

**(2015) 04 JH CK 0032**

**In the Jharkhand High Court**

**Case No : L.P.A. No. 371 of 2014 and I.A. No. 2155 of 2015**

Kiran Kumari

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

**Date of Decision : 30-04-2015**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 109, 110  
Jharkhand Municipal Act, 2011 — Section 18(1)(I), 18(1)(k)

**Citation : AIR 2016 Jhar 11 : (2015) 4 AJR 77 : (2015) 2 JLJR 674**

**Hon'ble Judges : Dhirubhai Naranbhai Patel, J; Ratnaker Bhengra, J**

**Bench : Division Bench**

**Advocate : Nagmani Tiwari, for the Appellant**

## **Judgement**

Dhirubhai Naranbhai Patel, J.

1. This Letters Patent Appeal has been preferred by the original petitioner in W.P. (C) No. 3106 of 2014 which has been dismissed by the learned Single Judge vide order dated 01.09.2014, and, therefore, the original petitioner has preferred this Letters Patent Appeal.

2. With consent of counsel for both the sides, this matter is taken up for its final hearing.

3. Learned counsel appearing for the appellant submitted that this appellant has been wrongly declared as disqualified to contest the election of Municipality at Medininagar, District Palamu. She is the ordinary resident of Ward No. 26 and wrongly respondents have declared this appellant as ordinary resident of Ward No. 25 and have wrongly arrived at conclusions that this appellant has impersonated herself as Kiran Kumari. This aspect of the matter has not been properly appreciated by the learned Single Judge. It is further submitted by the counsel for the appellant that when this appellant filled up the form, which was scrutinized by the respondents for contesting the election of Ward No. 26, nothing objectionable was found out and when she won the election of ward No.

26, every objections have been raised by the dissatisfied soul and the respondents have accepted the complaints of these dissatisfied soul and have declared the elected appellant as disqualified. This aspect of the matter has not been properly appreciated by the learned single judge and hence the order passed by the learned single judge dated 01.09.2014 in W.P.(C) No. 3106 of 2014 deserves to be quashed and set aside. It is further submitted by the counsel for the appellant that now the election of ward No. 26 at Medininagar, District Palamu, has been canceled and new election is going to be held and 2nd of May of this month which is last date of nomination, and, therefore let this matter be heard and decided as on today.

4. Counsel appearing for the respondent Nos. 2 and 3 submitted that no error has been committed by the learned single judge in dismissing the writ petition preferred by this appellant. In fact, the correct name of this appellant is "Punam Devi". She has wrongly narrated herself with all "alias name", and, therefore, respondent Nos. 2 and 3 will address the appellant only as a "Punam Devi." This Punam Devi has wrongly narrated herself as a "Kiran Kumari", otherwise both the persons are different. This appellant is staying at ward No. 25, whereas Kiran Kumari is staying at ward No. 26. As per rule 18(2) of the Jharkhand Municipal Election and Conduct of Election Petition Rules, 2012, enacted in exercise of power conferred under Jharkhand Municipal Act, 2011 defines who can contest the municipal election and as per Rule 18(2) of the Rules of 2012, a person whose name is incorporated in the voter lists from a particular ward, can contest the election from that very ward. Thus, as per the e.g., if any one, who is ordinary resident of ward No. 1, and, if his name is reflected in the voter lists in ward No. 1, he can contest election only in ward No. 1, and, not in any other ward. The present appellant is ordinary resident of ward No. 25, and, she contested the election of ward No. 26. This is a major objection of the respondent Nos. 2 and 3. There are various reasons why this appellant has remained successful for some time in misguiding the respondents, because several names are common. Husband name of this appellant and husband name of Kiran Kumari are the same. There is one more similarity between these two persons. Father's father name of the appellant-Poonam Devi is Jagarnath Ram as well as father's name of Kiran Kumari is the same this is one more similarity. This has created some confusion and this appellant-Poonam Devi has remained successful for some time in misguiding by filing false affidavit that she is ordinary resident of ward No. 26 and this Poonam Devi-appellant has impersonated herself as Kiran Kumari, she won the election, but, later on complaint was filed and correct facts were brought to the notice to the respondents and the State Election Commission, who has empowered to enquire into the disqualification of the members, has appointed the Deputy Commissioner, Palamu to hold enquiry. He gave Report-I, which was forwarded to the State Election Commission dated 27.07.2013 that this appellant-Poonam Devi is not a Kiran Kumari, moreover, this appellant-Poonam Devi is not a resident of ward No. 26 and several other illegalities have been pointed out in the said report which has been committed by

this appellant-Poonam Devi. Thereafter, notice was given by State Election Commission and reply was filed by this appellant-Poonam Devi. A lot of hue and cries were made by this appellant-Poonam Devi, with a view to give one more chance to the appellant-Poonam Devi. Again enquiry was ordered to be conducted, now, by team of three higher ranking officers of the State, they also enquired into the matter and they gave Report-II-which was dated 28.05.2014. A lot of things against this appellant-Poonam Devi have been pointed out in Report-II. Nothing was in favour of this appellant. Again notice was given by State Election Commission to the appellant and now disparate this appellant-Poonam Devi, instead of continue with the hearing before State Election Commission, rushed to the Court and filed W.P.(C) No. 3106 of 2014. This disparate appellant-Poonam Devi stopped attending the hearing before State Election Commission, ultimately, on the basis of the reply filed by this appellant-Poonam Devi, and, on the basis of the Report-I and Report-II, and, on the basis of the documentary evidences on record, order was passed by State Election Commission dated 21.07.2014 declaring that this appellant-Poonam Devi, who is ordinary resident of ward No. 25, wrongly narrated herself as a Kiran Kumari of ward No. 26 and had contested election, and, therefore, the said election of ward No. 26 has been canceled and she is declared as disqualified as per rule 18(2) of the rules, 2012. These aspects of the matter have been properly appreciated by the learned single judge in a great detailed order which has been passed by State Election Commission dated 21.07.2014, and, hence this Letters Patent Appeal may not be entertained by this Court, and, may be dismissed with costs.

Reasons:

5. Having heard counsels for both the sides and looking to the facts and circumstances of this case, we see no reason to entertain this Letters Patent Appeal mainly for the following facts and reasons:-

(i) This appellant is an original petitioner and had preferred W.P.(C) No. 3106 of 2014, as she was declared as disqualified for contesting the Municipal Election at Medininagar District-Palamu. In the said writ petition, several contentions have been raised that this appellant is ordinary resident of ward No. 26, though her name is Poonam Devi, she is also known as Kiran Kumari, several names are common between this appellant-Poonam Devi and Kiran Kumari, and, therefore, the respondents have wrongly arrived at conclusion that this appellant-Poonam Devi is not a Kiran Kumari. This matter has been taken up for its final hearing because of the request of the counsel for the appellant as well as for the respondent.

(ii) It appears that this appellant-Poonam Devi had contested the election of ward No. 26 at Medininagar, District-Palamu, she won the election, and, thereafter, complaint was made that this appellant-Poonam Devi has wrongly narrated her self as Kiran Kumari ward No. 26. In fact, this appellant-Poonam Devi is ordinary resident of ward No. 25, and, therefore, she cannot contest the election at ward No. 26. This complaint was ultimately enquired into State

Election Commission, who had empowered to Deputy Commissioner, District-Palamu to hold enquire and he gave Report-I, which was forwarded to State Election Commission on 27.07.2013, in which the Deputy Commissioner, Palamu confirmed that this appellant-Poonam Devi is ordinary resident of ward No. 25. This appellant is not Kiran Kumari of ward No. 26, and, therefore, she has wrongly filed necessary affidavit etc. and had contested wrongly election as Kiran Kumari of ward No. 26.

(iii) After receiving the aforesaid Report-I, the State Election Commission gave notice to this appellant that why she should not have been declared as disqualified under rule 18 (2) of Jharkhand Municipal and Conduct of Election Petition, Rules, 2012 to be read with Section 18(1)(I), and, to be read with Section 18(1)(k) of Jharkhand Municipal Act, 2011 read as under;

#### 18. Disqualification of Councillors:

"(1) Notwithstanding anything contained in this Act, a person shall be disqualified for election or after election for holding the office as councilor, if such person:

- (a) is not a citizen of India;
- (b) is so disqualified by or under any law, for the time being in force, for the purpose of elections to the Legislature of the State:

Provided no person shall be disqualified on the ground that he is less than twenty five years of age when he has attained the age of twenty one years.

- (c) is in the service of the Central or State Government or any local authority;
- (d) is in the service of any institution receiving and from the Central or State Government or any local authority;
- (e) has been adjudged by a competent court to be of unsound mind;
- (f) applies to be adjudicated or is adjudicated as an insolvent;
- (g) has been dismissed from the service of the Central or State Government or any local authority for misconduct and has been declared to be disqualified for employment in the public service;
- (h) has been sentenced by a criminal court, whether within or outside India, to imprisonment for an offence, other than a political offence for a term exceeding six months or has been ordered to furnish security for keeping good behavior under section 109 or section 110 of the Code of Criminal Procedure, 1973 and such sentence or order not having subsequently been reversed, or absconding being an accused in a criminal case for more than six month;
- (i) has under any law for the time being in force become ineligible to be a member of any local authority;
- (j) holds any salaried office or office or profit under the Municipality;

Provided that a person shall not be deemed to hold an office or profit under the municipality by reason only that he is a mayor or chairperson or councilor of a municipality,

(k) has been found guilty of corrupt practices:

Provided that on being found guilty of corrupt practices, the disqualification shall cease after six years of general election;

(l) if he has not paid all taxes due by him to the Municipality at the end of the financial year immediately preceding that in which the election is held;

(m) has been willfully omits or refuses to perform his duties and functions or abuses the power vested in him or is found to be guilty of misconduct on the discharge of his duties or become physically or mentally incapacitated for performing his duties;

(n) if he has more than two living children:

Provided that a person having more than two children on or upto the expiry of one year of the commencement of the Act shall not be deemed to be disqualified.

(o) has been absent from three consecutive meetings or sittings of the Municipality without having previously obtained permission from the council at a meeting.

(2) If any question arises as to whether a Member of a Municipality at any level was before election or has become after election subject to any disqualifications mentioned in sub-section (1), the question shall be referred for the decision of the State Election Commission. The matter of disqualification may be brought to the notice of the State Election Commission in the form of a complaint, application or information by any person or authority. The State Election Commission may also take suo-moto cognizance of such matters and decide such matters expeditiously after allowing sufficient opportunity to the affected parties of being heard.

(3) If a person, who is chosen as a member of a Municipality, is or becomes a member of Lok Sabha, Rajya Sabha, Legislative Assembly, or is or become a member of Panchayat or Mukhia or Sarpanch then within fifteen days from the date of commencement of the term of office of a member of the Lok Sabha, Rajya Sabha, Legislative Assembly or a member of a Panchayat or Mukhia or Sarpanch, his seat in the Municipality shall become vacant unless he has previously resigned his seat in the Lok Sabha, Rajya Sabha, Legislative Assembly or Panchayat, as the case may be."

This notice was replied by this appellant. In a reply she has stated, whatever, she argued in this L.P.A.

(iv) The State Election Commission give one more chance to this appellant as a fair and transparent proceedings. One more order of enquiry was passed by

State Election Commission to hold one more enquiry to satisfy this appellant-Poonam Devi. Now, the enquiry was to be conducted by team of officers of the State. Three high ranking administrative officers of the State conducted second enquiry and gave report on 28.05.2014 which is Report-II.

(v) On the basis of this Report-II, again notice was given by State Election Commission to the appellant, and, thereafter, this appellant was so disparate that instead of appearing before State Election Commission, she moved a writ petition before this Court bearing W.P.(C) No. 3106 of 2014, and, the notices were under challenged. In fact, this appellant should have awaited till out come of the proceedings before State Election Commission, every type of opportunity was given to this appellant by the State Election Commission. But, she hurriedly filed the writ petition, which was dismissed by the learned Single Judge because a detailed speaking order has been passed by the State Election Commission dated 21.07.2014.

(vi) This Court of the view is that this appellant has wrongly filed affidavit before the State Election Commission. In fact this appellant is not a Kiran Kumari at all and this appellant is only a Poonam Devi and nothing beyond that. Alias names added are only with a view to misguide the State of Jharkhand, and, the State Election Commission, and, only with a view to contest election at ward No. 26 of Medininagar District-Palamu, otherwise this appellant, who is commonly known as a Poonam Devi, her name is never Kiran Kumari, much less who is staying at ward No. 26. This appellant-Poonam Devi is staying at ward No. 25.

(vii) This appellant has done everything pre-planned, and, well designed, nothing is out of ignorance. This appellant's husband name is Santosh Kumar, and, that Kiran Kumari, her husbands' name is also Santosh Kumar. This is one similarity. Second similarity between this appellant and that Kiran Kumari is that father's father name of this appellant-Poonam Devi is Jagarnath Oraon, and, the father's name of Kiran Kumari is also Jagarnath Oraon. These two facts have been narrated in a great detailed Report-II dated 28.05.2014, husband name Santosh Kumar is also common one, but, father of both Santosh Kumar are different Poonam Devi-appellant husband's father is Kailash Ram, whereas, Kiran Kumari husband's father names is Yadunandan Sharma. This aspect of the matter has been correctly appreciated in a Report-II. This has revealed that Poonam Devi-appellant is not Kiran Kumari. Several other things have been pointed out in a Report-I and Report-II , and, therefore, State Election Commission has rightly arrived at conclusion that this Poonam Devi-appellant has wrongly narrated herself as Kiran Kumari of ward No. 26, and, this tantamounts to I personification, and, therefore, she is disqualified to contest the election. No error has been committed by the State Election Commission in passing an order dated 21.07.2014, and, no error has been committed by the learned Single Judge in dismissing the W.P.(C) No. 3106 of 2014 vide order dated 01.09.2014. There are several difference between the Poonam Devi-appellant and that Kiran Kumari at ward No. 26. Their houses numbers are different. Poonam Devi-

appellant is ordinary resident of house No. 130-B at ward No. 25, whereas, that Kiran Kumari is ordinary resident of house No. 9-B of ward No. 26. This is also one of the reasons stated in Report-II, instead of narrating this type of differences in the language of this Court, we find it better, to narrate relevant part of the Report-I as under:-

"The District Election Officer (M) cum Deputy Commissioner, Palamau vide letter No. 449/Nirvachan dated 27.07.2013 informed that the matter was inquired into by the Sub-Divisional Officer, Sadar, Madninagar and according to his report, Smt. Poonam Devi was elected from ward No. 26 by impersonating as Smt. Kiran Kumari wife of Santhosh Kumar son of Yadunandan Sharma, resident of House No. 9B, Medninagar, BID No. KGV 1013739 according to the report submitted by the Sub-Divisional Officer, Sadar, Medninagar the name of Poonam Devi @ Guria @ Kiran Kumari, wife of Santosh Kumar, son of Kailash Ram who is opposite party in the case, was not listed in the voter list of ward No. 26 and in fact, Poonam Devi @ Guria @ Kiran Kumari, wife of Santosh Kumar has impersonated as Smt. Kiran Kumari wife of Santosh Kumar son of Yadunandan Sharma, resident of House No. 9B of Ward No. 26, listed at Sl. No. 94 (without photo of the voter list). The enquiry also revealed that Smt. Poonam Devi @ Guria opposite party never lived in the house No. 9B of Ward No. 26 whose owner was Shri Ram Charitar Mistry nor her name was listed in the voter list. The opposite party Poonam Devi @ Guria @ Kiran Kumari wife of Santosh Kumar son of Kailash Ram was permanent resident of House No. 130, ward No. 25 and the name of Santosh Kumar was listed at Sl. No. 282 of the voted list Part-25/1 of ward No. 25. Further that, the enquiry revealed that Santosh Kumar son of Kailash Ram permanent resident of House No. 130, Ward No. 25 who is husband of opposite party, is Kahar by caste, and Santosh Kumar son of Yadunandan Sharma, resident of House No. 9B, Ward No. 26, who is husband of Kiran Kumari is Bhumihar by caste. According to the report of the Sub-Divisional Officer, impersonation was done due to same name of the husband of the opposite party and that of name of husband of above mentioned Kiran Kumari @ Poonam Devi @ Guria of ward No. 26 and also because photo of Kiran Kumari was not posted at Sl. No. 94 of the voted list of ward No. 26. This helped the opposite party Poonam Devi @ Guria to pass off as Kiran Kumari of Ward No. 26."

(Emphasis Supplied)

This is an extract of the relevant part of the Report-I which is mentioned in the order passed by the State Election Commission dated 21.07.2014.

(viii) Similarly, the relevant extract of the Report-II dated 28.05.2014 read as under:-

"In view of contention made on behalf of opposite party that She is in fact Kiran Kumari @ Guria @ Poonam Devi wife of one Santosh Kumar, resident of House No. 9, Ward No. 26, BID No. KGV 1013739, the Deputy Commissioner, Daltonganj was directed to get the matter inquired into depth and submit his

report on the next date of hearing on 01.07.2014. The District Election Officer (M)-cum-Deputy Commissioner, Daltonganj forwarded the joint report of Three Member committee constituted by him comprising of the Sub-Divisional Officer, Sadar, Medninagar, District Panchayati Raj Officer, Daltonganj and Dy. Election Officer, Palamau vide his letter No. 773 of 29.05.2014. While forwarding the joint inquiry report, the learned District Election Officer (M)-cum-Deputy Commissioner, Palamau, said in his forwarding letter dated 29.05.2014 that he is in agreement with the enquiry report of the committee constituted by him. The enquiry report dated 28.05.2014 of the Committee comprising of Sub-Divisional Officer, Sadar, Medninagar, District Panchayati Raj Officer and Dy. Election Officer, Palamau mentioned the following as here under:

(i) That the contention of opposite party that Poonam Devi @ Guria @ Kiran Kumari are three different named of same person i.e. opposite party is incorrect. Poonam Devi and Kiran Kumari are separate persons. Poonam Devi father's name is Arun Ram son of Jaganath Ram.

(ii) Kiran Kumari in her application for issue of permanent residential certificated from Nagar Parishad, Medninagar has stated in the enclosed affidavit that she is daughter of one Jagarnath Ram and her mother's name is Asha Devi whereas Smt. Kiran Kumari in her written statement dated 28.05.2014 has stated that her father's name is Arun Ram and mother's name is Rupa Devi, and that Asha Devi wife of Jaganath Ram is her sister-in-law. On the basis of affidavit, the Executive Officer, Nagar Parishad, Medninagar has issued permanent residence certificate.

(iii) Further that opposite party, Poonam Devi @ Guria has also filed a complaint case No. 798 of 2012 before the learned Chief Judicial Magistrate, Palamau against her husband and father in law wherein she has not shown her name as Kiran Kumari. Therefore, how is that during the election of 2013 the opposite party Poonam Devi @ Guria became Kiran Kumari. There is no proof whatsoever that said Poonam Devi @ Guria adopted the name of Kiran Kumari by following any due procedure according to law.

(iv) That the voter list of ward No. 26 of Nagar Parishad, Medninagar indicates that one Kiran Kumari wife of Santosh Kumar, is the resident of House No. 9B ward No. 26. The opposite party Poonam Devi has impersonated herself as Poonam Devi @ Guria @ Kiran Kumari, wife of Santosh Kumar, resident of House No. 9B of ward No. 26, entered in the voted list at Sl. No. 94 by taking advantage of the fact that photo of Kiran Kumari is not affixed against Sl. No. 94 and also because the name of the husbands of both are the same.

(v) That further that Smt. Kiran Kumari has submitted before the State Election Commissioner on 28.05.2014 in her written statement that she resides with her sister-in-law Asha Devi wife of Jaganath Ram in House No. 15/B listed in voter list at Sl. No. 195 of ward No. 26 voter list 26/1. If that be so, she should have indicated that as her residential address that she is listed at Sl. No. 94 of the

voter list of ward No. 26 in the nomination papers."

(Emphasis Supplied)

(ix) In view of the aforesaid factual aspects of the matter, we are clearly of the opinion that this appellant, who is known as Poonam Devi at ward No. 25, resident of house No. 130-B at Medninagar Municipality, District-Palamu, had wrongly narrated herself as Kiran Kumari of ward No. 26 of house No. 9-B and therefore, rightly she has been declared as disqualified by the State Election Commission vide order dated 21.07.2014.

(x) We see no reason to alter the order passed by State Election Commission, dated 21.07.2014, and we see also that no error has been committed by the learned single Judge while dismissing the writ petition.

6. As a cumulative effect of the aforesaid facts and reasons and judicial pronouncement, there is no substance in this L.P.A., hence, the same is hereby dismissed, with a cost of Rs. 25,000/- which will be deposited by this appellant within a period of four weeks from today, before the Advocate's Association Welfare Fund, Jharkhand High Court, Ranchi.

7. This amount shall be deposited within the aforesaid time limit.

8. Copy of the order will be given to the President of the Advocate's Association, Jharkhand at Ranchi.

I.A. No. 2155 of 2015.

This Interlocutory Application is hereby disposed of in view of the final order passed in L.P.A. No. 371 of 2014.