नाम से निर्गत खतिहान की छायाप्रति जिसमें उनकी जाति कोईरी अंकित है। मुखिया मनोज प्रसाद के द्वारा अपने चाचा नन्दलाल प्रसाद से दिनांक 27.09.2018 को खरीदी गयी जमीन से संबंधित केवाला दस्तावेज की छाया प्रति जिसमें मुखिया मनोज प्रसाद की जाति कोईरी अंकित है।

जांच के क्रम में मनोज प्रसाद पे० रामएकबाल प्रसाद की जाति के संबंध में अंचलाधिकारी बैरिया अंचल, जिला प० चम्पारण से प्रतिवेदन की मांग की गयी। अंचलाधिकारी बैरिया अंचल के द्वारा अपने पत्रांक 494 दि०-9.9.2022 के माध्यम से प्रतिवेदन समर्पित किया गया है कि "श्री मनोज कुमार, पिता श्री रामएकबाल प्रसाद सा० बगही बघम्बरपुर थाना श्रीनगर प्रखण्ड बैरिया, जिला पश्चिम चम्पारण की जाति का जांच संबंधित हल्का कर्मचारी से करायी गई। हल्का कर्मचारी द्वारा खतियान के आधार पर प्रतिवेदित किया गया है कि श्री मनोज कुमार पिता रामएकबाल प्रसाद, सा० बगही बघम्बरपुर, थाना श्रीनगर, प्रखण्ड बैरिया, जिला पश्चिम चम्पारण जाति के 'कोईरी' है, जो बिहार हेतु पिछड़ा वर्ग -2 के अन्तर्गत आता है।"



स्थानीय सरपंच विपिन कुमार के द्वारा मनोज कुमार उर्फ मनोज प्रसाद की वंशावली जांच टीम को उपलब्ध कराया गया जिसमें भगेलू महतो एवं नन्दला प्रसाद को मुखिया मनोज प्रसाद का पूर्वज बताया गया है। यहाँ उल्लेखनीय है कि भगेलू महतो के खतिहान की सत्यापित प्रति में भगेलू महतो की जाति कोईरी अंकित है, जो मनोज प्रसाद के पूर्वज (परदादा) है।

संतोष कुमार पे० बैजनाथ साह ग्राम बगही बाघम्बरपुर थाना श्रीनगर के द्वारा जांच टीम को संतोष कुमार (चचेरे भाई) पिता नन्दलाल प्रसाद, ग्राम बगही बाघम्बरपुर जिला पश्चिमी चम्पारण का जिला पदाधिकारी, पश्चिम चम्पारण के कार्यालय से पत्र सं० 126 दि० 19.6.2002 के द्वारा निर्गत जाति प्रमाण पत्र उपलब्ध कराया गया है जिसमें संतोष कुमार की जाति कुशवाहा (कोईरी) है। यहाँ उल्लेखनीय है कि संतोष कुमार नन्दलाल प्रसाद के पुत्र हैं एवं नन्दलाल प्रसाद जो मुखिया मनोज प्रसाद के सगे चाचा है। सरपंच के द्वारा निर्गत मुखिया मनोज प्रसाद की वंशावली से भी इसकी पुष्टि होती है।

**मन्तव्य:-**

अतः इस प्रकार स्थलीय जांच, गवाहों के बयान, भू-अभिलेख की प्रति, अंचलाधिकारी बैरिया अंचल एवं सामान्य प्रशासन विभाग से प्राप्त प्रतिवेदन पत्रांक सं० 61, पटना दिनांक 08.03.2011 एवं पत्र सं० 16023 दिनांक 16.12.2021 के आधार पर जांच टीम इस निष्कर्ष पर पहुंची है कि श्री मनोज प्रसाद, पिता श्री रामएकबाल प्रसाद, ग्राम बगही बाघम्बरपुर, थाना श्रीनगर, जिला पश्चिमी चम्पारण जाति कोईरी (कुशवाहा) है, जो पिछड़ा वर्ग (अनुसूची-2) के हैं।

जांच से संबंधित विडियोग्राफी की सी०डी० (अनुलग्नक-08)

ह०/- सुनील कुमार

06.10.22

(सुनील कुमार)

पुलिस अवर निरीक्षक,

अपराध अनु० वि०,

बिहार, पटना।

ह०/- चन्द्र प्रकाश

6.10.22

(चन्द्र प्रकाश)

पुलिस निरीक्षक

अपराध अनु० वि०,

बिहार, पटना।

ह०/- अस्पष्ट

(अफाक अख्तर अंसारी)

पुलिस उपाधीक्षक,

अपराध अनु० वि०,

बिहार, पटना।

24. 'The GAD' also brought on record the



Gazette notification relating to the Constitution of Directorate for determining the caste of Other Backward Class, the Backward Class or Extremely Backward Class which read as follows:

“सं० 11/आ०-वि०5-49/2008-सा०प्र०-1567

सामान्य प्रशासन विभाग

संकल्प

5 फरवरी 2014

विषय: अत्यंत पिछड़ा वर्ग,, पिछड़ा वर्ग एवं अन्य पिछड़ा वर्ग के जाति प्रमाण-पत्रों की जाँच हेतु निदेशालय के गठन के संबंध में।

सी०डब्ल्यू०जे०सी० संख्या 4604/2008 फरजाना सबा बनाम बिहार सरकार एवं अन्य में दिनांक 29.01.2014 को सुनवाई के पश्चात् माननीय उच्च न्यायालय, पटना द्वारा निदेश दिया गया है कि माननीय उच्चतम न्यायालय के आदेश के अनुपालन में गठित कमिटी में अनुसूचित जाति/अनुसूचित जनजाति के सदस्य सम्मिलित हैं, परन्तु इसमें पिछड़ा वर्ग के सदस्य सम्मिलित नहीं हैं। माननीय न्यायालय के उक्त आदेश का आशय यह है कि अनुसूचित जाति/अनुसूचित जनजाति की भाँति अत्यंत पिछड़ा वर्ग, पिछड़ा वर्ग एवं अन्य पिछड़ा वर्ग के जाति प्रमाण पत्रों की जाँच हेतु भी निदेशालय का गठन किया जाए।

2. अतः राज्य सरकार ने भलीभाँति विचार करने के उपरान्त यह निर्णय लिया है कि माननीय उच्चतम न्यायालय द्वारा सिविल अपील संख्या 5854/94 (एराइजिंग आउट ऑफ एस०एल०पी०(सी०) 14467/93) कुमारी माधुरी पाटिल एवं अन्य बनाम अपर आयुक्त, जनजाति (आदिवासी) विकास एवं अन्य में पारित न्याय निर्णय के आलोक में निर्गत तत्कालीन कार्मिक एवं प्रशासनिक सुधार विभाग (सम्प्रति सामान्य प्रशासन विभाग) के संकल्प संख्या 3887 दिनांक 08.11.2007 की भाँति सरकारी सेवाओं में नियुक्ति अथवा विभिन्न शैक्षणिक संस्थानों (यथा तकनीकी, गैर तकनीकी, सामान्य, व्यवसायिक आदि) में नामांकन आदि के क्रम में अत्यंत पिछड़ा वर्ग, पिछड़ा वर्ग एवं अन्य पिछड़ा वर्ग के जाति प्रमाण पत्रों की जाँच हेतु एक स्वतंत्र निदेशालय का गठन किया गया जाए।



3. इस क्रम में सचिव/प्रधान सचिव, सामान्य प्रशासन विभाग के नियंत्रणाधीन राज्य स्तर पर अत्यंत पिछड़ा वर्ग, पिछड़ा वर्ग एवं अन्य पिछड़ा वर्ग के जाति प्रमाण पत्रों की जाँच हेतु एक स्वतंत्र निदेशालय का गठन किया जाता है, जिसका स्वरूप निम्नवत् होगा :-

(i) सामान्य समिति

(ii) निगरानी समिति

(i) सामान्य समिति का गठन निम्नांकित रूप से किया जाता है:-

(क)	प्रधान सचिव/सचिव, सामान्य प्रशासन विभाग।	अध्यक्ष
(ख)	पिछड़ा वर्ग/अति पिछड़ा वर्ग से संबंधित निदेशक/संयुक्त सचिव/उप सचिव/अवर सचिव स्तर के पदाधिकारी पिछड़ा वर्ग एवं अति पिछड़ा वर्ग कल्याण विभाग द्वारा मनोनित।	सदस्य
(ग)	पिछड़ा वर्ग/अति पिछड़ा वर्ग से संबंधित निदेशक/संयुक्त सचिव/उप सदस्य सचिव/अवर सचिव स्तर के पदाधिकारी सामान्य प्रशासन विभाग द्वारा मनोनित।	सदस्य

इस समिति को सहयोग हेतु आवश्यकतानुसार सामान्य प्रशासन विभाग के अधीन कार्यरत पदाधिकारी/कर्मचारी से कार्य लिया जाएगा।

(ii) निगरानी कोषांग का गठन निम्नांकित रूप से किया जाता है :-

राज्याधीन जाली जाति प्रमाण पत्र संबंधी जाँच आदि कार्य पुलिस महानिरीक्षक (कमजोर वर्ग), अपराध अनुसंधान विभाग, बिहार, पटना द्वारा निष्पादित किया जाता है। अतः निगरानी कोषांग का कार्य पुलिस महानिरीक्षक (कमजोर वर्ग), अपराध अनुसंधान विभाग, बिहार, पटना द्वारा निष्पादित किया जायेगा।

4. सामान्य समिति द्वारा कार्य निष्पादन की प्रक्रिया:-

जाली जाति प्रमाण पत्र संबंधी शिकायत प्राप्त होने पर सचिव/प्रधान सचिव, सामान्य प्रशासन विभाग द्वारा इसकी जाँच पुलिस महानिरीक्षक (कमजोर वर्ग) अपराध अनुसंधान विभाग, बिहार, पटना द्वारा करायी जायेगी।

अपराध अनुसंधान विभाग से प्राप्त रिपोर्ट पर सामान्य समिति द्वारा निम्न प्रक्रिया अपनाते हुए अपेक्षित कार्रवाई की जायेगी :-



(क) सामान्य समिति, यदि सतर्कता अधिकारी की रिपोर्ट के आधार पर यह पाती है कि आवेदक का सामाजिक स्तर का क्लेम सही नहीं है या संदेहास्पद है या गलत रूप से क्लेम प्रस्तुत कर रहे हैं तब समिति 1/4 ऐसे आवेदक को सतर्कता अधिकारी की रिपोर्ट की प्रति के साथ पंजीकृत डाक के रसीद सहित, कारण बताओ सूचना पत्र, शैक्षणिक संस्था या कार्यालय प्रमुख के माध्यम से भेजेंगे। कारण बताओ सूचना पत्र में इस बात का उल्लेख होगा कि आवेदक अपना अभ्यावेदन या उत्तर कारण बताओ सूचना पत्र प्राप्ति के 15 दिनों के भीतर आरक्षण प्रभारी, अवर सचिव/उप सचिव, सामान्य प्रशासन विभाग को प्रस्तुत करें और किसी भी परिस्थिति में अभ्यावेदन अथवा उत्तर प्रस्तुत करने के लिए 30 दिन से अधिक का समय नहीं दिया जायेगा। यदि आवेदक (प्रमाण पत्र धारक) उसे सुनने का और वाद प्रस्तुत करने का अवसर चाहता है, तो ऐसा आवेदन या उत्तर प्राप्त होने के पश्चात समिति की बैठक आरक्षण प्रभारी अवर सचिव/उप सचिव बुलायेगा और प्रधान सचिव, सामान्य प्रशासन विभाग ऐसी समिति के अध्यक्ष के रूप में आवेदक को सुनवाई एवं साक्ष्य प्रस्तुत करने का पूर्ण अवसर देंगे। आवेदक को ऐसा अवसर देने के बाद भी आवेदक को उसके अभिभावक के माध्यम से या अन्य अवसर देने के बाद समिति ऐसी जाँच कर सकेगी, जिससे आवेदक के क्लेम और अन्य आपत्तियों पर विचार करने पर शीघ्र निर्णय लेने के लिए यदि आवश्यक हो तो उभय पक्षों को सुनकर समिति एक उचित निर्णय लेगी।

(ख) ऐसे प्रकरणों जहाँ सतर्कता अधिकारी की रिपोर्ट (प्रमाण पत्र धारक) के पक्ष में हो तो समिति को किसी कार्यवाही की आवश्यकता नहीं होगी।

(ग) समिति द्वारा जाँच दिन प्रतिदिन के आधार पर की जायेगी और किसी भी स्थिति में इसे पूर्ण करने के लिए 2 माह से ज्यादा समय नहीं लेगी। यदि जाँच समिति यह पाती है कि आवेदक (प्रमाण पत्र धारक) का क्लेम झूठा या असत्य है तो समिति ऐसी जाति प्रमाण-पत्र को निरस्त करते हुए एक उचित आदेश पारित करेगी।

समिति यह भी निर्णय ले सकेगी कि जो व्यक्ति अत्यंत पिछड़ा वर्ग, पिछड़ा वर्ग एवं अन्य पिछड़ा वर्ग के गलत जाति प्रमाण पत्र के आधार पर लाभ प्राप्त किये हैं, जो इसके पात्र नहीं है, वैसे लाभार्थी के विरुद्ध आपराधिक मुकदमा दर्ज करा कर दंडात्मक कार्रवाई की जायेगी। प्रमाण पत्र निर्गत करने वाले पदाधिकारी/कर्मचारी यदि जालसाजी में संलिप्त पाए जाते हैं तो उनके विरुद्ध नियमानुसार आवश्यक कार्रवाई कर सकेगी।

5. निगरानी कोषांग द्वारा कार्य निष्पादन की प्रक्रिया:-

निगरानी कोषांग द्वारा किसी व्यक्ति विशेष के विरुद्ध प्राप्त शिकायत की जाँच के क्रम में उसके पैतृक निवास/रिश्ते-नातेदार/स्कूल कॉलेज में उपलब्ध



अभिलेख /भू-राजस्व संबन्धी अभिलेख/समाज के गणमान्य व्यक्तियों से प्राप्त प्रतिवेदन, जो साक्ष्य के लिए आवश्यक हो, के आधार पर कार्रवाई की जायेगी। निगरानी कोषांग द्वारा जाँच प्रतिवेदन के एक माह के अन्दर सामान्य समिति को निश्चित रूप से सौंपा जायेगा।

6. नियुक्ति पदाधिकारी द्वारा सामान्य परिस्थितियों में नियुक्ति के क्रम में आवेदक के जाति प्रमाण पत्र का सत्यापन प्रमाण-पत्र निर्गत करने वाले संबंधित जिला पदाधिकारी द्वारा ही कराया जायेगा।

7. यह आदेश तात्कालिक प्रभाव से लागू होगा।

**आदेश:-** अतः यह आदेश है कि सर्वसाधारण की जानकारी के लिए इसे राजकीय गजट के असाधारण अंक में प्रकाशित किया जाए और इसकी प्रति महालेखाकार, बिहार, पटना/बिहार लोक सेवा आयोग/बिहार कर्मचारी चयन आयोग/बिहार संयुक्त प्रवेश प्रतियोगिता परीक्षा पर्षद/केन्द्रीय चयन पर्षद (सिपाही भर्ती)/सभी विभाग/ सभी विभागाध्यक्ष/सभी प्रमण्डलीय आयुक्त/सभी जिला पदाधिकारी/मुख्य मंत्री सचिवालय/ बिहार विधान सभा/ बिहार विधान परिषद को सूचना एवं आवश्यक कार्रवाई के लिए भेजी जाए।

बिहार के राज्यपाल के आदेश से,  
राजेन्द्र राम,  
सरकार के संयुक्त सचिव।”

25. According to the said counter affidavit, the inclusion of caste ‘Dangi’ in the list of Backward Classes in the year 1995-96 does not mean that this caste was not in existence prior to the said year. It also highlighted the fact that the report submitted by State Commission for Backward Classes does not indicate that the ‘Dangi’ is sub caste of ‘Koeri’. It is a purely product of the mind of the petitioner only to save his skin.



26. It also clarified that the inclusion or deletion of a caste from a caste list of the State is a continuous process and it is done on the recommendation of the respective Commissions of the State meant for the purpose. In this very process, the caste 'Dangi' was included in Backward Class list in the year 1995 and in the list of Extremely Backward Class in the year 2015.

27. It is to be noted that the District Magistrate, West Champaran, Bettiah in its letter no. 462 dated 19.05.2022 addressed to the Special Work Officer of 'the Commission' reported as follows:-

“(जिला पंचायत कार्यालय )

पत्रांक— 462 / पंचायत  
प्रेषक,

कुन्दन कुमार, भा.प्र.से.  
जिला पदाधिकारी,  
पश्चिम चम्पारण, बेतिया।

सेवा में,

विशेष कार्य पदाधिकारी,  
राज्य निर्वाचन आयोग,  
बिहार, पटना।

बेतिया, दिनांक—19/05/2022

**विषय:** वाद संख्या—72/2021 संतोष कुमार बनाम मनोज प्रसाद में प्रतिवादी के द्वारा दायर जवाब के आलोक में पूरक प्रतिवेदन का प्रेषण।

**प्रसंग—** राज्य निर्वाचन आयोग के पत्रांक 1697 दिनांक 09.05 2022

महाशय,

उपर्युक्त विषयक प्रासंगिक पत्र के आलोक में कहना है कि राज्य निर्वाचन आयोग, बिहार में दायर वाद संख्या 72/2021 संतोष कुमार बनाम मनोज प्रसाद से संबंधित विमति मामले में संयुक्त जांच जिला गोपनीय शाखा, पश्चिम चम्पारण, बेतिया के पत्रांक 2794/गो.



दिनांक 25.10.2021 से अपर समाहर्ता, पश्चिम चम्पारण, बेतिया के अध्यक्षता में कमिटी गठित करते हुए कराई गयी। तदालोक में अपर समाहर्ता पश्चिम चम्पारण, बेतिया के पत्रांक 2884/रा. दिनांक 01.11.2021 से प्राप्त संयुक्त जांच के आलोक में इस कार्यालय के पत्रांक 45/पंचायत दिनांक 11.02.2022 के द्वारा प्रतिवेदन भेजा जा चुका है। (छायाप्रति संलग्न)

उल्लेखनीय है कि समरूप मामले में जिनके द्वारा दांगी जाति का प्रमाण पत्र जारी करने हेतु "कोईरी" अंकित राजस्व कागजात प्रस्तुत किया जा रहा है के पक्ष में जाति प्रमाण पत्र निर्गत करने के बिन्दु पर जिला कल्याण शाखा, पश्चिम चम्पारण, बेतिया के पत्रांक 1350 दिनांक 25.10.2021 से सामान्य प्रशासन विभाग, बिहार, पटना से मार्गदर्शन की मांग की गयी थी, जिसके आलोक में सरकार के अवर सचिव, सामान्य प्रशासन विभाग, बिहार, पटना के पत्रांक 16023 दिनांक 16.12.2021 के द्वारा मागदर्शन प्राप्त है जिसमें उल्लेख है कि "जाति प्रमाण-पत्र निर्गत करते समय आवेदक के पिता/पूर्वज के राजस्व अभिलेख (पथा खतियान, दान-पत्र, भूमि संबंधी दस्तावेज, भूमिहीनों को आवंटित जमीन से संबंधित अभिलेख आदि) को आधार बनाया जाय। इन अभिलेखों की अनुपलब्धता की स्थिति में स्थल निरीक्षण कर जांच प्रतिवेदन को भी यथास्थिति यथासमय जाति प्रमाण पत्र निर्गत करने हेतु आधार बनाया जा सकता है। जहाँ तक विभागीय पत्र संख्या 1006 दिनांक 06.04.2011 में अंकित दिशा-निर्देश या प्रश्न है इस संदर्भ में स्पष्ट किया जाता है कि जाति प्रमाण पत्र निर्गत करने वाले अधिकारी का आवेदक की जाति के संबंध में जांचोपरांत संतुष्ट होना आवश्यक है" (छायाप्रति संलग्न)।

अपर समाहर्ता, पश्चिम चम्पारण, बेतिया की अध्यक्षता में गठित नाथ दल के द्वारा भी जांच दल में स्पष्ट उल्लेख किया गया है कि "श्री मनोज प्रसाद, पिता-श्री रामएकबाल प्रसाद, माता श्रीमति शांति देवी, साकिन-बथम्बरपुर, पंचायत बगही बधम्बरपुर, थाना-श्रीनगर पुजहाँ, प्रखण्ड बैरिया जिला-पश्चिम चम्पारण, दांगी जाति का प्रमाण पत्र जारी करने के आधार के रूप में उनके पूर्वज के नाम विनिर्दिष्ट सर्वे खतियान श्री प्रति में कौम "कोईरी" करके अंकित है, दोनों ही जाति के वर्ग में काफी अंतर है जहाँ दांगी जाति अत्यंत पिछड़ों वर्गों की (अनुसूची-1) के क्रमांक 127 पर अंकित है। वही कुशावाहा (कोईरी) पिछड़े वर्गों की (अनुसूची-2) के क्रमांक-4 पर अंकित है। जांच दल के द्वारा सर्वसम्मति निर्णय लिया कि दांगी जाति का निर्गत प्रमाण पत्र रद्द (Cancel) किया जाना अपेक्षित है" (छायाप्रति संलग्न)। संयुक्त जांच दल एवं विभागीय अद्यतन निर्देश के आलोक में अंचलाधिकारी, बैरिया के द्वारा



वर्ष 2021 में निर्गत "दांगी" समुदाय के प्रमाण पत्र BCCCO/20213036895 दिनांक 26.06.2021 को निरस्त करते हुए पत्रांक 69 दिनांक 02.02.2022 के माध्यम से संसूचित किया गया है। (छायाप्रति संलग्न)

विदित हो कि परिवारी के द्वारा सरकार के संयुक्त सचिव, सामान्य प्रशासन विभाग, बिहार, पटना के पत्रांक 106 दिनांक 06.04.2011 के आधार पर वर्तमान में दावा किया जा रहा है किन्तु इसी परिप्रेक्ष्य में अद्यतन विभागीय पत्रांक 16023 दिनांक 16.12.2021 से स्पष्ट निर्देश है कि जाति प्रमाण पत्र निर्गत करने हेतु राजस्व कागजात को आधार बताया जाना है तथा इसकी अनुपलब्धता की स्थिति में ही जाँच प्रतिवेदन को आधार बनाया जाना है प्रश्नगत मामले में राजस्व कागजातों में आवेदक की जाति "कोईरी" अंकित है तथा संयुक्त जाँच दल के द्वारा जाँच प्रतिवेदन को निरस्त करने की स्पष्ट अनुशंसा की गयी है।

उपरोक्त प्रतिवेदन के साथ सुनवाई की निर्धारित तिथि को उपस्थित होने हेतु श्री मनीष कुमार, जिला पंचायत राज पदाधिकारी, बेतिया को प्राधिकृत किया जाता है।

अनुलग्नक— यथोक्त।

विश्वासभाजन  
ह0/- अस्पष्ट  
जिला पदाधिकारी  
पश्चिम चम्पारण, बेतिया।"

28. The Election Commission, Bihar, Patna  
(Respondent Nos. 1 to 3) too filed its counter affidavit and  
submitted amongst other the following facts:-

*" 8. That before giving para-wise  
reply to the present writ application the answering  
Respondent proposed to brought certain facts to  
the notice of this Hon'ble Court, which are as  
follows:*

*(i) The Respondent No. 4 viz.  
Santosh Kumar filed a complaint before the State  
Election Commission on 06.12.2021 alleging  
therein that the Petitioner does not belong to*



*Extremely Backward Caste and as such he is disqualified to hold the post of Mukhiya under the Bihar Panchayat Raj Act, 2006.*

*(ii) That on the aforesaid complaint of Respondent No. 4. Case No. 72 of 2021 was instituted in the State Election Commission and the State Election Commission vide Letter No. 1697 dated 09.05.2022 called for a report from the District Magistrate -cum- District Election Officer (Panchayat), West Champaran, Bettiah. In pursuance of the aforesaid letter the District Magistrate -cum- District Election Officer (Panchayat) submitted a report before the State Election Commission vide Letter No. 462 dated 19.05.2022 stating therein that the Joint Committee has specifically stated that the Petitioner belongs to Koeri Caste and as such his caste certificate be cancelled.*

*(iii) That it is stated and submitted that the matter was heard on 15.07.2022 before the State Election Commission and after hearing the parties the State Election Commission found that disputed question of fact arose before the Commission with regard to caste of the Petitioner and relegated the matter to the Caste Scrutiny Committee in the light of order of the Hon'ble Court dated 21.06.2022 in CWJC No. 19084 of 2021 (Baidhnath Singh Vs. State).*

*(iv) That it is stated and submitted that the Caste Scrutiny Committee finally*



*decided the matter on 12.01.2023 and forwarded it to the State Election Commission vide Memo No. 863 dated 12.01.2023, which is Annexure-12 to the writ application.”*

29. The further stand of ‘the Commission’ is/are that:

*“14. That with regard the statements made in paragraph no. 9 of the writ petition it is stated and submitted that section 136(1) of the Bihar Panchayat Raj Act, 2006 provides as follows:*

**136. Disqualification for Membership** – (1) *Notwithstanding anything contained in this Act, a person shall be disqualified for election or after election for holding the post of Mukhiya, member of the Gram Panchayat, Sarpanch, Panch of the Gram Katchahri, member of the Panchayat Samiti and member of Zilar Parishad, if such person-*

*From perusal of the aforesaid provision, it is evident that the State Election Commission has power to decide pre &post election disqualification.”*

30. ‘The Commission’ also reasoned on referring the matter to ‘the Committee’ stating :

*“17. That the statements in paragraph nos. 12 & 13 of the writ petition under reply is matter of records and in this respect it is*



*stated and submitted that from Annexure-R 1-3/1, it is evident that several documents were produced by the District Magistrate -cum- District Election Officer (Panchayat), West Champaran, Bettiah with regard to caste of a Petitioner, which was disputed by him and due to this the Commission has relegated the matter to the fact finding body, which is Caste Scrutiny Committee and kept the matter pending till the receiving of report from the caste scrutiny committee.”*

31. The respondent no. 4, Santosh Kumar, who complained before ‘the Commission’ in his counter affidavit stated as follows:

*“8. That after minutely going through the report as submitted by the Caste Scrutiny Committee dated 06.10.2022, it will transpire that despite giving ample opportunities to petitioner he chose prime facie not to appear and rather appeared through his learned lawyer who could not defend the fraud played by petitioner and taking into consideration and after hearing the parties the said report of Caste Scrutiny Committee dated 06.10.2022 has been passed. The said report is cogent and has been taken into consideration all aspects and relevant and material facts/documents.*

*9. That the petitioner maliciously to waste the precious and judicial time of the*



*Hon'ble Court has filed the present case just to linger the Election Case No.72/2021 and the order of status quo has been passed behind the back of present respondent by complete misrepresentation of facts. The order of status quo deserves to be vacated and the instant writ petition deserves to be dismissed.”*

*10. that the prayer of petitioner is for quashing the order dated 15.07.2022 passed by respondent no. 2 in Election Case No. 72/2022 (Santosh Kumar Vs. State of Bihar & Ors.). It is humbly submitted that the said order has been passed after hearing the parties at length and is free from flaws hence the order dated 15.07.2022 merely not being in favour of writ petitioner does not deserves to be quashed.”*

32. Further, the supplementary counter affidavit of the respondent no. 4 read as follows:

*“6. That the Respondent no.4 is bringing on record the current/recent notification by Government of Bihar Cast Scrutiny Committee which clearly decategorized Koiri/Kushawa (at Sr. No.26) from Dangi (at Sr. No.86) it also the shows that both are separate caste and not the sub caste of each as stated and claimed by writ petitioner and thus now there shall not be an iota of doubts regarding the arguments advanced by the petitioner that Dangi is sub caste of*



*Koiri/Kushawa.”*

33. Further, in paragraph 7, it is stated that :-

*“7. That it will be pertinent to bring on record that the father of writ petitioner namely Ramekbal Prasad as well as his grandfather namely Lakhraj Mahto has executed earlier a sale deed in which the caste of them is mentioned as Koiri/Kushwaha as well as in some other sale deed as executed by his family members the everywhere has been mentioned/stated as Koiri/Kushwaha, hence it further cements the case/claim of private respondent no.04.”*

34. Heard learned counsel for the parties.

35. Mr. S.B.K. Mangalam, learned counsel for the petitioner submits that the letter/memo no. 673 dated 08.03.2011 issued by the Joint Secretary of the ‘the GAD’ had given guidelines for issuance of the caste certificate, the income certificate, the residential certificate as also the certificate relating to creamy layer.

36. It is his submission that in continuation thereof, another letter was issued by the Joint Secretary which diluted the aforesaid letter dated 08.03.2011 inasmuch as letter/memo no. 1006 vide dated 06.04.2011 addressed to the



District Magistrate, Munger, it was informed that in case, in the '*khatian*' of the applicant, it has been inscribed '*koeri*' (Kushwaha) and if he is claiming caste certificate for '*Dangi*' caste, the Circle Officer can do the inspection of the area/local survey and accordingly, can issue certificate of '*Dangi*' (Annexure P -16 to the rejoinder to the counter affidavit filed on behalf of the respondent).

37. It is his submission that though the letter/memo no. 673 dated 08.03.2011 talks about the revenue documents to be the foremost document for granting of such certificate, a clarificatory letter was already in place. As such, only because the caste of one his ancestor, Bhagelu Mahato was recorded as '*Koeri*' (*Kushwaha*) in the revenue record, that cannot be the ground for disallowing his claim for granting caste certificate of '*Dangi*'.

38. His submission is that earlier '*Dangi*' was part of '*Koeri*' (*Kushwaha*) and only in the year 1995, it was separated and made an independent entity as OBC and later in the year 2015, it was brought under the category of Extremely Backward Class. Thus, there is nothing wrong on his part in getting caste certificate of '*Dangi*' and contesting the election from Extremely Backward Class seat.



39. The next submission put forward by Mr. Mangalam is that the proceeding conducted by the Caste Scrutiny Committee was not done in a conducive manner *inasmuch as* despite his illness, when his Junior Counsel made a prayer for adjournment, the same was refused and even he was threatened.

40. The further submission is that altogether 9 points were put forward by him in support of the case that though being a '*Dangi*' was part and parcel of the '*Koeri*' (*Kushwaha*) and as such the Circle Officer rightly issued the caste certificate to him, the same were not considered and/or incorporated in the order. He has taken this Court to the different paragraphs of the counter affidavit of the State to show that his claim that the document produced by him has not been considered, there is no answer.

41. It is his case that the report submitted by 'the CID' under the signature of its Additional DGP vide letter no. 1812 dated 18.10.2022 (Annexure-P-11&P11/1 to the petition) formed the basis for the Caste Scrutiny Committee to take up the proceedings. He submits that while the committee accepted the statement of some of the local villagers (which forms incorporated in the order) that the petitioner belongs to '*Koeri*'



(*Kushwaha*), on the other hand, those villagers/local representatives who gave affidavits in his support was/were rejected holding that the same are subsequent to the findings arrived at by 'the CID'.

42. He next submits that contrary to the fact that documents were provided to the committee, it has been recorded in paragraph-8 that despite giving sufficient opportunity, the petitioner failed to bring anything on record or give a statement in his favour. He submits that he has already stated that prayer on the ground of his illness was rejected summarily by the committee.

43. The next submission of the learned counsel for the petitioner is that the only document on which the respondents are harping is that his ancestor Bhagelu Mahato has been recorded as '*Koeri*' (*Kushwaha*) in the revenue records.

44. So far as the stand of the respondents that in a sale deed of 2018 in which the petitioner was a buyer, his caste has been declared as '*Koeri*' (*Kushwaha*) (as contained in Annexure-R-4/B series to the counter affidavit on behalf of the respondent no. 4), he submits that the buyer and/or the seller seldom go through the facts recorded in the sale deed



and in a routine manner signs the document.

45. He submits that the petitioner also failed to see the anomaly that his caste has been inscribed as '*Koeri*' in the sale deed. He reiterates that the documents of the local representatives in his support was rejected only on the ground that the same are subsequent to the enquiry that started in July, 2022.

46. The further submission is that on the one hand, the documents of the local representatives in his favour were rejected in paragraph-5 of the findings of the committee, twice the caption of prominent people have been given to show that he belongs to '*Koeri*' caste.

47. Learned counsel for the petitioner thus submits that:

(i) he belongs to '*Dangi*' caste which was part of '*Koeri*' (*Kushwaha*) and only in 1995, it was separated and later became Extremely Backward Caste;

(ii) the Joint Secretary in its clarificatory letter dated 06.04.2011 had given instruction that even if earlier it was inscribed as '*Koeri*' (*Kushwaha*), after ground inspection,



‘Dangi’ caste certificate can be granted;

(iii) the documents supporting his case being a ‘Dangi’ by the local representatives was/were not taken note of;

(iv) despite the illness of the petitioner’s counsel, time was not granted and on erroneous consideration, he was declared belonging to ‘Koeri’ (Kushwaha).

48. In support of his case, he has drawn attention of this Court to the order of the Hon’ble Apex Court in the case of **Kumari Madhuri Patil & Anr. (supra)** with specific reference to paragraph 13 (11) and 13 (13) which read as follows:

*11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.*

*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.”*



49. He further took this Court to paragraph 15 of the said judgment which read as follows:

*15. The question then is whether the approach adopted by the High Court in not elaborately considering the case is vitiated by an error of law. High Court is not a court of appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and records a finding, though another view, as a court of appeal may be possible, it is not a ground to reverse the findings. The court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately record the finding. Each case must be considered in the backdrop of its own facts.”*

50. He thus submits that the Court only has to see whether the committee considered all the relevant materials and applied its mind or not and each case be considered in the



backdrop of its own fact.

51. He next cited the case of **Kranti Associates Pvt. Ltd & Anr. Vs. Mashood Ahmad Khan & Ors.** reported in **(2010) 9 SCC 496** with specific reference to paragraph 47 (j) (k) & (l) which read as follows :

*“(j) insistence on reason is a requirement for both judicial accountability and transparency.*

*(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.*

*(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.”*

52. The said decision has been cited by the petitioner to support his case that the enquiry report of ‘the CID’ was incorporated by the Caste Scrutiny Committee without applying its own mind and/or the materials on record.

53. The next case cited by the petitioner is an



order of the Patna High Court (Full Bench) in the case of **Rajani Kumari & Ors. Vs. State Election Commission & Ors.** reported in **2019 (4) PLJR 673** with specific reference to paragraph 184 which read 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 suo-moto or by any other person, the Commission shall at the first instance either enquire whether it is a purely election and only when it is found that the*



*dispute brought before it is not a purely dispute 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.*

**Question No. II-**

*Whether the provisions of Section 476 read with Section 479 of the Bihar Municipal Act, 2007 can be rendered redundant or otiose, if the State Election Commission is conferred power to disqualify a candidate after election, as the disqualification of a candidate is a ground on which election petition can be filed?”*

54. He submits that such contentious issue has to be decided after taking evidence and till then ‘the Commission’ cannot take a decision on such complaint.



55. He concludes by submitting that on the basis of the facts that has come, the writ petition is fit to be allowed so that he can continue as the '*Mukhiya*' of Gram Panchayat Raj, Baghambarpur under Bariya Block, West Champaran.

56. Mr. Amit Srivastava, learned Senior Counsel represents the respondent no. 4. He also relied on the '*khatiyani*' of the ancestor of the petitioner to show that the petitioner belongs to '*Koeri*' caste.

57. It is the further case of the respondent no. 4 that he had preferred objection against the claim of the petitioner of being a "Dangi" caste before the concerned District Magistrate even prior to the election on 21.10.2021 and later it was submitted before 'the Commission'.

58. It has further been submitted that prior to the election, the petitioner got a wrong Caste Certificate issued showing him as '*Dangi* Caste', contested the election on Extremely Backward Class seat and won and thus is also liable for prosecution.

59. Mr. Srivastava, learned Senior counsel submits that he would like to rebutt the case of the petitioner point by point and in continuation of that, he took this Court



again to the letter/memo no. 1006 dated 06.04.2011 issued by 'the GAD' (Annexure-P/16 to the writ petition).

60. According to him, the guidelines were issued on 08.03.2011 and a perusal at the bottom of the letter dated 06.04.2011 clearly shows that it has been issued pursuant to the information sought by the Commissioner, Munger Division on 04.03.2011 i.e. prior to the issuance of letter dated 08.03.2011 by 'the GAD'.

61. The further submission is that even the initial information of the letter show that the District Magistrate, Munger has been informed pursuant to his letter dated 01.03.2011. He as such submits that unlike the guidelines dated 08.03.2011 that was issued to all concerned in the State of Bihar, the present letter was district specific and sent to the District Magistrate, Munger only with reference to their query relating to an individual.

62. It is his submission that even otherwise, the content of the letter was very clear that the Circle Officer has to do the ground enquiry and only after he finds that the concerned person belongs to '*Dangi*' caste, the certificate can be issued to him.

63. He thus reiterates that it was district



specific, person specific and communication made pursuant to the letters sent to it on 01.03.2011 and 04.03.2011 i.e. prior to 08.03.2011.

64. The next submission is that 'the CID', Bihar, Patna which made the initial enquiry and submitted a categorical report vide letter no. 1812 dated 18.10.2022 that the petitioner belongs to '*Koeri*' caste, the said finding has not been challenged by the writ petitioner and in that background alone, the same is fit to be dismissed.

65. His next contention is that the order in question has been passed by the Caste Scrutiny Committee and not 'the GAD'. However, again, the said committee has not been made party-respondent and on this ground too, the petition needs to be dismissed for non-joinder of necessary party.

66. He further took this court to the Gazette notification of 1996 relating to the Other Backward Class (Bihar Act, 6, 1996) to show that both *Kushwaha/Koeri* as well as '*Dangi*' have been incorporated separately *inasmuch as* while the *Kushwaha/Koeri* was placed at Serial No. 4, the '*Dangi*' Caste has been placed at serial no. 37. (Annexure R-5/D to the second supplementary counter affidavit on behalf of



the respondent no. 4).

67. He again took this Court to Annexure-R/7/D wherein all the Castes of the State of Bihar (total 251 to be precise) have been incorporated in which again at serial no. 26, *Kushwaha/Koeri* finds place whereas at serial no. 86, the 'Dangi' Caste has been recorded separately.

68. He lastly took this Court to the sale deed that was executed in favour of the petitioner in 2018 where the petitioner described himself to be a 'Koeri' caste. He as such submits that the caste of the petitioner for sale deed is 'Koeri' (*Kushwaha*) whereas for contesting elections, he is a 'Dangi' as the seat is reserved for Extremely Backward Class.

69. He relied on an unreported judgment of Patna High Court in **Khusboo Ara Vs. The State of Bihar & Ors.** in **CWJC No. 5581 of 2023** disposed of on **27.06.2023** with specific reference to paragraph -48 which read as follows.

*48. The findings of 'the Committee' dated 07.12.2021 is an unimpeachable evidence unless set aside by a competent Court. In the said findings communicated vide memo no. 14561 of 07.12.2021 'the Committee' came to a definite conclusion that the lady belongs to 'Sheikh' caste and not 'Sheikhra' caste to get benefits under the E.B.C.*



*category.*

70. He as such submits that the conclusion arrived at by 'the Committee' that the petitioner is 'Koeri' (Kushwaha) is an unimpeachable piece of evidence and in that background, the writ petition is fit to be dismissed.

71. The State on the other hand submits that a bare perusal of the findings of the Caste Scrutiny Committee shows that sufficient opportunity was given to the petitioner before it came to a finding and passed an order holding him to be 'Koeri' (Kushwaha).

72. It is his further submission that the said findings being an unimpeachable evidence, the petitioner do not have any case. He thus supporting the submissions put forward by the learned Senior counsel for the respondent no. 4 submits that the case is fit to be dismissed.

73. The State Commission, on the other hand represented by Mr. Sanjiv Nikesh submits that the case itself is premature *inasmuch as* pursuant to the complaint preferred by the respondent no. 4, no decision has been taken yet by the Election Commission in Case No. 72 of 1922 **(Santosh Kumar vs. State of Bihar).**

74. It is his further submission that the petitioner has jumped the line and instead of contesting the



matter and putting the facts before the Election Commission wants the same to be set aside and in that background, no relief can be granted to him.

75. This Court has gone through the facts of the case as also the submissions put forward by the rival parties and finds force in the averments made by the learned counsels appearing on behalf of the respondent no. 4, the State as also the Election Commission.

76. As per the documents on record, the '*Dangi*' caste was incorporated as a separate caste in the year 1995 and has not been carved out from *Kushwaha/Koeri* as pointed out by learned Senior Counsel for the respondent no. 4 and is also reflected from the Gazette notification.

77. Further, as per the letter no. 673 dated 08.03.2011 issued by 'the GAD', the land revenue record is the foremost document for the issuance of caste certificate and only in its absence, the other documents have to be relied upon.

78. In the case of the petitioner, the admitted fact is that his ancestor, Bhagelu Mahato has been shown in the '*Khatiyar*' as '*Koeri*' (*Khushwaha*).

79. Even the petitioner purchased the land in 2018 showing himself to be of '*Koeri*' caste. Further, as per the



findings of the Caste Scrutiny Committee; one Santosh Kumar, son of Nandlal Prasad of village Baghambarpur, P.O. Patjirwa, Shree Nagar, West Champaran who is a Government Teacher in Bhagambarpur Panchayat and own cousin of petitioner is having a '*Koeri*' caste certificate.

80. In view of such unimpeachable evidences before the Caste Scrutiny Committee which included the report submitted by 'the CID' showing the petitioner to be a '*Koeri*' (*Khushwaha*) caste; it rightly came to the finding communicated vide memo no 863 dated 12.01.2023 which cannot be faulted upon.

81. Learned Senior Counsel for the respondent no. 4 has rightly pointed out that the Inquiry Committee of 'the CID' which submitted its report to the Caste Scrutiny Committee (and formed basis for coming to the said conclusion vide letter no. 1812 dated 18.10.2022) also incorporated the fact that the Santosh Kumar, cousin brother of the petitioner and the Government Teacher has got a caste certificate showing himself as a '*Koeri*' caste which comes under OBC category.

82. Against the said unimpeachable evidence/documents/records, the only document on which the



petitioner is harping upon is a letter issued by the Joint Secretary dated 06.04.2011 which was communicated to the District Magistrate, Munger, copy whereof was sent to the Commissioner, Munger Division, Munger in response to their query dated 01.03.2011 and 04.03.2011. The same has already been rebutted/clarified by the learned Senior Counsel for the respondent no. 4 as incorporated above that it was district specific, person specific and even then direction was given to have enquiry done by the Circle Officer.

83. Having gone through the matter as also the rival submissions, the facts that are on record is/are that:

(i) in the Land Revenue Record, the ancestor of Bhagelu Mahto has been inscribed as '*Koeri*' in the '*khatiyani*';

(ii) the petitioner himself purchased a land in 2018 showing himself as '*Koeri*' caste.

(iii) as per the gazette notification (letter no. 673 dated 08.03.2011), the revenue record of father/ancestor is one of the important criteria for verification;

(iv) further only in its absence,



the ground verification is/are required;

(v) the 'Sarpanch' provided genealogy showing relationship of the petitioner with late Bhagelu Mahato;

(vi) 'Dangi' caste is different from 'Koeri' caste which came to be included earlier under Other Backward Class in 1995 and later in 2015 under Extremely Backward Class;

(vii) 'the CID' accordingly submitted its report;

(viii) the Caste Scrutiny Committee thereafter came to a definite finding that the petitioner does not belong to the 'Dangi' Caste.

84. So far as the cases cited by the petitioner are concerned, in the case of **Kumari Madhuri Patil (supra)**, the Hon'ble Apex Court held that the High Court is not court of appeal to appreciate the evidence. The Committee which is empowered evaluate the evidence placed before it before recording finding of facts which ought to prevail unless found by the judicial review by any High Court subject to limitation of interference with finding of facts. The Hon'ble Apex Court further held that when the Committee considers all the material



facts and record a finding, though another view, as a court of appeal may be possible, it is not a ground to reverse the findings. The court has to see whether the committee considered all the relevant material placed before it or has not applied its mind to relevant facts have led the committee ultimately record the finding. Each case must be considered in the backdrop of its own facts.

85. In this case, it is very clear that the committee has considered and recorded that :

(i) in the '*khatian*' (revenue records) the ancestor of the Bhagelu Mahato was described as '*Koeri*' (Khushwaha);

(ii) the petitioner while purchasing the land in 2018 described himself as '*Koeri*';

(iii) the cousin brother of the petitioner namely, Santosh Kumar is having '*Koeri*' caste certificate;

(iv) in the light of the said facts recorded/findings given, in the opinion of this Court, Caste Scrutiny Committee has passed the test of **Kumari Madhuri Patil (supra)**.



86. So far as the case of **Kranti Associates Pvt. Ltd (supra)** cited by the petitioner is concerned, the reasons have already been assigned by the Caste Scrutiny Committee for coming to a finding and in the opinion of this Court, it cannot be considered rubber stamp reasons.

87. Regarding the **Rajani Kumari (supra)** case, the petition is still pending before the State Election Commission and it has yet not decided the matter.

88. This Court has also takes note of the case of **Khusboo Ara (supra)** cited by the learned Senior Counsel in which it was held that the decision arrived at by the Committee cannot be faulted upon.

89. This Court thus observes that the petitioner cannot be allowed to change colours like the Chameleons *inasmuch* as he cannot become a 'Koeri' (under OBC category) to purchase a land in 2018 and immediately thereafter turn into a '*Dangi*' (under EBC category) to contest 2021 election from an Extremely Backward Class seat.

90. In the aforesaid backdrop and taking into account the rival submissions put forward by the parties and



perusing the materials on record, in the considered opinion of the Court relief sought for by the petitioner cannot be extended to him.

91. The writ petition fails and is accordingly, dismissed.

**(Rajiv Roy, J)**

Jagdish-

AFR/NAFR	AFR
CAV DATE	03.08.2023
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