IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.812 of 2014
IN
Civil Writ Jurisdiction Case No. 16861 of 2013

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Purohit Lal Gupta, Son of Panna Lal Gupta, Resident of Mohalla - Daldali Road (Nav Durga Mandir), Bakarganj, Post Office - Kadamkuan, Police Station - Gandhi Maidan, District - Patna

.... Appellant/s

Versus

1. Dharamsheela Devi wife of Ashok Kumar Yadav, Resident of Mohalla - Salimpur Ahara, Ward No.37, Post Office - Kadamkuan, Police Station - Gandhi Maidan, District - Patna
2. The State Election Commission (Municipality) Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner
3. The State Election Commissioner, The State Election Commission (Municipality) Sone Bhawan, Birchand Patel Path, Patna
4. The Secretary, State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna
5. The Additional Secretary, State Election Commission (Municipality) Sone Bhawan, Birchand Patel Path, Patna
6. The District Magistrate - cum - District Election Officer (Municipality) Patna, District - Patna
7. The Additional District Magistrate, Patna, District - Patna
8. Jyoti Gupta, Daughter of Panna Lal Gupta, Resident of Mohalla - Daldali, Post Office - Kadamkuan, Police Station - Gandhi Maidan, District - Patna
9. The Patna Municipal Corporation, through Municipal Commissioner, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Durga Nand Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 13-05-2015

This Appeal is preferred against the order dated 9.4.2014 passed by the learned Single Judge in CWJC No. 16861 of 2013. The appellant figured as respondent no.8 in the writ petition. The writ petition was filed against the order dated 7.8.2013 passed by the State Election Commissioner in Case No. 2 of 2013 through which the election of the first respondent herein, as Councillor of Patna Municipal Corporation was set aside. The learned Single Judge allowed the writ petition and has set aside the order of the learned Election Commissioner.

The brief facts pertaining to the case is as follows.

The election to the Patna Municipal Corporation was held during the year 2012. Respondents 1 and 8 herein, and certain others then filed nomination and the 1st respondent was declared elected.

The appellant filed Election Case No. 2 of 2013 before the State Election Commissioner, the 2nd respondent, under Section 18(2) of the Bihar Municipal Act, 2007 (for short, 'the Act') with a prayer to disqualify the 1st respondent. The ground pleaded by the appellant was that the 1st respondent failed to pay holding tax in respect of properties held by her. It was stated that the grandfather of the husband of the respondent held such items and though they devolved upon the father of the husband of the respondent and thereafter the husband of the respondent, the holding tax was not paid. The genealogical table as well as particulars of the holdings were detailed in the election petition.

The petition was opposed by the 1st respondent. She pleaded that tax in respect of the properties that are in their enjoyment and ownership was paid and particulars furnished by the appellant are not correct. The 2^{nd} respondent has referred the matter to the Municipal Commissioner and taking into account, the particulars furnished, bypassed the order dated 7.8.2013 disqualifying the 1^{st} respondent. Challenging the said order the 1^{st} respondent filed the writ petition and the same was allowed by the learned Single Judge.

Heard Shri Durganand Jha, learned counsel for the appellant.

Section 18 of the Act confers power upon the 2^{nd} respondent for disqualifying an individual from being elected to the office of the Councillor or from holding such office after such election. The grounds on the basis of which disqualification can be ordered are mentioned in clauses (a) to (n) of sub-section (1) of Section 18 of the Act. The one pleaded against the 1^{st} respondent is referable to Section 18(1)(k) which reads, *"if he has not paid all taxes due by him to the Municipality at the end of the financial year immediately preceding that in which the election is held".*

The record discloses that while filing nomination the 1^{st} respondent enclosed a certificate dated 16.4.2012 issued by the Senior Deputy Collector, Incharge Revenue, of Municipal Corporation to the effect that there are no dues of holding tax or any other amounts against her, to the Corporation. Copies of the receipts through which the tax was paid were also enclosed, and no objection was raised at the time of scrutiny of nominations.

Normally, the election of a successful candidate can be challenged only by filing an election petition. Exercise to be undertaken by the 2^{nd} respondent under Section 18 of the Act is very limited and summary in nature. It is only when there exists indisputable material that invites the disqualification, that the

Commissioner can pass an order disqualifying the candidate of course after putting him or her on notice. For example, if the disqualification is sought on the ground that the concerned person has been adjudged by a competent court to be of unsound mind which attracts clause (e), the only basis on which the Election Commissioner can take a decision in this regard, is the order passed by such court. He cannot decide by himself, the mental condition of the candidate. Same is the case with the disqualification referable to various clauses.

In case there existed the indisputable material to show that the respondent defaulted in payment of tax, such demand notice issued by the Municipality or Municipal Commissioner referable to the period before the notification issued for election, or a certificate issued by the local body to that effect, the 2nd respondent can take the same into account. The question of undertaking a fishy enquiry by the 2nd respondent, that too for the first time after the complaint is filed, does not arise.

In the instant case, the appellant wanted to expand the scope of the enquiry by the 2nd respondent almost to unlimited levels. A perusal of the petition submitted by him discloses that in a way, he invited the decision from the 2nd respondent not only on the question of succession to the property, ownership thereof, and obligation to pay tax, but also in relation to the presumptive dues. The discussion undertaken by the 2nd respondent in his order virtually smacks that of a civil court. The genealogical table furnished in the petition was taken into account. The question as to what property devolved upon the husband of the 1st respondent by way of succession through two generations was decided by him. The deviation from the prescribed procedure reached its pinnacle when the 2nd respondent has ignored the factum of sale of one of the items of the property as regards which the appellant pleaded that there existed dues of holding tax. There cannot be any better example of assumption of power or authority in deviation of the relevant provision, than that.

We do not appreciate or approve the conduct of the 2^{nd} respondent in undertaking the fishy enquiry of that nature. We make it once again clear for its future guidance that the 2^{nd} respondent can not undertake any enquiry into disputed questions raised before him for the first time and it is only when undisputed material inviting disqualification exists, that he can act.

There is no basis to interfere with the order dated 9.4.2014 passed by the learned Single Judge CWJC No. 16861 of 2013. We dismiss the Appeal.

Interlocutory application, if any, shall stand disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

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