

(2016) 03 PAT CK 0085

In the Patna High Court

Case No : Letters Patent Appeal No. 65 of 2014 in Civil Writ Jurisdiction Case No. 7593 of 2013 and Letters Patent Appeal No. 470 of 2014 in Civil Writ Jurisdiction Case No. 7593 of 2013

Kavita Devi and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-03-2016

Acts Referred:

Bihar Panchayat Raj Act, 2006 — Section 136 (2), Section 136(2)
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 154, Section 155
Penal Code, 1860 (IPC) — Section 120B

Citation : (2016) 03 PAT CK 0085

Hon'ble Judges : I.A. Ansari, Actg. C.J. and Chakradhari Sharan Singh, J.

Bench : Division Bench

Advocate : Ashok Kumar Sinha, Sr. Adv. and Santosh Kumar Singh, Advocate, for the Appellant; Nawal Kishore Singh, SC-2 and Kamlesh Prasad, AC to SC-2, for the Respondent

Final Decision : Dismissed

Judgement

Chakradhari Sharan Singh, J.—1. These two appeals have been preferred, under Clause 10 of the Letters Patent of this Court, by the appellants, whereby they seek to challenge an order, dated 02.12.2013, passed by a learned single Judge of this Court in C.W.J.C. No. 7593 of 2013.

2. Since these appeals arise out of the same order, dated 02.12.2013, passed in C.W.J.C. No. 7593 of 2013 (Smt. Kavita Devi & Anr. v. The State of Bihar & Ors.), they have been heard, with the consent of the parties, together and are being disposed of by the present common judgment and order.

3. The appellants of L.P.A. No. 65 of 2014 (Smt. Kavita Devi & Anr. v. The State of Bihar & Ors.) are the writ-petitioners, who had filed the said C.W.J.C. No. 7593 of 2013, under Article 226 of the Constitution of India, challenging an order,

dated 08.03.2013, passed by the State Election Commissioner, Bihar, in Case No. 37 of 2011, whereby the said appellants have been held to be disqualified to hold the posts of Mukhiya and Sarpanch of Gram Panchayat Himmat Nagar in Kochadhaman block of Kishanganj district (hereinafter referred to as the "Gram Panchayat").

4. L.P.A. No. 470 of 2014 (The State Election Commission v. Smt. Kavita Devi & Ors.) has been preferred by the State Election Commission of Bihar (hereinafter referred to as the "Commission") assailing the said order, dated 02.12.2013, under appeal, only to the extent, whereby learned single Judge has held that the Commission did not have the jurisdiction to order for a criminal prosecution exercising power, under Section 136(2) of the Panchayat Raj Act, 2006 (hereinafter referred to as the "Act").

5. We have heard Mr. Ashok Kumar Sinha, learned Senior Counsel, appearing on behalf of the appellants, Mr. Amit Shrivastava, learned Counsel, appearing on behalf of the respondents-State Election Commission, Mr. Nawal Kishore Singh, learned Standing Counsel No. 2, appearing on behalf of the respondents-State of Bihar, and Mr. Ram Chandra Prasad Bharti, learned Counsel, appearing on behalf of respondent Nos. 9 to 11, in L.P.A. No. 65 of 2014. We have also heard Mr. Amit Shrivastava, learned Counsel, appearing on behalf of the appellants, Mr. Ashok Kumar Sinha, learned Senior Counsel, appearing on behalf of the respondent Nos. 1 and 2, Mr. Nawal Kishore Singh, learned Standing Counsel No. 2, appearing on behalf of the respondents-State of Bihar, and Mr. Pawan Kumar Singh, learned Counsel, appearing on behalf of the respondent Nos. 9 to 11, in L.P.A. No. 470 of 2014.

6. Shorn of unnecessary details, the facts of the present cases are that appellant Nos. 1 and 2 (L.P.A. No. 65 of 2014) were elected as Mukhiya and Sarpanch respectively of the said Gram Panchayat, which were reserved for scheduled castes. The election for the said posts was held in the year 2011 and they were declared elected as such on 16.05.2011. Both of them claimed to be belonging to caste "Kurriyar", which is a scheduled caste, on the basis of certificates to the said effect issued by the Block Development Officer of Kochadhaman Block.

7. Respondent Nos. 9 to 11 (in both the appeals), invoking provisions of Section 136 (2) of the Act, filed a complaint before the Commission in June, 2011, alleging that the appellants were not scheduled caste and that they had contested the election, on reserved posts, on the basis of false caste certificates. The said complaint gave rise to Case No. 37 of 2011 before the Commission.

8. The appellants were noticed upon the complaint so filed. It transpires that the District Magistrate-Cum-District Election Officer (Panchayat), Kishanganj, (hereinafter referred to as the "District Magistrate"), through a communication, dated 17.04.2012, addressed to the Commission, had reported that the appellants belonged to the caste "Badhai". This fact is evident from a communication, dated 23.04.2012, issued by the Commission addressed to the

District Magistrate. It further appears from the records, particularly, from the order, dated 08.03.2013, passed by the Commission, that the said report, dated 17.04.2012, was prepared after giving both the appellants an opportunity of being heard. A finding, recorded by the Commission, to this effect that opportunity of hearing was given to the appellants, by the District Magistrate before coming to the conclusion that they belonged to the caste "Badhai", has not been questioned, though a plea has been taken that due opportunity of hearing was not given to them in strict compliance of the principles of natural justice. It further transpires that the Commission, through letter, dated 23.04.2012, had asked the District Magistrate to cancel the caste certificates, issued in favour of the appellants, and institute criminal cases against them. This is to be noted that the said communication, dated 23.04.2012, was, admittedly, issued during the pendency of the aforesaid Case No. 37 of 2011.

9. Aggrieved by the said action of the Commission, the appellants filed an application before this Court under Article 226 of the Constitution of India, which gave rise to C.W.J.C. No. 9763 of 2012. A learned single Judge of this Court, by an order, dated, 16.05.2012, passed in C.W.J.C. No. 9763 of 2012, quashed the said communication, dated 23.04.2012, issued by the Commission.

10. Thereafter, the appellants were given opportunity of hearing before the Commission. The Commission, on the basis of enquiry report, submitted by the District Magistrate, held that the petitioners-appellants did not belong to the caste "Kurriyar" and, therefore, they could not be treated to be belonging to a scheduled caste community. The Commission cancelled the results of their elections, by an order, dated 08.03.2013, and directed to filling up the consequent vacancies arising out of the aforesaid order, in accordance with law, holding the appellants to be disqualified to hold the posts.

11. The Commission further directed for institution of First Information Reports, under the relevant provisions of the Indian Penal Code including Section 120B of the Indian Penal Code, against the persons responsible for preparing false caste certificates. A direction was also issued for institution of departmental proceedings against the persons responsible for issuance of the said false caste certificates.

12. The appellants of L.P.A. No. 65 of 2014 herein challenged the said order, dated 08.03.2013, passed by the Commission, by filing an application, under Article 226 of the Constitution of India, which came to be registered as C.W.J.C. No. 7593 of 2013. They challenged the said order, dated 08.03.2013, on various grounds including the ground that the Commission did not have the jurisdiction to decide their disqualification on the ground that they did not belong to scheduled castes, which involved adjudication of disputed questions of facts. They took a plea that the enquiry, conducted by the District Magistrate-Cum-Chief Election Officer into the caste status of the appellants, was not in accordance with the law and in conformity with the principles of natural justice.

13. A learned single Judge of this Court, by the order, under appeal, dated 02.12.2013, turned down the appellants' challenge to the order, passed by the Commission, to the extent that they were held to be disqualified to hold the posts of Mukhiya and Sarpanch as they did not belong to reserved category. While refusing to interfere with the order of the Commission on this aspect, the learned single Judge did not find any fault with the decision making process. However, the learned single Judge arrived at the conclusion that the Commission, at the same time, had no jurisdiction to order for prosecution, while exercising his power, under Section 136(2) of the Act, as done by the Commission by the impugned order, dated 08.03.2013.

14. In the above background, L.P.A. No. 65 of 2014 has been preferred by the appellants, namely, Smt. Kavita Devi, and Smt. Radhika Devi, challenging the order, dated 02.12.2013, passed by the learned single Judge. On the other hand, the State Election Commission has put to challenge the same order, dated 02.12.2013, under appeal, to the extent the order of the Commission, directing for criminal prosecution, has been interfered with.

15. Mr. Ashok Kumar Sinha, learned Senior Counsel, appearing on behalf of the appellants, in L.P.A. No. 65 of 2014, has contended that it was not within the jurisdiction of the Commission to have gone into the disputed questions of facts, touching caste status of the appellants, while exercising its power, under Section 136(2) of the Act. He has submitted that if at all, there was any dispute as regards the caste status of the appellants, it ought to have been decided in accordance with the directions issued by the Supreme Court, in case of *Kumari Madhuri Patil v. Additional Commissioner*, reported in , (1994) 6 SCC 241. He has submitted that when this issue was raised on behalf of the appellants, on 27.06.2013, in writ proceeding before a learned single Judge of this Court, in C.W.J.C. No. 7593 of 2013, the learned single Judge had directed the matter to be placed before Hon'ble the Chief Justice for consideration and appropriate orders. He further submits that reliance, placed on behalf of respondents on various decisions of this Court, in case of *The State Election Commission v. Punam Kumari & Anr.*, reported in , 2009 (2) PLJR 189 (DB), and another Division Bench decision, dated 18.12.2012, passed in L.P.A. No. 1271 of 2012 (*Jahedi Begum v. The State of Bihar & Ors.*), which have been considered by the learned single Judge in the order, under appeal, are misconceived, inasmuch as in none of the decisions, the Supreme Court decision, in case of *Kumari Madhuri Patil* (supra), has been noticed.

16. Upon perusal of the records, we find that the District Magistrate had conducted an enquiry and in the course thereof, the appellants were given opportunity of presenting their respective cases. After having held the enquiry, the District Magistrate came to specific finding that the appellants belonged to caste "Badhai", which is not a scheduled caste. The District Magistrate had held the enquiry, on a direction issued by the Commission in the matter. We do not find any illegality in the action of the Commission seeking report from the District

Magistrate of the concerned district, with respect to actual caste status of the appellants. The appellants have not been able to persuade us that the findings, as recorded by the District Magistrate, on the basis of which the Commission passed the order, dated 08.03.2013, are based on no material and suffers from any perversity. In such circumstance, in our opinion, the learned single Judge has rightly refused to interfere with the order of the Commission.

17. We are unable to accept the arguments, advanced on behalf of the appellants, that the decision of the Commission requires interference, because he did not resort to the direction issued by the Supreme Court in case of Kumari Madhuri Patil (supra). If the said decision of Kumari Madhuri Patil (supra) is to be applied in the present case, social status certificate was required to be issued by the Revenue Sub-Divisional Officer and the Deputy Collector. Admittedly, in the present case, the certificates were not issued by the Revenue Sub-Divisional Officer/the Deputy Collector or the Deputy Commissioner. In our view, in the facts and circumstances of the present case, the Supreme Court's decision, in case of Kumari Madhuri Patil (supra), has no application.

18. L.P.A. No. 65 of 2014 is, accordingly, dismissed.

19. We now come to L.P.A. No. 470 of 2014, preferred by the Commission, questioning the order, under appeal, passed by the learned single Judge, whereby it has been held that the Commission has no jurisdiction to order for prosecution while exercising its power, under Section 136(2) of the Act, we do not find any legal infirmity in the said conclusion, arrived at by the learned single Judge, inasmuch as the Commission's power, under Section 136(2) of the Act, is confined to an adjudication on the question whether a person is qualified to be elected as Mukhiya, Member of Gram Panchayat, Panchayat Samiti or Zila Parishad or after his election to such post, he has become disqualified for being a Member on the grounds mentioned in the aforesaid section. The Commission, while exercising such jurisdiction, could not have issued direction for criminal prosecution of the appellants of L.P.A. No. 65 of 2014. However, there is no bar in informing the concerned police station by any person in relation to commission of a cognizable or even non-cognizable offence. No one is prevented from furnishing an information to a police officer regarding commission of cognizable or even non-cognizable offence, as is evident from the language of Sections 154 and 155 of the Code of Criminal Procedure, 1973. Situated thus, while holding that the learned single Judge rightly held that the Commission could not have directed for criminal prosecution, exercising power under Section 136(2) of the Act, we observe that the said direction can be treated as an information for the purpose of Sections 154 or 155 of the Code of Criminal Procedure, 1973, for the concerned police station to proceed in accordance with law.

20. We, therefore, dismiss L.P.A. No. 470 of 2014, with the observation as above.

21. The order, under appeal, dated 02.12.2013, passed by a learned single Judge, in C.W.J.C. No. 7593 of 2013, does not require interference by this Court.

22. Both these appeals are, accordingly, dismissed.

23. Parties shall bear their own costs.

I.A. Ansari, Actg. C.J.

I agree.