

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2777 of 2015

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Ashok Kumar, son of Sri Ram Naresh Yadav, resident of village - Mohani Pokhar,
Ward no. 10, P.O. - Amarpura, P.S- Naubatpur, District- Patna.

.... Petitioner/s

Versus

1. The State Election Commission, Bihar, Patna through its Secretary, Sone Bhawan, Birchand Patel Path, Patna.
2. The State Election Commissioner, State Election Commission, Sone Bhawan, Birchand Patel Path, Patna.
3. The District Magistrate, Patna –cum- District Election Officer (Municipality), Patna.
4. The Sub-Divisional Officer, Danapur, Patna.
5. The Deputy Collector, In-charge, Birth and Death, Danapur, Patna.
6. The Executive Officer, Naubatpur Municipality, Naubatpur, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s

: Mr. Ashutosh Ranjan Pandey
Mr. Abdul Wadood
Mr Ramanuj Tiwary

For the Respondent-State

: Mr. Indeshwari Prasad Mandal, AC to GA-7

For the State Election Commission: Mr. Amit Shrivastava

Mr. Sanjeev Nikesh

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 19-03-2015

Heard Mr. Ashutosh Ranjan Pandey, learned counsel
appearing on behalf of the petitioner, Mr. Indeshwari Prasad
Mandal, learned Assisting Counsel to Government Advocate No.7
for the State and Mr. Sanjeev Nikesh, learned counsel appearing for
the State Election Commission.

The petitioner is aggrieved by the order dated
23.1.2013 of the State Election Commission, Bihar, Patna passed in
Case No.11 of 2012, whereby the petitioner has been disqualified
under section 18(1) (m) read with section 18(2) of the Bihar

Municipal Act, 2007 (hereinafter referred to as 'the Act') *inter alia* on grounds that last of his children, namely, Abhay Kumar was born in 2009 i.e. after the cut-off date fixed under 'the Act' which is 4.4.2008 and since the number of children exceeds the prescribed number hence he stands disqualified.

The date of birth certificate relied upon by the petitioner to support the age of his son Abhay Kumar was disbelieved by the authorities and was subsequently cancelled and it is in this backdrop of the matter that the State Election Commission considering the matter has passed the impugned order on 23.1.2013.

It is the contention of Mr. Pandey, learned counsel appearing for the petitioner that following the orders of this Court in CWJC No.4043 of 2013 that the Executive Officer referred the son of the petitioner for assessment by the Medical Board of the Patna Medical College and Hospital and the Medical Board after examining the son of the petitioner has given its report, a copy of which is placed at Annexure-15 series to the writ petition. It is submitted that as the medical assessment the age of the son of the petitioner has been held to be between 8-9 years as on 18.1.2014, meaning thereby he would be born in between 2005-2006 and certainly before the cut-off date i.e. 4.4.2008. It is taking note of such circumstances that the State was required to respond and although a counter affidavit has been filed on behalf of the State but

the specific statement made by the petitioner in paragraphs 24 and 25 of the writ petition relatable to medical assessment of the age of the petitioner's son has not been responded to rather it is admitted to be a matter of record. The eloquent circumstances leaves no room for confusion that the State does not dispute the age of the son of the petitioner as assessed by the Medical Board and according whereeto, the son of the petitioner would be born before the cut-off date which is 4.4.2008.

Since the order impugned passed by the State Election Commission rests entirely on the cancellation of date of birth certificate by the authorities who have doubted the statement of the petitioner relating to the date of birth of his youngest son hence in view of the report of the Medical Board present at Annexure-15 series the disqualification has become non est and in consequence the order dated 23.1.2013 passed by the State Election Commission in Case No.11 of 2012 placed at Annexure-11 cannot be upheld and is accordingly set aside.

The writ petition is allowed.

(Jyoti Saran, J)

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