

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7139 of 2017

=====

Bhushan Prasad Sinha Son of Balgovind Sahay, Resident of Mohalla- Kunj Gali,
Naya Bazaar, P.S. Sherghati, District- Gaya.

.... Petitioner/s

Versus

1. The State Election Commission, Sone Bhawan, Third Floor, Birchand Patel Path, Bihar, Patna.
2. The State Election Commissioner, Bihar, Patna.
3. The Secretary, State Election Commission, Bihar, Patna.
4. The District Magistrate, Gaya.
5. The Sub-Divisional Officer-cum-Returning Officer, Sherghati, District- Gaya.
6. The Circle Officer-cum-Assistant Returning Officer, Sherghati, District- Gaya.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Ravindra Kumar Singh, Advocate
For the State	:	Mr. Amish Kumar, A.C. to A.A.G. 8
For the SEC	:	Mr. Amit Shrivastava and Mr. Ritesh Kumar, Advocates

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 11-05-2017

Heard learned counsel for the petitioner; the State Election Commission and learned AC to AAG-8 for the State.

2. The petitioner is aggrieved by the rejection of his nomination paper for election to Ward No. 4 of Nagar Panchayat, Sherghati in the district of Gaya.

3. Learned counsel for the petitioner submitted that while filling up the nomination paper, though he was required to give 'No Dues Certificate' but inadvertently, the said 'No Dues



Certificate' which was filed related to his wife and at the time of scrutiny, he had given an affidavit to the effect that the 'No Dues Certificate' in his favour shall be filed. Learned counsel drew the attention of the Court to the guidelines issued by the State Election Commission dated 27.03.2017, to contend that the duty of the Returning Officer at the time of filling of nomination paper is to ensure that as per the check list, all necessary papers are attached and clerical mistakes removed. It was submitted that the Returning Officer not having done that, the inadvertent mistake on the part of the petitioner was required to be condoned by giving him opportunity to file the 'No Dues Certificate' issued in his name at the relevant time. Learned counsel further submitted that the Court has directed for consideration of the nomination paper of **Basanti Devi** in C.W.J.C. No. 6727 of 2017, by order dated 04.05.2017 and the petitioner may also be given similar relief.

4. Learned counsel for the State and State Election Commission submitted that the rejection of the nomination paper of the petitioner is correct as the onus and duty cast upon the petitioner, to attach the correct papers, along with the nomination papers cannot be shifted to the Returning Officer. It was submitted that in the present case, the admitted position is that a wrong 'No Dues Certificate' relating to the wife of the petitioner instead of the



petitioner had been submitted and thus, the requirement under the guidelines issued by the State Election Commission on the Returning Officer was limited to check as to whether all the documents as per the check list were attached and once a document was attached, the Returning Officer was not required to go on the merits of the document, which are to be looked into only at the time of scrutiny.

5. Having considered the matter, the Court does not find any ground to interfere. As has rightly been contended by learned counsel for the State and the State Election Commission, if the Returning Officer is held obliged to ensure that correct documents are filed, then it would result in a situation where the process of scrutiny would become redundant as all verification would already have been done at the time of filling of the nomination paper itself. The purpose for the State Election Commission to issue guidelines is to act as a safeguard so that if due to inadvertence, any document remains to be filed or is omitted, attention may be drawn of the person concerned, but ultimately it is the responsibility of the candidate concerned to ensure that not only documents but correct documents are filed. In the present case, 'No Dues Certificate' was filed. The only requirement by the Returning Officer at the time of filling of the nomination paper was to verify as to whether the 'No Dues Certificate' was available. The authenticity, validity and correctness



of such 'No Dues Certificate' was only required to be looked into at the time of scrutiny and not before. If the same had been done at the time of filing of nomination paper, it would be beyond jurisdiction and not in accordance with law, since the law contemplates verification on merits of the nomination paper and the documents attached to be done only at the time of scrutiny by the Returning Officer in the presence of all the candidates and any objector.

6. As far as the case of **Basanti Devi** (supra) is concerned, the facts were totally different inasmuch as, **Basanti Devi** had claimed that despite her having enclosed her caste certificate along with her nomination paper, the same had been rejected by the Returning Officer on the ground that no such caste certificate has been enclosed. In such background, the Court had only directed for a verification to be made and if it was found that the caste certificate had been enclosed, then **Basanti Devi** was allowed to contest in the said election.

7. At this juncture, Mr. Amit Shrivastava, learned counsel for the State Election Commission informed the Court that pursuant to records being called for and verified/examined at the level of the State Election Commission, the contention of **Basanti Devi** was found to be correct and thus, she has been allowed to be a contestant for the said election and necessary direction in this regard



has already been issued to the concerned Returning Officer for taking all consequential steps.

8. Accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

AFR/NAFR	AFR
U	

