

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 8164 of 2017

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Sangeeta Hijra @ Sangita Hijara, Daughter of Late Bangali Hijra @ Bangali Hijara, resident of Kamla Nehru Nagar, Post- G.P.O. P.S. Kotwali, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Urban Development Department, Government of Bihar, Patna.
2. The Secretary, State Election Commission, Bihar, Sone Bhawan, 3rd Floor, Beer Chand Patel Marg, Patna- 800001.
3. The District Election Officer-cum-District Magistrate, Patna.
4. The Returning Officer-cum-Deputy Development Commissioner, Patna.
5. The Assistant Returning Officer, Patna Municipal Corporation, Patna.
6. The Senior Superintendent of Police, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vikash Kumar Pankaj and Mr. Arun Kumar, Advocates
For the SEC	:	Mr. Amit Shrivastava and Mr. Sanjeev Nikesh, Advocates
For the State	:	Mr. Zaki Haider, A.C. to S.C. 9
For the P.M.C.	:	Mr. Prabhakar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 05-07-2017

Heard learned counsel for the petitioner, State, State
Election Commission and the respondent no. 5.

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

“(i) To issue appropriate Writ order in nature of the Writ of Certiorari or any other appropriate writ direction to set aside the Order dated 13.05.2017 issued by the Respondent no. 4 whereby and nomination filed by the petitioner to contest the Patna Municipal Election 2017 from Patna Municipal Commission Ward No. 21 has been rejected.

(ii) To issue appropriate writ order in nature of the Writ of Certiorari other appropriate writ



direction to set aside the Order dated 11.05.2017 passed by Respondent No. 5 whereby a recommendation has been made to Respondent No. 4 to reject the aforesaid nomination of the petitioner on the ground that Ward No. 21 is a “female unreserved” seat and petitioner being a third gender ought to have filed her nomination for an “unreserved others” seat.

(iii) To issue appropriate Writ order in nature of Writ of Mandamus directing Respondents, particularly Respondent No. 2 to 5 to henceforth treat the aforesaid nomination of the petitioner as valid and allow her contest the Patna Municipal Election 2017 from Patna Municipal Commission Ward No. 21, scheduled to be held on 07.06.2017.

(iv) To issue appropriate Writ order in nature of Writ of Mandamus directing Respondents, particularly Respondent No. 2 to 4 to immediately allot the petitioner an election-symbol in order to contest the aforesaid election and further, the petitioner’s name and such symbol shall also be printed on the electronic voting machine (EVM) of the said election.”

3. The only issue was as to whether the order dated 13.05.2017, rejecting the nomination paper of the petitioner by the respondent no. 4 was justified or not. The ground for rejection was two-folds. Firstly, that being a transgender, the petitioner could have fought only from an Unreserved General Category i.e., Category-C whereas the contention of the petitioner was that because of being a transgender, in terms of the order of the Supreme Court in the case of **National Legal Services Authority v. Union of India** reported as **(2014) 5 SCC 438**, the relevant being at paragraph no. 135.2., she having voluntarily decided to be treated as a female, she was entitled



to all benefits given under law to a female candidate. Secondly, the issue with regard to her having put cross mark at various columns in the nomination paper, the stand was that those columns were in continuation to the initial query and only if the answer to the first query was 'Yes', then those details were required and once the answer was 'No', the said category was not to be filled up. It was the discretion of the petitioner to 'cross mark' or put a 'dash' or a 'zero' and thus, having put a cross mark cannot go against her and there is no suppression.

4. After some arguments, learned counsel for the petitioner submitted that in view of time running out for filing a statutory election petition, the same being over by day after tomorrow, he would rather withdraw the writ application for availing of that alternative statutory remedy, in accordance with law. However, he submitted that the Court may observe on merits.

5. At this juncture, Mr. Amit Shrivastava, learned counsel for the State Election Commission fairly took the stand that the Court may observe that in the election petition, the Court below would take into consideration the stand of the petitioner in terms of the order of the Hon'ble Supreme Court in the case of **National Legal Services Authority** (supra).

6. In view thereof, the writ petition stands disposed off



with liberty to the petitioner to file an election petition in terms of the statute. If such a petition is filed, the Court expects that all points and issues raised by the petitioner, including the law laid down by the Supreme Court in the case of **National Legal Services Authority** (supra) shall be taken note of and appropriately considered by the Court while adjudicating the matter which shall be disposed off expeditiously.

(Ahsanuddin Amanullah, J.)

P. Kumar

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