

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 405 of 2017

=====

Pramod Mahto son of Sri Mangal Mahto resident of village & Post - Ashogi, Nagar Panchayat Bairagania Ward No. 2, P.S. Bairagania, District - Sitamarhi Ward Commissioner from Ward No. 2, Nagar Panchayat Bairagania, Sitamarhi.

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Nagar Vikas and Awash, Bihar, Patna.
2. Bihar State Election Commission.
3. Bihar State Election Commissioner.
4. Bihar State Election Commissioner through its Secretary. Respondent no. 2, 4 & 4 - III rd Floor, Sone Bhawan, Birchand Patel Marg, R - Block, Patna.
5. District Magistrate, Sitamarhi-cum-District Election Officer (Municipality) Sitamarhi at Dumra.
6. Additional Collector, Sitamarhi, Enquiry Officer at Dumra, Sitamarhi.
7. Senior Dy Collector-cum-Returning Officer, Nagar Panchayat Bairagania at Dumra, Sitamarhi.
8. Block Development Officer, Bairagania at Bairagania, District - Sitamarhi.
9. Circle Officer Bairagania - Circle Officer Bairagania at Bairagania District Sitamarhi.
10. Medical Officer/Medical Officer Incharge Primary Health Centre Bairagania at Bairagania, District - Sitamarhi.
11. Child Development Project Officer, Bairagania, at Bairagania, District - Sitamarhi.
12. Chandra Bhushan Baitha son of Sri Ram Udar Baitha resident of Ward No. 4, Nagar Panchayat, Bairagania, P.S. Bairagania, District - Sitamarhi.

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Bindeshwar Sah, Advocate
For Resp. Nos. 2,3 & 4 : Mr. Amit Shrivastava, Advocate
Mr. Girish Pandey, Advocate
For the State : Mr. Ravish Chandra, AC to SC-6

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 20-01-2017

Heard learned counsel for the parties.

The petitioner has moved this Court for quashing
of the entire proceedings of Case No. 18 of 2016, including the
order dated 24.11.2016, passed by the State Election



Commissioner by which the petitioner has been disqualified from being a Ward Member of Ward No. 2, Nagar Panchayat, Bairagania and consequent upon the seat becoming vacant, direction has been given for filling it up in accordance with law and further, the District Magistrate, Sitamarhi has been directed to take action against the petitioner under Section 447 of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act').

The petitioner had contested the election for becoming a Ward Member of Ward No. 2 of Nagar Panchayat, Bairagania and was successful. After that the Respondent No. 12 filed a complaint before the State Election Commission alleging that the petitioner was disqualified to stand for election in view of the bar of Section 18(m) of the Act. The complaint was that his 4th child was born on 20.7.2010, i.e., after the cut-off date 04.04.2008 and, thus, he was not eligible to contest the election, relying upon the records of the Primary Health Centre where his son namely, Sachin Kumar was born as also records of the Anganwari Centre where the son was given immunization. The matter was heard and the defence of the petitioner was that the Birth Certificate issued with regard to his son discloses the date of birth as 19.9.2007 and, thus, he was not covered by Section 18(m), as the birth of none of his children took place after the



cut-off date 04.04.2008. The State Election Commissioner passed the impugned order which is subject matter of challenge in the present writ application.

Learned counsel for the petitioner submitted that there is no signature of the petitioner or his wife on the documents produced by the complainant i.e., records of the Primary Health Centre and Anganwari Centre whereas the evidence produced by him was the Birth Certificate which is a valid, legal and admissible document, as it is issued by the Directorate of Statistics and Evaluation. He further submitted that the very jurisdiction of the State Election Commissioner is ousted as it is in the teeth of the provisions of Articles 243V and 243ZG of the Constitution of India, which stipulate that the disqualification would be specified by the Legislature of the State by law and that no Court would interfere in electoral matters. He submitted that in terms of the same, it is only by way of an election petition that such dispute relating to pre-election disqualification can be looked into in terms of Section 476 of the Act and Section 478 of the Act creates a bar to interference by Courts in electoral matters, except by an election petition presented to the prescribed authority under the Act. He submitted that once the forum of Munsif has been provided for presenting



an election petition, the State Election Commission cannot look into such aspect. He submitted that in view of the same, Section 18(2) of the Act, conferring power of the State Election Commission to look into the matter of disqualification, is restricted to disqualification incurred after the election and such pre-election disqualification cannot be looked into. He further submitted that once a certificate admissible in law relating to date of birth with regard to the son of the petitioner has been shown to the authority, the finding that the son was born after 04.04.2008 cannot be sustained and this being the sole ground for his being removed from the post of Ward Member, such order needs to be set aside. He further submitted that the complainant had also contested the election and had lost the same.

Learned counsel for the respondents submitted that the challenge to Section 18(2) of the Act or interpreting it in a manner, so as to restrict the dispute only to post-election disqualification to be incurred after the election and not pre-election dispute, is erroneous and further, that the said issue has been settled by a Division Bench of this Court in the case of **Arun Ravidas Vs. The State of Bihar & Ors.** reported as **2011 (2) PLJR 795**, by which Section 18(1)(m) has been upheld. Learned counsel submitted that the petitioner while filling his



nomination form on 24.2.2012 could not have relied upon the Birth Certificate issued in favour of his son as the same was done only on 25.4.2012, though the date of registration may have been 21.4.2012. He submitted that the mode and manner of obtaining such certificate itself raises *bona fide* doubt inasmuch as if the son of the petitioner was born in the year 2007, what prompted the petitioner to obtain such certificate after five years and the timing would disclose that it was only for the purpose of getting over the disqualification of Section 18(m) of the Act for the reason that the nomination paper has been filled up on 24.4.2012, whereas the certificate has been issued on 25.4.2012 i.e., clearly for the purpose of the said election. Learned counsel submitted that the entries made both at the Primary Health Centre as well as Anganwari Centre disclosing the date of birth of the son of the petitioner to be 20.7.2010 was verified by the District authorities and the same has been found to be true. Learned counsel submitted that there is presumption in law with regard to the correctness of entries made in official records which includes the register of the Primary Health Centre as well as the Anganwari Centre.

Learned counsel further submitted that such being matters of evidence, cannot be gone into in the present



proceeding and further the same have not been assailed or challenged by the petitioner before any competent forum or authority. Learned counsel submitted that under the provisions of the Registration of Birth and Death Act, 1969, the registration has to be made within one year and if the same is not so done, then it can be only on an order made by a Magistrate of the 1st Class after verifying the correctness of the birth and death on payment of the prescribed fee. Learned counsel submitted that these aspects are required to be gone into in view of there being contemporaneous evidence to show that the son of the petitioner was born on 20.7.2010, whereas the Birth Certificate issued was only on 25.4.2012, which is in close proximity of the election and in any case, after five years from the alleged date of birth in the year 2007, and thus, the same being obtained after such a long gap of time, the evidentiary value and correctness is also required to be verified. Learned counsel submitted that in any view of the matter, the authority relying upon the contemporaneous government records disclosing the date of birth of the son of the petitioner as 20.7.2010, cannot be said to be erroneous which may require judicial interference by this Court. Learned counsel further submitted that the right to contest an election is a statutory right governed by the strict language of the Statute as framed by



the Legislature of the State which is in accordance with the requirement of the Constitution and such proposition is now well settled and cannot be disputed. He submitted that in view of such settled principle, the action taken by the State Election Commissioner is in conformity with the clear statutory provisions which have the backing and sanctity of the Rules as well as the Constitution of India.

Having considered the rival contentions, this Court does not find any merit in the writ application. The petitioner was elected as Member of Ward No.2, Nagar Panchayat, Bairagania and just because he was elected would not mean that his election cannot be looked into or enquired later on by the State Election Commission. The Court need not over-emphasize the fact that under Section 18(2) of the Act, such issue relating to disqualification can be looked into by the State Election Commission both with regard to pre-election as well as post-election disqualification. Thus, till the time Section 18(2) is on the Statute, action of the State Election Commission to interfere with and declare even an elected person to be disqualified and not fit to be elected, does not require any interference. Coming to the merits of the matter, the Court is in agreement with the submissions of learned counsel for the



respondents, that two contemporaneous official records disclosing the date of birth of the son of the petitioner to be 20.7.2010 being before the authority, the same have rightly been given primacy over the document which came into existence after the election process had begun, for the first time on 21.4.2012, and markedly in close proximity to the date of the election. In fact, the petitioner filled up his nomination form on 24.4.2012, which indicates that the process must have started a few months back and the Birth Certificate being issued on 25.4.2012, also can be presumed to be the result of an application made only a few days back. Thus, it indicates that even the process of obtaining such Birth Certificate must have been initiated by the petitioner after notification of the election.

In view of the discussions made hereinabove, the Court does not find any reason to interfere with the order impugned and accordingly the writ application stands dismissed.

(Ahsanuddin Amanullah, J.)

S.Pandey/-

AFR/NAFR	
U	

