

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6414 of 2017

=====

Indu Devi wife of Krishna Sah resident of Village - Kapiya Nijamat, P.S. -
Maharajganj, District - Siwan.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The State Election Commission, Govt. of Bihar, Patna.
3. District Magistrate cum Zila Nirwachi Padadhikari, Siwan.
4. Superintendent of Police, Siwan.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Amit Shrivastava, Advocate
Mr. Girish Pandey, Advocate

For the State : Mr. Manish Dhari Singh, AC to AG

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 23-04-2018

Challenge in this writ petition is made to the Bihar Nagar Palika Adhiniyam, 2007 and Rule 46 (1) (i) (n) of Bihar Nagarpalika Nirvachan Niyamavali wherein the provision is made prohibiting a person from taking more three children after 4.4.2008 for contesting the Nagar Palika Election. The identical question of law to challenge Section 18 of Bihar Nagarpalika Adhiniyam, 2007 has been considered by this Court in the case of Arun Ravidas Vs. The State of Bihar and others, C.W.J.C. No.16546 of 2010 and a Division Bench vide order dated 7.4.2011 reported in 2011(2) PLJR 795, the



constitutional validity of this Clause has been upheld and while doing so the learned Division Bench had referred to an earlier judgment of the Supreme Court in the case of Javed and others Vs. State of Haryana, AIR 2003 Supreme Court 3057. The question has been considered by a Co-ordinate Bench of this Court recently on 25.4.2017 in C.W.J.C. No.5520 of 2017, Brahmanand Singh Vs. The State of Bihar and others wherein the provision of Bihar Municipal Act, 2007 was also considered by this Court in the following manner :

“Challenging Section-18(1)(m) of the Bihar Municipal Act, 2007 a writ petition was filed and in the case of Arun Ravidas vs. The State of Bihar & Ors. (C.W.J.C. No.16546 of 2010), decided by a Division Bench of this Court on 7.4.2011 and reported in 2011 (2) P.L.J.R. 795, the constitutional validity of this Clause has been upheld and while doing so the learned Division Bench had referred to an earlier judgment of the supreme Court in the case of Javed & Ors. Vs. State of Haryana, reported in AIR 2003 SC 3057. Before the Supreme Court ;in the case of Javed (supra), Section 175(1)(q) of the Haryana Panchayat Raj Act, 1994 was challenged and



Section 175(1)(q) of the Haryana Panchayat Raj act, 1994 reads as under :

“ 175(1)(q) has more than two living children.”

A perusal of the provisions of section-18(1)(m) of the Bihar Municipal Act, 2007 and Section 175(1)(q) of the Haryana Panchayat Raj Act, 1994 goes to show that both are identical in terms and similar in nature. The Hon’ble Supreme Court while considering the validity of Section 175(1)(q) of the Haryana Panchayat Raj Act, 1994 in the case of Javed (supra) had gone into the question of discrimination, legislative competence and the reasonableness of the disqualification based on such a Clause and has upheld that identically in the State of Bihar.

Once the Supreme Court and a Division Bench of this Court have upheld the statutory provision, we see no reason to make any indulgence into the matter.

The petition is, therefore, dismissed.”

In view of the above, we find no reason to differ with



the findings indicated therein that there is no constitutional invalidity in the provision in question i.e. the provision of Section 18 of the Bihar Nagarpalika Adhiniyam, 2007 and Rule 46 (1) (i) (N) of Bihar Nagarpalika Nirvachan Niyamavali. Identical petition having already been dismissed by a Co-ordinate Bench of this Court, as indicated hereinabove, this petition is also dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	25-04-2018
Transmission Date	

