

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13087 of 2014

Arbind Kumar Singh, son of late Basudeo Prasad, Ward Parshad, Ward No.2, Nagar Panchayat, Bodh Gaya

.... Petitioner

Versus

1. The State of Bihar
2. State Election Commissioner, Bihar, Patna
3. Deputy Secretary to the Govt. of Bihar, Urban Development and Housing Deptt. Govt. of Bihar, Patna
4. Commissioner of Magadh Division, Gaya
5. District Magistrate, Gakya
6. Sub Divisional Officer, Sadar Gaya
7. Lalita Devi wife of Sri Vijay Kumar Manjhi, Ward Parshad, Ward no. 17, Mastipur Nagar Panchayat, Bodh Gaya
8. Jamuna Devi wife of Ranvijay Kumar @ Choudhary, Ward Parshad, Ward No. 10, Bapunagar, Nagar Panchayat, Bodh Gaya
9. Shivshankar Bhagar son of Ram Swarup Bhagat, Ward Parshad, Ward no.11, Rampur Nagar, Nagar Panchayat, Bodh Gaya
10. Shiv Barat Manjhi son of late Panchu Manjhi, Ward Parshad, Ward no.06, Rajapur Nagar Panchayat, Bodh Gaya
11. Reshmi Devi wife Sri Rambali Manjhi, Muhalla Mounia, Ward Parshad, Ward no.05, Nagar Panchayat, Bodh Gaya
12. Ram Sewak Singh son of Sri Bagi Singh, Ward Parshad, Ward No. 12, Newta Rihdih, Nagar Panchayat, Nagar Panchayat, Bodh Gaya
13. Kamla Devi wife of Ajay Kumar Arya, Ward Parshad, Ward no. 14, Nagar Panchayat, Bodh Gaya
14. Smt. Prati Singh wife of Sri Suresh Singh, Mukhya Parshad, Nagar Panchayat, Bodh Gaya
15. Dinesh Kumar Singh son of Sri Jagdeo Singh, Vice-President, Nagar Panchayat, Bodh Gaya

.... Respondents

Appearance :

For the Petitioner/s :	Mr. Indradeo Prasad
For the State :	Mr. Shyam Kishore Sharma, Sr. Advocate Govt. Advocate I Ms. Shalini Raut, AC to GA I
For the Respondent/s :	Mr. Amit Shrivastava Mr. Sanjeev Nikesh

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 20-01-2015



The petitioner is an elected member of Ward No. 2 of Nagar Panchayat, Bodh Gaya. He states that on requisition given by the members of the Nagar Panchayat expressing want of confidence in the President, a meeting was held for taking no-confidence motion; but on account of absence of the respondent nos. 7 to 15 at the meeting the motion was defeated. He submitted a representation dated 21.6.2014 to the State Election Commissioner, the 2nd respondent herein, with a prayer to disqualify the respondent nos. 7 to 15 under Section 18 of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act'). His grievance is that no steps have been taken by the 2nd respondent, on the representation.

This writ petition is filed in public interest, with a prayer to direct the 2nd respondent to disqualify the respondent nos. 7 to 15.

Heard Mr. Amit Srivastava, learned counsel for the petitioner and Mr. Shyam Kishore Sharma, learned Government Advocate for the respondents.

Section 18 of the Act stipulates the circumstances, under which a member of the Municipality or Nagar Panchayat would incur disqualification. The Act also prescribes the procedure to be followed in this regard. The petitioner has submitted a representation as mentioned above. Though the petitioner asserts that no steps were taken thereon, learned counsel for the 2nd respondent has placed before this Court, the concerned file. On a perusal of the same, it is evident that the representation was rejected by taking the view that the matter concerns no-confidence motion, and that the Election Commissioner has no role to play in that behalf. However, no communication in relation to that, was issued to the petitioner.

Learned counsel for the petitioner has placed reliance

upon a judgment of this Court which is to the effect that the Election Commissioner is under obligation to issue notice to the concerned person before it passes an order in relation to disqualification. The requirement to issue notice is mostly when a person is disqualified rather than declining to disqualify a person. All the same, the 2nd respondent is under obligation to communicate its order passed on the representation of the petitioner within one week from today. If the petitioner feels any grievance about it, it shall be open to him to pursue further remedy, in accordance with law.

We, therefore, dispose of the writ petition directing the 2nd respondent to communicate the order passed by it, on the representation of the petitioner within two weeks from today. If the petitioner still feels any grievance about it, it shall be open to him to work out his remedy in accordance with law.

Interlocutory Application, if any, shall stand disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

Rajendra Kumar Mishra, J. I agree.

(Rajendra Kumar Mishra, J)

mrl

U			
---	--	--	--