

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13695 of 2017

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Arun Kumar Gupta, Son of Late Tej Narayan Prasad Sah, R/o Village- Sarsaula
Khurd, P.S. and District- Sheohar.

.... Petitioner

Versus

1. The State of Bihar through the District Magistrate, Sheohar.
2. The District Magistrate, Sheohar, District- Sheohar.
3. The Bihar State Election Commission, Patna, through its Chairman.
4. The State Election Commissioner, Bihar at Patna.
5. The Chairman, District Board, Sheohar, District- Sheohar.
6. The Executive Officer, District Board, Sheohar, District- Sheohar.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Mahendra Thakur, Advocate
Mr. Vijay Kumar, Advocate
For the Respondent-State : Mr. Gyan Prakash Ojha, GA-7
For the Respondent-BSEC : Mr. Amit Shrivastava, Advocate
Mr. Sanjeev Nikes, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-03-2018

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. In the present writ petition the petitioner has
prayed for quashing the order dated 04.08.2017 passed by the
Commissioner, State Election Commission, Bihar, Patna in Case
No.31 of 2017 by which he has declared the petitioner unfit from the
post of member, Zila Parishad, Sheohar on the ground that he has
been convicted for a maximum period of two years and the same has
been upheld by the appellate court.



3. It is submitted by the learned counsel for the petitioner that the petitioner was made an accused in Sheohar P.S. Case No. 5 of 2008 in which charges were framed against him for the offences punishable under Sections 323, 341 and 379 of the Indian Penal Code. After holding the trial, the Sub Divisional Judicial Magistrate, Sheohar convicted him for the aforesaid offences and he was awarded sentence of simple imprisonment of one year and fine of Rs.500/- under Section 323 of the Indian Penal Code, simple imprisonment of one month and fine of Rs.100/- for the offence under Section 341 of the Indian Penal Code and simple imprisonment for two years for the offence under Section 379 of the Indian Penal Code as well as fine of Rs.5,000/-. The judgment of conviction and order of sentence was challenged before the learned Sessions Judge, Sheohar in Cr. Appeal No.8 of 2017 and the appellate court upheld the conviction and sentence passed by the Sub Divisional Judicial Magistrate, Sheohar. The judgment passed by the appellate court was challenged in revision before this Court in Cr. Revision No.842 of 2017 and this Court vide its judgment dated 20th November, 2017 while upholding the judgment of conviction passed by the court below modified the sentence awarded to the petitioner for all the aforesaid offences to the period already undergone but the fine under Section 379 of the Indian Penal Code



has been increased to Rs.15,000/- out of which 80% of the fine has been allowed to be given to the informant.

4. He submitted that in view of the modification in sentence, his disqualification ordered by the State Election Commission cannot be sustained as Section 136(1)(g) of the Bihar Panchayat Raj Act, 2006 stipulates that a person shall be disqualified for election or after election for holding the post as member of Zila Parishad if such person has been sentenced by a criminal court for a term exceeding six months or has been ordered to furnish security for good behavior under Section 109 or Section 110 of the Code of Criminal Procedure, 1973 and such sentence or order not having subsequently been reversed. Since the petitioner had remained in custody only for twenty-five days and the sentence awarded against him was subsequently modified and was reduced to the period already undergone, the disqualification of the petitioner made in terms of Section 136(1)(g) of the Bihar Panchayat Raj Act, 2006 cannot be sustained.

5. On the other hand, learned counsel appearing for the State Election Commission submitted that the petitioner had earned disqualification on the date of conviction by the learned Sub Divisional Judicial Magistrate, i.e. 08.03.2017, the judgment of conviction and sentence by the learned Sub Divisional Judicial



Magistrate was upheld by the appellate court vide its judgment dated 18.07.2017 and after the judgment of the trial Magistrate and the appellate court, the order of disqualification was passed by the State Election Commission on 04.08.2017 and, thus, no error can be found with the order passed by the State Election Commission. He submitted that there is no such provision under the Bihar Panchayat Raj Act under which the disqualification once earned can be altered after subsequent modification in sentence by any higher court.

6. In reply, learned counsel for the petitioner submitted that till date notification for fresh election on account of vacancy having been created due to disqualification earned by the petitioner has not been made. He submitted that in view of the subsequent modification in sentence, it would be travesty of justice to hold that the petitioner has earned disqualification.

7. Having heard the parties, I find substance in the submissions made by the learned counsel for the petitioner.

8. Section 136(1)(g) of the Bihar Panchayat Raj Act, 2006 provides as follows:-

“136(1)(g). Disqualification for Membership - (1)
Notwithstanding anything contained in this Act, a person shall be disqualified for election or after election for holding the post as Mukhiya, member of the Gram Panchayat, Sarpanch, Panch of the



Gram Katchahri, member of the Panchayat Samiti and member of Zila Parishad, if such person—

(g) has been sentenced by a criminal court whether within or out of India to imprisonment for an offence, other than a political offence, for a term exceeding six months or has been ordered to furnish security for good behavior under section 109 or section 110 of the Code of Criminal Procedure 1973 (Act 2, 1974) and such sentence or order not having subsequently been reversed”.

(emphasis mine)

9. In the present case, it is an admitted position that the sentence has subsequently been modified under the judgment of this Court in Criminal Revision application. The sentence awarded to the petitioner has been reduced to the period already undergone and, till that time, the petitioner had remained in custody for twenty-five days only. In effect, it would be deemed that the petitioner has been sentenced for a period of twenty-five days for the offences for which he was put on trial and has been held guilty. If that is the position, then in that case, even in terms of Section 136(1)(g) the disqualification earned by the petitioner cannot be sustained in view of the fact that the original sentence awarded by the trial Magistrate which was upheld by the appellate court for a maximum period of two years, which was certainly for a period of



more than six months as stipulated in Section 136(1)(g) of the Bihar Panchayat Raj Act, 2006 has subsequently been reversed by the revisional court for a period lesser than six months.

10. In view of the subsequent developments, which took place after the order impugned was passed in Criminal Revision application filed by the petitioner before this Court challenging the appellate order passed by the court of Sessions, the impugned order dated 04.08.2017 passed by the Commissioner, State Election Commission, Bihar, Patna in Case No.31 of 2017 is set aside. Since the vacancy created due to disqualification earned by the petitioner has not been filled up till date, he shall continue to be a member of Sheohar, Zila Parishad and shall be deemed to have been continued as such without having earned any disqualification in terms of the aforestated impugned order.

11. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.03.2018
Transmission Date	NA

