

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.4935 of 2011**

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1. Arun Ravidas S/O Shri Gairi Das Anarhit Ward Parshad, Ward No. 19,  
Nagar Panchayat Bodhgaya, Zila Gaya.

.... .... Petitioner/s

Versus

1. The State Of Bihar.  
2. Aayukt, Rajya Nirwachan Aayug, Bihar, Patna.  
3. Aayukt, Magadh Pramandal, Bodhgaya.  
4. Zila Padadhikari, Gaya.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Subodh Kumar, Adv.

For the Respondent/s : Mr. Sanjeev Nikesh, Adv.

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**  
**ORAL ORDER**

4      16-04-2018                      In the instant writ petition the petitioner, an elected member of Bodh Gaya Nagar Panchayat, has challenged his disqualification under Section 18(1)(m) of the Bihar Municipal Act, 2007 (for short 'the Act').

The petitioner was elected to the post of a member of Bodh Gaya Nagar Panchayat. During his tenure as an elected member he became father of two more children. Thus, a complaint was made against him by one Jai Singh before the State Election Commission that he had earned disqualification under Section 18(1)(m) of the Act pursuant to which the State Election Commission got Case No. 26 of 2010 instituted and after conducting enquiry vide impugned order dated 01.02.2011 disqualified him from the said post on the ground that after being



elected he fathered two more children and earned disqualification. Section 18 of the Act deals with disqualification. Sub-section (1) thereof stipulates that notwithstanding anything contained in this Act, a person shall be disqualified for election or after election for holding the post as member of the Municipality. Clause (m) of sub-section (1) of Section 18 stipulates as under :-

“(m). If he has more than two living children:—  
provided that a person having more than two children on or upto the expiry of one year of the commencement of the Ordinance, shall not be deemed to be disqualified.”

It has not been disputed by the petitioner that he had one daughter from before the election and he became father of two more daughters after being elected. Thus, he had incurred disqualification as stipulated by clause (m) of Section 18(1) of the Act.

Be it noted that the petitioner had also challenged the constitutional validity of Section 18(1)(m) of the Act before this Court in the case of *Arun Ravidas Vs. The State of Bihar & Ors.* [2011(2) PLJR 795]. While dismissing the said writ petition, a Division Bench of this Court held that the provision of Section 18(1)(m) of the Act is intra vires the Constitution. The operative part of the judgment passed in the *Arun Ravidas* (Supra) reads as



under :-

“We are unable to agree with the petitioner. At first no fundamental right is conferred upon any citizen to have as many children as he/she may choose to have. The question of abrogation of fundamental right, therefore, does not arise. As to the question of discrimination, we quite appreciate that the endeavour of the State is to impose family planning to check the population which is rising in leaps and bounds. It may not be possible to impose such check in every possible way at a time. It may have to be imposed in a phased manner. The incorporation of disqualification under impugned Clause (m) is obviously an effort to impose compulsory family planning.

We are supported in our view by the judgment of the Hon’ble Supreme Court in matter of **Javed and others Vs. State of Haryana and others; A.I.R. 2003 SC 3057**, relied upon by the learned Advocate Mr. Anjani Kumar appearing for the respondent-State. While considering discrimination, the Hon’ble Supreme Court has also held,

“It is not permissible to compare a piece of legislation enacted by a State in exercise of its own legislative power with the provisions of another law, though *pari materia* it may be, but enacted by Parliament or by another State legislature with its own power to legislate. The sources of power are different and so do differ those who exercise the power.....”



For the aforesaid reason, the challenge to the constitutional validity of Section 18(1) (m) of the Bihar Municipal Act, 2007 fails. The provision is held to be intra vires the constitution. Petition is dismissed in limine.”

In view of the above decision passed by the Division Bench of this Court in *Arun Ravidas* (Supra) that the petitioner fathered two more children after being elected, the impugned order passed by the State Election Commission cannot be held to be bad.

Accordingly, the application, being devoid of any merit, is dismissed.

**(Ashwani Kumar Singh, J)**

Pradeep/-

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