

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10980 of 2018

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Amit Kumar S/o Sri Jay Kumar R/o Mohalla/Village- Rampratap Nagar, Ward No. 8, P.O./P.S.-Islampur, District- Nalanda

.... Petitioner

Versus

1. The State of Bihar
2. The State Election Commission through Election Commissioner Bihar
3. The District Magistrate, Nalanda
4. The District Magistrate-Cum-District Election Officer (Pagar Palika)
5. The SDO, Nalanda, Hilsa, District-Nalanda, Bihar
6. The Deputy Collector, Land Reform, Hilsa, Nalanda
7. The Deputy Election Officer, Nalanda
8. The Circle Officer, Islampur, District - Nalanda
9. Shiv Shankar Kumar S/o Late Rameshwar Prasad R/o Village- Rana Pratap Nagar, Ward No.- 8, P.O./P.S.- Ishlampur, District- Nalanda

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Mukund Jee, Advocate
For the State	:	Mr. Sunil Kumar Mandal –SC-3 Mr. Bipin Kumar AC to SC-3
For SEC	:	Mr. Amit Shrivastava, Advocate Mr. Sanjeev Nikesh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 31-10-2018

This writ petition has been filed by the petitioner for quashing the order dated 04.05.2018 passed by respondent no. 2 in Case No. 12 of 2018 whereby the election of the petitioner on the post of ward councillor of Nagar Parishad was declared to be



annulled under Section 18 of the Bihar Municipal Act, 2007 (for short 'the Act') on account of contravention of the provision of law relating to more than two children alive after 04.04.2018.

2. The facts of the case, in brief, are that the petitioner contested the election of councillor of Nagar Parishad, Ishlampur. In the nomination paper, he had mentioned that he was blessed with twin daughters and one son. He was allowed to contest the election after filing nomination and he got elected. However, after the petitioner was declared elected, respondent no. 9, another contesting candidate filed a complain before the State Election Commission, Bihar, Patna alleging therein that the petitioner was not qualified to contest the election, as he was having three children at the time of nomination. On receipt of the complaint, the State Election Commission registered Complaint Case No. 12 of 2018 and after affording an opportunity of hearing to the parties, vide impugned order dated 04.05.2018, it annulled the election of the petitioner exercising powers under sub-section (2) of Section 18 of the Act.

3. Assailing the impugned order dated 04.05.2018, learned counsel for the petitioner submitted that the petitioner had not suppressed anything at the time of filing of his nomination paper. He had disclosed in the nomination form itself that he had fathered twin daughters and a minor son. Being satisfied with the eligibility of the



petitioner, no objection was raised by any one at the time of scrutiny of the nomination paper and he was allowed to contest the election. He argued that since there is no suppression on the part of the petitioner, the impugned order whereby the petitioner's election has been annulled is bad in law. He urged that the Election Commission failed to appreciate that a candidate, who had contested the election against the petitioner and lost the same cannot be allowed to raise such an issue at a belated stage.

4. On the other hand, learned counsel for the State submitted that Section 18(1)(m) of the Act clearly provides that a person shall be disqualified for election or after election for holding the post as member of the Municipality if such person has more than two children. He contended that since the petitioner had more than two living children, he was disqualified to contest the election as member of the municipality and, hence, no illegality can be found with the order passed by the State Election Commission.

5. Identical arguments have been advanced by the learned counsel for the State Election Commission. In support of his submissions, he has placed reliance on a Division Bench judgment of this Court in the matter of **Arun Ravidas vs. State of Bihar & Ors.**, reported in **2011 (2) PLJR 795**.

6. Having heard the parties and perused the record, I find



that sub-section (1) of Section 18 of the Act enumerates the situations in which an elected member would be disqualified to hold the post as a member of the municipality. Clause (m) thereof reads 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 Act, shall not be deemed to be disqualified.”

7. It is not in dispute that at the time of election, the petitioner was having more than two children. Thus, he was disqualified to contest the election of the municipality. Hence, he can not be allowed to hold post as a member of municipality.

8. A challenge to the constitutional validity of Section 18(1)(m) of the Act was tested by a Division Bench of this Court in the matter of **Arun Ravidas vs. State of Bihar & Ors.** (Supra). In that case, the Bench held the provisions to be intra vires the Constitution and dismissed the challenge *in limine*.

9. In view of the discussions made above and view of the ratio laid down in **Arun Ravidas vs. State of Bihar & Ors.** (Supra), I see no illegality in the order passed by the State Election Commission.



10. The writ petition, being devoid of any merit, is dismissed *in limine*.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.11.2018
Transmission Date	NA

