

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.463 of 2016

IN

Civil Writ Jurisdiction Case No. 15822 of 2015

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Sri Hari Kishore Prasad, son of Late Madhusudan Prasad, resident of Village-
Mohanpur, Ward No. 21, P.O.- Bagheji, P.S.- Barauli, District- Gopalganj.

.... Appellant

Versus

1. The State of Bihar.
 2. The Chief Secretary, Government of Bihar, Patna.
 3. The District Magistrate-cum-District Election Officer (Municipality),
Gopalganj, District- Gopalganj.
 4. The State Election Commission, Bihar, Patna through its Secretary, Birchand
Patel Path, Sone Bhawan, Patna.
 5. The Secretary, State Election Commission, Bihar, Patna.
 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 In- Charge Officer, Barauli Block,
District- Gopalganj.
 9. Suman Prasad, son of Late Hira Prasad, resident of Village- Mohanpur, Ward
No. 20, P.O- Bagheji, P.S.- Barauli, District- Gopalganj Respondents
- =====

Appearance :

For the Appellant/s : Mr. Rajesh Kumar, Advocate

For the Respondent/s : Mr. SANTOSH KUMAR JHA- GP3

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 04 -07-2016

This Letters Patent Appeal has been filed against the
order, dated 14.12.2015, passed in C.W.J.C. No. 15822 of
2015, whereby learned single Judge has allowed the writ
application of the petitioner and quashed the order, dated
28.08.2015, passed by the respondent State Election
Commission (hereinafter referred to as the 'Commission') in

Case No. 8 of 2015.

2. The Commission, vide order, dated 28.08.2005, in exercise of powers under Section 18(2) of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act'), held the writ petitioner, Suman Prasad (respondent No. 9 herein), to be disqualified to continue as Councillor of Nagar Panchayat, Barauli, Ward No.20, in the district of Gopalganj, in terms of disqualification clause contained in Section 18(1) of the Act.

3. Before we consider the rival submissions of the parties, it would be necessary to notice the facts of the case in brief:-

Initially, the wife of the writ petitioner was elected as a Councillor, Nagar Panchayat, Barauli, for the period 2002-2007. Thereafter, the petitioner contested and was elected as a Councillor and continued, for the full term, till 2012. He was re-elected and is continuing as such. The appellant filed a complaint before the Commission, under Section 18(2) of the Act, against the petitioner. The Commission vide its order, dated 28.08.2005, disqualified and unseated the petitioner under Section 18(2) of the Act. Being aggrieved by the order passed by the Commission under Section 18(2) of the Act, the writ petitioner filed a writ petition, bearing C.W.J.C.No. 15822

of 2015, wherein the appellant was made party respondent. After hearing the parties, this Court vide order, dated 14.12.2015, held that none of the alleged irregularities levelled against the petitioner is relatable to his present term as the complaints were of previous term.

2. The complainant-appellant was not able to refute the submissions of the writ petitioner that illegalities incurred were of his previous tenure, as Ward Councillor from 2007 to 2012, and none of them related to the present term starting from 2012. The learned single Judge accepted the submission of the writ petitioner and quashed the impugned order of the Commission, passed under Section 18(2) of the Act, unseating him on the ground of having incurred disqualification under Section 18(1) of the Act.

3. Being aggrieved, the complainant has filed the instant Letters Patent Appeal. The complainant, once again, has not been able to establish that any of the allegations on which the Commission disqualified the petitioner is relatable to petitioner's present tenure.

4. On the other hand, learned Counsel for the writ petitioner has justified the impugned order. He submits that apart from the fact that none of the allegations are relatable to

his present tenure, the writ petitioner could have been removed only under Section 25(5) of the Act as the writ petitioner was elected soon thereafter as Chief Councillor.

5. We have heard learned counsel for the parties.

6. From a conjoint reading of Section 18(1)(1) and 25(5) of the Act, it becomes transparent that the Commission can disqualify a person for election or after election for holding the post as a Member of the Municipality if he incurs any of the disqualification mentioned in Section 18(1) of the Act.

7. The appellant has not been able to establish that the writ petitioner has incurred any of the disabilities so as to disqualify him from contesting the election. Equally, he has not been able to demonstrate that the petitioner incurred any of the disqualifications, after being elected as Ward Councillor in his present tenure inasmuch as he could not be disqualified for illegalities committed by him during his previous tenure as a Member of Municipality. At best, the complainant-appellant has alleged some act of misconduct, omission and commission, of previous tenure of the writ petitioner.

8. In our view, the learned single Judge was correct in holding that the act of misconduct, omission and commission committed during the previous tenure, cannot form basis for

disqualification under Section 18(1) of the Act in his next tenure.

Situated thus, we do not find any illegality in the order under appeal and this appeal is accordingly dismissed.

(Samarendra Pratap Singh, J)

I.A.Ansari, ACJ I agree.

(I.A.Ansari, ACJ)

Shashi.

AFR/NAFR	
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