

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5562 of 2013

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Bijay Kumar ' Bimal', Son of Sri Pulkit Prasad Yadav, Resident of Ward No. 18, P.O. and P.S. Madhepura , District - Madhepura, Presently the Chief Councilor of Madhepura Nagar Parishad, P.O., P.S. and District – Madhepura.... Petitioner
Versus

1. The State Election Commission (Municipality), 3rd Floor, Sone Bhawan, Bir Chand Patel Path, Patna through the State Election Commissioner
 2. The State Election Commissioner, the State Election Commission (Municipality), 3rd Floor, Sone Bhawan, Bir Chand Patel Path, Patna
 3. The Secretary, the State Election Commission (Municipality), 3rd Floor, Sone Bhawan, Bir Chand Patel Path, Patna
 4. The Joint Election Commissioner, 3rd Floor, Sone Bhawan, Bir Chand Patel Path, Patna
 5. The Inspector General of Police (Weaker Section), Bihar, Patna
 6. The Superintendent of Police, Madhepura, District - Madhepura
 7. The Police Station Head Officer, Madhepura, District - Madhepura
 8. Manisha Kumari Wife of Sri Manoj Kumar, Resident of Ward No. 9, Azad Nagar, P.O. and P.S. Madhepura, District – Madhepura Respondents
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Appearance :

For the Petitioner/s : Mr. S.B.K. Manglam, Advocate

For the Respondent/s : Mr. Amit Shrivastava, Advocate
Mr. Girish Pandey, Advocate

For the State : Mr. Nutan Kumari Sharma, AC to GA-9

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 20-07-2015

The petitioner was elected as Chief Councilor of Madhepura Nagar Parishad in the year 2007-08.

2. The petitioner seeks direction to the respondents to produce a copy of letter no. 277 dated 07.02.2013 issued by respondent no.5, addressed to the respondent no.6, whereby and whereunder on complaint of respondent no.8 direction has been issued to lodge F.I.R. against the petitioner pursuant to order dated 22.11.2012, passed by respondent no.3 in Case No. 109 of 201.

3. It appears that a complaint was filed against the petitioner

for misuse of his office by respondent no.8. The power of the State Election Commissioner in the matters of disqualifying a member is circumscribed by Section 18(2) of the Bihar Municipal Act. The State Election Commissioner referred the matter to the State for its consideration.

4. Learned counsel submits that the State Election Commissioner would not decide any such complaint, as it was beyond his jurisdiction and as such no cognizance of his order can be taken for institution a case.

5. A counter affidavit has been filed on behalf of State, in which it has been stated that the petitioner himself has produced letter dated 07.02.2013 and as such part of the relief prayed for in para 1 of the writ application does not survive. So far as institution of F.I.R. is concerned, the same is governed by the guidelines given in Section 154 of the Cr.P.C.

6. In case, the authority concerned itself satisfies on the facts of the case that a cognizable offence is made out and an F.I.R. can be instituted. Merely, on recommendation and without being satisfied with the cognizability of offence, F.I.R. could not be instituted.

7. With the aforesaid observation, this application stands disposed of.

(Samarendra Pratap Singh, J.)

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