

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.833 of 2015

With

I.A. No.482 of 2015

With

I.A. No.855 of 2015

With

I.A. No.1038 of 2015

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1. Navratan Choudhary.
 2. Gopal Choudhary.

Both are sons of Late Shiv Nandan Choudhary and are residents of Ward No. 14, Nagar Panchayat, Banmankhi, P.S. - Banmankhi, District- Purnea.

.... Petitioner/s

Versus

1. The State of Bihar through District Magistrate, Purnea.
2. The State Election Commission, Sone Bhawan, Patna.
3. Birendra Prasad Singh, son of Ram Nath Singh, resident of Ward No.15, Nagar Panchayat, Banmankhi, P.S.- Banmankhi, District- Purnea.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Vijay Anand
For the Respondent-State	:	Mr. S.K. Sharma, GA-1
For State Election Commission	:	Mr. Amit Shrivastava Mr. Girish Pandey
For the Private Respondent No.3	:	Mr. S.B.K. Manglam Mr. Shailendra Singh

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 08-04-2015

Mr. Y.V. Giri, learned senior counsel appearing on behalf of the petitioners, learned counsel for the State, Mr. Amit Shrivastava, learned counsel appearing for the State Election Commission and Mr. S.B.K. Manglam, learned counsel appearing for the private respondent no.3 are in attendance and have been heard.

The petitioners have questioned the order dated

12.12.2014 passed by the State Election Commission in Election Case No.37 of 2012 the complete order-sheet whereof has been placed at Annexure-7 to the supplementary affidavit.

The two petitioners contested the election of Ward Councillor from Ward Nos. 15 and 17 of Banmankhi Nagar Panchayat in the district of Purnea and were declared elected. The petitioner no.1 further contested the election of the Deputy Chief Councillor of the Nagar Panchayat and again succeeded in the election. The election of these petitioners have been challenged by the private respondent no.3 before the State Election Commission in Election Case No.37 of 2012, inter alia, on grounds that since both the petitioners stand convicted in a case arising from Sessions Trial No.418 of 2004 vide judgment and order passed on 5.8.2008 by the Additional Sessions Judge, FTC-5, Purnea for the offences punishable under sections 324, 149 and 342 of the Indian Penal Code hence they were statutorily not qualified to file their nomination to contest the election held in the year 2012.

It is by virtue of an order passed by a Bench of this Court in Criminal Appeal (SJ) No.835 of 2008 suspending the sentence of the petitioners that the State Election Commission vide order passed on 13.3.2013 stayed further proceedings in the election case and which was questioned by the private respondent before this



Court in CWJC No.14978 of 2013. This Court upon consideration of the matter and after hearing the contesting parties vide order dated 25.11.2014 placed at Annexure6 to the writ petition while setting aside the order dated 13.3.2013 directed the State Election Commission to dispose of the matter in accordance with law within three months from the date of receipt/production of a copy of the order.

It is the contention of Mr. Giri, learned senior counsel appearing on behalf of the petitioners with reference to the order-sheet in the election case that the State Election Commission on 4.12.2014 in consideration of the order passed by this Court in CWJC No.14978 of 2013 directed for issuance of notice for its service upon the parties and fixed the date of hearing on 12.12.2014. With reference to the order-sheet it is further submitted that on 12.12.2014 it stands recorded that during the process of service of notice upon the petitioners it transpired that these petitioners were not present at their residence and had gone to attend the marriage at Silliguri. The process server tried to effect house service but he was protested by the persons present there. It also stands recorded that information was given to the petitioners on telephone on 11.12.2014 which they did not choose to accept. It is the contention of Mr. Giri that even if these developments which stand recorded in the order



dated 12.12.2014 regarding refusal by the petitioners to accept notice is accepted on face value yet considering the nature of dispute it was in the interest of justice that the State Election Commission taking note of the position existing ought to have fixed a date for ex-parte hearing giving one opportunity to the petitioners. But this was not to be done and on the very first date fixed i.e. 12.12.2014, the order impugned has been passed disqualifying the petitioners.

The short submission made by Mr. Giri to question the impugned order is that it has been passed behind the back of the petitioners by showing undue hurry and without affording reasonable opportunity to these petitioners to contest the election dispute. He submits that once it stood confirmed that the petitioners were not present at their residence on 11.12.2014, there was no occasion for the State Election Commission to adjudicate the matter in such hurry on 12.12.2014.

This matter was earlier heard on 30.1.2015 and this Court taking note of the nature of controversy raised as well as the election notified by the State Election Commission on account the vacancy so caused by virtue of the impugned order impugned in the present proceeding, while staying the communication of the State Election Commission dated 30.12.2014 placed at Annexure-8 to the interlocutory application whereby the date of election had been fixed

for 11.2.2015, issued notice to the private respondent no.3 who has registered his appearance through Mr. S.B.K. Manglam.

I have heard learned counsel for the parties and I have perused the records.

It is a matter of record that following the order passed by this Court in CWJC No.14978 of 2013 the matter was first taken up for consideration by the State Election Commission on 4.12.2014 and in consideration of the obligation cast thereunder that the State Election Commission while directing for issuance of notice fixed the date of hearing on 12.12.2014 and on which date the impugned order has been passed. The impugned order passed on 12.12.2014 itself takes notice of the fact that the petitioners were not present at their residence rather had gone to attend the marriage at Silliguri. The order impugned also records that the petitioners were sought to be informed telephonically on 11.12.2014 and that they replied that since they are attending the marriage hence they would not be accepting the notice of hearing for 12.12.2014. It is thus manifest from the records that the State Election Commission despite taking note of the fact that the two petitioners were not present at their residence rather were in Silliguri, has proceeded to pass the impugned order merely recording the refusal of the petitioners to accept the notice on 11.12.2014.



Section 18(2) of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act') casts an obligation upon the State Election Commission to pass appropriate order for disqualification after affording sufficient opportunity to the affected parties of being heard. It thus cannot be contested that the petitioners have been denied a reasonable opportunity of being heard inasmuch as even when the State Election Commissioner has recorded that they were absent from their residence and were attending marriage in Silliguri, the State Election Commission has proceeded to pass the impugned order on 12.12.2014 itself. The petitioners were legally entitled to a reasonable opportunity to contest the matter.

Although learned counsel for the contesting parties endeavoured to address the matter on merits but considering that the order impugned has been passed ex-parte, in absence of the petitioners and without giving them reasonable opportunity to defend their respective case, in my opinion, the order impugned is indefensible and has been passed in violation of the mandate cast under section 18(2) of 'the Act'. In result the order dated 12.12.2014 passed by the State Election Commission in Case No.37 of 2012 cannot be upheld and is accordingly set aside.

The matter is remitted to the State Election Commission for reconsideration of the matter and its disposal afresh in

accordance with law and after giving opportunity of hearing to the contesting parties who would be at liberty to raise all issues as sought to be raised in the present writ petition.

The parties would appear before the State Election Commission along with a copy of this order on 15.4.2015 at 11.00 AM and when the State Election Commission would fix a date of hearing and proceed to dispose of the matter by holding day-to-day hearing preferably within two weeks thereafter.

The writ petition is allowed. The interlocutory applications stand disposed of.

(Jyoti Saran, J)

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