

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7410 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 Dist Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar.
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 Dist. Patna.
6. The Sub-Divisional Officer Patna Sadar Cum Returning Officer Municipal Election 2017 Nagar Parishad Phulwarisharif.
7. Zeba Praveen wife of Faiz Ahmad Resident of Mohalla Haroon Nagar Phase 1 Ward No. 8 Phulwarisharif Nagar Parishad P.O. and P.S. Phulwarisharif Dist Patna.

.... 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. Rajiv Roy GP1
		Mr. Arun Kumar, AC to GP 1.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 17-05-2017

Heard learned counsel for the parties.

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 No. 6 to produce on record his order dated 13.05.2017, whereby and whereunder he has been pleased to reject the nomination filed by the petitioner to contest Municipal Election, 2017 from Ward No. 8 of Phulwarisharif Nagar Parishad and on production the same may be quashed by issuance of an appropriate writ in the nature of CERTIORARI on the ground that if her Secunder Syed nasim Rizvi is not defaulter and he has cleared all his dues of the Municipality in respect of the holding which he possesses, the Respondent no. 6 was justified to reject the nomination of the petitioner and that too without disclosing the holding number in respect of which her Secunder was said to be defaulter.

(II) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent no. 6 to accept the nomination of the petitioner which he has illegally rejected by the impugned order dated 13.05.2017, to incorporate her name in the list of contesting candidates, to allot a symbol to her and enter her name in the Electronic Voting Machine which he might have allotted to the Presiding Officers of different booths of Ward No. 8.

(III) 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 was a prospective candidate for the post of Ward Councilor of Ward No. 8 of Phulwarisharif Nagar Parishad. The proposer in her nomination paper was Syed Tasnim Rizvi and seconder was Syed Nasim Rizvi. It appears that at the time of scrutiny somebody raised an objection that No Dues Certificate given by the seconder was not proper as he was a defaulter for another holding. Despite there being no written objection, the nomination paper of the petitioner has been rejected on such ground which is assailed in the present writ application.



4. Learned counsel for the petitioner submitted that No Dues Certificate of the petitioner as well as the proposer and seconder were duly filed with the nomination paper, but at the time of scrutiny, on oral objection by a stranger, the same has been rejected. Learned counsel submitted that an objection was raised by the petitioner at that very point to be made aware of the details regarding the holding for which the person objecting had made a complaint. Learned counsel further submitted that no evidence or supporting document or even a written complaint was filed and only orally somebody had observed that the seconder was defaulter for holding no. 372 without there being any ward number or details. Learned counsel has taken a categorical stand that despite the same being incorrect, it was also too vague and no records/documents/evidence was ever shown to the petitioner or even verified from the official records. Learned counsel submitted that the rejection of the nomination paper of the petitioner has to be seen in the context that out of three nomination papers, filed, two nomination papers, including that of the petitioner has been rejected by the Returning Officer which is obviously for the purpose of unduly benefiting the candidate i.e., respondent no. 7.

5. Learned counsel for the State Election Commission very fairly submitted that if the matter is still open, in the sense that respondent no. 7 has not been declared elected, the State Election Commission is ready to look into the matter.



6. In view thereof, the writ application stands disposed off with a direction to the respondents no. 3 and 4 to verify from the official records with regard to the claim of the petitioner that her nomination paper has wrongly been rejected on the ground that the seconder was in default with regard to due municipal tax of his holding. It would be verified from the records of the Phulwarisharif Nagar Parishad as to whether the holding of which the petitioner's seconder is said to be in default is borne out from the official records. If it transpires that there is no written objection on record or that no such holding of the seconder is recorded in the official records, the nomination papers of the petitioner shall accordingly, be directed to be accepted, for which the State Election Commission shall issue necessary directions to the authorities concerned, including the Returning Officer and in the forthcoming Election, she shall participate as a candidate for Ward No. 8. At this juncture, the Court called upon learned counsel for the petitioner to inform as to whether consequences of rejection of nomination papers of all other prospective candidates excluding respondent no. 7 had taken effect and whether she has been declared elected and certificate granted, upon instructions, he submitted that no declaration or grant of certificate have been made in favour of the respondent no. 7. Learned counsel has explained the proposition in law also, that since today till 3 p.m is the date for withdrawal of nomination papers, any



consequences shall follow only after that whereas the present order has been passed today at 12.30 P.M. In view thereof, a direction is also issued to the Returning Officer not to proceed with regard to the consequences flowing out of acceptance of the sole nomination papers of respondent no. 7 till the State Election Commission takes a final decision in this regard.

7. Learned counsel for the State as well as State Election Commission shall communicate the order to the Returning Officer (Respondent no. 6) with regard to the present order so that he does not proceed in the matter by taking consequential steps in terms of Rule 51 of the Bihar Municipal Election Rules, 2007. The petitioner shall serve a copy, may be a web copy with due attestation by the petitioner, on respondent no. 4 by 11 a.m tomorrow morning. The respondents no. 3 and 4 shall thereafter, ensure that the exercise indicated in this order is completed within two working days thereafter.

(Ahsanuddin Amanullah, J)

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