

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7964 of 2017

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Afrin Rizvi, Wife of Syed Tasnim Rizvi, Resident of Mohalla- Haroon Nagar, Phase-1, Ward No. 8, Phulwarisharif Nagar Parishad, P.O. and P.S. Phulwarisharif, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The State Election Commission(Municipality), Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
3. The State Election Commissioner, The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.
4. The Secretary, The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.
5. The District Election Officer (Municipality) -cum-District Magistrate, Patna, District- Patna.
6. The Sub-Divisional Officer-Patna Sadar-cum-Returning Officer Municipal Election 2017, Nagar Parishad, Phulwarisharif District- Patna.
7. The Joint Secretary, The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.
8. Zeba Praveen, Wife of Faiz Ahmed, Resident of Mohalla- Haroon Nagar, Phase- 1, Ward No.8 Phulwarisharif Nagar Parishad, P.O. and P.S. Phulwarisharif, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S. B. K. Mangalam with Mr. Ravi Ranjan, Advocates
For the SEC	:	Mr. Amit Shrivastava with Mr. Sanjeev Nikesh, Advocates
For the State	:	Mr. Syed Hussain Majeed, AC to SC 6

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 05-07-2017

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



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

“ (I) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the order dated 18.05.2017 passed by the Respondent no. 3 in Case No. 30 of 2017 and communicated to the petitioner under memo no. 2496 dated 18.05.2017 issued under the signature of Respondent no. 7, whereby and where under he has been pleased to refuse to interfere in the order passed by the Respondent no. 6, whereby and where under the Respondent no. 6 was pleased to reject the nomination of the petitioner which she had filed to contest the election of Ward Councilor from Ward No. 8 of Phulwarisharif Nagar Parishad.

(II) For a declaration that if on verification of the relevant records and on recommendation of the Tax Collector, the competent authority had issued No Dues Certificate in favour of the petitioner's seconder and the said No Dues Certificate was filed by the petitioner along with her nomination paper, the Respondent no. 6 was not required to go further for any enquiry if there was no objection against her nomination by any candidate or any other person and that no clinching evidence was proceeded before him to show that the petitioner's seconder was in default.

(III) For a declaration that if it is the case of the



petitioner and her seconder that so-called holding no. 372 does not belong to her seconder, there can be no justification in rejection of petitioner's nomination unless a finding based upon evidence is recorded that holding no. 372 belongs to the petitioner's seconder and he was in default.

(IV) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Authorities to accept the nomination of the petitioner which has been arbitrarily rejected by the Returning Officer and allow her to contest the election for which the Respondent State Election Commission may further be directed to notify the schedule of election in Ward No. 8 of Phulwarisharif Nagar Parishad afresh in accordance with law.

(V) For issuance of any other appropriate writ/writs. Order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”

3. The petitioner had earlier moved for the same relief in C.W.J.C. No. 7410 of 2017 which was disposed off by order dated 17.05.2017 by which the matter was sent to the State Election Commission to take a final decision. Subsequent to the same, the State Election Commission has decided the issue by order dated 18.05.2017 refusing to interfere in the matter. The same is under challenge in the



present writ application.

4. The stand of learned counsel for the petitioner is that during the course of scrutiny of nomination paper, on an oral objection by a party that the seconder of the petitioner was a defaulter for one of his municipal holdings i.e., 372, he was ineligible to become a proposer, was incorrect as no such holding was in his name.

5. In the counter affidavit filed on behalf of the State Election Commission, the stand is that such finding has been found to be correct, inasmuch as, the Executive Magistrate, Patna Sadar in his communication under letter no. 47 dated 13.05.2017 to the Returning Officer had clearly indicated that there were two holdings i.e., Holding No. 404, Ward No. 8 and Holding No. 372, Ward No. 8 in the name of Syed Nasim Rizvi, who was the seconder in the nomination paper filed by the petitioner. Learned counsel took the stand that such entry is incorrect.

6. Having considered the matter in its entirety, as long as the entry showing the name of seconder of the petitioner exists and against which there are holding tax dues, in law, if the Returning Officer relies upon such fact and holds the seconder to be incompetent/ineligible and based on the same has rejected the nomination paper, no infirmity can be attributed to such order. The remedy of the petitioner relies elsewhere, i.e., first to get the records



relating to such holding(s) corrected and then only he can have a case that he is not the owner of such holding(s) and any liability against such holding cannot be fastened to him. However, till the time the petitioner's name exists in the records of Nagar Parishad, Phulwarisharif with regard to holdings No. 404 and 372 of Ward No. 8, the petitioner shall, in law, is responsible and liable to pay the dues outstanding against such holdings, till such time necessary corrections, in accordance with law, are not carried out. The order of rejection, thus, being based on such entry which has been verified by the Executive Magistrate and communicated to the Returning Officer, does not require any interference.

7. Accordingly, the writ petition stands disposed off.

8. It shall be open to the petitioner to move before the appropriate forum/court, in accordance with law, for any grievance she may have in the matter.

(Ahsanuddin Amanullah, J)

Anjani/-

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