

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.15822 of 2015**

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Suman Prasad, son of Late Hira Prasad, resident of Village- Mohanpur, Ward No.20, P.O.- Bagheji, P.S.- Barauli, District- Gopalganj.

.... .... Petitioner/s

Versus

1. The State of Bihar.
2. The Chief Secretary, Government of Bihar, Patna.
3. District Magistrate -cum- District Election Officer (Municipality), Gopalganj, District- Gopalganj.
4. The State Election Commission, Patna, Bihar through its Secretary, Birchand Patel Path, Sone Bhawan, Patna.
5. The Secretary, State Election Commission, Patna, Bihar.
6. The State Election Commissioner, State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.
7. The Executive Officer, Nagar Panchayat Barauli, P.O. & P.S. Barauli, District Gopalganj.
8. The Senior Deputy Collector -cum- Senior Incharge Officer, Barauli Block, District- Gopalganj.
9. Sri Hari Kishore Prasad, son of Late Madhusudan Prasad, resident of Village- Mohanpur, Ward No.21, P.O. Bagheji, P.S. Barauli, District- Gopalganj.

.... .... Respondent/s

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**Appearance :**

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| For the Petitioner/s           | : | Mr. Y.V. Giri, Sr. Advocate with<br>Mr. Ashish Giri |
| For the Respondent/s           | : | Mr. Satyendra Kumar Jha, AC to GP-3                 |
| For State Election Commission: |   | Mr. Amit Shrivastava<br>Mr. Girish Pandey           |
| For the Private Respondent     | : | Dr. Uma Shankar Prasad, Sr. Advocate                |

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**ORAL JUDGMENT**

**Date: 14-12-2015**

Heard Mr. Y.V. Giri, learned counsel senior counsel appearing on behalf of the petitioner, Mr. Girish Pandey, learned counsel appearing for the State Election Commission, learned counsel appearing for the State and Dr. Uma Shankar Prasad, learned senior counsel appearing for the complainant-respondent herein.

The petitioner is aggrieved by the order dated



28.8.2015 passed by the State Election Commission in purported exercise of powers vested under section 18(2) of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act') in Case No.8 of 2015, whereby the petitioner has been held disqualified to continue as the Councillor, Nagar Panchayat, Barauli, Ward No.20 in the district of Gopalganj in terms of the stipulation underlying section 18(1) (l) of 'the Act'.

Facts of the case briefly stated is that the wife of the petitioner was elected as Councillor, Nagar Panchayat, Barauli for the period 2002-07. In the following election held in June, 2007, the petitioner contested and was elected as Councillor and continued as such until 2012. The petitioner also returned in the successive election held in June, 2012 and is presently continuing as such. The private respondent not being satisfied by the return of the petitioner in the election held in 2012 chose to question his eligibility to continue in the light of the stipulations underlying section 18(1)(l) of 'the Act'. A petition of complaint was filed before the State Election Commission under section 18(2) of 'the Act' accordingly. Since the said application was not being disposed of by the State Election Commission that the complainant moved this Court in CWJC No.18060 of 2014. This Court in consideration of the issues raised and considering the submission of counsel for the State Election Commission that the delay was attributable to the District



Magistrate –cum- Election Officer (Municipality), Gopalganj in submitting his report, disposed of the writ petition with direction to the District Magistrate, Gopalganj to submit the enquiry report in response to the query made by the State Election Commission and while issuing such order the State Election Commission was also directed to dispose of the same expeditiously.

The non-compliance of the direction led to filing of a contempt application arising from MJC No.388 of 2015 and it is at this stage that the District Magistrate informed this Court that the enquiry report has since been forwarded to the State Election Commission. The Election Commission was accordingly directed to dispose of the case and it is following such direction that the impugned order has been passed and the petitioner has been unseated by the Commission for having incurred the disqualification under section 18(1)(l) of ‘the Act’. The petitioner being aggrieved by the order passed by the Commission under section 18(2) of ‘the Act’ is before this Court.

Mr. Giri, learned senior counsel appearing on behalf of the petitioner has raised the following issues while questioning the impugned order:

- (a) The allegations are stale and relate to the previous tenure and are not entirely attributable to the petitioner;
- (b) The allegations pertaining to the previous tenure can

not be a subject-matter of complaint under section 18(1) (l) in the current tenure of the petitioner beginning June, 2012, since none of the allegations made, relate to the present tenure of the petitioner either as a Councillor or as the Chief Councillor;

- (c) The petitioner being elected as Ward Councillor in June, 2012 has subsequently been elected as the Chief Councillor on 11.9.2014 and in view of the special provisions underlying section 25(5) of 'the Act' in absence of any complaint seeking removal of the petitioner from the post of Chief Councillor, the complaint filed for disqualification of the petitioner as a Councillor, has been rendered academic;
- (d) Even on merits the allegations are not sustainable.

Adverting to the allegations on merit it is the argument of Mr. Giri that the first complaint related to appointment of the own sister of the petitioner as the *Anganwadi Sevika*. It is argued by Mr. Giri that the selection of *Anganwadi Sevika* was made during the previous tenure of the petitioner as a Councillor i.e. 2007-12 and the selection letter is dated 13.9.2011. He further submits that at the relevant time the petitioner as Ward Councillor, was the Chairman of the Selection Committee and it is in consideration of the objections received that the selection was never

finalized and no appointment took place.

He submits that the second allegation is relatable to the preparation of BPL list which again relates to the previous tenure of the petitioner as a Councillor and which allegation does not find support from the enquiry report submitted by the District Magistrate, a copy of which is placed at Annexure-4 to the writ petition.

It is next argued that the third allegation is related to the installation of solar lights and the only allegation against the petitioner is that the solar lights were installed near the house of his own relatives. He submits that there is no allegation regarding non-installation of solar lights which again dates back to the year 2008 i.e. the previous tenure of the petitioner.

He submits that the fourth allegation is with regard to the irregularities in construction including the construction of a public toilet which dates back 15 years during the tenure of the wife of the petitioner.

Learned counsel having explained the allegations submits that neither on facts nor on law, the proceedings are maintainable and should have been disposed of accordingly but the Election Commissioner has misdirected himself to dispose of the matter in a mechanical manner.

Mr. Giri relying upon a judgment of the Supreme



Court reported in **(2001)6 SCC 260 (Tarlochan Dev Sharma vs. State of Punjab)** has with particular reference to paragraphs 7 to 9 of the judgment submitted that despite the position having been settled by the Supreme Court that the election of an elected representatives is not to be interfered with, in a casual manner, yet the situation has not changed. Learned counsel with reference to the Supreme Court judgment reported in **AIR 1961 SC 1170 (J.K.C.S. & W.Mills vs. State of U.P.)** paragraphs 9 and 10 has submitted that since after the election of the petitioner as Chief Councillor on 11.9.2014, the application had been rendered infructuous for any attempt to remove the petitioner thereafter could be only by taking recourse to the provisions of section 25(5) of 'the Act'.

The argument of Mr. Giri has been contested by Dr. Prasad to submit that the allegations against the petitioner as a Councillor were very serious and bordering on mis-conduct, the petitioner was rightly removed from the said post. With reference to the individual allegations it was argued that the mis-conduct is writ large in the actions of the petitioner. On the argument of Mr. Giri that consequent upon the election of the petitioner as the Chief Councillor the only provisions under which the petitioner could be removed is section 25(5) of 'the Act' Dr. Prasad referred to the provisions of section 25(1) of 'the Act' to submit that the answer is found therein and no sooner the petitioner is found to be

disqualified to continue as a Councillor that he shall cease to function as Chief Councillor. To support his submissions learned counsel has further referred to Article 75 (1B) of the Constitution of India.

Responding to the argument of Dr. Prasad it is argued by Mr. Giri that whereas section 25(1) of 'the Act' does not alter the situation, the provisions as underlying Article 75(1B) is a situation where the Member of Parliament is removed under the Tenth Schedule of the Constitution.

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

Although extensive arguments have been advanced by both the parties but the writ petition is fit to be allowed on limited ground and i.e. that section 18(1)(l) of 'the Act' is only relatable to any act of omission or commission by a Ward Councillor during his current tenure. In fact the legal position in respect of a Ward Councillor or a Chief Councillor/Deputy Chief Councillor is no different and in each of the cases it is only if the Councillor or the Dy. Chief Councillor/Chief Councillor incurs disqualification under section 18(1) (l) or section 25(5) of 'the Act', as the case may be, during the currency of a tenure that they can be removed for the remaining period of the tenure with no further future disqualification.



The complaint is enclosed at Annexure-1 to the writ petition and the only period referred to therein is 2007 when the complainant charges the petitioner of having abused his position as a Ward Councillor to appoint his sister. Nowhere in the entire complaint petition or the allegations mentioned therein is the date referred. Thus going by the year mentioned in the complaint and as admitted by Mr. Giri, the appointment issue related to the previous tenure. In fact in so far as the other allegations are concerned, no specific details of their happenings, is given and as per Mr. Giri, all related to the previous tenure or even prior thereto.

I shall not be going into the merits of each of the allegation for in my opinion in view of the clear stipulation underlying section 18(1) (l) of 'the Act', these allegations relatable to previous tenure could not be a subject matter of disqualification in the present tenure. The legislature has consciously set out the conditions for disqualification of a Ward Councillor and has also determined the period. The very language of section 18(1) (l) and section 25(5) confirms that it is the acts of misconduct and abuse of position done in the current tenure, which can be a subject matter of disqualification of the elected representative concerned, for the remaining period of tenure. The grounds for disqualification in the present tenure cannot be searched back to any earlier tenure.

In the eloquent circumstances where the legislative



intent underlying section 18(1) (l) or section 25(5) of 'the Act' merely disqualifies the Ward Councillor/Deputy Chief Councillor/Chief Councillor for any act of abuse, misconduct or the circumstances explained therein for the remainder period of the term without any future disqualification, the very fact that the allegations date back to the previous tenure of the petitioner or even before, the same could not have been the subject-matter of complaint during his present tenure beginning June, 2012. Unfortunately the State Election Commission has proceeded mechanically to dispose of the matter to comply with the direction of this Court without appreciating or applying his mind whether the complaint in the light of the statutory provisions discussed above, is at all maintainable.

For the reasons discussed above the impugned order dated 28.8.2015 passed by the State Election Commission in Case No.8 of 2015 cannot be upheld and is accordingly set aside. The consequences shall follow.

The writ petition is allowed.

**(Jyoti Saran, J)**

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