IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7185 of 2020

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Priyam (Gender-Female), aged about 37 years, W/o- Shri Sunil Kumar Resident of Pratap Bhawan, Goriya Toli, Anaith, P.O.- Anaith, P.S.- Ara, Nawada, District- Bhojpur.

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna.
2. The District Magistrate- cum- District Election Officer Municipality, Bhojpur at Ara.
3. Mr. Abhay Kumar Pandey S/o Shri Dinesh Pandey Resident of Village- Simariya (Barhara), P.O. and P.S.- Barhara, District- Bhojpur.

----- Respondents 1st Set

4. The State Election Commission Bihar, Patna through its Secretary, State Election Commission, Bihar, 5th Floor, Sone Bhawan, Veer Chand Patel Path, Patna- 800001.
5. The State Election Commissioner State Election Commission, Bihar, 5th Floor, Sone Bhawan, Veer Chand Patel Path, Patna- 800001.

... ... Respondents 2nd Set

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Appearance :

For the Petitioner/s	:	Mr. Shri Prakash Srivastava, Adv. Mr. Abhay Kumar Pandey, Adv.
For the S.E.C.	:	Mr. Amit Shrivastava, Adv. Mr. Sanjeev Nikesh, Adv.
For the Resp. No.3	:	Mr. Y.V. Giri, Sr. Adv. Mr. Ranjeet Choubey, Adv.
For the State	:	Mr. Manish Kumar, AC to AAG-6

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 15-01-2021

Heard learned counsel for the parties.

In the present case, the petitioner is seeking relief for quashing the order dated 28.02.2020 (Annexure-P/5) passed by the Respondent No.5 in Case No. 30 of 2019 by which the petitioner has been declared unsuited on account of violation of Section 18(1)(k) of the Bihar Municipal Act, 2007 (hereinafter to be referred to as 'the Municipal Act') as it has been recorded that the petitioner did not pay all the taxes due by him to the Municipality at the end of the financial year immediately preceding that in which the election was held.

The short fact of this case is that the election of Ara Municipal Corporation was conducted in the year 2017 in which the petitioner filed her nomination paper on 25.4.2017 for the post of Ward Councilor from the Ward No. 44 which was accepted, fought the election, declared elected as Councilor on 23.5.2017. She also filed her nomination for the post of Mayor of Ara Municipal Corporation on 9.6.2017, was elected on the post but, after a while, two independent persons of the locality, namely, Santosh Kumar and Abhay Kumar Pandey filed their respective complaint to the Bihar Election Commission, Respondent no.5. The complaint of Santosh Kumar was not under consideration before the Bihar Election Commission rather the complaint of Abhay Kumar Pandey, who filed complaints on two occasions, was deliberated, wherein took a plea that the petitioner suppressing the material fact and without making payment of up-to-date municipal rent, filed her nomination paper and was elected accordingly.

In the first complaint dated 8.11.2019 (Annexure-2), he has stated that as per Section 18(1)(k) of the Bihar Municipal Act, deals with violation to deposit all taxes due by him to the Municipality at the end of the financial year immediately preceding that in which the election was held, has earned disqualification, giving example that the petitioner has an ancestral house in holding no. 153 having an area of 3566 Sq.ft. but, she has not mentioned in the nomination paper. Secondly, her husband Sunil Kumar and family are running a business establishment in the name and style of Pratap International School standing in holding no. 205/A having an area of 8894 Sq.ft. but, the valuation of the property was not done nor obtained the "No Objection Certificate" from the Municipal Corporation, Ara. She did not mention in the detail of this property in the nomination paper whereas the school is running in the name of Lalti Devi Foundation since 2014. In the complaint petition, it has been stated, the holding tax of the aforesaid building is being paid from the financial year 2017-18 onward which proves that Sunil Kumar of ward no.44 by adopting wrong method running the school without payment of municipal tax which violates Section 18 of the

Municipal Corporation Act. He has also stated in the complaint petition that she is one of the members of Lalti Devi Foundation.

Third example has been given that the holding no. 232 which is known as Pratap Market of which the “No Objection Certificate” was obtained but, the information obtained from the office of Ara Municipality indicates that the outstanding dues of Rs. 1,87,301/- still pending against the premises of which the demand notice has been issued. She has obtained the “No Objection Certificate” illegally without making payment of the entire municipal taxes. Forth instance has been shown that in ward no.44, the land measuring 16.25 decimal having area 6400 Sq.ft. belongs to the petitioner, of which, neither holding number has been shown nor obtained the “No Objection Certificate” of the said property. It has further been mentioned that she has not given the details of holding no. 182 in her Nomination Paper of which neither “No Objection Certificate” was obtained nor has mentioned in the nomination paper. It has further been mentioned that the reports which have been obtained with respect to the complaint of Santosh Kumar comprises several irregularities and infirmities and, on that basis, claimed that in view of Section 18(1)(k) of the Municipal Act, 2007, she should be declared to be disqualified to hold the post of Councilor of ward no. 44 of Ara Municipal Corporation.

In the second complaint of Abhay Kumar Pandey dated 12.12.2019 (Annexure-2/A), has reiterated the same thing. At the end, he has mentioned that from the information received under the R.T.I., it appears that on the day the nomination paper was filed, up to date, the municipal tax was not paid and the same is standing against the holding and the notices have been issued to the petitioner for payment, inasmuch as, there is some irregularities in payment of tax with respect to holding no. 153, 184 and, as per information, the petitioner is holding the post of Secretary of Lalita Devi Foundation, has been running since 2014 of which the tax has been deposited later on, hence, she should be declared disqualified for the post of Councilor of Ward No. 44.

On receipt of the notices, the petitioner appeared and filed her objection taking a plea that the complaint filed by Abhay Kumar Pandey is required to be rejected at the threshold as on the compliant of Santosh Kumar, the enquiry was conducted and the report was also submitted to the Commission with respect to the issues raised by which Abhay Kumar Pandey dated 5.2.2020. Hence, Santosh Kumar is the necessary party and, in absence of the same, the instant proceeding is directly hit on the premise of defect of non-joining of the necessary party. It has further been stated that on the complaint of Santosh Kumar, the enquiry was conducted by the Deputy Commissioner of Municipal as well as the Commissioner of the Municipality. The Deputy Commissioner of Municipality submitted the adverse report against the petitioner vide his letter no. 2113 dated 30.11.2019. The petitioner took plea that the Deputy Commissioner of Municipality conducted enquiry behind her back as the petitioner was neither noticed nor even issued show-cause giving her chance to put forward her case. Thus, the enquiry behind her back cannot be a basis to initiate the proceeding and, as such, based on such enquiry, the present proceeding stands vitiated on the ground of violation of principle of natural justice. It has also been stated that the Municipal Commissioner in the instant case has forwarded two favorable enquiry reports, vide letter no. 2488 dated 5.12.2018 and another enquiry report contained in Memo No. 1798 dated 27.12.2019 with details and in conclusion, has not found any illegality to have been committed under the Municipal Act as payment of municipal tax has been made in terms of provisions of Municipal Act. It has also been stated that in view of “No Objection Certificate” issued by the Municipality at the time of filing of the nomination which was attached with the nomination paper still holds good and has not been set aside by any competent authority, in such circumstances, the petitioner cannot be said to have incurred disqualification under the Bihar Municipal Act and, in support of her proposition, she has placed reliance on two judgments being judgment passed in the case of Manager Prasad Vs. State Election Commission reported in AIR 2014 Pat 111 which was upheld by the Hon'ble Division Bench of this Court in the judgment passed in the case of The State Election Commission, Bihar & Anr. Vs. Manager Prasad reported in 2016 (1) PLJR 90.

It is further mentioned that once a duly issued certificate stands in the name of petitioner upon which she contested the election, no interference is permissible unless and until the "No Objection Certificate" is set aside. It has further been mentioned that the petitioner after being elected as Councilor in 2017 vide letter dated 27.10.2017 had instructed for assessment holding tax of all her properties including her family members and based upon which a fresh assessment was made and thereupon afresh demand was raised which has not attained finality as objections have been raised against demand against Municipal Tax and same has not reached to finality and more so, even at worst any due if any remained pending prior to election then only it can be a ground for disqualification which is not the case at hand as the petitioner opposite had contested election after submission of No Dues Certificate duly issued by the concerned Municipality. It has further been stated that the properties mentioned in the nomination paper are not his personal property of the opposite party rather the same are either belonging to her-in-law or husband's ancestral property which has not been partitioned thus coming to a conclusion that the due, if any, is against the petitioner, is highly misplaced and wrong assessment has been made, it requires proper enquiry and only then a concrete finding of any due can be ascertained. It is further stated that the reliance has been placed upon the report of Deputy Commissioner while two different reports of Commissioner and Sub-Divisional Officer, Sadar Ara supporting the claim of the petitioner has not been relied upon and, thus, in that circumstances, the report of Deputy Commissioner, Municipal Corporation was not required to be taken into consideration for deciding the lis. It is further mentioned that the report of Deputy Commissioner is not concrete rather is based on presumption and assumption and adverse inference has been drawn against the petitioner which clearly shows doubt over the conclusion arrived at by the Deputy Commissioner and, thus, the report of the Deputy Commissioner is completely defective based on no evidence either documentary or oral. It has further been stated that in the judgment passed in the case of Rajani Kumari & Ors. Vs. State Election Commission & Ors. reported in 2019 (4) PLJR 673, wherein, it has been held that in the event of disputed fact, the Election Commission has no jurisdiction to decide the complaint filed by the objector and arrive to a final decision. It has further been stated that the Commissioner, in no uncertain terms mentioned that there is no due as against the petitioner holding-wise and, thus, the allegation leveled in the complaint is false and requires no consideration and out-rightly be rejected.

The records show that reports of Municipal Commissioner and Municipal Deputy Commissioner came for consideration before the Election Commission, the first one is of Municipal Commissioner, Ara contained in memo no. 1798 dated 27.12.2019 and another report is letter no. 2113 dated 30.11.2019 given by Deputy Municipal Commissioner. The Commissioner of Ara Municipal Corporation has mentioned that the holding no. 153 appertaining to Khata no. 1006, Khesra 1115 and 1116, area 5 decimal in which the petitioner lives, has been mentioned in Annexure-iii of the valuation report and second, holding is standing in the name of Lalti Devi wife of Ram Pravesh Rai and the “No Objection Certificate” has been issued by the Municipal Corporation. With respect to holding no. 205/A, the same relates to

Lalti Devi Foundation appertaining to Khata no. 244, Khesra no. 2440, 2521, Area 2041 decimal over which Pratap international School is running which has been mentioned in the valuation report of the petitioner. It has been stated that for the first time in 2017, the Municipal Corporation, Ara has created the holding no. 205/A of the said property whereupon the assessment of tax has been made being holding tax of 51,539/- which has been deposited. With respect to holding no.232, of which the "No Objection Certificate" was issued, is attached with the nomination paper of which the holding tax was Rs. 1944/- and, on payment of said dues, "No Objection Certificate" was issued. After being elected as Mayor, at the behest of the petitioner, a fresh assessment of holding tax was made of the entire family properties including the holding no.232 in which yearly holding tax has been assessed Rs. 49,183/- and the difference of money for the period 2014-15 onward, a demand of Rs. 1,87,301/- has been raised. It has further been mentioned that whatever dues were standing against holdings, all were paid and only, thereafter, the No Objection was issued. In column no.III of the valuation report in which the holding having an area of 16.5 decimal and total constructed area has been shown as 641 Sq.ft. appertaining to holding numbers being 232, 153 and 184 of which the "No Objection Certificate" was issued in connection with the election, 2017. It has further been mentioned in the report of Commissioner that the building situated at Mauza Anaith standing over the plot vide ward no. 44 total area 16.5 decimal, constructed area 641 Sq.ft. appertaining to holding nos. 232, 153 and 148 of which “No Objection Certificate” was issued and, further stated that the holding of khata no. 21, khesra no. 678 comprises the holding of 184 and 185 in which the holding of 185 is an open space and yearly municipal tax is zero and the “No Objection Certificate” of holding no. 184 was obtained and the same was attached along with the nomination paper and, as such, prima facie no error has been found as alleged against the petitioner whereas the Deputy Commissioner of Municipal, Ara in his report dated 30.11.2019 has considered the complaint holding-wise in which he has found that the holding no. 153 appertaining to thana no. 227, khata No. 1006, khesra no. 1115 and area 5 decimal standing in the name of Ram Dayal Rai over which the ancestral property has been constructed in which the petitioner use to reside and she has not obtained the “No Objection Certificate” of that holding and, thereby, has suppressed the fact and the nomination paper suffers from infirmity. With respect to holding no. 205A which was not created before the election, 2017 over which the school in the name and style of Pratap International

School has been running since 2014 by a trust created in the name of Malti Devi Foundation of which the petitioner is the Secretary and before the election, the municipal tax was not ever been assessed nor the “No Objection Certificate” was obtained. It has further been mentioned that in terms of Municipal Act, 2007, it was required to the petitioner to pay the tax of that building and also obtain the “No Objection Certificate” but, not done, thereby committed illegality in filing the nomination paper whereas the allegation made by Abhay Kumar Pandey has been found to be correct. It has further been stated that as per report submitted by the In-charge, Tax Inspector, namely, Satrughan Kumar, it appears that during the period 2013-14 the holding tax was mentioned as 1944/- and for the financial year 2014-15 to 1017-18, the holding tax was fixed Rs. 49,183/- per year and total tax arrear of tax comes to Rs. 1,96,732/- out of which only Rs. 9,431/- has been paid and, for the payment of rest amount, a demand notice has been issued. It has further been mentioned that the Tax Register maintained in office shows the tax of holding no. 232 for the financial year 2014-15 has been fixed for Rs. 49,183/- per year and, accordingly, the lessor amount has been paid and, further mentioned that by wrong representation, the “No Objection Certificate” was obtained. It has been mentioned that her husband

Sunil Kumar was Mayor during that period exercising the official position illegally obtained the “No Objection Certificate” and, ultimately, held that the nomination paper suffers from irregularity and illegality. It has also been mentioned that Satrughan Kumar, Tax Daroga, has wrongly issued the “No Objection Certificate” for the year 2017-18 without looking to the outstanding dues of the holding tax for the year 2014-15, 2015-16 and 2016-17 and recommended for disciplinary action against the then Tax Daroga. It has further been stated that the property having an area of 6400 Sq.ft. Standing in ward no. 44 and during enquiry, it was found that “No Objection Certificate” was not obtained.

On examination of the report of the Municipal Commissioner, it shows that he has not been taken into consideration the report of the Deputy Commission of Municipal Corporation, Ara who has explained in what manner the petitioner has violated the provisions of the Municipal Act, inasmuch as, she has failed to deposit the holding tax due by her to the Municipality at the end of the financial year immediately preceding that in which the election held.

Learned counsel for the petitioner submits that Ara Municipal Corporation has furnished the “No Objection Certificates” which has never been challenged by the petitioner nor has been set aside and, as such, declaring the petitioner to earn disqualification is completely misplaced and uncalled for, requires interference of the order passed by the Election Commission, and, illegally, she has been non-suited. Learned counsel for the petitioner in support of his submission has placed reliance on the judgment passed in the case of Manager Prasad Vs. State Election Commission reported in AIR 2014 Pat 111 and the The State Election Commission, Bihar & Anr. Vs. Manager Prasad reported in 2016(1) PLJR 90.

Per contra, learned counsel for the respondents has submitted that the judgment reported in the case of Manager Prasad (supra) 2016(1) PLJR 90 does not apply in the present case as the fact of that case was quite different to the present case and, as in that case, Rule 13 of the Bihar Municipal Property Tax (Assessment, Collection & Recovery) Rule, 2013 was not under consideration, postulates as follows:-

> ***"13. Self-declaration/Self-Assessment.*** *- (1) Self- assessing their holding tax and paying it to the Municipality without waiting for a demand notice shall be the responsibility of the tax payer or owner of the holding.*
> *(2) Every assessee / tax payer and owner of holding shall follow the scheme of self deceleration and self- assessment for the purpose of calculation and payment of holding tax. The Municipality shall as early as practicable but not later than 6 months from the date of notification of these Rules by the Government introduce the system of self- assessment of holding*

tax and for this purpose Municipality and /or UD&HD shall prescribe Self-Assessment Form and issue guidelines to facilitate self-assessment.

(3) If any owner of the holding or assess willfully suppresses material information essential for assessment of holding tax or under assesses the holding tax, such persons shall be liable for payment of difference between the amount actually payable and the self-assessed tax and also a fine of one hundred percent of such differential amount."

As in that case, the petitioner had made several applications addressed to the Executive Officer, Rafiganj Nagar Panchayat, prior to filing of her nomination papers seeking assessment of the holding tax of the holding no.177 but, no action was taken by the said Nagar Panchayat on her application and while filing her nomination paper, he had indicated therein the valuation of the tax made by the Registered Valuer of holding no. 177 but, since no notice was ever issued to, or served upon him, mentioning assessment of the tax of holding no. 177 nor was any notice of demand was served upon him in this regard, he could not have paid and did not, therefore, pay the tax and situated thus, he was not a defaulter in making payment of tax in respect of the said holding no.177. He has submitted that the fact of the present case is quite different. In this case, there is no such fact that ever they have made an application for assessment of valuation of the payment of tax and ready to pay the municipal tax of those properties. It has further been submitted that the valuation report attached by the petitioner itself shows that the petitioner was holder of the five properties which reflects from the valuation report dated 24.4.2017 whereas in the nomination paper, she has only attached the "No Objection Certificate" of holding no. 184 and 232 standing in the ward no. 44, Nawadah, Ara. The respondents have also placed reliance on Section 18 of the Bihar Municipal Act, 2007 which deals in the disqualification. Section 18(1)(k) being relevant reads as follows:-

> *"**18.(1)(k)** If he has not paid all taxes due by him to the Municipality at the end of the financial year immediately preceding that in which the election is held.*

Section 445 of the Bihar Municipal Act reads as follows:-

> ***"445. Furnishing of certain information essential for candidates.*** *(1) A candidate shall, apart from any information which he is required to furnish in his nomination papers delivered under the Act or the Rules made thereunder, also furnish information on affidavit on the following aspects in relation to his/her candidature-*
>
> *(i) Whether he is convicted/acquitted/discharged of any criminal offence in the past-if any, whether he is punished with imprisonment or fine;*
>
> *(ii) Prior to six months of filing of nominations, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for more than six months, and in which a charge has been framed or cognizance has been taken by a competent court of law. If so, the details thereof.*

(iii) <u>The assets (including movable, immovable and bank balances, etc.) of a candidate, and of his/her spouse and that of dependants</u>.

(iv) Liabilities, if any, particularly whether there are any over dues of any public financial institution or Government dues.

(v) The educational qualifications of the candidate.

(2) In case of non-furnishing of the affidavit by any candidate, the nomination of the concerned candidate shall be liable to rejection by the Returning Officer at the time of scrutiny of nominations for such non-furnishing of the affidavit.

(3) The information so furnished by each candidate in the aforesaid affidavit shall be disseminated by the respective Returning Officer by displaying a copy of the affidavit on the notice board of his office and also by making the copies thereof available freely and liberally to the representatives of the print and electronic media and to any other candidate or person on deposit of fee prescribed by the Commission.

(4) If any rival candidate furnishes information to the contrary by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with the affidavit of the candidate concerned in the manner directed above."

Having considered the rival contention of the parties, from the records, it appears that admittedly the petitioner has submitted the "No Objection Certificate" with respect to holding nos. 184 and 232 and, admittedly, she has not submitted the "No Objection Certificate" of other properties nor shows that paid holding tax as prescribed under the Municipal Act whereas the valuation report shows that the petitioner is holding altogether five properties. As per Rule 13 of the Bihar Municipal Tax

(Assessment, Collection & Recovery) Rule, 2013, it postulates that holder should make self assessment of holding and make payment but, the same is absent. It has further been mentioned in the report of the Deputy Commissioner, Ara that with respect to the property standing in holding no.232, which is a market and the tax register shows that the valuation of holding tax has been assessed to be Rs. 49,183/- per year whereas the petitioner has deposited Rs. 1,847/- on 15.4.2017 and Rs. 7494 on 22.4.2017 and the rest amount still to be paid by the petitioner. Rule 13 of the Bihar Municipal Property Tax (Assessment, Collection & Recovery) Rules, 2013 prescribes that every assessee/tax payer and owner of the holding will make self-declaration and self-assessment for the calculation and payment of holding tax and also prescribes the penal action that if the owner of the holding or assessee willfully suppresses the material information essential for assessment of holding tax or under assesses the holding tax, such person shall be liable for payment of difference between the amount actually payable and self-assessed tax and also a fine of one hundred of such differential amount. Admittedly, the petitioner, save and except holding nos. 232 and 184, has not made self-assessment of other holdings and also failed to make payment of the holding tax as it appears from the report of Deputy Commissioner of Municipality nor paid the tax as has been mentioned in the tax register maintained in the Ara Municipality.

In that view of the matter, failure to pay the holding tax in terms of Section 18(1)(k) of the Municipal Act read with Rule 13 of the Bihar Municipal Property Tax (Assessment, Collection & Recovery) Rules, 2013, attracts disqualification of the petitioner. This Court does not find any error in the order dated 28.02.2020 passed by the State Election Commission. Accordingly, this writ application stands dismissed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.01.2021
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