
(2007) 09 PAT CK 0046
In the Patna High Court
Case No : CWJC NO. 9299 of 2006

Punam Kumari

APPELLANT

Vs

State Election Commission and Others

RESPONDENT

Date of Decision : 05-09-2007

Acts Referred:

Citation : (2007) 09 PAT CK 0046

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.—It is submitted that the qualification of respondent No. 5 to stand for election as an extremely backward class candidate was challenged at the time of scrutiny as also thereafter before the State Election Commission. When first challenge was made, the Returning Officer did not decide the issue. When the second challenge before the Election Commission was made, it has passed the impugned order directing the petitioner to go before the Election Tribunal. The legality and propriety of this order is under challenge. With the consent and after hearing the parties, this writ application is disposed of at the stage of admission itself.

2. To the objection by the respondents as to maintainability of this writ application in election matters, the reliance has rightly been placed by the learned Counsel for the petitioner on a judgment of Apex Court in the case of K. Venkatachalam Vs. A Swamickan and Another, . The Apex Court has clearly held that where the question is of the eligibility of the candidate to contest the election, the same can be challenged in a writ application and that too after the elections. The writ is maintainable as permitting a person not otherwise qualified to continue to hold office would be contrary to the Constitution. In other words, the writ would be in the nature of quo warranto which can be filed at any time and by any person.

3. Here, the question is whether the Election Commission was correct in directing the petitioner to go before Election Tribunal and raise this question. In my view, the decision of the Election Commission cannot be sustained in law. Section 135

of the Act prescribes the qualification for a person to become Member of the Panchayat. Section 136 provides for disqualification of Member. Sub-section (2) of Section 136 statutorily confers jurisdiction on the Election Commission to decide the question whether a Member of Panchayat at any level or Mukhiya or Gram Panchayat was before the election or after the election has been subject to any disqualification mentioned in Sub-section (1) of Section 136. The various disqualifications are mentioned in Clauses (a) to (j) of Sub-section (1) of Section 136. From this, it would be evident that the jurisdiction of the Election Commission is exclusive and has to be exercised in respect of fact either before or after election has taken place. It is submitted on behalf of respondents that Section 137 gives ample power to a losing candidate to challenge the election. It is submitted that the Commission rightly relegated the petitioner to election petition. In my view, the submission cannot be sustained. There is an essential distinction between disqualification as contemplated u/s 136 of the Act and the conferment of jurisdiction to decide the same on the Election Commission and challenge to the election or the result of the election. The first deals with the eligibility of a person to stand for election. The section that is Section 137 deals with the election process and the election result. The two, in my mind, are distinct contingencies mutually exclusive and, as such, jurisdiction has been conferred on two different statutory authorities. It is then submitted on behalf of respondents that there may be disputed questions of fact and that being so may require adjudication by a Tribunal rather than the Commission. Again, I am unable to accept the said submission. The legislature has conferred power on the Election Commission to decide the disqualification matter. It goes without saying that if a power has been conferred on an authority to do certain act, it carries with it all necessary ancillary and incidental power to effectuate the authority conferred. It would, thus, be seen that the Election Commission would, by necessary implication, has all ancillary powers and necessary powers to decide the issue and it cannot shirk its responsibility by relegating a person to the Election Tribunal when the legislature has conferred jurisdiction on the Commission itself.

4. In that view of the matter, I have no option but to quash the impugned order of the Election Commission (Annexure-5) by which the petitioner has been directed to seek her remedy before the Election Tribunal. This writ application is, accordingly, allowed.

5. As the matter relates to election already having been held, it is expected that the Election Commission would notice the parties and decide the matter within a period of two months from the date of receipt of this order.