

Shila Devi Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Dec-01-2008

Judge : Samarendra Pratap Singh, J.

Appellant : Shila Devi

Respondent : The State of Bihar and ors.

Prior history : Samarendra Pratap Singh, J. 1. Heard the learned Counsel for the petitioner, State Election Commission as well as the State of Bihar. 2. The petitioner has prayed for quashing the F.I.R. being Nagar Nausa P.S. Case No. 16/07 dated 1.9.2007 under Sections 467, 468, 471, 420 and 120B of the Indian Penal Code lodged by the District Panchayat Officer, Bihar Sharif, pursuant to the direction of the State Election Commission dated 31.2.2007. 3. The learned Counsel submits that the petitioner has a h

Judgement :

Samarendra Pratap Singh, J.

1. Heard the learned Counsel for the petitioner, State Election Commission as well as the State of Bihar.

2. The petitioner has prayed for quashing the F.I.R. being Nagar Nausa P.S. Case No. 16/07 dated 1.9.2007 under Sections 467, 468, 471, 420 and 120B of the Indian Penal Code lodged by the District Panchayat Officer, Bihar Sharif, pursuant

to the direction of the State Election Commission dated 31.2.2007.

3. The learned Counsel submits that the petitioner has a house in village- Khiru Bigha P.S. Nagar Nausa as well as in village - Kamta which is divided by a road. Learned Counsel submits that the name of the petitioner and her husband was published in 1995, voter list showing her name as well as her husband rightly as resident of Khiru Bigha falling under Khajura Gram Panchayat. It is their further case that in the voter list published in 2000, her name as well as the name of her husband were also published as residents of Village-Khiru Bigha under Khajura Gram Panchayat. On the application of the husband of the petitioner, her name was added in Kamta Gram Panchayat, in place of Khajura Gram Panchayat

4. The further case of the petitioner is that her son, namely, Santosh Kumar generally resides in residential house in village - Kamta under Kamta Gram Panchayat, his name by mistake was recorded in voter list as resident of Village - Khiru Bigha under Khajura Gram Panchayat. The petitioner now being desirous that her name be corrected and added in Khajura Gram Panchayat from Kamta Gram Panchayat filed an application stating that the name of her son be deleted from Khajura Gram Panchayat and her name instead be added there. It is submitted that the B.D.O. being competent officer rightly added and recorded her name in Khajura Gram Panchayat by deleting the name of her son. It is submitted that her actions did not invite any penal offence as the F.I.R. for the same is misconceived. He further submits that in course of investigation the police has submitted final form in favour of the B.D.O.

5. The learned Counsel for the Election Commission stated that the voter list was due published in accordance with law both in 1995 and 2000. He submits that Shila Devi filed an application for adding her name in place of name of her son Santosh Kumar by deleting the name of latter which was published at Serial No. 172 of Khajura Gram Panchayat. She stated that his name wrongly figured therein, in her place. The learned Counsel for the Commission submits that Shila Devi fully knew that the name of her son was rightly published and as a camouflage filed a cunning application stating that her name be added in Khajura Gram Panchayat by striking off the name of her son Santosh Kumar.

The State Election Commission by its circular/letter dated 14.11.2005 has provided guidelines in respect of preparation of voter list for the Panchayat Elections. As per Section 137 A of the Bihar Gram Panchayat Raj Act, name of a person would be added in any given panchayat on permission of State Election Commission. Similarly the name of any person so entered in the voter list under any particular Gram Panchayat can be deleted only after due approval of the State Election Commission except for the situation provided under Clause 8 (1) (2) and (4) of letter No. 1475 dated 14.11.2005. The Commission vide its subsequent letter bearing No. 1585 dated 7.12.2005 partially reviewed the guidelines contained in earlier letter dated 14.11.2005; particularly the power of District Election Officer to make or delete necessary entries in voter list after enquiry by an officer not below the rank of B.D.O.. The letter dated 7.12.2005 extended jurisdiction of District Panchayat Officer to add or delete the names falling in clause 8 as a whole which was earlier limited to Sub-clause (1) (2) & (4) of Clause 8 after due disposal of complaint by authorized officer not below the rank of BDO/Circle Officer. In such situation no prior approval of State Election Commission would be required.

So far this case is concerned Sub Clause (3) and Sub Clause (4) of the Clause 8 requires due notice. Sub Clause (3) relates to entry of name of a person in another electoral area, other than one of his residence. Sub Clause (4) visualizes a situation where the person concerned does not reside under the Gram Panchayat.

6. According to submission of the learned counsel for the petitioner her name figured in the voter list of Kamta Gram Panchayat in which she has also a residence. However, it is not a case that her name figured in the list of a Gram Panchayat in which she does not have her residence. As such, prima facie her case does not fall in categories mentioned in Clause 8. Further more the allegation is that the petitioner without making a straight application has filed the application obliquely in order to misguide the enquiry officer for again changing her name from voter list of Kamta Gram Panchayat to Khajuria Panchayat

7. As the investigation of this case is continuing, this Court is not inclined to quash the F.I.R. However, the petitioner may file an application before the I.O. of the

case who will take into consideration the points that may be raised by her, if final form has not been submitted by then.

8. With the aforesaid observations and directions this writ application is disposed of.

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