

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.9547 of 2020**

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Vikram @ Vikram Sah @ Bikram Sah, Son of Sri Nagendra Prasad, Resident of Mohalla Nehra Tola, Near Jharnakal Ward no. 67, P.O. Begampur, P.S.-Chowk City, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home and Personal Department, Government of Bihar, Patna.
2. The Secretary, State Election Commission, Bihar, Patna.
3. The Additional Chief Secretary, General Administration Department-Cum-Chairman, State Level Caste Scrutiny Committee, Bihar, Patna.
4. The Deputy Secretary, Backward Class and Extreme Backward Class, Selfare Department-Cum-Member of State Level Caste Scrutiny Committee, Bihar Patna.
5. The Under Secretary, General Administration Department-Cum-Caste Level Scrutiny Committee, Bihar Patna.
6. The Joint Commissioner, State Election Commission, Bihar, Patna.
7. The District Magistrate-Cum-District Returning Officer (Municipal Corp). Patna.
8. The Deputy Development Commissioner-Cum-The Returning Officer, Patna Municipal Corporation, Patna.
9. The Sub-Divisional Officer, Patna Sadar.
10. The Circle Officer, Patna Sadar, Patna.
11. Sri Manoj Kumar @ Munna Jaiswal, Son of Sri Gopal Prasad Joiswal, Resident of Quila Road, Kaimasikoh, Near Mal Ki Kachhari, Ward No.67, P.O.-Jhauganj, P.S.-Chowk City, Patna.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s	:	Mr. Rajeev Ranjan, Advocate Mrs. Bela Singh, Advocate
For Respondent No. 11	:	Mr. Y.V. Giri, Sr. Advocate Mr. Ranjeet Choubey, Advocate
For the State	:	Mr. Ruchikar Jha, AC to SC-8
For Respondent No. 2	:	Mr. Sanjeev Nikesh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

**and**

**HONOURABLE MR. JUSTICE MADHURESH PRASAD**

**CAV JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)**



**Date : 04-04-2022**

The post of the Ward Councillor of Ward No. 67 of Patna Municipal Corporation was reserved for Extremely Backward Class (for short EBC) for the election held on 04.06.2017. The petitioner and Respondent No. 11 had contested the said election, both claiming to be belonging to EBC. The petitioner is indisputably *Teli* by caste. Respondent No. 11, on the other hand, claimed his status of EBC with his caste name '*Awadh Baniya*'.

2. It is the petitioner's case that Respondent No. 11 does not belong to the caste *Awadh Bania* rather he is *Kalwar Bania* by caste which does not fall within the EBC category. The only dispute, which the petitioner has raised in this writ application, is as to whether Respondent No. 11 is *Awadh Bania* or not. The State Level Caste Scrutiny Committee, Bihar, Patna (hereinafter referred to as 'the Committee'), upon determination of the caste status of Respondent No. 11, has concluded that he belongs to the caste *Awadh Bania* which comes under EBC (Schedule-1). The said decision of the Committee dated 16.03.2020 is under challenge in the present writ application. The petitioner is seeking a consequential declaration from this Court to the effect that Respondent No. 11, being ineligible for the post because of his



caste status and the petitioner having secured second highest votes in the said election, stood validly elected for the post of Ward Councillor.

3. Upon perusal of the pleadings and copies of the documents brought on record and rival submissions advanced on behalf of the parties the Court is called upon to consider and decide whether the impugned finding and decision of the Committee need interference by this Court in exercise of power of judicial review under Article 226 of the Constitution of India. Secondly, whether the nature of consequential relief, which the petitioner is seeking, can be granted by this Court in a writ proceeding.

4. We have heard Mr. Rajeev Ranjan, learned counsel for the petitioner, Mr. Y.V. Giri, learned Senior Counsel for Respondent No. 11, Mr. Ruchikar Jha, learned AC to SC-8 and Mr. Sanjeev Nikesh, learned counsel for the State Election Commission.

5. It is deemed appropriate to narrate briefly certain undisputed facts which give the background in which the present writ application has been filed. Indisputably, the seat was reserved for EBC. The petitioner being *Teli* by caste belongs to EBC. During the process of scrutiny of nomination paper election



itself the petitioner had raised an objection regarding the status of Respondent No. 11 as EBC asserting that he was *Jaiswal/ Baniya*, a Backward Class and not EBC.

6. Respondent No. 11 resisted the claim of the petitioner with his plea that he was born and brought up in the State of Bihar and his forefathers were residents of Lucknow who were *Awadh Bania*, which caste falls under EBC category. Respondent No. 11 possessed a certificate issued by a competent authority as regards his caste status of *Awadh Baniya* falling under EBC category. Respondent No. 11 was declared elected with 4849 votes and petitioner stood second with 3735 votes to his credit. The petitioner had approached the State Election Commission during the election process itself, questioning the claim of Respondent No. 11 of being belonging to EBC category. Evidently, on the petitioner's complain filed against Respondent No. 11, an enquiry was conducted. From a communication dated 21.08.2017 of the Election Officer, Patna Municipal Corporation-cum-Deputy Development Commissioner, Patna addressed to the District Election Officer-cum-District Magistrate, Patna it appears that the petitioner's complain was found correct. The said report of the Election Officer, Patna Municipal Corporation dated 21.08.2017 was forwarded to the State Election Commission by the District



Electoral Officer (Municipalities)-cum-District Magistrate, Patna for further action. The State Election Commission, thereafter, put the petitioner to notice fixing a date of hearing. Subsequently, the State Election Commission referred the dispute to the Committee through a letter dated 10.01.2018, addressed to the Principal Secretary, General Administration Department, Government of Bihar. The Committee in its report dated 29.10.2018 (Annexure-16 to the writ application) determined the caste of Respondent No. 11 as *Kalwar Baniya*, which is at Item No. 10 of the Schedule-2 of Backward Class.

7. On perusal of the said report of the Committee, it appears that a report in respect of caste status of Respondent No. 11 was called for from the District Magistrate, Lucknow where forefathers of Respondent No. 11 used to reside. The report of the District Magistrate, Lucknow (UP) did not disclose formation of any definite opinion on the aforesaid aspect. The Committee, however, had taken note of the fact that in the light of the request made by the Committee, under the orders of the District Magistrate, Lucknow, Tahsildar Sadar had conducted an enquiry. During the course of the said enquiry, the residents of the place where forefathers of Respondent No. 11 had resided are said to have disclosed that the forefathers of Respondent No. 11 were



*Awadh Baniya.*

8. The said finding recorded by the Committee dated 29.10.2018 was put to challenge by the petitioner before this Court by filing a writ petition giving rise to CWJC No. 22734 of 2018. The writ petition was allowed by an order dated 13.11.2019 in following terms :-

*“Having heard learned counsel for the parties and on a careful perusal of the records, this court finds that this writ application has to be allowed as it appears from the impugned order contained in Annexure ‘P/14’ that the finding in respect of the petitioner saying that he is ‘Kalwar Baniya’ is not supported by any cogent material. No basis of arriving at such a conclusion has been shown save and except some vague statements taken from the report of the Crime Investigation Department. What are those documents, the descriptions thereof and what are the materials contained in those documents which indicate that the petitioner is ‘Kalwar Baniya’ have not at all been referred to. This court further finds that the District Magistrate, Lucknow had sent a report as contained in Annexure ‘P/13’ to the writ application. In his report, he had informed that the ancestors of this petitioner were the domicile of Lucknow and they belonged to Awadh Baniya Caste. In the opinion of this court, once the report of the Lucknow*



*Administration was available with the Crime Investigation Department or the General Administration Department as the case may be, in case they were of the view that some more evidence in support of the said report are required to be called for, the principle of equity, good faith and conscience required that instead of taking a decision in haste they should have requested the District Administration, Lucknow to send the materials in support of the report. This has not been done and the State Level Scrutiny Committee as also the General Administration Department proceeded to pass the impugned order.*

*In ultimate analysis of the entire facts and circumstances as also the materials available on the record, this court is of the considered opinion that the impugned orders as contained in Annexure 'P/8', 'P/14' and Memo No. 5004 dated 12.08.2017 issued by the Circle Officer are required to set-aside and those are accordingly set-aside. The matter is remitted to the Caste Scrutiny Committee for a fresh consideration after giving an appropriate opportunity of hearing to the petitioner as well as respondent no. 11.*

*Let a final decision in this regard be taken within a period of four months from the date of receipt/production of a copy of this order.*

*This Writ Application is allowed to the extent indicated hereinabove."*



9. By the said order of this Court dated 13.11.2019, passed in CWJC No. 22734 of 2018, the matter was remanded back to the Committee for fresh consideration after giving the petitioner as well as Respondent No. 11, an opportunity of hearing.

10. The petitioner had also filed a writ petition, which gave rise to CWJC No. 21781 of 2018, seeking a direction to the State Election Commission to take a final decision on the question of disqualification of Respondent No. 11. The said writ petition was disposed of on that very date i.e. 13.11.2019, taking into account the order which was passed in CWJC No. 22734 of 2018. It is in the aforesaid background that the Committee upon consideration has recorded its conclusion in its order dated 16.03.2020 (Annexure-17) to the following effect :-

“8. प्रस्तुत मामले में स्टेटलेवल स्कूटनी कमिटी द्वारा यह पाया गया कि जिला पदाधिकारी, लखनऊ का प्रतिवेदन यह प्रमाणित करता है कि याचिकाकर्ता श्री मनोज कुमार उर्फ मुन्ना जयसवाल के पूर्वज इस्माईलगंज, लखनऊ के निवासी थे एवं 'अवध बनिया' जाति के सदस्य थे। अतएव स्टेटलेवल स्कूटनी कमिटी के द्वारा सर्वसम्मति से श्री मनोज कुमार उर्फ मुन्ना जयसवाल, पार्श्व, वार्ड संख्या-67, पटना नगर निगम, पटना पिता- श्री गोपाल प्रसाद, साकिन- किला रोड, पटना सिटी की जाति 'अवध बनिया' अत्यन्त पिछड़े वर्गों की सूचि (अनुसूची-1) विनिश्चित किये जाने का निर्णय लिया गया है।



यह भी निर्णय लिया गया है कि इसकी सूचना संबंधित प्राधिकार एवं पक्षकार को उपलब्ध करा दी जाय।”

11. The caste status of Respondent No. 11 as *Awadh Baniya* has been upheld by the Committee upon consideration of the report of the District Magistrate, Lucknow (UP), taking into account the fact that one of the ancestors of Respondent No. 11 i.e. Kishan Lal Choudhary was found during the enquiry to be belonging to *Awadh Baniya* and his ancestors were residents of Ismailganj (Lucknow).

12. Mr. Rajeev Ranjan, learned counsel appearing on behalf of the petitioner has submitted that the Committee was under obligation to consider fresh materials in true compliance of this Court's order dated 13.11.2019, passed in CWJC No. 22734 of 2018. He has argued that on the basis of the same material which was there on record i.e. the inconclusive report of the District Magistrate, Lucknow that the Committee has now held Respondent No. 11 to be belonging to *Awadh Baniya* caste, which is EBC. He has submitted that the father of Respondent No. 11 holds a licence under Public Distribution System and in the list prepared by the Sub-Divisional Officer-cum Licensing Authority of the dealers under PDS, caste of the father of Respondent No. 11 Gopal Prasad Jaiswal has been mentioned as Kalwar. He has



further submitted that Respondent No. 11 is in fact a resident of Bakhtiyarpur Block in the district of Patna. He has placed reliance on various reports at the level of Revenue *Karmchari* and Circle Officer to make out a case that Respondent No. 11 belongs to *Jaiswal (Kalwar caste)* and not *Awadh Baniya*. He has referred to letter dated 12.08.2017, issued by the Circle Officer, addressed to the Deputy Development Commissioner, Patna informing therein that the caste certificate earlier granted was cancelled as he belonged to *Kalwar*. He has argued that caste of a male has to be decided on the basis of the caste of the parents. Since the caste of the father of Respondent No. 11 falls in Backward Class, the Respondent No.11 cannot have a different caste than that of his father viz. *Jaiswal* and, therefore, the finding of the Committee is contrary to the materials on record.

13. Mr. Y.V. Giri, learned counsel appearing on behalf of Respondent No. 11 has submitted that he had obtained caste certificate on 27.11.2009 in which his caste name has been mentioned as *Baniya*. Earlier, the said caste was under BC-2 category, which was subsequently included in BC-1. He has submitted that the Committee has recorded its finding after giving opportunity of hearing to the parties and materials available before it.



14. In reply, Mr. Rajeev Ranjan, learned counsel appearing on behalf of the petitioner has placed reliance on a certificate issued by Lucknow Nagar Nigam, Lucknow dated 20.04.2017 (Annexure-19), wherein it has been mentioned that the forefathers of Respondent No. 11 were residents of village Ismailganj who were '*Awadh Baniya*' and had left Ismailganj since long. He has further submitted that the same report was available before the Committee earlier also based on which the finding was recorded against Respondent No. 11 about his caste status.

15. Upon consideration of rival submissions advanced on behalf of the petitioner, Respondent No. 11 and the State Respondents and pleadings and other materials on record, we find that the petitioner has not disputed that Respondent No. 11 is a resident of Bakhtiyarpur. It is also not disputed by the petitioner that Respondent No. 11 has settled in the State of Bihar for several decades after his forefathers having migrated to the State of Bihar. The finding of the Committee is based on the caste of forefathers of Respondent No. 11 and on the basis of local enquiry conducted in that regard by the District Magistrate, Lucknow (UP). The submission made on behalf of the petitioner that since father of Respondent No. 11 is having a licence to run



PDS shop with his caste status as *Kalwar*, in the Court's opinion, cannot be a ground to interfere with the finding recorded by the Committee for the reason that caste of the father of Respondent No. 11 was not the subject-matter of scrutiny by the Committee. The impugned finding of the Committee, in our opinion, cannot be said to be without any basis, some basis having been disclosed in the impugned order. The contesting parties were given opportunity of hearing and upon appreciation of the relevant materials available before it, the Committee has concluded that Respondent No. 11 is *Awadh Baniya* by caste. This Court, exercising power of judicial review need not re-appreciate the evidence already appreciated by the Committee. We are not inclined to go into the disputed questions of fact which are being raised by the petitioner in the present writ application to assail the impugned order. In our opinion, the impugned order of the Committee does not require interference by this Court on the grounds taken on behalf of the petitioner.

16. We, however, make it clear that it will be open for the petitioner to avail appropriate civil remedies in respect of declaration of caste status of Respondent No. 11 in accordance with law.

17. This application is accordingly dismissed with the



aforesaid observation.

18. No order as to costs.

**(Chakradhari Sharan Singh, J)**

I agree  
**Madhuresh Prasad, J**

**( Madhuresh Prasad, J)**

Rajesh/-

<b>AFR/NAFR</b>	NAFR
<b>CAV DATE</b>	22.03.2022
<b>Uploading Date</b>	19.04.2022
<b>Transmission Date</b>	NA.

