

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7203 of 2017

Along with

Interlocutory Application No. 3987 of 2017

=====

Smt. Ruma Raj, wife of Subodh Verma, resident of village Argara Road (Lallu Pokhar), Police Station Kasim Bazar, District Munger.

.... Petitioner/s

Versus

1. The State Election Commission Bihar, through Chief Election Commissioner, Bihar, Patna, Sone Bhawan, Birchand Patel Road, Patna.
2. The State of Bihar through the District Magistrate-cum-District Election Officer (Nagarpalika), Munger.
3. The Joint Secretary, State Election Commission, Bihar, Patna.
4. The District Election Officer (Nagarpalika)-cum-District Magistrate, Munger.
5. The Returning Officer, Nagar Nigam Munger-cum-Deputy Development Commissioner, Munger.
6. Smt. Kumkum Devi wife of Ravi Prasad, resident of Mohalla - Lallu Pokhar, Argara Road, P.S. - Kasim Bazar, District - Munger.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Shashi Anugrah Narain, Sr. Advocate Mr. Shivendra Kumar Sinha, Advocate
For the SEC	:	Mr. Amit Shrivastava, Advocate Mr. Ritesh Kumar, Advocate
For the respondent no. 6	:	Mr. P. K. Shahi, Sr. Advocate Mr. Sumeet Kumar Singh, Advocate
For the State	:	Mr. Md. Obaidullah, AC to SC-10

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 19-05-2017

Heard Mr. Shashi Anugrah Narain, learned senior counsel along with Mr. Shivendra Kumar Sinha, learned counsel for the petitioner; Mr. Md. Obaidullah, learned AC to SC-10 for the State; Mr. Amit Shrivastava along with Mr. Sanjeev Nikesh, learned counsel for the State Election Commission and Mr. P. K. Shahi, learned senior counsel along with Mr. Sumeet Kr. Singh, learned



counsel for the respondent no. 6.

2. The writ petition was originally filed seeking the following reliefs:

“1. That this writ application is being filed by the petitioner for quashing the order dated 8.5.17 passed by the State Election Commissioner, Bihar in Case No. 24 of 2017 by which State Election Commissioner, Bihar has rejected the nomination paper of this petitioner for Election of Councillor post Ward No. 32 and further issue appropriate writ/writs, order/orders, direction/directions to the Respondents as your Lordships may deem fit and proper”

3. However, due to subsequent development by which the respondent no. 6 having been held to be the sole candidate, whose nomination was held valid, was also declared elected and certificate issued by the respondent no. 5 on 16.05.2017. Thus, the petitioner has assailed the said by filing Interlocutory Application No. 3987 of 2017.

4. In view of the fact that the writ petition has been filed on 10.05.2017 against the rejection of the nomination paper of the petitioner by the State Election Commission by order dated 08.05.2017 and the consequential declaration of the respondent no. 6 to be the winner and issuance of certificate to her by the respondent no. 5, is a related development subsequent to filing of the writ petition, Interlocutory Application No. 3987 of 2017 stands allowed.



The challenge to the declaration of winner and issuance of certificate in favour of respondent no. 6 on 16.05.2017 shall also form part of the main writ application.

5. The petitioner along with respondent no. 6 and another candidate had filed their nomination papers for election to the post of Ward Councillor for Ward No. 32 of Munger Municipality. Upon scrutiny held on 28.04.2017, the nomination paper of the petitioner and respondent no. 6 were found valid and accordingly duly accepted by the respondent no. 5. The same was followed by allotment of symbol to the petitioner on 03.05.2017. However, it appears that a complaint was filed by the respondent no. 6 before the State Election Commission on 28.04.2017, on which the State Election Commissioner on 29.04.2017 had directed for issuance of notice to the parties to appear on 08.05.2017 and the respondent no. 4 was directed to send a representative along with an enquiry report and relevant papers. The same having been done, the State Election Commissioner by order dated 08.05.2017 in Case No. 24 of 2017 rejected the nomination papers of the petitioner. The same was assailed in the writ petition. After filing of the writ petition and in compliance of the order dated 08.05.2017, the respondent no. 5 has also declared the respondent no. 6 duly elected and issued certificate on 16.05.2017. The same are also impugned in the present writ



application.

6. Learned counsel for the petitioner submitted that in terms of the provisions of Rule 47 of the Bihar Municipal Election Rules, 2007 (hereinafter referred to as the 'Rules'), the decision of the Returning Officer becomes final. He submitted that once the nomination papers have been accepted followed by issuance of symbol to the petitioner, the decision having become final is amenable to challenge only in accordance with law, which implies that it is to be done in a duly constituted election petition before the prescribed authority. Learned counsel submitted that in terms of the Constitutional mandate of Article 243ZG(b), no election can be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State. Learned counsel submitted that the same has been incorporated in the Bihar Municipal Act, 2007 (hereinafter referred to as the 'Act'), of which Section 478 (b) stipulates that no election to any Municipality shall be called in question except by an election petition presented to the prescribed authority under the Act. Learned counsel contended that the Constitution of India as well as the Act having clearly laid down the procedure for questioning the election to be before the prescribed authority under the Act, and the same being the Sub-Judge in the



District in which the Urban Local Body is situated, the jurisdiction not only of the Courts but also of the State Election Commission stand excluded. Learned counsel submitted that even the Rules made under the Act, especially 47 thereof makes the decision of the Returning Officer final which can only be challenged after the process of election has reached finality by declaration of result through a duly constituted election petition before the Sub-Judge of the district in which the Urban Local Body is situated. It was submitted that the acceptance of the nomination papers followed by allotment of symbol having attained finality, the interference by the State Election Commission is both unwarranted and beyond jurisdiction. In support of his submissions, learned counsel relied upon the decision of the Hon'ble Supreme Court in the case of **Ramchandra G. Shinde v. State of Maharashtra** reported as **(1993) 4 SCC 216**, the relevant being at paragraph no. 60 as well as decisions of the High Court in the case of **Balendu Bharti vs. State of Bihar** reported as **2012(3) PLJR 460**, the relevant being at paragraphs no. 19, 20 and 21; in the case of **Prafful Chandra Sudhanshu vs. State Election Commission (Municipality)** reported as **2013(2) PLJR 114** as also in the case of **Jai Narain Pandit vs. State Election Commission** reported as **2014(1) PLJR 466**, the relevant being at paragraphs no. 12 to 15.



7. Learned counsel for the respondent no. 6 raised a preliminary objection with regard to maintainability of the writ petition submitting that once notification has been issued with regard to election and a candidate has been declared elected, the only remedy left is to assail such declaration before the prescribed authority. It was submitted that the respondent no. 6, having been declared elected and certificate issued in her favour, the jurisdiction under Article 226 of the Constitution of India gets denuded. For such proposition, he relied upon a Division Bench judgment of this Court in the case of **Bibha Devi vs. State Election Commission (Panchayat)** reported as **2017(1) PLJR 225**, the relevant being at paragraphs no. 18, 21, 22, 29, 30, 31, 32, 79, 80 and 81. However, coming to the merits of the case, he submitted that the Returning Officer was required to consider the objection of the respondent no. 6 and he not having done so, the respondent no. 6 had approached the State Election Commission and during enquiry it was revealed that the objection raised by the respondent no. 6 was valid and accordingly her nomination papers have been rejected which is sound, both in law as well as on facts. Learned counsel submitted that the order of the State Election Commission rejecting the nomination paper of the petitioner was based upon an enquiry conducted by the District Officers followed by opportunity of hearing to the petitioner



and thus, the basic requirements of law have also been complied with. It was submitted that in the declaration relating to cash in hand shown by the petitioner was Rs. 5000/- whereas in the nomination paper filed by her husband for Ward No. 29, the amount shown as cash in hand was Rs. 10,00,000/- which amounts to suppression of fact and thus, rightly the State Election Commission has interfered. It was further submitted that the fact about the husband of the petitioner having a Hindustan Petroleum Gas Agency not being declared is another suppression of fact. He submitted that the said requirement is statutory in terms of Section 445 of the Act which requires the assets to be declared of the candidate, and of his/her spouse and that of dependants. It was thus, submitted that the requirement of law is declaration of the assets of not only the petitioner alone but also of the husband, as in the present case, which in two separate forms, one by the petitioner and another by the husband reveal that incorrect facts have been stated.

8. Learned counsel for the State Election Commission submitted that besides adopting the arguments advanced on behalf of the respondent no. 6, even Rules 46(1) and 46(1)(iv) of the Rules, having been violated by the petitioner, the State Election Commission had to intervene. However, he submitted that he accepts the position of law relating to Rule 47 of the Rules. He submitted that in the



present case, there has been infraction of the requirement of law with regard to declaration by the petitioner, coupled with the fact that the Returning Officer did not consider the objection filed by the respondent no. 6, which also is mandatorily required, otherwise it would amount to abdication of its Constitutional obligation to supervise the election so that it is held in a free and fair manner, while exercising plenary power in such matters.

9. Having considered the rival contentions, the Court is unable to uphold the decision of the State Election Commission. The law clearly stipulates that once an election process has started, the same shall not be interfered with except in the manner prescribed and before the authority as may be prescribed by the Legislature of the State. In the present case, the State Legislature has enacted the Act in which a forum has been prescribed for such challenge post election. Further, the bar to interference relates to authorities and is not restricted to that by the Courts and is equally applicable to the State Election Commission as has been held in the decisions of **Balendu Bharti** (supra) and **Jai Narain Pandit** (supra). Further, this Court was a member of the Bench in the case of **Prafful Chandra Sudhanshu** (supra), where it has been held that Rule 47 makes the decision of the Returning Officer final and once the respondent no. 5 had accepted the nomination papers of the petitioner and also allotted



symbol, the matter stood concluded till the election attained finality by declaration of result in accordance with law to be assailed before the prescribed authority under the Act. The contentions of learned counsel for the State Election Commission that the objection had not been considered has to be considered in two parts. On facts, only one objection was raised before the Returning Officer i.e., the petitioner having filled Rs. 5,000/- in the column of her assets relating to cash in hand which was alleged to be contrary to such declaration filled by her husband in his nomination paper for Ward No. 29 which declared the cash in hand to be Rs. 10,00,000/-. Dealing with this issue, the Court would only observe that such declaration filled in the nomination paper is not material to be looked into at the time of scrutiny of nomination paper moreso, for the reason it relates to cash in hand which fact is totally the subjective declaration of the person concerned. Thus, either Rs. 5,000/- could be correct or Rs. 10,00,000/- could be correct but both being known only to the petitioner or to the other declarant, the Returning Officer could not have gone into and decided which was correct and to hold that the petitioner's was incorrect is not proper at such stage. The law provides a forum and after the election, in a duly constituted election suit, such issue can be dealt with which would require leading of evidence. Further, besides this objection, there was no other



objection before the Returning Officer and rightly he was not required to pass any formal order rejecting such objection. The issue on which the State Election Commission seems to have become active is more with regard to the non declaration of the fact that the husband of the petitioner had a Hindustan Petroleum Gas Agency in his favour. This fact was never raised before the Returning Officer and thus, there was no occasion for him to be aware of any suppression of fact on the part of the petitioner. Again, at the cost of repetition, even that issue can adequately be looked into post election before the prescribed authority in a duly constituted election suit. The Court, at this juncture, would clarify one basic issue i.e., if there would have been suppression of fact of a substantive nature and some basic inherent and glaring disqualification under the law, for example, non declaration of any criminal antecedent which has a direct bearing on the main electorate, with regard to forming an opinion of the prospective candidate by the electorate in choosing their representative, this Court would have refrained to interfere in the matter or exercise its extraordinary prerogative writ jurisdiction which is also discretionary. Coming to the second issue relating to law, as has been discussed earlier and has been the consistent view of the Courts, once the Returning Officer takes a decision either to accept or reject, neither he nor the State Election Commission has the



power to interfere in the same. In this case, the State Election Commission has directly rejected the nomination paper of the petitioner which itself does not appear to be permissible as there is no such provision either under the Act or the Rules which confers the power on the State Election Commission to deliberate upon and directly accept or reject the nomination paper of any candidate. The objection of learned counsel for the respondent no. 6, relating to maintainability is noticed only for the sake of rejecting the same. In the present case, the Court is not impeding or coming in the way of election, rather the action of the State Election Commission has come in the way of holding of a free and fair election for the reason that had the nomination paper of the petitioner been accepted, it would have resulted in proceeding of the election in accordance with law as per the schedule fixed and thus, the law would have taken its course once the process was completed in accordance with law, and the aggrieved party having an opportunity to move before the prescribed authority under the Act. Further, the declaration of the result based upon rejection of the nomination paper of the petitioner by the State Election Commission being clearly beyond jurisdiction, no benefit or right can flow from such order. Once admittedly the respondent no. 6 has been declared elected based on an order of the State Election Commission which this Court has held to be without jurisdiction, the



subsequent declaration and issuance of certificate in her favour also becomes *non est* as they are consequential and a direct result of the original order impugned which the Court has found to be unsustainable.

10. The Court has further been persuaded to interfere in the matter for once it is convinced that such rejection of nomination paper of the petitioner is not in accordance with law and proper, it would not let the respondent no. 6 to steal a march by the conduct of the Returning Officer and frustrate the cause of democracy by requiring the petitioner to wait for filing of an election petition before the prescribed authority merely as a formality when the issue has been decided in her favour by this Court.

11. As a result, the writ petition succeeds. The impugned order of the State Election Commission dated 08.05.2017 passed in Case No. 24 of 2017 stands set aside. The nomination papers of the petitioner are held to be validly accepted and she shall be a contesting candidate, along with respondent no. 6 and the election to Ward No. 32 of Munger Municipality shall now proceed in accordance with law. The subsequent and consequential orders declaring the respondent no. 6 elected and issuance of the certificate in her favour also stand quashed.

12. Since the election is scheduled to be held on 21st



May, 2017 i.e., day after tomorrow, the Court in the interest of justice deems it appropriate to direct that such election to Ward No. 32 shall now be held after acceptance of the nomination papers of the petitioner, on a date to be fixed by the Election Commission for such election.

13. In view of the present order, the State Election Commission shall proceed to hold the election for Ward No. 32 of Munger Municipality, in accordance with law, in which the petitioner shall also be a candidate. The schedule and other formalities of such election shall be at the discretion of the State Election Commission. To facilitate matters, let the petitioner furnish a copy of this order on the respondents no. 1, 3, 4 and 5 latest by 23rd May, 2017.

(Ahsanuddin Amanullah, J)

P. Kumar

AFR/NAFR	AFR
U	

