

(2020) 01 PAT CK 0042

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7154 Of 2017

Guriya Devi

APPELLANT

Vs

State Of Bihar Through The Chief Secretary And Ors

RESPONDENT

Date of Decision : 16-01-2020

Acts Referred:

Bihar Panchayat Raj Act, 2006 — Section 136(2)

Citation : (2020) 1 PLJR 617

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : S.B.K Mangalam, Amit Shrivastava, Sanjeev Nikesh, Sandip Kumar, Ravindra Kumar

Final Decision : Allowed

Judgement

1. Heard Mr. S B K Mangalam, learned counsel for the petitioner; learned AC to AAG 6 for the State; Mr. Amit Shrivastava, learned counsel along with Mr. Sanjeev Nikesh, learned counsel for the State Election Commission and Mr. Sandip Kumar, learned counsel for the respondent no. 6.

2. The petitioner has moved the Court for the following reliefs:

(I) For issuance of an appropriate writ in the nature of CERIORARI for quashing the report dated 30.11.2016 submitted by the Respondent no. 4 to the Respondent no. 3 vide his letter no. 2092 dated 30.11.2016, whereby and where under he has declared the caste of the petitioner to be "NAT" as, therefore, a member of Schedule Caste Category on the ground that she is the sister of Sri Jitendra Nat and since Jitendra Nat is a grandson of Sattu Ram son of Roop Chand Nat, Jitendra Nat is "Nat" by caste.

(II) For a declaration that when it is the case of the petitioner that she is member of Gandharv Society which comes under the category of Extremely Backward Class, determination of her caste on the ground that she is sister of Jitendra Nat is wholly illegal, unreasonable and unsustainable in law even on the

ground that the show-cause filed by the petitioner has not been considered by the Respondent no. 4 while submitted his impugned report to the Respondent no. 3.

(III) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case."

3. During the pendency of the application, the State Election Commission proceeded in the matter and has passed final orders by which she was declared disqualified to hold the post of member of the Panchayat Samiti on the ground of her not satisfying the eligibility criteria of the caste for which the post was reserved and as a consequence, she has also stood unseated from the post of Pramukh of Kargahar Block in the district of Rohtas by order dated 25.08.2017 contained in Memo no. 3785 dated 29.08.2017.

4. Learned counsel for the petitioner submitted that the same has also been challenged by way of filing Interlocutory Application No. 6469 of 2017.

5. Having regard to the fact that the initial challenge was against the report submitted in connection with the petitioner not belonging to Extremely Backward Class and pursuant thereto, in the proceeding, matters have been taken to its logical conclusion resulting in the impugned order dated 25.08.2017, the Court finds it appropriate to allow the prayer.

6. Accordingly, challenge to the order dated 25.08.2017 passed by the State Election Commissioner shall form part of the relief claimed by the petitioner in the present writ application.

7. Learned counsel for the petitioner submitted that she had filed a detailed show cause before the State Election Commissioner prior to the final order passed by him but without considering or referring to any of the plea taken in her show cause, the impugned order has been passed. Learned counsel has taken the Court through the order.

8. On a response sought by the Court from learned counsel for the respondents, they were not in a position to controvert such stand or to assist the Court with regard to the show cause of the petitioner having been considered before passing of the order dated 25.08.2017.

9. Having regard to the aforesaid, the Court finds that the order dated 25.08.2017 passed by the State Election Commissioner as contained in Memo No. 3785 dated 29.08.2017, against the petitioner in Case No. 19 of 2017, has to be set aside on the short point of there being violation of the principles of natural justice.

10. The settled law to which there cannot be any exception is that in any proceeding, whoever is charged with some misconduct or otherwise, he is entitled to be given a show cause calling upon the person to explain as to why

appropriate and consequential orders be not passed. The Court would indicate here that the same has also been formally and statutorily reiterated in the Bihar Panchayat Raj Act, 2006 in Section 136(2). Thus, once the petitioner had submitted her show cause, it was incumbent upon the State Election Commissioner to deal with her show cause and thereafter to arrive at a conclusion meeting such issues/defence raised by the petitioner. Perusal of the order impugned reveals that there has been neither any reference, much less consideration of any of the issues/points/defence raised by the petitioner in her show cause filed in the said proceeding.

11. For reasons aforesaid, the application is allowed. The order dated 25.08.2017 contained in Memo No. 3785 dated 29.08.2017 in Case No. 19 of 2017, stands set aside. The matter stands remanded to the State Election Commissioner, who shall pass fresh orders, in accordance with law, after giving opportunity of hearing to all concerned, including the petitioner and also taking into consideration whatever written pleadings/materials which are filed by her as also the law settled by the Courts in this regard. The interim order dated 10.07.2018, by which counting for the election held for the post of Pramukh, which stood vacated due to the impugned order dated 25.08.2017, shall continue for a period of two weeks after final orders are passed and communicated to all concerned, especially the petitioner. Thereafter, consequences in terms of the order which would be passed by the State Election Commissioner shall follow.

12. It goes without saying that once the Court has interfered in the order dated 25.08.2017, passed against the petitioner, she stands restored to the position as existing before passing of the order.

13. However, the petitioner shall discharge her duties, in accordance with law.