

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22784 of 2013

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Smt. Farzana Khatoon W/o Md. Nazbul Resident of Ward No. 18, Dakshin Maheshwari, (Mandal Tola), P.S. and P.O.- Jogbani, District- Araria at Present Ward Councillor of Ward No. 18, Nagar Panchayat- Jogbani (Araria)

.... Petitioner/s

Versus

1. The State Election Commission, Bihar, through its Commissioner, Sone Bhawan, Birchand Patel Path, Patna - 1
2. The Secretary, State Election Commission, Bihar, Sone Bhawan, Birchand Patel Path, Patna - 1
3. The District Magistrate-Cum-District Election Officer (Municipality), Araria
4. The Sub-Divisional Officer, Forbesganj, Araria
5. The Executive Officer, Nagar Panchayat, Jogbani (Araria)
6. Dilip Kumar Sah S/O Late Parmeshwar Sah Resident of Ward No. 17, Dakshin Maheshwari, P.S. and P.O. - Jogbani, District - Araria
7. Yunus Ansari S/O Late Riyasat Mian Resident of Ward No. 18, Dakshin Maheshwari, (Mandal Tola), P.S. And P.O. - Jogbani, District - Araria. At Present Ward Councillor of Ward No. 18, Nagar Panchayat - Jogbani (Araria)
8. Shiv Narayan Sah S/o Late Premlal Sah Resident of Ward No. 18, Dakshin Maheshwari, (Mandal Tola), P.S. and P.O. - Jogbani, District - Araria. At Present Ward Councillor of Ward No. 18, Nagar Panchayat - Jogbani (Araria)

.... Respondent/s

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Appearance:

For the Petitioner/s	:	Mr. S.B.K. Manglam, Advocate Mr. Shashi Nath Jha, Advocate
For the Respondent/s	:	Mr. S.S. Shabbar Hussain
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 04-05-2016 Heard Mr. S.B.K. Manglam for the petitioner, counsel for the State and State Election Commission.

The petitioner is aggrieved by the order of disqualification passed by the State Election Commission under



Section 18(1) (m) read with Section 18(2) of the Bihar Municipal Act, 2007 (hereinafter referred to as the 'Act') which *inter alia* provides that the candidate should not have more than two children at expiry of one year from the enforcement of the 'Act' on 04.5.2007.

Mr. Manglam, learned counsel for the petitioner while canvassing the case of the petitioner has fairly admitted that although an interlocutory application was filed for stay of fresh election to the post of Councillor which remains pending however since no interim order was passed thereon for staying the election, hence the election has taken place and a new person now represents the concerned Ward No. 18. He further submits that despite information being given to the petitioner for taking the lawful recourse to question the fresh election but she has not responded and resultantly the election is not under challenge before this Court.

Having heard learned counsel for the parties and considering the stage at which the present dispute rests, in my opinion, an adjudication on the issue in absence of a challenge to the newly elected Ward Councillor would be academic. The petitioner having not chosen to question the election of the Ward Councillor who has been elected in her place the contest so

initiated by the petitioner cannot have a logical conclusion.

In the extraordinary circumstances so discussed and in absence of any challenge to the fresh election, in my opinion, the grievance raised has been rendered academic and this writ petition is disposed of accordingly.

(Jyoti Saran, J)

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