

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 6931 of 2017

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Fatama Khatoon @ Fatama Khatun, Wife of Akhyar Ahmed, Resident of Village-
Lohar Toli, Ward No. 20, P.S. Sherghati, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Nagar Vikash Avam Awash Bibhag, Bihar, Patna.
2. The State Election Commission Bihar, Patna through its Secretary.
3. The Secretary, Nagar Vikash Avam Awash Bibhag, Bihar, Patna.
4. The District Magistrate-cum- District Election Officer (Nagarpalika), Gaya, District- Gaya.
5. The Election Officer Nagar Panchayat Sherghati-cum-Sub- Divisional Officer, Sherghati, Gaya, District- Gaya.
6. Sakil Khan, Son of Late Mahaphuj Khan, Resident of Village- Lohartoli, Ward No. 20, P.S. Sherghati, District- Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S. N. Mishra and Mr. Deepak Kumar, Advocates
For the State	:	Mr. Zaki Haider, A.C. to S.C. 9
For the SEC	:	Mr. Amit Shrivastava and Mr. Girish Pandey, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 11-05-2017

Heard learned counsel for the petitioner; learned AC to SC-9 for the State and Mr. Amit Shrivastava along with Mr. Girish Pandey, learned counsel for the State Election Commission.

2. The present writ application has been filed for quashing of the order dated 29.04.2017 issued by the Returning Officer of Sherghati Nagar Panchayat election by which her nomination paper for contesting the election for the post of Ward Councillor of Ward No. 20 has been rejected under Rule 42(2) of the Bihar Municipal Election Rules, 2007 (hereinafter referred to as the



‘Rules’).

3. The petitioner had filled up the nomination paper for the said election and at the time of scrutiny on 29.04.2017, on an objection filed by another candidate that she had a living child born after 04.04.2008 and the said child being the third, the same entailing disqualification, her nomination papers should be rejected, was upheld and accordingly, the impugned order was passed which is assailed in the present writ application.

4. Learned counsel for the petitioner submitted that in 2010, due to the petitioner having three sons, adopted a girl child, who was distantly related to her and in support of which she has also filed affidavit, but the child was not born to her. Learned counsel submitted that the adoption was for a laudable purpose as she had adopted a girl child, which in the present social scenario is seldom done and in fact, the girl child is discriminated against.

5. Learned counsel submitted that the said child not having been born to the petitioner, cannot be a disqualification under the Bihar Municipal Act, 2007 (hereinafter referred to as the ‘Act’), especially Section 18(1)(m) thereof.

6. Learned counsel for the State Election Commission submitted that the submissions advanced on behalf of the petitioner are misconceived for the language of Section 18(1)(m) of the Act



clearly stipulates that there should not be more than two living children born beyond the cut-off date 04.04.2008, as per Rule 42(2) of the Rules, in view of the Act having come into effect from 04.04.2007 and even after excluding the moratorium of one year, and the vires of such provision of the Act having been upheld by two Division Benches of the Court and the issue having attained finality.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present writ application.

8. The admitted position is that the petitioner herself admits that inspite of having three sons, she also has a girl child, though she may have adopted her. Once it is admitted that she has more than two children and one born on 17.04.2010, as has been informed to the Court by learned counsel for the petitioner, the same being much beyond the cut-off date of 04.04.2008, the rejection of nomination papers of the petitioner, in the considered opinion of the Court, cannot be faulted.

Accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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