

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18018 of 2015

=====

Sima Devi W/o Sri Bijay Kumar Singh resident of Village - Mairwa Tola Sakra,
Ward No. 2, P.S. - Mairwa, District - Siwan.

.... Petitioner/s

Versus

1. The State Election Commission Bihar through its Secretary Sone Bhawan, 3rd Floor, Veerchand Patel Road, Patna - 8000001.
2. The Commissioner, State Election Commission, Sone Bhawan, 3rd Floor, Veerchand Patel Road, Patna - 8000001.
3. The Secretary, State Election Commission, Sone Bhawan, 3rd Floor, Veerchand Patel Road, Patna - 8000001.
4. The District Magistrate-cum-District Returning Officer (Municipality), Siwan.
5. The District Panchayat Raj Officer, Siwan.
6. The Block Panchayat Raj Officer, Mairwa, Siwan
7. Nagar Pancayat, Mairwa, Siwan through the Executive Offier, Mairwa, Siwan.
8. The Nagar Manager, Nagar Panchayat, Mairwa, Siwan.
9. Ajay Kumar Singh S/o Sri Hansh Nath Singh Resident of village - Mairwa Tola Sakra, P.S. - Mairwa, District - Siwan.

.... Respondent/s

=====

Appearance:

For the Petitioner/s : Dr. Umashankar Prasad, Sr. Advocate
Mr. Akhileshwar Kumar, Advocate
Mr. Sushil Kumar Jha, Advocate

For the State E.C. : Mr. Amit Shrivatava, Advocate
Mr. Sanjeev Nikesh, Advocate

For the State : Mr. V.K. SINGH, GA-3
Mr. Kunal Tiwary, A.C. to G.A.-3

For respondent no. 9 : Mr. Prabhakar Singh, Advocate
Mr. Rakesh Mohan Singh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 08-03-2016

Heard Dr. Umashankar Prasad, learned senior counsel for
the petitioner, Mr. Kunal Tiwary, Assisting Counsel to G.A.-3 for the
State, Mr. Sanjeev Nikesh for the State Election Commission and Mr.
Prabhakar Singh for the complainant-respondent no. 9.

The petitioner is aggrieved by the order dated 19.10.2015
passed by the respondent State Election Commissioner in Case No. 14

of 2015 whereby the petitioner has been held disqualified to hold the post of Ward Councillor *inter alia* on grounds that she gave birth to a third child on 22.7.2012 i.e. after the cut off date fixed which is 04.4.2008 and thus has incurred a disqualification under Section 18(1)(m) of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act').

Facts of the case briefly stated is that the petitioner and the wife of the respondent no. 9 contested the election to the post of Ward Councillor, Ward No. 2, Mairwa Nagar Panchayat in the district of Siwan in which the petitioner was returned on 19.2.2012. It is almost three years thereafter that a complaint was made by the respondent no. 9 praying for disqualification of the writ petitioner *inter alia* on grounds of birth of a third child on 22.7.2012. The respondent no. 9 while enclosing an extract of the date of birth register maintained in the office of the Integrated Child Development Scheme complained that a baby girl was born to the petitioner on 22.7.2012. It was also alleged that the husband of the petitioner carries a twin name i.e. Vijay Kumar Singh @ Vinod Singh. The complaint was registered giving rise to Complaint Case No. 14 of 2015 and on an enquiry so held by the State Election Commission that a report was submitted by the District Panchayat Raj Officer on 23.6.2015 which was forwarded by the District Magistrate-cum-District Election Officer (Municipality), Siwan to the State Election Commission vide letter dated 11.7.2015. The report contains an admission by the petitioner



and her father in law regarding the birth of third child and that the husband of the petitioner carried two names i.e. Vijay Kumar Singh @ Vinod Singh. It is proceeding herefrom that the State Election Commission has passed the impugned order upsetting the election of the petitioner *inter alia* on grounds of having incurred the disqualification provided under Section 18(1)(m) of 'the Act'. The petitioner being aggrieved is before this Court.

While it is the argument of Dr. Prasad, learned senior counsel appearing for the petitioner that the allegation is without any foundation and is a mischief created by the respondent no. 9 with the aid of his sister who happens to be the Aanganbari Sevika and has manipulated the records maintained in the office but the argument is contested by Mr. Prabhakar Singh appearing for the complainant as well as Mr. Sanjeev Nikesh appearing for the State Election Commission relying upon the report of the District Panchayat Raj Officer, a copy of which is placed at Annexure-4 as well as the admission of the petitioner made in paragraph-13 of the statement made in the Written Statement filed before the Commission. Mr. Prabhakar has also gone ahead to rely upon an FIR instituted against one Vinod Singh son of Kanchan Singh, a copy of which is enclosed with the supplementary counter affidavit filed by the respondent no. 9 to submit that the petitioner has not controverted that Vinod Kumar Singh son of Kanchan Singh is anybody else than her husband.

I have heard learned counsel for the parties and I have



perused the records. Whereas Section 18(1) of 'the Act' provides of the circumstances in which a Councillor either before or after the election can be held disqualified and which disqualification can be raised before the State Election Commission, the other forum available for the aggrieved is found under Section 476 of 'the Act' which enables any person to question the election to any office of the Municipality by filing an election petition before the Munsif in case it arises from election of a Nagar Panchayat and before the Sub-Judge in case it arises from an election to the office of the Municipal Council as well as Municipal Corporation. Such election petition is regulated under Rule 103 of the Bihar Municipal Election Rules, 2007 (hereinafter referred to as 'the Rules') framed under 'the Act' and prescribes a period of 30 days from the date of declaration of result.

As I have already indicated at the outset in the present case the issue of a third child born to the writ petitioner has been raised by the complainant almost after three years of the declaration of result and the reasons is not spelt out. No complaint is either made by the wife of the private respondent who was the defeated candidate. The records have been produced by Mr. Nikesh and paragraph-1 of the complaint so filed by the respondent no.9 charges the petitioner of being pregnant for the third time at the time of filing of the nomination and of giving a birth to a child on 22.7.2012. The allegation is sought to be established by taking recourse to the extract of the Register of birth and death maintained at the Anganwari Kendra



which shows that a baby child was born to a couple by the name of Seema Devi and Vinod Singh. It is sought to be proved by the complainant that the couple named in the register is the petitioner and her husband who also carries a name of Vinod Singh besides the name of Vijay Kumar Singh. The second line of attack for the complainant is on the admission recorded in the report of the District Panchayat Raj Officer placed at Annexure-4 as well as in paragraph-13 of the written statement filed by the writ petitioner stating that she was in advanced stage of pregnancy at the time of nomination. The petitioner has challenged the report maintained in the office of the Integrated Child Development Scheme *inter alia* on ground of collusiveness between the respondent no. 9 and his sister who is the Anganbari Sevika and insofar as the report of the District Panchayat Raj Officer impugned at Annexure-4 is concerned, the admission is denied and it is specifically stated that the report is incorrect.

Dr. Prasad has tried to explain the statement made in paragraph-13 of the Written Statement to submit that it is a typographical error and the admission so reflecting was not intended which is manifest from the other paragraphs of the written statement in which the petitioner has categorically denied any third child since after the second child was born to her on 10.1.2006. He has submitted that the non mention of the denial word in the sentence is a bona fide error.

Interestingly this complicated nature of contest has been



decided on mere affidavits and reports. It is rather unfortunate that an issue of child birth raised by the complainant has been concluded upon by the State Election Commission by placing reliance on affidavits. I would not be faltering in holding that except for words of mouth and statement of the contesting parties, there is nothing to conclusively hold either that the husband of the petitioner has an alias by the name of Vinod Singh and/or that the couple named in the Register of Birth and Death maintained in the office of Anganbari Kendra is the writ petitioner and her husband. A birth of a child is a matter of record and has to be proved by conclusive piece of evidence and not by oral assertion. The petitioner has questioned the report on its veracity while recording her statement in paragraph-11 of the writ petition. Insofar as the admission made in paragraph-13 of the written statement is concerned, the explanation given by Dr. Prasad that due to bonafide mistake the denial is not reflecting, appears to be acceptable in view of the specific allegation made by the private respondent in paragraph-1 of the complaint charging the petitioner of being in advance state of pregnancy read alongside the denials present in the other paragraphs of the written statement. In fact the private respondent while trying to encash a bona fide typographical error in Paragraph-13 of the written statement has conveniently ignored to take note that in paragraph-11, 12, 16 and 26, the writ petitioner has specifically stated that she has only two children and the allegation of a third is concocted.

An issue of such disputed nature could not have been adjudicated on mere affidavits and reports. A birth of a child needs to be proved by material evidence of satisfactory character and which is ominously missing in the present case. There is absolutely no explanation as to why the private respondent sat tight over the matter for three years when in paragraph-1 of the complaint petition he has specifically mentioned that the petitioner was pregnant for the third time at the time of filing of nomination in 2012. It took him three years to realize that the writ petitioner was disqualified for continuing on the post. The order passed by the Commission impugned in this writ petition is based on documents which are opinion based and are capable of rebuttal. In my opinion these documents lack authenticity, are open to contest and are not conclusive on the issue. In fact there is absolute lack of evidence on the whereabouts of the third child as well as her identification details. The order confirmingly is perverse and is not supported by evidence and the election of the petitioner in the circumstances discussed could have been interfered with.

In result, the order dated 19.10.2015 passed by the respondent State Election Commissioner in Case No. 14 of 2015 cannot be upheld and is accordingly set aside.

The writ petition is allowed.

The record produced is being returned back to Mr. Sanjeev Nikesh, learned counsel appearing for the State Election Commission.

S.Sb/-

(Jyoti Saran, J)

U			
---	--	--	--