

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1196 of 2017

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Amol Paswan Son of Ram Prasad Paswan Resident of Village- Hanuman Nagar,
Benipur, P.O. Benipur, District- Darbhanga.

.... Petitioner

Versus

1. The State Election Commission , 3rd Floor Sone Bhawan, Birchand Patel Path, Patna.
2. The Then Panchayat Sachiv-cum- Registration Officer, Benipur Block Darbhanga, Presently working as Panchayat Sachiv at Kiratpur Block, District- Darbhanga.
3. The State of Bihar, through Superintendent, Darbhanga Medical College and Hospital, Darbhanga.
4. Mahinder Paswan, Ward Parshad, Ward No. 25, Nagar Parishad, Benipur, District- Darbhanga.
5. The Senior Superintendent of Police, Darbhanga.

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Sarvadeo Singh, Advocate Mr. Sanjay Kumar, Advocate
For respondent no. 1	:	Mr. Amit Shrivastava, Advocate Mr. Sanjeev Nikesh, Advocate
For respondent no. 4	:	Mr. Sanjay Parasmani, Advocate. Mr. Maruty Nath Roy, Advocate
For the State	:	Mr. Upendra Prasad Singh, AC to GP 25

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 08-12-2017



The petitioner has challenged the decision of the State Election Commission dated 30.09.2016 by which the complaint made against the respondent no. 4 that he should be disqualified from election as ward councilor on the ground that after 04.04.2008 he became the father of a fifth child has been dismissed.

2. Learned counsel for the petitioner submitted that a complaint was filed before the State Election Commission by one Sushil Kumar Das and the petitioner stating therein that Mahendra Paswan became father of a fifth child after 04.04.2008. He submitted that Section 18 of the Bihar Municipal Act, 2008 deals with disqualifications and sub-section (1) thereof enumerates the situations which disqualify an elected member to hold the post as a member of the Municipality. Proviso to clause (m) prescribes that a person having more than two children on or upto the expiry of one year of the commencement of the Ordinance shall not be deemed to be disqualified. He submitted that as per provisions enshrined under the proviso to Section 18(1)(m) of the Bihar Municipal Act, cut-off date has been fixed, which is 04.04.2008, regarding the number of child of a person.

3. He contended that when the Election Commission failed to take any action on the representation made by the petitioner and Sushil Kumar Das, a writ petition was filed before



this Court, vide CWJC No. 4430 of 2016, for taking appropriate action and for setting aside the election of private respondent Mahendra Paswan. The writ petition was disposed of, vide order dated 15.03.2016, with a direction to the State Election Commission to consider the complaint filed by the petitioner. Thereafter, the petitioner filed a complaint on 29.02.2016 before the Bihar State Election Commission for setting aside the election of the private respondent. In the said complaint, it was categorically stated that the private respondent had given false statement in the nomination paper regarding the child despite the knowledge about Section 18(1)(m) of the Municipal Act. He submitted that the private respondent was disqualified to contest the said election in view of the fact that the fifth child of the petitioner was born on 23.08.2008, i.e. after more than four months of the cut-off date fixed under the Act. In this regard, documents submitted by the petitioner in support of his claim were not looked into and appreciated by the respondent State Election Commission and in a whimsical and arbitrary manner, the representation filed by the petitioner and Sushil Kumar Das was dismissed, vide impugned order dated 30.09.2016.

4. Learned counsel appearing for the respondent State Election Commission submitted that the petitioner filed complaint



on 29.02.2016. After receiving the complaint, the State Election Commission called for a report from the District Magistrate-cum-District Election Officer, Darbhanga and instituted Case No. 6 of 2016. The District Magistrate-cum-District Election Officer, Darbhanga submitted his report before the State Election Commission, vide letter no. 215 dated 22.09.2016 along with report of Sub-divisional Officer dated 21.09.2016 which would go to suggest that the claim of the petitioner that the 5th child of the private respondent born after 04.04.2008 was false whereafter the case was heard on 30.09.2016 and after hearing the petitioner, private respondent and district officials, the State Election Commission rejected the complaint of the petitioner.

5. I have heard the parties and carefully perused the record.

6. It would be pertinent to note here that this Court in order to satisfy itself regarding the genuineness of the claim of the petitioner vide order dated 07.08.2017 directed the Senior Superintendent of Police, Darbhanga to inquire into the matter and submit a report within four weeks. In compliance of order dated 07.08.2017, the Senior Superintendent of Police, Darbhanga submitted his report stating therein that there is no clinching evidence in support of the claim against the respondent no. 4, but the evidence produced by respondent no. 4 has reliability. Being not satisfied with



the report submitted by the Senior Superintendent of Police, Darbhanga, this Court, vide order dated 16.10.2017 once again directed the Senior Superintendent of Police, Darbhanga to verify the materials supplied by the petitioner in respect of his claim and the official records of the authority of the State Government. In compliance of order dated 16.10.2017, the Senior Superintendent of Police, Darbhanga submitted his 2nd report on 12.11.2017 stating therein that on verification of the documents produced by the petitioner, they were found suspicious. The issuing authority of the documents produced by the petitioner also accepted her fault and could not furnish any satisfactory reply. Thus, he opined that the complaint against respondent no. 4 was not based on any reliable evidence.

7. Having considered the rival submissions and the materials available on record, this Court is of the considered opinion that the impugned order passed by the State Election Commission does not require any interference, as the same has been passed on the basis of a fact finding inquiry conducted by the District Election Officer-cum-District Magistrate, which is also corroborated by the reports submitted by the Senior Superintendent of Police, Darbhanga under the orders of this Court. The reports clearly suggest that the fifth child of the respondent no. 4 was born



much before the cut-off date 04.04.2008 fixed under the proviso to Section 18(1)(m) of the Municipal Act for disqualification to hold the post as a member of the municipality.

8. The writ petition, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.12.2017
Transmission Date	NA

