

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.557 of 2019**

**In**  
**Civil Writ Jurisdiction Case No.9829 of 2019**

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Angesh Kumar S/o Sri Narayan Singh Vill.- Jagdishpur, P.s.- Tariyani, Distt.- Sheohar

... .. Appellant/s

Versus

1. The Election Commission of India through the Chief Election Commission, Nirvachan Bhawan, New Delhi
2. The State Election Commission Bihar, Patna
3. The Returning Officer-cum-District Magistrate Motihari at Motihari Distt.- Motihari

... .. Respondent/s

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**Appearance :**

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| For the Appellant/s | : | Mr. P.K. Shahi, Senior Advocate<br>Mr. Purnendu Singh, Advocate<br>Mr. Thakur Jai Singh, Advocate<br>Mrs. Pronoti Singh, Advocate |
| For the E.C.I.      | : | Mr. Siddhartha Prasad, Advocate<br>Mr. Om Prakash, Advocate                                                                       |
| For the State       | : | Mr. G.S. Ojha, Advocate                                                                                                           |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE JUSTICE SMT. ANJANA MISHRA**  
**ORAL ORDER**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

2      06-05-2019                      This matter was called on a special mention being made stating the urgency for entertaining this appeal.

Heard learned counsel for the appellant and the learned counsel for the State as well as Shri Siddhartha Prasad for the Election Commission of India.

The appellant questioning the rejection of his nomination paper filed the writ petition giving rise to this appeal.



The writ petition has been dismissed by the learned Single Judge making certain observations, but, primarily, on the ground that the appellant shall have an adequate remedy in terms of Article 329(b) of the Constitution of India by filing the election petition at the appropriate stage.

Learned counsel for the appellant contends that the nature of the defect, on the basis whereof the learned Single Judge has rendered his opinion as also on the merits of the matter, cannot be said to be a substantial defect in the declaration and, consequently, the writ petition has been dismissed on the ground which is based on erroneous consideration.

Learned counsel for the appellant is correct in his submission that such a fact will have to be determined on the basis of evidence to be led, but for that a writ petition would not be maintainable keeping in view the law which has been referred to by the learned Single Judge in the impugned judgment itself.

We are, therefore, not inclined to entertain this appeal, without prejudice to the rights of the appellant to contest the rejection of his nomination paper in accordance with law and any observation made by the learned Single Judge will not be an



impediment to the same.

Consigned to records with the said observations.

**(Amreshwar Pratap Sahi, CJ)**

**(Anjana Mishra, J)**

Saif/-

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