

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21451 of 2014

Nityanand Singh @ Nityanand Yadav, son of Sri Bhagwan Singh, resident of Village- Khankulipur, P.S. and District- Arwal, at present Ward Councillor of Ward No.9 of Arwal Nagar Parishad.

.... Petitioner/s

Versus

1. The State Election Commission Bihar through its Commissioner, Sone Bhawan, Veerchand Patel Marg, Patna-1.
2. The Secretary, State Election Commission, Sone Bhawan, Veerchand Patel Marg, Patna, Bihar.
3. The Deputy Secretary, State Election Commission, Sone Bhawan, Veerchand Patel Marg, Patna, Bihar.
4. The State of Bihar through Principal Secretary, Urban Development Department, Govt. of Bihar, Patna.
5. The District Magistrate –cum- The District Election Officer (Municipality), District- Arwal.
6. The Sub-Divisional Officer, District- Arwal.
7. The Senior Deputy Collector, Arwal, District- Arwal.
8. The Executive Officer, Nagar Parishad, Arwal –cum- Senior Deputy Collector, Arwal, District- Arwal.

.... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate with Mr. Ranjeet Choubey
For the Respondent- State	:	Mr. Shyameshwar Kr. Singh, AC to GP-12
For State Election Commission	:	Mr. Amit Shrivastava Mr. Girish Pandey
For the Respondent No.8	:	Mr. Sanjeev Nikesh

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 09-01-2015

Heard Mr. Y.V. Giri, learned senior counsel appearing on behalf of the petitioner, Mr. Shyameshwar Kumar Singh, learned Assisting Counsel to Government Pleader No.12 for the State, Mr. Girish Pandey for the State Election Commission and Mr. Sanjeev Nikesh who has registered appearance for the respondent no.3, the Executive Officer, Nagar Parishad, Arwal

cum- Senior Deputy Collector, Arwal and has also filed a counter affidavit.

The parties have been heard on merits and the matter is being disposed of at the stage of admission itself by way of this judgment.

The petitioner is aggrieved by an order dated 24.11.2014 passed in Case No.22 of 2013 by the State Election Commission, whereby the petitioner stands disqualified under section 18(1) (1) and section 18(2) of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act').

Mr. Giri, learned senior counsel appearing for the petitioner with respect to the order impugned has submitted that even when the records reflect that the notice relating to the meeting was never served on the adult member of the family as mandated under section 377 of 'the Act' nor the petitioner was given 72 hours advance notice as mandated under section 49 of 'the Act' and which facts stand supported by the report of the Senior Deputy Collector, Arwal, yet the State Election Commission on a presumptuous findings that the petitioner ought to have been aware of the meeting, has proceeded to pass the impugned order.

Learned counsel in support of his submission has relied on a Bench decision of this Court reported in **2011 (4) PLJR**

802 (Shakuntala Devi Vs. State Election Commission).

I have heard learned counsel for the parties and I have perused the materials on record.

The proceedings in question was instituted before the State Election Commission on a complaint made by the Executive Officer, the Respondent no.8 praying for disqualification of the petitioner for not having participated in the three consecutive meetings and thus incurring a disqualification under section 18(1) (l) and (n) of 'the Act'. The petitioner responded to the notice and contested the complaint made by the Executive Officer by submitting that since the notices were not served in terms of the provisions underlying section 377(1) of 'the Act' nor the mandatory compliance of section 49 of 'the Act' had been adhered to that he could not be held to have incurred any disqualification. The State Election Commission by the order impugned even while taking note of the report submitted by the Senior Deputy Collector, Arwal i.e. respondent no.8 herein dated 14.9.2013 that the notice had not been served on the petitioner rather were served on his minor son and having held that since the notice was not served on the petitioner rather on his minor son hence he cannot be disqualified under section 18(1) (n) of 'the Act' but thereafter the Election Commissioner has proceeded presumptuously to hold that

since the petitioner did have information regarding holding of the meeting but took no steps to participate in the meeting, this act shows that he is avoiding to perform the duties and functions attached to the post and thus stands disqualified under section 18(1) (I) of 'the Act'.

The foundation for the complaint is non-participation by the petitioner in the meetings convened and once it has been held that such notices were never served on the petitioner or on any adult member of the family, he can not be disqualified for not participating in the meetings. In view of such admitted circumstances, this Court fails to appreciate as to the materials available before the State Election Commission to hold the petitioner disqualified under section 18(1) (I) of 'the Act'. The views expressed in the Bench decision of this Court rendered in the case of **Shakuntala Devi** (supra) squarely applies to the present case and the finding of the State Election Commission being presumptuous and in absence of any materials, cannot be upheld and is accordingly set aside. The petitioner stands restored to the post of Ward Councillor, Ward No.9, Arwal Nagar Parishad, district- Arwal. The consequences shall follow.

It is stated at the bar by Mr. Giri that following the impugned order an election has been notified on 12.1.2015 which

fact is admitted by Mr. Girish Pandey, learned counsel appearing for the State Election Commission.

In view of the order restoring the position of the petitioner as Ward Councillor, Arwal Nagar Parishad, any election so notified for filling up the post in pursuance of the impugned order, becomes meaningless and is accordingly set aside.

The writ petition is allowed.

(Jyoti Saran, J)

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