

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14936 of 2014

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Asha Devi, wife of Munna Prasad, resident of village and P.O. Shahpur, P.S. Shahpur, District- Bhojpur at Ara.

.... Petitioner/s

Versus

1. The State Election Commission (Municipality), through the State Election Commissioner, Sone Bhawan, Birchand Patel Path, Patna.
2. The State Election Commissioner, the State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.
3. The Deputy Secretary, the State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.
4. The District Election Officer (Municipality), Bhojpur at Ara, District- Bhojpur at Ara.
5. The Executive Officer, Nagar Panchayat, District- Bhojpur at Ara.
6. Ranju Devi, wife of Arun Kumar Chaubey, resident of village and P.O. Shahpur, P.S. Shahpur, District- Bhojpur at Ara.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.B.K. Manglam Mr. Chandan
For the Respondent-SEC	:	Mr. Amit Shrivastava
For the private Respondent	:	Mr. Om Prakash Upadhyay
For the Respondent no.5	:	Mr. Sanjay Kumar

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 04-09-2015

Heard Mr. S.B.K. Manglam, learned counsel appearing on behalf of the petitioner, learned counsel for the State Election Commission, Mr. Om Prakash Upadhyay, learned counsel appearing for the private respondent and Mr. Sanjay Kumar, learned counsel appearing for the Executive Officer, Nagar Panchayat, Shahpur.

The writ petition was initially filed questioning the order dated 24.7.2014 of the respondent Deputy Secretary directing the petitioner to file her defence before the State Election



Commission in Case No.11 of 2014 filed by the private respondent no.6. While the matter remained pending, the final order has been passed on 15.10.2014 and whereunder the petitioner has been unseated on grounds of disqualification under section 18(1) (m) of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act') inasmuch as the petitioner was charged of having given birth to a 4th child after the cut-off date fixed under 'the Act' i.e. 4.4.2008 whereunder having more than 2 children become a disqualification to contest election.

This matter was heard on 9.1.2015 and when this Court while issuing notice to the private respondent, stayed the operation of the impugned order dated 15.10.2014 passed by the State Election Commission in Case No.11 of 2014. Upon service of notice the respondents have appeared and have been heard.

While it is the case of the election petitioner that the lady Asha Devi who is the wife of Munna Pandit has given a birth to a male child, namely, Shivam on 9.12.2008, i.e. after the cut-off date fixed under 'the Act' on 4.4.2008 but this position was contested by the returned candidate on grounds that the lady who gave birth to a 4th child is the wife of Munna Pandit whereas the petitioner is wife of Munna Prasad and the two persons are different. The contentions advanced on behalf of the petitioner has been rejected by the State Election Commission on grounds that no



evidence was produced by the petitioner to distinguish as to who gave birth to the 4th child on 9.12.2008. In my opinion the foundation for the impugned order is patently erroneous for the reason that once the returned candidate denied the charge then the onus under section 106 of the Evidence Act shifted on the election petitioner to prove this fact. The pleadings reflect that it is simply on the basis of affidavits received from the statutory authorities and oral averment made by the election petitioner with the aid of documents certifying that one Asha Devi, wife of Munna Pandit had given birth to a male child on 9.12.2008 that the Election Commission has proceeded to accept that the 4th child was of the writ petitioner despite no supportive evidence being present to support the charge. In my opinion, the decision of the State Election Commission resting on mere affidavit was not sufficient for arriving at such decision which has to be proved by leading oral and documentary evidence. Apparently this exercise is missing and in my considered opinion in such complicated circumstances existing which required appreciation and evaluation of evidence, the State Election Commission ought to have relegated the matter for adjudication by the Election Tribunal.

Since admittedly the election petitioner has also filed an election petition bearing Election Petition No.01 of 2012 on the same issue and which is pending before the Munsif, Bhojpur at Ara

in my opinion, an adjudication of such contested issue can only be done by the Election Tribunal in the backdrop of the circumstances existing and the State Election Commission has incorrectly ventured into such disputed issue.

For the reasons aforementioned the order dated 15.10.2014 passed by the State Election Commission in Election Case No.11 of 2014 cannot be upheld and is accordingly set aside.

I shall make it clear that I have expressed no opinion as to the relative merits of the case and the election dispute shall be adjudicated by the Munsif, Bhojpur at Ara on its own merits. The parties in contest would be at liberty to raise all issues as raised herein and support their respective cases by leading evidence as they choose.

Since the matter arises out of an election dispute the learned Munsif would be well advised to consider and dispose of the same expeditiously and preferably within a period of six months from the date of receipt/production of a copy of this judgment.

This writ petition is allowed.

(Jyoti Saran, J)

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