

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7202 of 2017

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Subodh Kumar Verma @ Subodh Verma son of Rajendra Prasad Singh 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. Ramanand Yadav son of Bishnunath Yadav resident of village Goshi Tola,
Lallu Pokhar, P.S.Kasim Bazar, District Munger.

.... Respondent/s

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Appearance :

For the Petitioner	:	Mr. Shashi Anugrah Narain, Sr. Advocate with Mr. Shivendra Kumar Sinha, Advocate
For the SEC	:	Mr. Amit Shrivastava, Mr. Ritesh Kumar and Mr. Sanjeev Nikesh, Advocates
For the State	:	Mr. Amish Kumar, AAG 8
For the Respondent no. 6	:	Mr. Sumit Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 19-05-2017

Heard learned counsel for the petitioner; State; State
Election Commission and respondent no. 6.



2. The petitioner has moved the Court seeking the following reliefs:

“ That this writ application is being filed by the petitioner for quashing the order dated 08.05.2017 passed by the State Election Commissioner, Bihar in Case No. 25 of 2017 by which State Election Commissioner, Bihar has rejected the nomination paper of this petitioner for Election of Councillor post Ward No. 29 and further issue appropriate writ/writs, order/orders, direction/directions to the Respondents as your Lordships may deem fit and proper.”

3. The petitioner has filed his nomination papers for being elected as Ward Councillor from Ward No. 29 of Munger Nagar Nigam. After scrutiny held on 28.04.2017 and 29.04.2017, the nomination paper of the petitioner was accepted by the Returning Officer and after expiry of the date for withdrawal of nomination, the Returning Officer also allotted symbol to the petitioner on 03.05.2017. The respondent no. 6, who was also a candidate from Ward No. 29, filed complaint before the State Election Commission on 28.04.2017. On receipt of such complaint, the State Election Commission initiated Case No. 25 of 2017 on 29.04.2017 and sent notice to the petitioner as well as the respondent no. 4. The complaint related to suppression of facts by the petitioner. It was alleged that he was accused in a police case in which he was on bail and that he had



not disclosed with regard to him being proprietor of a Gas Agency and also Certificate with regard to there being No Dues of sales tax or any other Department and further that there was difference in the figures of income shown in the nomination paper of his wife from Ward No. 32 of the same Nagar Nigam. After hearing the petitioner and also taking into consideration the report of the District Magistrate, Munger, the State Election Commission, by order dated 08.05.2017, cancelled the nomination paper of the petitioner. The same is under challenge in the present writ petition.

4. Learned counsel for the petitioner submitted that firstly, no objection was raised before the Returning Officer and further that non-disclosure of Kotwali P.S. Case No. 121 of 2015 was under *bona fide* impression that since it was under Section 7 of the Essential Commodities Act, it did not come under the category of criminal offence. It was further submitted that the petitioner had disclosed his and his family's income along with his nomination paper which was brought to the notice of the State Election Commission but was not considered. Learned counsel submitted that once the nomination paper has been accepted by the Returning Officer under Rule 47 of the Bihar Municipal Election Rules, 2007 (hereinafter referred to as the 'Rules'), the same becomes final and cannot be interfered with either by the State Election Commission or even the Returning Officer



himself. Learned counsel submitted that the only remedy left was to let the petitioner participate in the election and thereafter, if he was elected, the same could have been challenged before the prescribed authority under the Bihar Municipal Act, 2007 (hereinafter referred to as the 'Act'), but the impugned order of the State Election Commission is without jurisdiction.

5. Learned counsel for the State Election Commission submitted that the nomination paper of the petitioner had rightly been rejected for the reason that he had suppressed material facts, both with regard to his assets as well as criminal antecedent. Learned counsel submitted that non-disclosure of criminal antecedent would be a corrupt practice and election of such candidate can be declared null and void. For such proposition, he relied upon a decision of the Hon'ble Supreme Court in the case of **Krishnamoorthy v. Sivakumar** reported as **AIR 2015 SC 1921**.

6. Learned counsel for the respondent no. 6 adopted the arguments advanced on behalf of the State Election Commission and added that the petitioner before the State Election Commission has not denied the fact that he had not disclosed his criminal antecedent.

7. Having considered the rival contentions, the Court is not inclined to interfere in the matter. In a democracy, purity and probity has to be maintained in public life and in this regard, the Court is in



agreement with the submissions of learned counsel for the State Election Commission and his reliance on the decision of the Hon'ble Supreme Court in the case of **Krishnamoorthy** (supra). It was mandatory on the part of the petitioner to disclose about both his assets as well as criminal antecedent in terms of Sections 445 (1), 445 (1) (i) and 445 (1) (iii) of the Act. The explanation that he was under impression that a case under the Essential Commodities Act, was not a criminal offence, cannot be accepted for the reason that admittedly he had also obtained bail in the said case and further that the case was registered in a police station. Both these facts do not give any scope for giving benefit of doubt or to accept his contention that he was under any type of misconception. Moreover, such suppression of criminal antecedent is detrimental to a democratic set up where the electorate has the right to know about the criminal antecedent reflecting the character of the prospective candidate of which pendency of criminal cases is a major indicator. Such non-disclosure would lead to the electorate being unaware of the past conduct and criminal antecedent of the petitioner which is a vital and essential information and the electorate has a right to know about it. Moreover, once the Court finds that such suppression would be a valid ground for interfering in the election, if the petitioner finally wins, it would not let the matter wait till such time, only as a mere formality, when



the result is already known. Thus, once the petitioner's conduct makes his nomination paper liable to be rejected, the Court would not provide him the luxury to contest the election on a technicality, as it would be a mockery of the system. Further, the Court would rely upon and adopt the reasons recorded in the judgment dated 18.11.2016 in C.W.J.C. No. 2394 of 2016 in the case of **Shiv Ballam Yadav v. The State of Bihar and Others**. Today, the Court had interfered with regard to rejection of nomination papers in the case of **Smt. Ruma Raj v. State Election Commission and Others** (C.W.J.C. No. 7203 of 2017) for the reason that once the nomination paper of the candidate is accepted by the Returning Officer, Rule 47 of the Rules does not permit any interference even by the State Election Commission but in the said case the Court had clearly indicated that had there been suppression of fact of 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, the Court would have refrained to interfere in the matter or exercise its extraordinary prerogative writ jurisdiction which is also discretionary. However, in the present case, the suppression being vital, that is, of criminal antecedent, on the basis of admitted



facts to prove that the petitioner had suppressed such material facts, clearly disentitles him to any relief, especially under Article 226 of the Constitution of India as one of the fundamental principles to interfere in writ jurisdiction by the High Court is the requirement of the petitioner coming with clean hands and once it is proved that he had suppressed material facts for taking part in the election process, the Court would refrain from interfering in the matter.

8. For the reasons aforesaid, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

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