

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16817 of 2015

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Zafiruddin Khan, Son of Sh. Zabir Khan, resident of Mohalla - Basuham, P.S. Bahera, District – Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Housing and Urban Development, Government of Bihar, Patna.
2. The Principal Secretary, Department of Housing and Urban Development, Government of Bihar, Patna.
3. The Deputy Secretary, Department of Housing and Urban Development, Government of Bihar, Patna.
4. The Divisional Commissioner, Darbhanga.
5. The Executive Officer, Nagar Parishad, Benipur, Darbhanga.
6. The State Election Commission, Bihar through the State Election Commissioner.
7. The State Election Commissioner, State Election Commission, Bihar, Patna.
8. The Secretary, State Election Commission, Bihar, Patna.
9. The Deputy Secretary, State Election Commission, Bihar, Patna.
10. Smt. Kaniya Khatoon, Ward Councilor, Ward No.04, Wife of Shahid Husain, resident of Bahera, P.S. Bahera, District – Darbhanga.
11. Smt. Asama Nizam, Ward Councilor, Ward No.05, Wife of Nizamuddin Ansari, resident of Mohalla - Mohammedpur (Zamiyanagar), P.O.- Bahera, P.S. Bahera, District – Darbhanga.
12. Sh. S.M. Ali Imam, Ward Councilor, Ward No.07, Son of Syed Md. Zarif, Mohalla - Basuham (Kajiyana), P.S. Bahera, District – Darbhanga.
13. Smt. Radhika Devi, Ward Councilor, Ward No.14, Son of Ramnah Choudhary, resident of Mohalla - Basuham (Kajiyana), Mohalla - Baheda, P.S. Bahera, District – Darbhanga.
14. Smt. Baby Thakur, Ward Councilor, Ward No.15, Son of Ram Bhushan Thakur, resident of Mohalla - Majhauda, P.S. Bahera, District – Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Tej Bahadur Singh, Sr. Advocate with Mr. Sanjay Parasmani
For the Respondent-State	:	Mr. Ashok Kumar Verma, AC to SC-17
For Respondent Nos.6 to 9	:	Mr. Amit Shrivastava Mr. Girish Pandey

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 29-10-2015

Heard Mr. Tej Bahadur Singh, learned senior counsel appearing for the petitioner, learned counsel for the State and Mr. Girish Pandey, learned counsel appearing for the State Election Commission.

The petitioner, an Ex-Deputy Chief Councillor of Benipur Nagar Parishad in the district of Darbhanga is aggrieved by the order dated 15.9.2015 passed by the State Election Commission in Case No.12 of 2015, whereby the application filed by the petitioner under section 18(2) of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act') for seeking declaration of disqualification of the private respondents under section 18(1) (n) of 'the Act', inter alia, on grounds that they failed to attend three consecutive meetings held on 4.3.2014, 3.9.2014 and 15.9.2014 did not find favour with the Commission and has been dismissed.

Mr. Singh learned senior counsel appearing for the petitioner with reference to a report of the Sub-Divisional Officer, a copy of which is placed at Annexure-8 has submitted that in view of the uncontested position emanating therefrom there is no dispute regarding absence of the petitioner on three consecutive dates. He thus submits that in view of such circumstances the decision of the



Commission to distinguish the meeting held on 15.9.2015 on grounds that it was a special meeting held for considering the *no confidence motion* and thus did not fall within the consideration of section 18(1) (n) of 'the Act' amounts to reading into the provisions. He further with reference to the statutory provisions underlying section 18(1) (n) of 'the Act' submits that where the Act does not make any distinction as regarding the nature of meeting rather provides for a disqualification in case of absence of Councillor from three consecutive meetings or special meeting the Commissioner has gone beyond such statutory provisions.

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

A copy of the complaint is placed at Annexure-5 and charges the private respondent nos.10 to 14 of willfully absents from the meetings held on 4.3.2014, 3.9.2014 and 15.9.2014. The report on which Mr. Singh seeks to rely given by the Sub-Divisional Officer present at Annexure-8 manifests that on each of the dates the notice intimating the date of the meeting was received by the private respondents well in advance as per the statutory provisions underlying section 49 of 'the Act'. Now whereas on



4.3.2014 it is reported by the Sub-Divisional Officer that the respondent nos. 10, 11, 13 and 14 did not choose to appear, it is specifically mentioned that respondent no.12 sent his intimation regarding his absence. In so far as the next date 3.9.2014 is concerned, it is specifically mentioned that these private respondents intimated regarding their boycott of meeting to be held on 3.9.2014 by sending intimation well in advance on 2.9.2014. In so far as the 3rd meeting is concerned which was held on 15.9.2014 although the State Election Commission has distinguished the same on grounds that it was special meeting for considering the *no confidence motion* and thus did not fall within the zone of meeting as envisaged under section 18(1) (n) of 'the Act' but without going into the controversy so arising from the opinion the Commission even otherwise it is seen that the meeting scheduled for 15.9.2014 was held to be illegal by the Urban Development Department and was adjourned to 24.11.2014 and on which date all five respondents have appeared. This single instance is sufficient to dismiss the writ petition since by appearance of the respondents on the 3rd date, the disqualification whatsoever that existed stood nullified. There is again no material on record to show that the permission sought by

the respondent no.12 for not attending the meeting on 4.3.2014 or the decision of the private respondents to boycott the meeting on 3.9.2014 was accepted by the Municipality or rejected. In these circumstances, I find no reason to interfere with the opinion expressed by the State Election Commission in rejecting the plea of the writ petitioner for disqualifying the private respondents and the writ petition is accordingly dismissed.

(Jyoti Saran, J)

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