

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 18842 of 2016

=====

Kunti Devi, Wife of Sri Sanjay Kumar Rajak, resident of Village- Mallahipatti, Ward No. 15, P.O.- Baidrabad, P.S.- Arwal, District- Arwal. At present Parshad, Ward No. 15, Nagar Parishad, Arwal.

.... Petitioner/s

Versus

1. The State Election Commissioner, Bihar, Patna 3rd Floor Sone Bhawan Beerchand Patel Path, Patna.
2. The Secretary, State Election Commission, Bihar, Patna Sone Bhawan, Beerchand Patel Path, Patna.
3. The District Magistrate cum District Returning Officer Nagar Palika Arwal.
4. The Nirvachi Padadhikari, Nagar Parishad, Cum Sub-Divisional Officer, Arwal.
5. The Executive Officer Nagar Parishad, Arwal.
6. The Assistant Nirvachi Padadhikari Nagar Parishad-cum-Executive, Magistrate, Arwal.
7. Srimati Sabila Khatoon, wife of Farooq Azam, Village- Mallahipatti, PO.- Baidrabad, P.S.- Arwal, Block- Arwal, District- Arwal.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Arvind Prasad Singh, Advocate
For the SEC	:	Mr. Amit Shrivastava and Mr. Girish Pandey, Advocates

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 12-01-2017

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

The petitioner has moved the Court for quashing of
order dated 26.10.2016 passed by the State Election Commission,
Bihar, Patna by which her election to the post of Ward Councillor of
Ward No. 15 of Nagar Parishad, Arwal has been set aside.

Learned counsel for the petitioner submitted that she
was duly elected as Ward Councillor of Ward No. 15 of Nagar



Parishad, Arwal and thereafter, respondent no. 7 filed a complaint before the State Election Commission alleging that after 04.04.2008, she had given birth to three children whereas in the declaration form filled up, she disclosed that she had only two children and thus, suppressed material facts due to which her election has been set aside. Learned counsel submitted that though the petitioner has given birth to three children after the cut off date but the last child who was born on 18.01.2016 was given in adoption to her sister and thus, in law, she was the mother of only two children born after the cut off date which would not make her disqualified for election. It was further submitted that though there is a finding that the stamp paper used for showing such adoption is ante dated, the mistake is inadvertent moreso, on account of the stamp vendor, but the fact remains that the son born to her on 18.01.2016 was given in adoption to her sister.

Learned counsel for the State Election Commission submitted that the matter was enquired into by the District Magistrate, Arwal, who has reported that the stamp paper used to show adoption was in fact issued by the Treasury on 27.02.2016 whereas the date of execution shown on the paper is 20.02.2016, which clearly indicates fraud and collusion, and in any view of the matter would make the document itself invalid for all purposes. It



was further submitted that the election was announced in February, 2016 and the dates for filing nomination fixed from 12th to 18th March, 2016, the conduct of the petitioner, as enumerated above, also raises genuine and *bona fide* doubt and the signature of the petitioner on all the pages of the so called adoption deed is dated 20.02.2016 and thus, leaves no doubt or ambiguity as to the document being ante dated. He submitted that a person is ineligible for being elected if he or she has more than two children born after the cut-off date 04.04.2008, as per statutory requirement under Section 18(1)(m) of the Bihar Municipal Act, 2007, the validity of which has been affirmed by the Division Bench of this Court in the case of **Arun Ravidas vs. State of Bihar** reported as **2011(2) PLJR 795**. He submitted that after hearing the parties, the State Election Commission by the impugned order has set aside the said election.

Having considered the matter, the Court does not find any merit in the present writ application. The fact that the paper on which the adoption deed has been prepared is admittedly 27.02.2016, which fact is not denied by the petitioner. The plea that due to the wrong mentioning of the date by the stamp vendor, she had also signed as 20.02.2016 cannot be accepted for the signature on all the pages have the date mentioned as 20.02.2016 which cannot be an inadvertent error. Further, the date of both the stamp vendor as well



as the petitioner being the same i.e., 20.02.2016 and even the sister of the petitioner as well as her husband, who are the beneficiaries of the adoption, having also given the date as 20.02.2016, is indicative of the fact that the document was created with *mala fide* intention and by sheer providence, the fraud has been exposed when the paper on which the adoption deed was executed has been found to be issued by the Treasury only on 27.02.2016.

In view of the aforesaid, the Court does not find any occasion to interfere in the matter and accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

AFR/NAFR	AFR
U	

