

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4268 of 2013

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Santosh Kumar @ Phantush Ram son of Late Binod Kumar @ Binod Ram
resident of Mohalla Dharmarajchak, Ward No. 7, Lakhisarai, P.S.
Lakhisarai, District - Lakhisarai

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Bihar State Election Commission, Patna
2. The Commissioner, Bihar State Election Commission, Sone Bhawan, Patna
3. The District Magistrate cum District Election Officer, Lakhisarai
4. The Sub Divisional Officer-cum-Returning Officer (Municipal Council), Lakhisarai
5. The Additional District Election Officer, Lakhisarai
6. The Executive Magistrate, Lakhisarai
7. The Executive Officer cum Registrar, Birth and Death Registration Officer, Nagar Parishad, Lakhisarai
8. The Block Development Officer, Lakhisarai
9. Manish Kumar Singh son of Vijay Prasad, resident of Mohalla Dharamrajchak, Ward No. 06, Lakhisarai, P.S. and District Lakhisarai

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Siya Ram Shahi, Advocate
Mr. Om Prakash Maharaj, Advocate
For the State-Respondent: Ms. Namrata Mishra, GA-13
For the State E.C. : Mr. Amit Shrivastava, Advocate
Mr. Sanjeev Nikesh, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

5 22-09-2015 Heard Mr. Siya Ram Shahi, learned counsel for the

petitioner, Ms. Namrata Mishra, G.A.-10 for the State, Mr.

Sanjeev Nikesh learned counsel for the State Election Commission

and Mr. Avinash Kumar, learned counsel for the Nagar Parishad.

The petitioner is aggrieved by the order dated 06.2.2013
passed by the State Election Commission in Case No. 36 of 2012



whereby the State Election Commission in exercise of powers vested under Section 18(2) of the Bihar Municipal Act, 2007 (hereinafter referred to as the 'Act') has set aside the election of the petitioner as Ward Councillor, Ward No. 7, Nagar Parishad, Lakhisarai *inter alia* on grounds that he had incurred a disqualification under Section 18(1)(m) of the 'Act'. By the same order the Election Commission has also directed the Collector-cum-District Election Officer to institute a case against the petitioner. Though served but the complainant has not registered appearance.

The substance of allegation against the petitioner is that the petitioner is the father of three children of whom one was born after the cut off date fixed under the 'Act' i.e. 04.4.2008. The complainant relies upon a certification present at Annexure-3. The complaint was registered as Case No. 36 of 2012 and when the District Magistrate-cum-District Election Officer, Lakhisarai was directed to enquire into the matter and submit his report which is present at Annexure-9 to the writ petition supporting the allegation and the Election Commission proceeding therefrom has held the petitioner disqualified to contest the election under Section 18(1)m of the 'Act' and thus has set aside the election. The petitioner being aggrieved is before this Court.



Mr. Shahi, learned counsel for the petitioner has questioned the order on the limited ground that it is based on no evidence. He submits that although his two children were born before 04.4.2008 but to gain advantage in age that a certificate was registered in respect of his son on a date subsequent thereto on 28.6.2009, a copy of which is placed at Annexure-3/1 and although the petitioner while filling up the nomination form has committed an irregularity in mentioning that no children was born after 04.4.2008 but the fact remains that the petitioner is father of only two children and both were born prior to the cut off date. He thus submits that in view of the date of birth mentioned in the certificate, the petitioner should have given such information against the column whether any child was born after 04.4.2008, but the same at best can be held an irregularity since it does not disqualify the petitioner from contest.

Although the argument of Mr. Shahi has been contested by Ms. Mishra relying upon the report of the District Magistrate which certify that three children were born to the petitioner but the fact remains that except for the reports which is based on oral statement of the local villagers, there is nothing on record to show that a third child was born to the petitioner after the cut off date. In fact the report of the Block Development Officer present at



Annexure-4 very clearly mentions that only two children were born to the petitioner of whom the son was born after the cut off date and which fact is not even disputed by the petitioner. In fact the petitioner has fairly admitted while responding to the notice of the Sub Divisional Officer vide Annexure-6 in which he admits to the irregularities occurring in the nomination form. The report of the Additional Election Officer-cum-Executive Magistrate is present at Annexure-7 and who admits that there could be no physical verification of any third child nor there was any evidence to support the same. Similar is the report of the Sub Divisional Officer present at Annexure-8.

It is rather surprising that despite the report(s) of the Block Development Officer present at Annexure-4, the Executive Magistrate at Annexure-7 and the Sub Divisional Officer at Annexure-8 all of whom have reported complete absence of evidence to support the complaint regarding a third child being born to the petitioner after the cut off date, yet most irresponsibly the District Magistrate, Lakhisarai has proceeded to confirm the complaint. In my opinion the District Magistrate should have been more responsible in his report and in absence of any evidence to support the charge, he should not have opined as such because his opinion has unseated an elected representative even in absence



of evidence. There has admittedly been an irregularity by the petitioner while filling up the nomination form but in my opinion in view of the admission made by the petitioner and considering that the irregularity is not fatal to unseat him, I would go with the explanation given by the petitioner and in the uncontested circumstances where there is no evidence to support the third child to the petitioner, in my opinion the Election Commission has completely misdirected itself to unseat the petitioner.

For the reasons aforementioned, the order dated 06.2.2013 passed by the State Election Commission in Case No. 36 of 2012 impugned at Annexure-10 cannot be upheld and is accordingly set aside. The writ petition is allowed. The interim order passed on 01.4.2013 is confirmed and in case the petitioner has been unseated, he stands restored to the post of Ward Councillor, Ward No. 7, Nagar Parishad, Lakhisarai.

(Jyoti Saran, J)

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