

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.881 of 2023

In
Civil Writ Jurisdiction Case No.5581 of 2023

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Khushboo Ara Daughter of Md. Quamruzzama Adil Resident of Ward No. 13,
Madhaili Bazar, P.O. Madhaili Bazar, P.S.- Shankarpur, District- Madhepura.
... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, Patna.
3. The District Magistrate-cum-District Election Officer (Panchayat), Araria, District- Araria.
4. The District Panchayat Raj Officer, Araria, District- Araria.
5. The Block Development Officer, Bhargama, District- Araria.
6. The Block Panchayat Raj Officer, Bhargama, District- Araria.
7. The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel, Patna, through the State Election Commissioner.
8. The State Election Commissioner, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel, Patna.
9. The Secretary, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel, Patna.
10. The Officer on Special Duty, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel, Patna.
11. Rukhsana Praveen, Daughter of Md. Shahzahan Resident of Village- Majarahi, P.S. Bhargama, District- Araria.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 202 of 2022

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Khusboo Ara Daughter of Md. Quamruzzama Adil Resident of Ward No.-13,
Madhaili Bazar, P.O.- Madhaili Bazar, P.S.- Shankarpur, District- Madhepura,
presently Mukhiya of Gram Panchayat Raj, Bishariya, Block- Bhargama,
District- Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary, Government of Bihar, Patna.
2. The Caste Scrutiny Committee Bihar through the Chairman-cum-Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Principal Secretary General Administration Department, Government of Bihar, Patna-cum- Chairman, Caste Scrutiny Committee, Bihar.
4. The Deputy Secretary Welfare Department, Government of Bihar, Patna-cum-Member, Caste Scrutiny Committee, Backward and Extremely



Backward Class.

5. The Joint Secretary General Administration Department, Government of Bihar, Patna-cum- Member, Caste Scrutiny Committee, Bihar.
6. The District Magistrate Madhepura, District- Madhepura.
7. The District Magistrate Araria, District- Araria.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 881 of 2023)

For the Appellant/s : Mr. S.B.K. Mangalam, Advocate
Mr. Awnish Kumar, Advocate
Mr. Kumar Gaurav, Advocate
Mr. Vikash Kumar Singh, Advocate

For the Respondent/s : Mr. Ajay (GA 5)

For the State Election Commission: Mr. Girish Pandey, Advocate

(In Civil Writ Jurisdiction Case No. 202 of 2022)

For the Petitioner/s : Mr. S.B.K. Mangalam, Advocate
Mr. Awnish Kumar, Advocate
Mr. Kumar Gaurav, Advocate
Mr. Vikash Kumar Singh, Advocate

For the Respondent/s : Mr. Md. Nadeem Seraj (GP5)

For the State Election Commission: Mr. Girish Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NANI TAGIA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 19-12-2023

Heard Mr. S.B.K. Mangalam, learned Advocate
for the appellant and the State and the State Election
Commission.

2. L.P.A. No. 881 of 2023 and C.W.J.C. No.
202 of 2022 have been taken up together and are being
disposed off by this common judgment.

3. The L.P.A. is directed against the judgment
dated 27.06.2023, passed by the learned Single Judge



in C.W.J.C. No. 5581 of 2023, whereby the order passed by the State Election Commission (Panchayat), Patna dated 27.03.2023 has been upheld.

4. By the aforementioned order, the appellant stood disqualified for the reason of her not belonging to EBC category (Sheikhra) on which she was returned elected as *Mukhiya* of a particular *Panchayat*.

5. C.W.J.C. No. 202 of 2022 has been filed by the appellant seeking quashing of the proceedings of State Level Caste Scrutiny Committee, dated 25.11.2021, whereby the appellant was held to be a member of Sheikh and not Sheikhra Caste, and therefore, belonging to the unreserved category.

6. Brief facts would be necessary for deciding both, the appeal and the writ petition.

7. The appellant, on the basis of her claim as a person of Sheikhra Caste, one of the most backward categories, contested elections for the Post of *Mukhiya* in the year 2016 from a Gram Panchayat, which was



reserved for Female EBC category. She was declared elected. The runners-up candidate (respondent No. 11) got a complaint registered *vide* Complaint No. 3 of 2017 with the State Election Commission that the appellant did not have the qualification for contesting election from a Panchayat, which was reserved for female EBC contestants.

8. The aforementioned complaint was sent to the Caste Scrutiny Committee, constituted by the State Government under its GAD in the light of the judgment of the Supreme Court in **Kumari Madhuri Patil and Anr. vs. Additional Commissioner, Tribal Development and Ors. (1994) 6 SCC 241.**

9. The Committee, in turn, referred the matter to the CID for submitting a report in connection with the claim of the appellant that she belonged to Sheikhra Caste.

10. The CID *vide* its report dated 05.02.2018, confirmed that the appellant belonged to Sheikh Caste



and not Sheikhra as claimed by her.

11. With the aforementioned report of the CID, the Caste Scrutiny Committee gave show-cause notice to the appellant which she had replied but the Committee came to a finding that the appellant belonged to Sheikh Caste (UR) and not Sheikhra.

12. The State Election Commission, however, did not give any weightage to such report of the Caste Scrutiny Committee on the ground that the report was not based on any unimpeachable material.

13. The complainant, thereafter, challenged the aforesaid decision of the State Election Commission before this Court *vide* C.W.J.C. No. 5136 of 2020, which was allowed and the Commission was directed to pass a fresh order after taking into account the findings recorded by the Caste Scrutiny Committee. In fact, while remanding the matter before the State Election Commission, the High Court expressed surprise as to how the State Election Commission avoided relying on



the findings recorded by the State Level Caste Scrutiny Committee in the absence of any challenge to it by the appellant.

14. The High Court also noticed that the appellant suffered from an inherent lack of eligibility to contest the election and therefore, thought it fit to restrain her from functioning as *Mukhiya* of the concerned Gram Panchayat till a final order was passed by the State Election Commission, Patna. The District Magistrate-cum-District Panchayat Raj Officer, Araria was also directed to consider registering FIR against the appellant who had fraudulently portrayed herself as EBC (Female) candidate for contesting the election in question.

15. The Commission, thereafter, *vide* order dated 31.12.2020 declared the appellant to be disqualified on account of the findings recorded by the Caste Scrutiny Committee.

16. The findings of the Caste Scrutiny



Committee thereafter was challenged by the appellant afresh *vide* C.W.J.C. No. 2408 of 2021, which challenge was sustained on the ground of Caste Scrutiny Committee having come to a finding on such cluster of documents which were never furnished to the appellant. This time again, the High Court, after quashing the findings of the Caste Scrutiny Committee, remanded it to the Committee to pass a fresh order in accordance with law after furnishing all the relevant materials/ documents/ evidence/ compact disc etc. to the appellant.

17. While this all was going on, 2021 elections were notified by the Commission. The appellant again could procure Sheikhra Caste certificate (08.09.2020) and contested the election for the Post of *Mukhiya*, Panchayat which still remained reserved for EBC (Female) category and was even declared successful.

18. Meanwhile, the appellant was noticed by the Caste Scrutiny Committee as directed by the High Court in C.W.J.C. No. 2408 of 2021 and after serving all



the documents which the Caste Scrutiny Committee would have relied upon, to the appellant, confirmed its earlier decision that the appellant belonged to Sheikh and not Sheikhra Caste.

19. This decision of the Caste Scrutiny Committee is under challenge, as noted above, in C.W.J.C. No. 202 of 2022 which has fallen for consideration before us.

20. The major ground of challenge in the aforementioned writ petition is that such a decision has been arrived at by the Committee even in face of there being more than one document in support of the claim of the appellant that she is Sheikhra by Caste, which document includes the Caste certificate of her father, her husband (who is also the cousin of the appellant) as well as the Caste certificates of a number of blood-relatives, school records, sale deeds, etc. The further ground of challenge is that the Committee relied heavily on few of the *Khatians* in the name of the grand-father of the



appellant in which the caste is recorded as Sheikh and not Sheikhra.

21. While again reiterating its finding that the appellant does not belong to the EBC category, the Committee took reference of Resolution No. 1567 dated 05.02.2014, that the primary document to rely upon in these matters would be the land records and only in the absence of such records, would spot verification and other documents be referred to. From the documents on record, the Committee, by a majority opinion, was of the view that for determining and certifying the Caste of a particular claimant, the Caste recorded in the *Khatian* of the ancestors of the claimant ought to be treated as the main document which could be relied upon.

22. Precisely for this reason, the Committee again came to a finding that the appellant belonged to the unreserved category.

23. The challenge to the judgment, as noted above, is on the ground that such *Khatian* in the name



of the grand-father of the appellant is not a document of such unimpeachable character which could have formed the basis for the Committee as also the State Election Commission to disqualify the appellant under 136(2) of the ***Bihar Panchayat Raj Act, 2006***.

24. The aforementioned writ petition (C.W.J.C. No. 202 of 2022) was admitted by the High Court but no interim protection was granted to the appellant.

25. The State Election Commission, therefore, proceeded against the appellant in view of the fresh report by the Caste Scrutiny Committee and got a case registered *vide* Case No. 43 of 2021 (**Rukhsana Praveen vs. Khushboo Ara**). In this complaint, the appellant was noticed and asked to furnish her show-cause reply. An initial objection was raised by the appellant before the Commission that the C.W.J.C. No. 202 of 2022, directed against the decision of the Committee is pending adjudication before the Court and therefore, the Commission ought not to proceed further



in the matter. However, the Commission finally heard the matter and held the appellant to be disqualified but made it clear that the decision of the Commission would be subject to the final outcome of C.W.J.C. No. 202 of 2022.

26. The aforementioned decision of the Commission was challenged before the High Court *vide* C.W.J.C. No. 5581 of 2023, as noted above, in which it was held that the challenge is unmerited and the disqualification of the appellant is justified.

27. The present L.P.A. arises out of the aforementioned decision of the learned Single Judge.

28. A perusal of the judgment delivered by the Single Judge clearly reflects that the verdict of the Full Bench of Patna High Court in ***Rajni Kumari and Ors. vs. The State Election Commission through its Secretary and Ors. 2019 (4) PLJR 673*** has been gone into in detail. Finding justification for the Commission to take up the complaint of respondent No.



11 to be within the jurisdiction of the Commission, to be correct, the learned Single Judge held that the Commission has rightly gone by the report submitted by the fact finding body, viz., the Caste Scrutiny Committee and the Caste Scrutiny Committee also had relied upon *Khatiani* documents to base its decision upon. Nothing at all was found by the learned Single Judge to justify any interference with the decision of the Commission, disqualifying the appellant.

29. Caste, especially, against a vacancy meant to be filled up by EBC (Female) category is the basic qualification and even pre-election, the appellant never possessed the necessary eligibility to contest the election. The only outcome of this is that the appellant is required to be disqualified, which decision was taken by the Commission, requiring no interference.

30. Mr. S.B.K. Mangalam, learned Advocate for the appellant, however, laid great emphasis on the having relied upon "impeachable" and "not



unimpeachable” documents and giving undue weightage to the findings. He suggested to the Court to first consider the challenge put up by the appellant in C.W.J.C. No. 202 of 2022 and then decide the L.P.A.

31. It was argued by him that the appellant is the daughter of one Md. Quamruzzama Adil who was married to her cousin, *viz.*, Naurej Alam in the year 2008. Even before she was elected as a *Mukhiya* of the concerned Gram Panchayat, she had been granted a Caste Certificate of Sheikhra Caste by the Circle Officer, Bhargama, way back in the year 2005. Similar certificate was granted to the father of the appellant. Some of the relatives of the appellant were granted such certificate of being members of Sheikhra Caste even before the certificate in her favour was issued.

32. From 1997-2015, most of the persons belonging to the family of the appellant are in possession of Caste certificate of Sheikhra Caste by different Circle Officers of Bhargama Block in the district of Araria.



Thus, the claim of the appellant is not recent but based on old documents. Additionally, it was argued that before the Returning Officer, no objection was raised about the Caste status of the appellant at the time of scrutiny of the nomination papers. The complaint was filed by respondent No. 11 only after she lost to the appellant in the elections.

33. The refrain of the respondents is that in the event of a fact finding body having come to a definite conclusion that the appellant did not belong to EBC, there was no reason to interfere with such decision making. The Commission rightly based its decision on the report of the Caste Scrutiny Committee.

34. It appears from the records that though the father and husband and other relatives of the appellant possess a certificate of Sheikhra Caste but the *Khatiani* document in the name of the grand-father of the appellant records that he was of Sheikh Caste, which is an unreserved category.



35. On a careful reading of the documents, we are of the considered opinion that for the Caste Scrutiny Committee to rely upon the *Khatiani* document as the main document for determining the Caste of the appellant for the purposes of assessing her qualification to contest the elections, is correct and justified. So is the resolution of the General Administration Department with respect to the *modus* of assessment of the Caste.

36. The *Khatiani* document of the grand-father of the appellant would come within the category of unimpeachable document and merely because some of the family members of the appellant including her father and husband have reaped advantage of being shown as EBC would not render a document of old antiquity to be impeachable or untrustworthy, at least for the purposes of the Caste Scrutiny Committee and the Commission to take a decision about the Caste status of the appellant for her disqualification.

37. We, therefore, uphold the decision of the



Caste Scrutiny Committee, the State Election Commission and of the learned Single Judge.

38. While saying so, we have taken note of the judgment rendered by Supreme Court in **Anand vs. Committee for Scrutiny and Verification of Tribe Claims and Ors. (2012) 1 SCC 113**, wherein it has been held in that context that the genuineness of a Caste claim has to be considered on a thorough examination of the documents and also on the affinity test, which would include the anthropological and ethnological traits etc. of an applicant. However, the Supreme Court admitted that it was neither feasible nor desirable to lay down any absolute rule which would be applied mechanically to examine a Caste claim. Having said that, the Supreme Court set a broad parameter, to be kept in mind, while dealing with a Caste claim.

39. It was noted by the Supreme Court that while dealing with documentary evidence, greater reliance ought to be placed on pre-independence



documents because they entail a higher degree of probative value regarding the declaration of status of a Caste, as compared to post-independence documents.

40. The reason for saying so, perhaps, is that only in the later years, the protective discrimination aspect would make it very profitable for an applicant to claim a reserved category status. The burden of proving the Caste claim is always upon an applicant, who has to produce all the requisite documents in support of his claim. The Caste Scrutiny Committee merely performs the role of verification of the claim and therefore, can only scrutinize the documents and materials produced by the applicant. In case, the material produced by the applicant does not prove his claim, the committee cannot gather evidence on its own to prove or disprove his claim.

41. Seen in this context also, we find that when the entry would have been recorded in the *Khatian* of the grand-father of the appellant, there would have been



the least chances of wrong projection of Caste of the grand-father of the appellant, as by that time there would not have been any concept of protective discrimination under the Constitution.

42. The argument of Mr. Mangalam that the report of the Caste Scrutiny Committee, the Election Commission and of the learned Single Judge are not based on any logic and reason, is incorrect and misplaced. The reason given by the two authorities and the learned Single Judge is quite cogent, clear and succinct and there does not appear to be any pretence of rubber-stamp reasons (refer to ***M/s. Kranti Associates Pvt. Ltd. & Anr. vs Masood Ahmed Khan & Ors. 2010 9 SCC 496; G. Vallikumari vs Andhra Education Society & Ors. 2010 2 SCC 497***).

43. Both C.W.J.C. No. 202 of 2022 and L.P.A. No. 881 of 2023 are thus dismissed but without any order as to costs.

44. However, we deem it appropriate to



observe that in the event of the appellant choosing to go before Civil Courts for a final determination based on evidence, of her Caste and holding the entry in the *Khatian* in the name of her grand-father to be an error of fact, it would be open for her to do so, but with the caveat that the outcome of such litigation would not disturb the decision of the State Election Commission and such decision shall, if in favour of the appellant, operate only prospectively.

(Ashutosh Kumar, J)

(Nani Tagia, J)

krishna/saurabh

AFR/NAFR	NAFR
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