

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.869 of 2017**

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Bindu Devi Wife of Sri Shravan Sah, Resident of Village- Bangari, P.O. Basant, P.S. Garkha, District- Saran at Chapra, Presently Mukhiya of Gram Panchayat Raj, Jalal Basant, Block- Garkha, District- Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
3. The District Magistrate, Saran at Chapra, District- Saran at Chapra.
4. The Additional Collector, Saran at Chapra, District- Saran at Chapra.
5. The District Panchayat Raj Officer, Saran at Chapra, District- Saran at Chapra.
6. The Circle Officer, Garkha, District Saran at Chapra.
7. Smt. Misha Gupta, Wife of Sri Ravitosh Gupta, Resident of Village- Jalal Basant, P.O. Basant, P.S. Garkha, District- Saran at Chapra.
8. Smt. Munni Devi, W/o Sri Sheo Shankar Sah Resident of Village- Bangari, P.O. Basant, P.S. Garkha, District- Saran (Chapra).
9. Smt. Noorjahan, W/o Sri Rojid Ansari Resident of Village- Bangari, P.O. Basant, P.S. Garkha, District- Saran (Chapra).

... .. Respondent/s

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with

**Civil Writ Jurisdiction Case No. 10775 of 2022**

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Kavita Devi Wife of Vijendra Gupta, Resident of village- Mathauli, P.O.- Rudalpur, P.S.- Bhore, District- Gopalganj, Presently Mukhiya of Gram Panchayat Raj, Gopalpur, Block- Bhore, District- Gopalganj.

... .. Petitioner/s

Versus



1. The State Election Commission (Panchayat) Sone Bhawan, Birchand Patel Path, Patna through the Secretary.
2. The State Election Commissioner, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
3. The Officer on Special Duty, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
4. The State of Bihar, through the Principal Secretary, General Administration Department, Government of Bihar, Patna.
5. The Principal Secretary, Welfare Department, Government of Bihar, Patna.
6. The District Magistrate, Gopalganj, District Gopalganj,
7. The District Welfare Officer, Gopalganj, District Gopalganj,
8. The District Panchayat Raj Officer, Gopalganj, District Gopalganj,
9. The Circle Officer, Bhore, District Gopalganj,
10. Sanju Parajapati Wife of Santosh Kumar Pandit Alias Santosh Prajapati, Resident of Village- Rudalpur, Tola- Hirapakar, P.O. Rudalpur, P.S. Bhore, District Gopalganj,

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 5516 of 2023**

Smt. Kumari Vandana W/o Devi Lal Choudhary R/o- Vill- Chehariya, P.O and P.S.- Durgawati, Dist- Kaimur, Bhabua.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of General Administration, Government of Bihar.
2. The Chief Secretary, Government of Bihar, Old Secretariat, Patna.
3. The Principal Secretary, Department of General Administration, Government of Bihar, Patna.
4. The Deputy Secretary, Department of General Administration, Government of Bihar, Patna.
5. The State Election Commission , through State Election Commissioner,



Patna, Bihar.

6. The District Election Officer (Panchayat) cum District Magistrate, Kaimur Bhabua.
7. The Senior Deputy Collector, Kaimur, Bhabua.
8. The Circle Officer, Durgawati, Dist.- Kaimur, Bhabua.
9. Sarvesh Singh Yadav S/o- Rajnath Singh R/o- Vill- Udhapura, P.O.- Kasthari, P.S.- Durgawati, Dist.- Kaimur, Bhabua.
10. Thakur Mallah, S/o Late Gurfekan Mallah R/o- Vill.-Chehariya, Tola Bahera, P.O. and P.S.- Durgawati, Dist.- Kaimur, Bhabua.

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 7443 of 2023**

Manju Devi W/o Sri Bachau Sah Resident of Village- Babhaniyav, P.O. and P.S. and Block- Chand, Dist.- Kaimur, Bhabua (legally elected Mukhiya of Gram Panchayat, Padhi, P.S.- Chand, Dist.- Kaimur, Bhabua).

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Department of General Administration, Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of General Administration, Government of Bihar, Patna.
3. The Additional Chief Secretary, Panchayat Raj Department, Government of Bihar, Patna.
4. The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
5. The Secretary, State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
6. The District Magistrate-cum-Returning Officer, Kaimur at Bhabua.
7. The Block Development Officer, Chand Block, District- Kaimur at Bhabua.
8. The Circle Officer, Chand Block, Dist.- Kaimur, Bhabua.
9. Priti Kumari Chaurasiya, W/o Sri Chandan Chaurasiya R/o Vill.- Karvandia,



P.O. and P.S. and Block- Chand, Dist.- Kaimur, Bhabua.

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 9393 of 2023**

Manju Devi Wife of Sri Bachau Sah Resident of Villlage- Babhaniyav, P.O. and P.S. Chand, District- Kaimur at Bhabhua, Presently Mukhiya of Gram Panchayat Raj, Padhi, Block- Chand, District- Kaimur at Bhabhua.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, General Administration Department, Government of Bihar, Patna.
3. The General Committee of the General Administration Department, through its Chairman-cum-Additional Chief Secretary, General Administration Department, Government of Bihar, Patna.
4. The Criminal Investigation Department, Government of Bihar, Patna through the Additional Director General of Police, Weaker Section, Criminal Investigation Department, Bihar, Patna.
5. The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
6. The Secretary, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
7. Preeti Kumari Chaurasiya Wife of Chandan Chaurasiya Resident of Village- Karwandiya, P.O. and P.S. Chand, District- Kaimur at Bhabhua.
8. Shamsheer Bahadur Singh Son of Sri Sukhdeo Singh Resident of Village- Babhaniyav, P.O. and P.S. Chand, District- Kaimur at Bhabhua.

... .. Respondent/s

**Appearance :**

(In Civil Writ Jurisdiction Case No. 869 of 2017)

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



Mr. Awnish Kumar, Advocate  
For the State : Dr. Md. Raisul Haque, SC-10  
Mr. Binay Kumar, Advocate  
(In Civil Writ Jurisdiction Case No. 10775 of 2022)  
For the Petitioner/s : Mr. S.B.K. Mangalam, Advocate  
Mr. Awnish Kumar, Advocate  
For the State : Mr. P.K. Shahi, AG  
Mr. Kameshwar Prasad Gupta, GP-10  
Mr. Satya Vrat, AC to GP-10  
For S.E.C. : Mr. Ravi Ranjan, Advocate  
Mr. Girish Pandey, Advocate  
For Respondent No. 10 : Mr. Suresh Prasad Bhakta, Advocate  
(In Civil Writ Jurisdiction Case No. 5516 of 2023)  
For the Petitioner/s : Mr. Radha Mohan Pandey, Advocate  
Mr. Chandra Shekhar Verma, Advocate  
For the State : Mr. Sheo Shankar Prasad, SC-8  
Mr. Sanjay Kumar, AC to SC-8  
For SEC : Mr. Ravi Ranjan, Advocate  
(In Civil Writ Jurisdiction Case No. 7443 of 2023)  
For the Petitioner/s : Mr. Radha Mohan Pandey, Advocate  
For the State : Mr. Kumar Alok, SC-7  
Mr. Satyeshwar Prasad, AC to SC-7  
(In Civil Writ Jurisdiction Case No. 9393 of 2023)  
For the Petitioner/s : Mr. Awnish Kumar, Advocate  
For the Respondent/s : Mr. P.K. Verma (AAG-3)

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE RAJIV ROY**

**CAV JUDGMENT**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 15 -01 -2024**

The writ petitions are placed before us on a reference made, doubting a Division Bench decision of this Court in



*Animesh Sil v. State of Bihar 2011 (1) PLJR 1164.* The Division Bench in the case of a selection & appointment to the post of Junior Scientist-cum-Assistant Professor in Agriculture Statistics, held that the appellant who is a native of Nagaland included in the Scheduled Caste list for that State, cannot claim the benefit of reservation within the State of Bihar. The reference order expressed a dissent, especially since the decision was not directly relating to elections; the reservations in which was the subject of consideration in the writ petition. The matter was referred for consideration by a Division Bench since, insofar as reservations to elections, especially in the context of a person who has come to Bihar by reason only of a marriage, it was opined, there were wider ramifications. The reference order reckoned Hindu Law by which a woman on being married is uprooted from her original family and replanted in her matrimonial home. It was observed that, on such marriage and taking up residence in the matrimonial home and State, she becomes a permanent and full member of that family. She would be deemed to be part and parcel of not only that family, but also the State of Bihar. In which event, it would be unfair to deny her the rights and privileges which are available to a person who hails and is residing within the State of Bihar.



2. On facts, it has to be noticed that except in CWJC No. 5516 of 2023, all the petitioners belong to the '*Teli*' caste and were residents of the State of Uttar Pradesh, wherein they are included under the Other Backward Classes (OBC). In the State of Bihar '*Teli*' is included in the Extremely Backward Classes (EBC). The petitioners contested in the reserved post to the Panchayats and got elected. Insofar as CWJC No. 5516 of 2023 is concerned, the petitioner belonged to a Scheduled Caste (SC), '*Pashi*', within U.P. and later migrated to the State of Bihar on marriage. The petitioners were disqualified for reason of they being original residents of another State, thus disentitled to reservation within the State of Bihar.

3. We heard learned counsel Shri S.B.K. Mangalam and Shri Radha Mohan Pandey appearing for the petitioners, Shri Suresh Prasad Bhakta, learned counsel for the respondent, learned Advocate General, Shri P.K. Shahi and Dr. Md. Raisul Haque (SC-10) for the State, the learned Standing Counsel appearing for the Election Commission.

4. Fully supporting the reasoning in the reference order, the petitioners contented that it is unfair to deny reservation benefits to women married to Bihar, especially since they have been residing in the State of Bihar for long and they



have assimilated themselves into the culture of the State. It is also pertinent that in both States, the caste of the petitioners were included under the Backward Class (BC). It is argued that ***Marri Chandra Shekhar Rao v. Seth G.S. Medical College; (1990) 3 SCC 130***, specifically spoke of the involuntary migration from one State to another State not dis-entitling the reserved category candidates from claiming reservation in that other State.

5. Specific reference was also made to ***Union of India v. Dudh Nath Prasad, (2000) 2 SCC 20***, wherein the respondent who was a native of the State of West Bengal, but born and educated in Bihar, was found entitled to the reservation claimed as belonging to 'Nuniya' caste, notified as a Scheduled Caste in the State of West Bengal.

6. Learned counsel would also refer to a decision of the High Court of Himachal Pradesh, Shimla, which specifically referred to ***Marri Chandra Shekhar Rao (supra)*** and found migration upon marriage, enabling a woman to seek the benefit of reservation, especially noticing Section 20 of the Representation of the People Act, 1950 (for brevity "Act of 1950") and the definition of the word '*Ordinarily Resident*'. It was argued that the Bihar Reservation of Vacancies in Post and



Services (For Scheduled Caste, Scheduled Tribes and Other Backward Classes) Act, 1991 (for brevity “Bihar Reservation Act”) is only for the purpose of providing adequate representation in posts and services under the State and the prohibition therein, cannot have any bearing on the reservations enabled in elections to local bodies. Reliance is also placed on Sections 15 and 16 of the Indian Succession Act, 1925 to contend that the domicile of a woman would be the domicile of the husband.

7. It was argued in CWJC No. 5516 of 2023 that therein the disqualification was made by the Election Commission, while Section 137 of the Bihar Panchayat Raj Act, 2006 specifically enables an election petition to be filed before either a Munsiff or a Sub-Judge. In fact, in the aforesaid case, an election petition was filed before the jurisdictional Munsiff which was later withdrawn and a further application made before the Election Commission, who erroneously set aside the election, is the plea.

8. The learned Advocate General would specially refer to Article 341 of the Constitution of India to contend that the list of Scheduled Castes under the Constitution is with reference to a particular State and the marginalized categories in



one State included under the Scheduled Caste cannot claim the benefit of reservation in another State wherein they reside by reason of a migration. Insofar as the backward communities in Bihar, there is a specific division of such Backward Class into Extremely Backward Class and Backward Class, which is as per the Bihar Reservation Act. The definition clause under the Bihar Panchayat Raj Act, 2006, Section 2(b), specifically refers to Annexure-1 of the Bihar Reservation Act and hence the provisions of that statute would be applicable even insofar as elections to the Panchayats. Section 12 of the Panchayat Raj Act also enables such reservation only insofar as the castes enumerated under Annexure-1 of the Bihar Reservation Act which is EBC and not BC. The categorization of BC is made only in the context of the special circumstances that exist in Bihar and the petitioners who come from another State cannot claim the entitlement for such reservation since, the travails and disadvantages suffered by the same caste members in the State of Bihar would not have visited the residents of Uttar Pradesh.

9. Learned Standing Counsel for the Election Commission in answer to the contention raised on Section 137, specifically refers to Section 136 of the Panchayat Raj Act and relies on the Full Bench decision of this Court in *Rajani*



***Kumari v. State Election Commission; 2019 SCC OnLine Pat 1715.*** The learned Standing Counsel Dr. Md. Raisul Haque (SC-10) appearing for the State submits that there is no reason to take a different opinion from that taken by the Division Bench of this Court. Reliance is also placed on ***Ranjana Kumari v. State of Uttarakhand and Ors.; (2019) 15 SCC 664*** which on identical situation negated the claim of the SC candidate of a State to contest in the reserved vacancy of another State.

10. Having gone through the decision in ***Animesh Sil (supra)***, we are not convinced that based on the reasoning in the reference order a reconsideration is warranted. The decisions of the Hon'ble Supreme Court referred at the Bar were specifically noticed to find that the reservation for a post in any State is made for the benefit of the natives of that State. It was categorically held that '*if a native of one State migrates to another State, he does not become entitled to reservation in the latter State merely by a long residence*' (sic-para 21). Therein the appellant was a native of Tripura, who claimed reservation for appointment to a post within the State of Bihar. Therein also the appellant belonged to a BC in Tripura and claimed reservation as an EBC.

11. The decision was in the context of appointment to



a post and so is the Bihar Reservation Act. Insofar as backward communities are concerned, the Reservation Act in the State of Bihar categorizes them into EBCs and BCs; based on the socio-economic conditions within the State. A reservation conferred on a native of Bihar under the EBC category cannot be enabled to a person who belongs to the same caste, but is a native of another State. The reasoning behind the affirmative action of carving out a special category as EBC, in Bihar, cannot have any application to the other State; since it is purely based on the socio-economic conditions existing in Bihar. The travails and disadvantages of a community member within the State of Bihar would not have been suffered by a person who was born and brought up in another State. We also have to notice that though the Bihar Reservation Act is for the purpose of providing adequate reservation to SC, ST and OBC in the posts and services of the State, the definition of 'Backward Classes' in the Panchayat Raj Act specifically refers to Annexure-1 of the Bihar Reservation Act. The reservation entitled under Sections 13 and 40 of the Panchayat Raj Act, insofar as the Backward Classes are concerned, has to go by the categorization of EBCs under the Bihar Reservation Act, who alone are enabled such reservation.



12. We have also looked at *Marri Chandra Shekhar Rao (supra)*. The learned counsel specifically referred to paragraph 23 wherein the voluntary and involuntary transfer from one State to another State was noticed. Even then the Hon'ble Supreme Court was cautious in declaring that *"it would, therefore, be necessary and perhaps desirable for the legislatures or the Parliament to consider appropriate legislations bearing this aspect in mind so that proper effect is given to the rights given to scheduled caste and scheduled tribes by virtue of the provisions under Articles 341 and 342 of the Constitution. This is a matter which the State legislatures or the Parliament may appropriately take into consideration"* (sic-para 23). It is not for this Court to legislate and the disqualification also is not one prohibited by the statute and is one going by the trite principles of reservation, as also the interpretation placed by the Constitution Bench of the Hon'ble Supreme Court on the words: 'for the purposes of this Constitution' and also 'in relation to that State', employed in Articles 341 and 342.

13. Insofar as the Scheduled Caste candidate is concerned, her inclusion in Scheduled Caste category is available both in the State of U.P. and the State of Bihar.



However, the petitioner has her roots in the State of Uttar Pradesh and came to the State of Bihar by reason only of marriage. Likewise, the other petitioners also belong to the Backward Classes in the State of Uttar Pradesh and came to Bihar by reason of marriage. Their inclusion in the State of Uttar Pradesh as a Backward Class or a Scheduled Caste would not enable them to stand for elections within the State of Bihar even if the very same caste is included as a Scheduled Caste or a BC in the State of Bihar. Insofar as an EBC reservation is concerned, which category alone has reservation under the Panchayat Raj Act, there is no question of an OBC candidate of U.P. being entitled to such reservation. We cannot also countenance the argument of the learned counsel that, in marriage, the migration is involuntary, since it is an arranged marriage. It would be puerile to presume that the consent of the woman was not taken for the marriage; which in any event is irrelevant in deciding the eligibility for reservation, as the law now exists.

14. We have also looked at *State of Himachal Pradesh v. Naveen Kumari (supra)* which considered the issue based on a reading of Section 20 of the Act of 1950. Therein a Division Bench had distinguished *Marri Chandra Shekhar Rao*



(*supra*) and the decision in *Action Committee on Issue of Caste Certificate to SCs/STs v. Union of India; (1994) 5 SCC 244*; which distinction we are unable to accept, with all the respect at our command. We do not think that the case before the H.P High Court, which was similar to the one before us, is beyond the ambit of the *ratio decidendi* of the decisions of the Hon'ble Supreme Court or that there is 'want of any firm declaration in the verdicts of the Hon'ble Apex Court' (*sic*), as has been observed by the learned Judges.

15. We also notice the decision of the Hon'ble Apex Court in **Ranjana Kumari** (*supra*) in which **Marri Chandra Shekhar Rao** (*supra*) was relied on and the appellant who belonged to 'Valmiki' Caste, included as a Scheduled Caste within the State of Punjab claimed reservation in the State of Uttarakhand; to which State she migrated on marriage, in which State also the said caste was declared as a Scheduled Caste. On identical facts when **Ranjana Kumari** (*supra*) has been decided by the Hon'ble Supreme Court we find absolutely no way to rely on a Division Bench decision of the High Court of Himachal Pradesh, which on unspecified reasons found the Hon'ble Supreme Court judgment to have not made any clear declaration.



16. Section 20 of the Act of 1950 defines 'ordinarily resident' or rather provides contingencies wherein a person can be deemed to be ordinarily resident in a constituency or cannot be said to be so residing; disabling or enabling him to contest in the elections held therein. The aforesaid definition for the purposes of the Act of 1950 only provide the circumstances that enable a person to contest the elections from a constituency in which he or she is ordinarily resident, but does not enable such contest in a reserved category; for which, the affirmative action is not to be found under the Act of 1950, but under the Panchayat Raj Act.

17. *Dudh Nath Prasad (supra)* was a case in which the appellant was selected under the reserved category to the Indian Administrative Service & Allied Services by the U.P.S.C. The appellant had obtained the certificate from the State of West Bengal wherein his parents were residing for more than 30 years. There was a doubt raised about his entitlement under the reserved category only by reason of the fact that the appellant had studied in the State of Bihar and his parents had a property in Siwan, in Bihar; which was negated by the Hon'ble Supreme Court. Therein a person with roots in West Bengal, where his parents had been residing for long had applied and



obtained a caste certificate from his native State and applied to the U.P.S.C for an all India service; not in any manner similar to the case herein.

18. In *Action Committee* (supra) the issue raised was with respect to persons belonging to a Scheduled Caste/Scheduled Tribe in relation to one State, who migrates to another State, where a caste or tribe of the same nomenclature is specified for the purposes of the Constitution to be a Scheduled Caste or Scheduled Tribe. Whether the person who migrated from one State to the other would be entitled to the SC/ST benefits in the other State, was the question raised. The inclusion of a particular Caste or Tribe in the Schedule by the President, in consultation with the Governor of a particular State, was specifically noticed; to find that such inclusion is based on the conditions and circumstances in which the particular caste or tribe members live in that State. The concept of reservation was reiterated to be one to ensure equality to those persons who suffered such disadvantages in their life, due to the reason of their belonging in a particular caste or tribe, which disadvantage was sought to be mitigated and effaced by the privilege of reservation; intended at providing them a benefit so as to make their conditions equal with that of the other



communities in that area who do not suffer from such disadvantages. This aspect of disadvantageous start in life could not be imported into a State to which a member of such Scheduled Caste or Scheduled Tribe migrates, since then the individual who migrated would be impairing the chances of those Scheduled Castes or Scheduled Tribes notified for that particular 'area/State'.

19. It was held so in paragraph 16 of **Action Committee** (*supra*);

*“We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Scheduled Tribes or backward classes in a given state would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States by the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in the State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled caste of the latter State “for the purposes of this constitution”. This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution. That is why in answer to a question by Mr. Jaipal*



*Singh, Dr. Ambedkar answered as under:*

*“He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local Government, within whose jurisdiction he may be residing the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But so far the present Constitution stands, a member of a Scheduled Tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal area or scheduled areas, in areas other than those which are covered by them. ...”.*

*Relying on this statement, the Constitution bench ruled that the petitioner was not entitled to admission to the medical college on the basis that he belonged to a Scheduled Tribe in the State of his origin”.*

20. The Constitution Bench decision referred herein above is ***Marri Chandra Shekhar Rao*** (*supra*).

21. We also observe that Section 137 is with respect to an election petition wherein dispute is with respect to an election to Gram Panchayat or Gram Kutchery or the Panchayat



Samiti or a Zila Parishad; which in the former case shall lie before the Munsiff and in the latter before a Sub-Judge within whose jurisdiction the local body is situated, as pointed out by the learned Standing Counsel for the Election Commission.

22. Section 136, however, speaks of disqualification from membership. Sub clause (b) of Section 136(1) refers to disqualification by or under any law for the time being in force for the purposes of election to the State. Any question of disqualification of a member of Panchayat, at any level, including Mukhiya of Gram Panchayat, Pramukh of Panchayat Samiti or Adhyaksh of Zila Parishad, Sarpanch of Gram Kutchery or Panch of Gram Kutchery, before the election or after election, is to be adjudicated by the State Election Commission. The issue is squarely covered by the Full Bench decision of this Court in ***Rajani Kumari*** (*supra*).

23. Indian Succession Act regulates succession and not reservation. We have, herein above, based on binding precedents of the Hon'ble Supreme Court, categorically found the disqualification of a reserved category candidate of one State, to such reservation in another State, even if the particular caste is a reserved category in that other State.

24. We confess our inability to refer the matter to a



larger Bench and bow to the dictum as declared in *Animesh Sil (supra)* which though was with respect to selection and appointment, is equally applicable to elections. The *ratio decidendi* is the principle of reservation, applicable equally in elections and selection & appointment. This is the dictum of two Constitution Bench decisions of the Hon'ble Supreme Court; *Marri Chandra Sekhar Rao & Action Committee* (both supra).

25. We respectfully follow the decisions of the Hon'ble Supreme Court & the Division Bench decision of this Court in *Animesh Sil (supra)*. Having answered the reference, we find nothing more to be considered in the writ petitions. We, hence, reject the writ petitions.

**(K. Vinod Chandran, CJ)**

**Rajiv Roy, J**

I agree

**( Rajiv Roy, J)**

Anushka/-

AFR/NAFR	
CAV DATE	08.01.2024
Uploading Date	15.01.2024
Transmission Date	

