

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 6798 of 2017

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Navratan Choudhary Son of late Shiv Nandan Choudhary Both Residents of Ward
No. 14, Nagar, Panchayat Banmankhi, P.S.- Banmankhi, District- Purnea.

.... Petitioner/s

Versus

1. The State Election Commission, Sone Bhawan, Patna.
2. The District Magistrate, Purnea.
3. The Returning Officer, Nagar Panchayat, Banmankhi cum LRDC, Banmankhi,
Purnea.

.... Respondent/s

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Appearance :

For the Petitioner	:	Mr. N. K. Agrawal, Sr. Advocate with Mr. Vijay Anand, Advocate
For the State	:	Mr. Ram Subhas Singh, AC to AAG 7
For the SEC	:	Mr. Amit Shrivastava with Mr. Girish Pandey, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 10-05-2017

Heard Mr. N. K. Agrawal, learned senior counsel
assisted by Mr. Vijay Anand, learned counsel for the petitioner;
learned A.C. to A.A.G. 7 for the State and Mr. Amit Shrivastava,
learned counsel assisted by Mr. Girish Pandey, learned counsel for the
State Election Commission.

2. The petitioner has assailed the order dated
29.04.2017 passed by the Returning Officer, Nagar Panchayat
Banmankhi-cum-L.R.D.C., Banmankhi in the district of Purnea by



which his nomination paper for the election to the post of Ward Councillor of Ward No. 15 of Nagar Panchayat Banmankhi has been rejected on the ground of him being disqualified under Sections 18 (1) (g) and 18 (2) of the Bihar Municipal Act, 2007 (hereinafter referred to as the 'Act').

3. The petitioner had filed his nomination paper for contesting election to the aforesaid post on 24.04.2017. On 28.04.2017, i.e., the date of scrutiny, on the objection raised by another prospective contestant, the Returning Officer referred the matter to the State Election Commissioner asking for guidelines. The petitioner was also asked to file his reply which was done on 29.04.2017. Without the Returning Officer waiting for any response from the State Election Commission, he rejected the nomination paper of the petitioner on 29.04.2017 which is under challenge in the present writ application.

4. Learned counsel for the petitioner submitted that the ground on which the nomination paper has been rejected, i.e., Sections 18 (1) (g) and 18 (2) of the Act is totally erroneous as the same relates to there being sentence of six months or more against the person which has not been subsequently reversed or if he is absconding as an accused in a criminal case for more than six months and if he is disqualified after election in terms of Article 243-V of the



Constitution of India as also any of the disqualification mentioned in Section 475 of the Act or subject to any disqualification mentioned in sub section (1) of Section 18 of the Act for which the matter will be referred to the State Election Commissioner. Learned counsel submitted that earlier he had contested the election in the year 2012, and had also won the election, but later, on the complaint of one Birendra Prasad Singh, the State Election Commission had held him disqualified and the matter reached the High Court in C.W.J.C. No. 14978 of 2013. It was submitted that before the case could be finally decided by the High Court, the petitioner had got an order on 01.02.2013 in Criminal Appeal (SJ) No. 835 of 2008 by which the judgment of conviction and sentence dated 05.08.2008 passed against the petitioner by the Additional Sessions Judge, Fast Track Court-V, Purnea in Sessions Trial No. 418 of 2004 was suspended till further order. Learned counsel submitted that the High Court by order dated 25.11.2014 in C.W.J.C. No. 14978 of 2013, held the view that because the order of stay of conviction and sentence was passed subsequent to the filing of nomination and election held in the year 2012, the petitioner, as on that date, stood disqualified and, thus, no relief was given. Learned counsel further submitted that the order of the State Election Commissioner disqualifying the petitioner on such basis being made a ground for rejection of his nomination paper in the



present transaction is totally misplaced and erroneous as the conviction and sentence having been stayed on 01.02.2013, the matter has to be judged in terms of the position existing on the date of filing nomination and, more importantly, on the date of scrutiny. Learned counsel submitted that the order passed has caused prejudice to the petitioner as without there being anything against him in law, he has been prevented from his right accruing under the statute to contest the said election.

5. Learned counsel for the State Election Commission submitted that though technically the petitioner may have made out a point but in view of law laid down by the Hon'ble Supreme Court in the case of **N. P. Ponnuswami v. The Returning Officer** reported as **AIR 1952 Supreme Court 64**, the election process once having started should not be interfered with and all matters including the issue relating to rejection of nomination paper has to be challenged before the appropriate forum, in accordance with law, after the completion of the election, i.e., declaration of result. He has specifically drawn the attention of the Court to paragraph no. 16 of the aforesaid judgment. He also referred to paragraph no. 2 of the said decision to show that the issues formulated include as to whether rejection of nomination paper during the process of election can be challenged before the High Court under Article 226 of the



Constitution of India.

6. Having considered the rival contentions, the Court is of the opinion that in the present case when the ground taken is *prima facie* and culpably erroneous, the petitioner being made to wait till completion of the election would be against the interest of justice and would frustrate the cause of justice, which is of paramount consideration for any court of law, especially while exercising jurisdiction under Article 226 of the Constitution of India. If interference would have impeded the course of the election, this Court, while exercising jurisdiction under Article 226 of the Constitution of India, could have refrained from interfering in the matter. However, if the nomination paper of the petitioner which has been rejected is interfered with and the same is held to be valid, it would not impede the election as only the name of the petitioner would have to be included in the election to be held and a symbol has to be allotted to him and the same would not delay the election, with the schedule already published being adhered to without there being any deviation required.

7. In light of the discussions made hereinabove, the order dated 29.04.2017 passed by the Returning Officer, Nagar Panchayat Banmankhi-cum-L.R.D.C., Banmankhi, rejecting the nomination paper of the petitioner, is quashed. His nomination paper



stands accepted. The concerned authorities shall ensure that the petitioner's name is included in the election for the post for which he has filed nomination.

8. At this juncture, learned counsel for the State Election Commission informed the Court that the elections are to be held through E.V.Ms. and symbols have already been allotted.

9. In such view of the matter, all the more, there is no requirement of any change in the schedule of election as the petitioner has only to be allotted symbol and his name has to be included in the E.V.M. for the post for the election to be held on the scheduled date, i.e., 21.05.2017. Accordingly, the Returning Officer is directed to include the name of the petitioner in the E.V.M., after allotting him symbol which would be without disturbing the symbols and serial numbers already allotted to the remaining candidates. To facilitate matters, the petitioner shall serve copy of this order on the respondents no. 1, 2 and 3 within the next two working days.

10. The writ petition stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J)

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