

(2008) 12 PAT CK 0050

Patna High Court

Case No: CWJC No. 9954 of 2007

Smt. Hema Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Dec. 10, 2008

Acts Referred:

- Bihar Panchayat Raj Act, 2006 - Section 18(5)

Citation: (2009) 2 PLJR 678

Hon'ble Judges: Ramesh Kr. Datta, J

Bench: Single Bench

Advocate: Kamal Nayan Chaubey, Ambuj Nayan Chaubey and Siddharth Harsh, R.S. Pradhan and Rajeev Lochan, for the Appellant; S.B.N. Singh, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Ramesh Kr. Datta, J.

The petitioner had initially approached this Court for a direction upon the respondents not to disqualify/dislodge the petitioner from the post of Mukhiya of Baijani Panchayat and for quashing the entire proceedings for dislodging the petitioner from the said post. Subsequently, during the pendency of the writ application by order dated 27.7.2007 (Annexure-10) passed by the Block Development Officer, Jagdishpur, the caste certificate of scheduled caste issued to the petitioner was cancelled on the ground that she had obtained the same by giving false information since her father belongs to Koeri caste. Accordingly, by filing an interlocutory application, the said order dated 27.7.2007 has been challenged and the petitioner has been permitted to challenge the same by this Court. Learned counsel for the petitioner refers to letter dated 24.7.2007 (Annexure-6) issued by the District Panchayat Raj Officer to the Block Development Officer in which he had directed the Block Development Officer to cancel the caste

certificate of the petitioner for the aforesaid reasons. It is submitted that the Block Development Officer could not have acted on the mere direction of the superior authority and issued the order of cancellation. He being purportedly the competent authority in the matter ought to have applied his mind before issuing the cancellation order. Learned counsel submits that before issuing the order of cancellation, the Block Development Officer did not issue any notice to show cause to the petitioner or provide her any opportunity of making a representation against the proposed order to cancel her caste certificate.

2. In the said circumstances, it is submitted that the order has been passed in complete violation of the principles of natural justice and requires to be struck down for the said reasons.

3. Learned counsel for the State, on the other hand, sought to support the action of the authority by stating that initially, it is the Commissioner, Bhagalpur who upon receiving complaint in this regard issued a show cause notice to the petitioner with respect to the allegation that she had obtained caste certificate on the basis of false statement. It is submitted that the petitioner replied to the said communication during the course of enquiry by the Commissioner in exercise of his powers u/s 18(5) of the Bihar Panchayat Raj Act, 2006 as it then existed. Subsequently, the Act was amended and the said provision was deleted and the matter was, accordingly, not continued by the Commissioner. Thereafter on the directions of the District Magistrate, the District Panchayat Raj Officer had written to the Block Development Officer who has acted, accordingly, on the basis of the materials available on the record.

4. This Court does not find any force in the submission of learned counsel for the State. It is evident that the stand of the State is that the Block Development Officer is the competent authority to pass the order in the matter and for the said reasons, the matter had been referred to him. Once that position is accepted, then being the competent authority, it was for the Block Development Officer to have acted in the matter by applying his mind to the facts of the case and before doing so, it was incumbent upon him to have issued the notice to show cause to the petitioner so that she could place the relevant materials in her defence. The same having not been done, the impugned order dated 27.7.2007 passed by the Block Development Officer suffers from both the defects of non-compliance with the principles of natural justice and also non-application of his mind since he has acted merely at the behest of his superior officers. Thus, on a consideration of the aforesaid facts and circumstances, the writ application is allowed. The impugned order dated 27.7.2007 passed by the Block Development Officer, Jagdishpur is quashed and the matter is remanded to him to proceed afresh in the matter after giving reasonable opportunity to the petitioner to be heard.