

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7619 of 2017

=====

Pushpa Devi, Wife of Sanjay Singh, Resident of Village- Rawaich, Police Station-
Bakhtiyarpur, District- Patna.

.... Petitioner/s

Versus

1. The State Election Commission, Bihar, Patna through its Secretary.
2. The Commissioner, State Election Commission, Bihar, Patna
3. The Election Officer-cum- District Magistrate, Patna.
4. The Returning Officer, Nagar Parishad, Bakhtiyarpur, Patna.
5. Shashi Devi, Wife of Navin Singh, Resident of Village- Rawaich, Police
Station- Bakhtiyarpur, District- Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Advocate Mr. Staya Prakash
For the Respondent no. 5	:	Mr. Ashok Kr. Choudhary, Advocate Mr. Bhola Kumar, Advocate
For the SEC	:	Mr. Amit Shrivastava, Advocate Mr. Sanjeev Nikesh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 19-05-2017

Heard Mr. Bindhyachal Singh along with Mr. Staya Prakash, learned counsel for the petitioner; Mr. Amit Shrivastava along with Mr. Sanjeev Nikesh, learned counsel for the State Election Commission and Mr. Ashok Kr. Choudhary, learned counsel along with Mr. Bhola Kumar, learned counsel for the respondent no. 5.

2. The petitioner has moved the Court being aggrieved by rejection of her nomination paper on the ground that his proposer who had a valid 'No Dues Certificate' was not competent on the day



of scrutiny i.e., 11.05.2017 as his 'No Dues Certificate' issued by the Nagar Parishad, Bakhtiyarpur had been cancelled on the day of scrutiny.

3. Learned counsel for the petitioner submitted that the 'No Dues Certificate' in favour of the proposer, Ram Kumar Singh was issued on 29.04.2017 by the Executive Officer, Nagar Panchayat, Bakhtiyarpur which was duly attached with the nomination papers of the petitioner but on the date of scrutiny i.e., 11.05.2017, without there being any intimation to the petitioner or her proposer with regard to cancellation of the 'No Dues Certificate', the Returning Officer on his own informed the petitioner that since the 'No Dues Certificate' stood cancelled, the nomination paper of the petitioner also stood rejected. Learned counsel submitted that neither any order was served on the petitioner or her proposer with regard to cancellation of the 'No Dues Certificate' and requisite filed for obtaining such order has also not resulted in copy of the order being served on her proposer i.e., Ram Kumar Singh. Learned counsel submitted that the respondent no. 5 is the sole person whose nomination paper has been accepted and she is the wife of the erstwhile Vice Chairman of Bakhtiyarpur Nagar Parishad and thus, under the influence of her husband, the 'No Dues Certificate' granted by the Executive Officer of Bakhtiyarpur Nagar Panchayat has been



cancelled, and that too, on the date of scrutiny and the most surprising part is that without copy being served on the petitioner or any intimation to him, the same stood communicated 'unofficially' to the Returning Officer without there being any 'formal' communication to him also. Learned counsel submitted that the 'No Dues Certificate' was issued after proper verification by the Tax Daroga of the Bakhtiyarpur Nagar Panchayat namely, Pappu Kumar and surprisingly Pappu Kumar is also nephew of respondent no. 5. Learned counsel submitted that the entire game plan was to somehow reject the nomination paper of all candidates and to declare the respondent no. 5 elected, very well knowing that once she is declared elected, the process to challenge such election would take long and in effect would frustrate the cause of democracy and also lead to gross injustice. Learned counsel for the petitioner submitted that he has also represented to the State Election Commission.

4. Learned counsel for the respondent no. 5 submitted that the petitioner has not impleaded the Nagar Panchayat, Bakhtiyarpur or its Executive Officer, who had issued 'No Dues Certificate' and later cancelled the same and further the fact of the Tax Daroga being related to the respondent no. 5, has neither been impleaded in the writ petition nor Pappu Kumar has been made a party.



5. Learned counsel for the State Election Commission very fairly submitted that if any representation is pending, it shall be looked into.

6. Having considered the matter in its entirety, as issues have been raised before the Court on facts, which, if true indicate fraud on the system i.e., of somehow allowing only one candidate to clear the hurdle of acceptance of nomination paper and thus, be declared elected without any election, is a hazardous and alarming trend in democracy. The system requires that there is healthy competition between persons so that the public/electorate have a choice in electing a candidate, who is under a solemn obligation to live up to the aspirations of the electorate and to act for their benefit. However, law also contemplates that if genuinely a situation arises where only one candidate is left then he or she has to be declared elected, but from what has been submitted, in the tentative view of the Court, the issue requires investigation, moreso, in view of the categorical stand taken on behalf of the petitioner that the 'No Dues Certificate' given to Ram Kumar Singh, was *bona fide*, correct and there was no occasion or ground to cancel the same.

7. Accordingly, Election to Ward No. 2 of Bakhtiyarpur Nagar Parishad is stayed and further there shall be stay of either declaring the respondent no. 5 to be elected or issuing any certificate



in her favour, for the present.

8. However, in the alternative, if consequences have followed from the respondent no. 2, being the sole remaining candidate whose nomination paper has been accepted, all such consequences/orders shall be kept in abeyance i.e., neither the declaration in her favour nor the certificate issued to her shall be given effect to.

9. In the meantime, the District Magistrate, Patna (respondent no. 3) shall also submit an enquiry report to the State Election Commission with regard to the stand of the petitioner that the 'No Dues Certificate' was correctly issued and only due to connivance and collusiveness between the parties, the same has been cancelled. Upon receipt of the report of the District Magistrate, Patna, the State Election Commission shall give opportunity of hearing to the petitioner as well as respondent no. 5 and thereafter take a final decision in the matter.

10. In the event, it is found that 'No Dues Certificate' has wrongly been cancelled in favour of Ram Kumar Singh, the proposer of the petitioner, consequences shall follow and any declaration in favour of the respondent no. 5 and the certificate issued in her favour shall stand cancelled. The State Election Commission shall thereafter proceed to get the election to Ward No. 2 of



Bakhtiyarpur Nagar Parishad held in accordance with law expeditiously including the petitioner as a candidate, upon her nomination paper being accepted.

11. In the event it is found that the 'No Dues Certificate' has rightly been cancelled, the official respondents shall not be required to take any further action and the respondent no. 5 shall reap the benefit of the consequences flowing from her being the sole candidate whose nomination paper was accepted for the post.

12. The Court would observe that in the event, the State Election Commission comes to a finding that the Returning Officer had wrongly rejected the nomination paper without there being official communication to him with regard to cancellation of 'No Dues Certificate' and also that such cancellation was not proper, appropriate action shall also be taken by the State Election Commission against such officers who may be found to be involved in such transaction and had not acted in accordance with law and whose conduct may reflect extraneous consideration/*mafa fide*.

13. To facilitate matters, let the petitioner appear before the State Election Commission on 25th May, 2017 at 11.00 A.M. along with a copy, may be web copy duly attested by him, of this order. The respondent no. 5 shall also appear on the said date and thereafter the State Election Commission shall undertake the exercise, as



required under this order, and will ensure that the exercise as contemplated by this Court is expeditiously completed so that, if required, the election to Ward No. 2 is also held on the scheduled day i.e., 7th of June, 2017 in which the petitioner and respondent no. 2 shall both be candidates.

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

(Ahsanuddin Amanullah, J)

P. Kumar

AFR/NAFR	AFR
U	

