

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11752 of 2017

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Nityanand Singh, S/o Late Bhagwan Singh, Resident of Village- Khan Kulipur,
P.O., P.S. & District- Arwal.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development & Housing Department, Govt. of Bihar, Patna.
2. The State Election Commission, Bihar through Secretary, 3rd Floor, Sone Bhawan, Beerchand Patel Path, Patna.
3. The Secretary, State Election Commission, Bihar, 3rd Floor, Sone Bhawan, Beerchand Patel Path, Patna.
4. The State Election Commissioner, Bihar, 3rd Floor, Sone Bhawan, Beerchand Patel Path, Patna.
5. The District Magistrate-cum-District Election Officer (Municipality), Arwal.
6. The Returning Officer, Arwal Nagar Parishad Election, Arwal.

.... Respondent/s

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Appearance :

For the Petitioner/s	: Mr. Waliur Rahman, Advocate. Mr. Ranjeet Choubey, Advocate.
For the State	: Mr. Rakesh Kumar Sharma, A.C. to SC9
For the State Election Commission:	Mr. Amit Srivastava, Advocate Mr. Girish Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 12-10-2017

Heard learned counsel for the petitioner; State and State
Election Commission.

2. The petitioner had moved the Court for the following
reliefs:

“1. For issuance of an appropriate writ in the nature of Certiorari, quashing & setting aside the Letter no. १० ११०. 50-26/2017-3236 dated 29.06.2017 as contained in annexure-2, issued under the signature of the Secretary, State Election Commission, Bihar, as the same has been issued in complete ignorance & violation of provisions of section 473 of the Bihar Municipal Act, 2007 (as amended) read with rule -



- 101 of the Bihar Municipal Election Rules, 2007.*
- II. *For issuance of an appropriate writ in the nature of Mandamus, commanding & directing the respondent Commission to take action u/s-474 of the Bihar Municipal Act, 2007 (as amended) against the persons/candidates concerned who failed to lodge account of election expenses within the specified period & manner prescribed under the Bihar Municipal Act, 2007 (as amended) & Bihar Municipal Election Rules, 2007.*
- III. *For issuance of any other appropriate writ/writs, order/orders, direction/directions which may deem fit and proper under the facts & circumstances of the case.”*

3. Today, at the very outset, Mr. Amit Srivastava, learned counsel for the State Election Commission produced letter No. 4175 dated 11.10.2017 by which the State Election Commission, Bihar has withdrawn its letter No. 3236 dated 29.06.2017, quashing of which was the first relief sought for in the writ application. The same having been done by the State Election Commission itself, after reconsidering the entire issue, the Court finds no occasion to go into the said aspect of the matter.

4. As far as the second relief sought by the petitioner, for a direction to the State Election Commission to take action under Section 474 of the Bihar Municipal Act, 2007 (hereinafter referred to as the ‘Act’), learned counsel for the petitioner submitted that despite him having made complaint to the State Election Commission with regard to specific persons, even action against them has not been



initiated.

5. Learned counsel for the State Election Commission submitted that in view of the impugned letter, the action was stayed, but now after issuance of the present letter dated 11.10.2017, necessary follow up action, in accordance with law, shall be taken. However, he further took a stand that the law does not provide for a complaint to be received by private individuals, as Section 474 of the Act gives power to the State Election Commission on its satisfaction and such satisfaction has to be on the basis of report submitted by the District Magistrate-cum-District Election Officer (Municipality) of the said District. He further drew attention of the Court to Rule 101 of the Bihar Municipal Election Rules, 2007 (hereinafter referred to as the 'Rules'), which require the submission of election expenses before the Returning Officer within thirty days from the date of publication of the result of the concerned election. He submitted that even the instructions issued by the State Election Commission in the year 2012 require that the District Returning Officer (Municipality)-cum-District Magistrate has to transmit the information with regard to compliance of Rule 101 of the Rules and based on the above, the power under Section 474 of the Act is to be exercised.

6. Having considered the matter, the Court finds that Rule 101



(4) gives liberty to any person on payment of a fee of ten rupees to inspect any such account and on payment of a fee of two rupees per page to obtain attested copies of such account or of any part thereof. This clearly implies that the Legislature in its wisdom has given the right to any person to seek information with regard to the return of election expenses submitted by any candidate in any election. The moment such right has been conferred, it presupposes a purpose.

7. In the present context, the only purpose is that, if any wrong is found, appropriate action is taken against such candidate. The only authority which can take such action is the State Election Commission under Section 474 of the Act. Thus, the obvious import of a conjoint reading of Section 474 of the Act and Rule 101 of the Rules, clearly implies that the satisfaction of the State Election Commission can also be based on material which may be furnished by any person who may have obtained such information, including that under Sub rules (3) and (4) of Rule 101 of the Rules.

8. In such view of the matter, the Court would only observe that the mandate of law requires the State Election Commission to take action under Section 474 of the Act upon being satisfied in terms of Section 474 (a) and (b) of the Act. Such satisfaction can be based on either *suo motu* action or on verification of the records or from a report by the Returning Officer or the District Returning



Officer (Municipality) or even from any person. However, if any other person is moving before the State Election Commission, the same has to be based on materials on which action can be taken, including information obtained under Rule 101 (4) of the Rules.

9. Mr. Amit Srivastava also informed the Court that in terms of the letter issued by the State Election Commission yesterday i.e., 11.10.2017, as referred above, general consequential follow up action, including any action which may be required in the present case in terms of the report already sought by the State Election Commission from the District Magistrate-cum- District Returning Officer (Municipality), Arwal, copies of which have been brought on record in the writ petition, shall be taken promptly.

10. The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

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