

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S). 10194/2017

JANAK LAL BASUMATARY
& ANR. . . . APPELLANT(S)

VERSUS

NABA KUMAR SARANIA (HIRA) . . . RESPONDENT(S)

ORDER

1. The appellants are the electors of No.5, Kokrajhar (ST) Parliamentary Constituency in the Bodoland Territorial Area District in the State of Assam. They are aggrieved by the order of the Gauhati High Court dated 9th June, 2017 dismissing the Election Petition filed by them challenging the election of the respondent (returned candidate) to the aforesaid constituency.

2. The core case of the appellants in the Election Petition is that the returned candidate was not a member of the Scheduled Tribe (Boro Kachari) and hence his nomination was wrongly accepted. According to the appellants, the returned candidate belongs to "Sarania Kachari" community which is not listed in the Schedule to the Presidential order under which "Boro Kachari" community is the recognized Scheduled Tribe.

3. The returned candidate filed his written statement denying the pleadings by the appellants and asserting that he has been certified by the Competent Authority i.e. All Assam Tribal Sangha to be a Scheduled Tribe belonging to the "Boro Kachari" community.

4. The issues framed on the basis of the respective pleadings are conspicuous by the absence of any specific issue with regard to the validity of the certificate of the returned candidate or the competence of the Certificate Issuing Authority to issue the same. In fact, the seven (07) issues framed for trial are as follows:

"1. Whether the petitioners have got any cause of action?

2. Whether the respondent belongs to 'Sarania Community'?

3. Whether 'Sarania' is a district (sic) separate community and not a Boro, Borokachari Scheduled Tribes as notified?

4. Whether proposal for inclusion of 'Sarania' community in the orders specifying Scheduled Tribes lists is pending and is still under consideration by the appropriate authority?

5. Whether nomination of the respondent was improperly accepted for election to the House of People from the 5 Kokrajhar (ST) Parliamentary Constituency in Assam State?

6. Whether the result of the election, in so far as it concerns the returned candidate i.e. the respondent, has been materially affected by improper acceptance of his nomination?

7. Whether the election of the respondent i.e. Shri Naba Kumar Sarania (Hira) from the 5 Kokrajhar (ST) Parliamentary Constituency in Assam State is liable to be declared void?"

5. The High Court in a long and elaborate order took the view that as the returned candidate was holding a valid certificate there would be no occasion for the Court to go into the question as to whether the returned candidate was a member of the "Sarania Kachari" community and the further question as to whether the "Sarania Kachari" community is same as "Boro Kachari" community.

6. The above if the core question arising in the Election Petition this Court

need not go into any further question(s) and in the first instance must attempt to answer the aforesaid issue that has arisen.

7. In a situation where there is no pleading challenging the validity of the certificate certifying the returned candidate to be a member of "Boro Kachari" community and, therefore, a Scheduled Tribe recognized under the Presidential Order we cannot find any fault with the order of the High Court. Neither is there any pleading nor issue framed with regard to the competence of the Authority issuing the certificate to act in the said manner i.e. to issue the certificate. When the Election Petitioners themselves did not challenge the validity of the certificate or the competence of the Certificate Issuing Authority to issue the same we do not see how the view taken by the High

Court that the returned candidate belongs to "Boro Kachari" community can be faulted. We will, therefore, have no occasion to interfere with the order impugned in the present appeal. The appeal, therefore, has to fail. It is accordingly dismissed. No costs. Consequently, all pending applications shall stand disposed of.

.....,CJI.
(RANJAN GOGOI)

.....,J.
(UDAY UMESH LALIT)

.....,J.
(K.M. JOSEPH)

NEW DELHI
OCTOBER 31, 2018

ITEM NO.101

COURT NO.1

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO(S). 10194/2017

JANAK LAL BASUMATARY & ANR.

APPELLANT(S)

VERSUS

NABA KUMAR SARANIA (HIRA)

RESPONDENT(S)

[FOR ADMISSION AND IA NO.72994/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS

[IA NO. 40339/18 FOR EARLY HEARING TO BE LISTED])

Date : 31-10-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE K.M. JOSEPH

For Appellant(s)

Mr. M.N. Rao, Sr. Adv.
Ms. C. K. Sucharita, AOR
Ms. Priti, Adv.

For Respondent(s)

Mr. Salman Khurshid, Sr. Adv.
Mr. Avijit Roy, AOR
Ms. Ayesha Jamal, Adv.
Mr. Manas Sarania, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order. Consequently, all pending applications shall stand disposed of.

[VINOD LAKHINA]

AR-cum-PS

[ASHA SONI]

ASSISTANT REGISTRAR

[SIGNED ORDER IS PLACED ON THE FILE]