

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 7071 of 2017

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Ashwani Kumar, Son of Mahesh Narayan Singh, Resident of Mohalla-Baradari,
Ward No. 28, P.O. and P.S.-Biharsharif, District-Nalanda at Biharsharif.

.... Petitioner/s

Versus

1. The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
2. The State Election Commissioner, the State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.
3. The Secretary, the State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.
4. The Joint Secretary, the State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.
5. The District Election Officer (Municipality)-cum-District Magistrate, Nalanda at Biharsharif, District- Nalanda at Biharsharif.
6. The Returning Officer, Municipal Election 2017, Biharsharif Municipal Corporation, District-Nalanda at Biharsharif.
7. Sanjay Kumar, son of Uttam Chand Yadav, Resident of Mohalla-Gauragarh, P.O and P.S. Biharsharif, District-Nalanda at Biharsharif.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.B.K. Mangalam, Advocate
For the SEC	:	Mr. Amit Shrivastava, Advocate
		Mr. Girish Pandey, Advocate
For the State	:	Mr. Kinkar Kumar, S.C. 9
		Mr. Zaki Haider, A.C. to S.C. 9

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 19-05-2017

Heard Mr. S.B.K. Mangalman, learned counsel for the
petitioner; Mr. Amit Shrivastava along with Mr. Girish Pandey,
learned counsel for the State Election Commission and Mr. Kinkar



Kumar, learned SC-9 for the State.

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

*“(I) For issuance of an appropriate writ in the nature of **MANDAMUS**, commanding and directing the Respondent Authorities to produce on record the order passed by the Respondent no. 2 in Case No. 23 of 2017, whereby and where under the Respondent no. 2 has been pleased to direct the Respondent no. 6 for rejection of nomination of the petitioner which was earlier accepted by the Returning Officer on the date of scrutiny i.e. 28.04.2017 and on production the same may be quashed by issuance of an appropriate writ in the nature of **CERTIORARI** on the ground that the State Election Commission does not have the jurisdiction to direct for rejection of nomination paper which was already accepted by the Returning Officer on the date of scrutiny in view of the provision contained in Rule-47 of the Bihar Municipal Election Rules, 2007 and the judgment of this Hon’ble Court in the case of Praful Chand Sudhanshu since reported in 2013(2) PLJR- 114.*

*(II) For issuance of an appropriate writ in the nature of **CERTIORARI** for quashing the list of contesting candidates published by the Returning Officer on 06.05.2017 whereby and where under he has been pleased to publish the list of contesting candidates and the name of the petitioner has been deleted from the list which was earlier incorporated in the list of contesting candidates and thereafter the election symbol was allotted to the petitioner.*

(III) Consequent upon quashing the order of State Election Commission directing the Returning Officer for rejection of nomination paper of the petitioner and the revised list of contesting candidates published by the Returning Officer,



this Hon'ble Court may further direct the Returning Officer to include the name of the petitioner in the list of contesting candidates and allow him to contest the Municipal Election, 2017 for which his nomination was already accepted by the Returning Officer after the scrutiny, his name was mentioned in the list of contesting candidates and thereafter election symbol too was allotted to him.

(IV) 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 along with respondent no. 7 and three others had filed nomination papers for the election to the post of Ward Councillor from Ward No. 28 of Biharsharif Municipal Corporation. On scrutiny held on 28.04.2017, all five nomination papers were accepted and upon one candidate withdrawing her candidature, the list of contesting candidates was published on 02.05.2017 and symbol was also allotted to the contesting candidate on 03.05.2017. On the date of scrutiny i.e., 28.04.2017 itself, the respondent no. 7 filed compliant before the State Election Commission alleging that the petitioner had not disclosed in his affidavit, filed along with the nomination papers, that there were three criminal cases pending against him and further that he was also a voter at Serial No. 131 of Territorial Constituency No. 5 under Gram Panchayat Raj Jamsari. The State Election Commission after notice to



the parties and the District Magistrate, Nalanda passed order on 05.05.2017 and directed for rejection of the nomination paper of the petitioner.

4. Learned counsel for the petitioner submitted that the order of the State Election Commission is beyond jurisdiction as no such power is available under either the Bihar Municipal Act, 2007 (hereinafter referred to as the 'Act') or the Bihar Municipal Election Rules, 2007 (hereinafter referred to as the 'Rules'), to the State Election Commission to pass such an order. It was submitted that once the nomination paper has been accepted, the natural consequences would follow and only after completion of the election process by declaration of result, the remedy available to the aggrieved parties is to move before the prescribed authority in an election petition. In this connection, learned counsel submitted that he was adopting the arguments advanced on behalf of the petitioner of C.W.J.C. No. 7203 of 2017 (**Smt. Ruma Raj vs. The State Election Commission Bihar & Ors.**) and noted by the Court in its order passed earlier today. With regard to the facts of the case, he submitted that as far as the allegation of not disclosing the details of three criminal cases filed against him, he had stated before the State Election Commission in his written reply that as per his knowledge, in two cases, neither any chargesheet has been submitted against him



nor cognizance taken by the Court and further with regard to the third case, the records were not available and thus, in terms of the requirement of disclosing such fact as per the columns in the affidavit details of such cases were not required to be disclosed. As far as the allegation of non disclosure of his name finding place at Serial No. 131 of the voter list of Gram Panchayat Raj Jamsari, it was stated that he would not take benefit of such entry. It was submitted that the petitioner had in fact left the column vacant but at the insistence of the Returning Officer, wrote '*shunya*' (zero). Learned counsel submitted that the police not submitting chargesheet against the petitioner in the criminal cases clearly indicates that the petitioner was not sent up for trial which amounts to him being discharged by the police itself.

5. Learned counsel for the State Election Commission submitted that the nomination paper of the petitioner has rightly been rejected for the reason that he had not only suppressed material fact but had also stated falsehood. Learned counsel submitted that even if the petitioner had not been sent up for trail by the police, as has been submitted by learned counsel for the petitioner, which may amount to him being discharged by the police in the criminal case, but details of such criminal case was also required to be furnished in terms of Section 445(1)(i) of the Act which he has admittedly not furnished. It



was further stated that the petitioner has further made a wrong statement in his affidavit by stating that his name did not figure in any other Nagar Nigam/Nagar Parishad/Nagar Panchayat/Gram Panchayat except in the voter list of the Nagar Nigam for which he was contesting. Learned counsel relied on a decision of the Hon'ble Supreme Court in the case of **Krishnamoorthy v. Sivakumar** reported as **AIR 2015 SC 1921**, where it has been held that non disclosure of criminal antecedent would be a corrupt practice and the election of such candidate can be declared null and void.

6. Having considered the rival contentions, the Court is not inclined to interfere in the matter. Though, the Court has interfered with regard to rejection of nomination papers in the case of **Smt. Ruma Raj** (supra), by order passed today, but there is material difference between the facts of the two cases. In the case of **Smt. Ruma Raj** (supra), on the ground that the non mentioning of certain facts were not of a nature which had the potential to materially affect the election like there being suppression of criminal antecedent or making a patently wrong statement. In fact in the case of **Smt. Ruma Raj** (supra) itself, the Court had clarified that if there had been non declaration of any criminal antecedent, it would have refrained to interfere in the matter. In the present case, though strictly speaking, the petitioner may have made out a case of the State Election



Commission not having jurisdiction to interfere in the matter, but in the present jurisdiction of this Court under Article 226 of the Constitution of India, which is a prerogative extraordinary and discretionary, the Court can very well decline from interfering on the ground of there being suppression of criminal antecedent as well as the petitioner making a patently false statement, which was very well known to him. In a democracy, purity and probity has to be maintained in public life and in this regard, the Court is in agreement with the submissions of learned counsel for the State Election Commission and his reliance on the decision of the Hon'ble Supreme Court in the case of **Krishnamoorthy** (supra). The Act, especially Sections 445(1) and 445(1) (i) thereof, stipulate that a candidate shall, apart from any information which he is required to furnish in his nomination papers delivered under the Act or the Rules made thereunder, has also to furnish information on affidavit on various aspects including whether he is convicted/ acquitted/ discharged of any criminal offence in the past and if any, whether he is punished with imprisonment or fine. Thus, even if no such specific column exists in the format of the nomination papers, in law, in terms of the aforesaid specific provision of the Act, the petitioner was obliged to disclose the pendency of criminal cases against him and as has been submitted by learned counsel for the petitioner himself that non filing



of the chargesheet amounts to discharge by the police itself, as per the language of the said provision of the Act, it is discharge from any criminal offence and not restricted to discharge by the Court. Thus, even if no chargesheet has been submitted or the petitioner not sent up for trial, he was required in law to disclose such information on affidavit. At the cost of repetition, this Court indicates that such suppression of criminal antecedent is detrimental to a democratic set up where the electorate has the right to know about the antecedent reflecting the character of the prospective candidate of which pendency of criminal cases is a major indicator. Further, in the affidavit regarding his name not being present in any other voter list of any other Nagar Nigam/Nagar Parishad/Nagar Panchayat/ Gram Panchayat, the petitioner having written '*shunya*' (zero), which is a categorical statement that his name was not at any other place, and this fact being patently false and even admitted in the reply filed by the petitioner himself before the State Election Commission, where he has only stated that he would not make use of the entry of his name in the other Gram Panchayat, cannot absolve him of the consequences of such wrong statement. Further, in view of the admitted position that the petitioner had contested the election for the said Gram Panchayat also in the year 2016, it cannot be said that he had no knowledge of such entry. Thus, the Court has no hesitation to hold that such false



statement of writing '*shunya*' (zero) with regard to a fact which was well known to the petitioner is a deliberate false statement and further non disclosure of pendency of more than one criminal cases under serious Sections of various penal laws, is an equally adverse circumstance against the petitioner since such non disclosure would lead to the electorate being unaware of the past conduct and criminal antecedent of the petitioner, which is a vital and essential information and the electorate has a right to know about it. Moreover, once the Court finds that such suppression would be a valid ground for interfering in the election, if the petitioner finally wins, it would not let matters wait till such time, only as mere formality, when the result is already known. Thus, once the petitioner's conduct makes his nomination paper liable to be rejected, this Court would not provide him the luxury to contest the election on a technicality, as it would be a mockery of the system. Further, the Court would also rely upon and adopt the reasons recorded in the judgment dated 18.11.2016 in C.W.J.C. No. 2394 of 2016 in the case of **Shiv Ballam Yadav vs. The State of Bihar & Ors.**

7. For the reasons aforesaid, on the basis of admitted facts which prove that the petitioner had made a deliberate false statement and had also suppressed material facts, clearly disentitles him to any relief, especially under Article 226 of the Constitution of



India as one of the fundamental principles to interfere in writ jurisdiction by the High Court is the requirement of the petitioner coming with clean hands and once it is proved that he had made false statement and also suppressed material facts for taking part in the election process, this Court would refrain from interfering in the matter.

8. Accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

P. Kumar

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