

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4596 of 2017

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Kalawati Devi, Wife of Sri Bindeshwari Prasad, Resident of Mohall Bankipur
Gorakh, Ward No. 9, Fatuha, PO+ PS Fatuha, District- Patna.

.... Petitioner/s

Versus

1. The State Election Commission through its State Election Commissioner, Bihar
3rd Floor, Sone Bhawan, Beer Chand Patel Path, Patna.
2. The State Election Commission through its State Election Commissioner,
(Municipality), Bihar 3rd Floor, Sone Bhawan, Beer Chand Patel Path, Patna.
3. Ratnesh Kumar Pathak, Son of Late Nawal Kishor Pathak, Resident of Mohalla
Bankipur Gorakh, PO+PS- Fatuha, District- Patna.
4. The District Election Officer-cum-District Magistrate, Patna.
5. The Executive Officer, Nagar Panchayat, Fatuha, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S. B. K. Mangalam, Advocate
For the SEC	:	Mr. Amit Shrivastava with Mr. Sanjeev Nikesh, Advocates
For the Pvt. Respondent No. 3:	:	Mr. Ratnesh Kumar Pathak (In Person)

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 07-07-2017

Heard learned counsel for the petitioner, State Election
Commission and the respondent no. 3, who has appeared in person.

2. The petitioner is basically aggrieved by the order
passed by the State Election Commissioner contained in Memo No.
876 dated 15.03.2017 in Case No. 19 of 2016 by which while holding



that the complaint of respondent no. 3 was not maintainable before the State Election Commission under Section 18 (2) of the Bihar Municipal Act, 2007 (hereinafter referred to as the 'Act'), he has directed the District Election Officer (Municipality)-cum-District Magistrate, Patna who lodged the F.I.R. against the petitioner under Section 447 and allied sections of the Indian Penal Code.

3. Learned counsel for the petitioner submitted that once having come to a finding that the complaint was not maintainable under Section 18 (2) of the Act, the State Election Commissioner could not have directed for lodging of F.I.R. as he has arrived at a finding of guilt against the petitioner without the petitioner having been given due opportunity. It was further submitted that the private respondent was free to institute a criminal case but the State Election Commission intervening in the matter is not proper.

4. Learned counsel for the State Election Commission and the respondent no. 3 submitted that an enquiry was done and a report submitted by the Executive Officer, Nagar Panchayat, Fatuha in which various allegations against the petitioner have been found to be correct. It was submitted that the copy of the same was supplied to the petitioner calling upon her to give written defence and also appear on the next date and after four months of the same and dates fixed and hearing held on a number of occasions, the impugned order has been



passed. It was submitted that the affidavit in which there was suppression of material facts was filed along with the nomination papers during the course of election i.e., it was filed before the Returning Officer, who is an officer of the State Election Commission and thus, the complaint by the District Election Officer was maintainable.

5. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the contentions of learned counsel for the respondents. Accordingly, the Court does not find any infirmity in the order impugned and the writ petition stands dismissed.

6. However, the Court would observe that the finding recorded in the impugned order against the petitioner or observations made in this order shall not prejudice her as and when she is called upon to defend her action before the appropriate forum in accordance with law.

7. Interim order dated 04.04.2017 stands vacated.

(Ahsanuddin Amanullah, J)

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