

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 6870 of 2017

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Sobha Devi, Wife of Shri Jagdish Bhagat @ Shri Jagdish Prasad Bhagat, resident of Ward No. 13, Nagar Panchayat- Amarpur, Mohalla- Hatt Road, P.O. + P.S.- Amarpur, District- Banka.

.... Petitioner/s

Versus

1. The State of Bihar, represented through the Principal Secretary, Department of Urban and Housing, Government of Bihar, Patna.
2. The District Magistrate-cum-District- Election Officer (Municipality), Banka.
3. The Returning Officer-cum-Senior Deputy Collector, Nagar Panchayat, Amarpur, Banka.
4. The Executive Officer, Nagar Panchayat, Amarpur, Banka.
5. The Block Development Officer-cum-Assistant Returning Officer, Nagar Panchayat, Amarpur, Banka.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shri Prakash Srivastava and Mr. Prahalad Kumar Bhagat, Advocates
For the State	:	Mr. Subhash Prasad Singh, G.A. 3 Mr. Dilip Kumar, A.C. to G.A. 3

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 10-05-2017

Heard Mr. Shri Prakash Srivastava, learned counsel for the petitioner and Mr. Subhash Pd. Singh, learned GA-3 along with Mr. Dilip Kumar, learned AC to GA-3 for the State.

2. The petitioner has moved the Court being aggrieved by non acceptance of her nomination paper on 29.04.2017 by the respondent no. 3 for Ward No. 13 of Amarpur Nagar Panchayat in the District of Banka.

3. The petitioner, along with others, was a prospective candidate and had filed nomination paper on 27.04.2017 for the post



of Ward Councillor for Ward No. 13 of Amarpur Nagar Panchayat in the District of Banka. On 29.04.2017, during scrutiny, no defect was pointed out. However, in the list of candidates, who had been cleared after scrutiny, the name of the petitioner did not figure and later on it transpired that after the process of scrutiny was over, on the basis of allegation/complaint filed by one Anjali Kumari wife of Ajit Bhagat, the respondent no. 4 had rejected the nomination paper without even informing the petitioner either with regard to the complaint or the reason for rejection of her nomination papers. Learned counsel submitted that once during scrutiny, the nomination papers had been accepted as valid by the Returning Officer i.e., respondent no. 3, under Rule 47 of the Bihar Municipal Election Rules, 2007 (hereinafter referred to as the 'Rules'), his decision becomes final and even he cannot review such decision. He submitted that the allegation was that the proposer was the son and seconder the daughter of the petitioner and further that the daughter was a music teacher. Learned counsel submitted that both these grounds are not a disqualification under either the provisions of the Bihar Municipal Act, 2007 (hereinafter referred to as the 'Act') or the Rules. Learned counsel submitted that the name of the proposer and seconder i.e., son and daughter of the petitioner were registered on the electoral roll of the Ward and further that there is no bar in law with regard to the



son or daughter being proposer or seconder.

4. Learned counsel for the State submitted that employment of the daughter of the petitioner is a disqualification under Section 18 of the Act read with Section 46(2) of the Rules.

5. Having considered the matter, the Court is unable to issue any positive direction since the facts are not very clear. In view thereof, the writ petition stands disposed off in the following terms:

(a) If on verification, it is found that the nomination papers of the petitioner had been accepted by the Returning Officer i.e., respondent no. 3 and there is an endorsement to such effect, in terms of Rule 47 of the Rules, he not having the power to review such acceptance, the nomination papers of the petitioner shall be held to be duly accepted and he shall be allowed to contest in the election.

(b) In the alternative, if it is found that there is no endorsement with regard to acceptance of the nomination papers in terms of Rule 47 of the Rules and only the order of rejection is endorsed, no further steps would be required to be taken by the authorities in this regard.

6. As the conduct of the Returning Officer i.e., respondent no. 3, is in question, let such verification be made by the respondent no. 2.

7. Accordingly, the petitioner shall serve copy of this



order on respondent no. 2 within two working days, who in turn shall verify the matter and record a finding after verification/scrutiny of the original records. In terms of the finding recorded by him consequences shall follow, as indicated hereinabove at paragraph no. 5.

(Ahsanuddin Amanullah, J.)

P. Kumar

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