

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3767 of 2023

Rakhi Gupta wife of Varun Prakash, resident of Shriprakash Ornaments, Azad Road, Sahebganj, P.O. Chapra, P.S. Chapra Town, District- Saran at Chapra. presently Mayor, Chapra Municipal Corporation, District- Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
3. The State Election Commissioner, The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.
4. The Officer-on- Special Duty, The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.
5. The District Magistrate-cum- District Election Officer (Municipality), Saran at Chapra, District- Saran at Chapra.
6. The Additional Collector, Saran at Chapra, District- Saran at Chapra.
7. Sunita Devi wife of Shatrughan Rai, Resident of Mohalla- Dahiawan Tola, P.O. Chapra, P.S. Chapra Town, District- Saran at Chapra.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Awnish Kumar, Advocate
For the Respondent/s : Mr. Kinkar Kumar, SC-9

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 29-03-2023 Heard learned counsel for the petitioner, learned counsel for the State, Mr. Kinkar Kumar SC-9 assisted by Mr. Yogesh Kumar along with learned counsel for the State Election Commission, Mr. Sanjeev Nikesh.

Learned counsel for the petitioner submits that the petitioner along with respondent No. 7 and many other candidates had filed their nomination for contesting on the post of Chief Counselor, Chapra Municipal Corporation.

It is submitted that Smt. Reena Devi, a candidate in



the said election, filed a compliant against the petitioner against her nomination alleging that petitioner had suppressed about her third child born to her after the cut-off date i.e., 04.08.2008 which attracted disqualification under Section 18(1)(m) of the Bihar Municipal Act, 2007.

The Returning Officer, accordingly, issued notice to the petitioner and Reena Devi under his memo dated 25.09.2022 (*Annexure-2* to the writ application) asking them to appear in his chamber on 26.09.2022.

The petitioner appeared and rebutted the allegation levelled against her by Reena Devi before the Returning Officer in her written statement (*Annexure-3* to the writ application).

The Returning Officer, after hearing the parties, rejected the complaint of Reena Devi by his order dated 26.09.2022 (*Annexure-4* to the writ application) and accepted the petitioner nomination and, accordingly, on 30.09.2022 (*Annexure-5* to the writ application), petitioner was allotted symbol by the Returning Officer.

Learned counsel for the petitioner next submits that Reena Devi, against the order dated 26.09.2022 passed by the Returning Officer, approached the State Election Commission with the same complaint against the petitioner in breach of Rule



47 of the Bihar Municipal Election Rules, 2007, which gives finality to the order of the Returning Officer after scrutiny of nomination paper in the event if nomination is accepted after rejecting the objection.

It is next submitted that the State Election Commission proceeded in the matter in breach of Rule 47 of the Bihar Municipal Election Rules, 2007 and directed the respondent No. 5 to hold an inquiry into the complaint and to report under letter dated 28.09.2022. It is further submitted that the respondent No. 5 constituted a Committee under the Chairmanship of A.D.M. for holding the inquiry into the complaint of Reena Devi, thereafter, the Chairman of the Committee issued notice to the petitioner *vide* memo dated 29.09.2022 asking her to appear in the office on the said date at 4:30 P.M.

It is submitted that the petitioner appeared and apprised the Committee of the order passed by the Returning Officer dated 26.09.2022 and clarified that she has only two children, as would be evident from her written statement (*Annexure-7* to the writ application).

Learned counsel for the petitioner next submits that the committee submitted its report dated 14.10.2022 (*Annexure-*



8 to the writ application) to the respondent No. 5 recording their inability to record a clear finding in absence of unimpeachable material in support of the complaint. The respondent No. 5 forwarded the report dated 14.10.2022 to the State Election Commission *vide* letter dated 24.12.2022 (*Annexure-9* to the writ application). Learned counsel further submits that the State Election Commission after thoroughly considering the report submitted by the respondent No. 5 as aforesaid came to a considered conclusion that the complaint did not require or merit consideration and, accordingly, the complaint was consigned.

Learned counsel for the petitioner next submits that after the petitioner was declared elected in the election, the respondent no. 7 instituted similar complaint, based on which, the state election commission instituted case no. 13 of 2023 and notice dated 01.02.2023 (*Annexure-10* to the writ application) as contained in memo No. 441 was issued to the petitioner, for appearing in hearing fixed on 17.03.2023. It is next submitted that the state election commission *vide* Memo No. 440 dated 01.02.2023 again directed the respondent no. 5 to hold an inquiry and to submit report by 14.02.2023.

Learned counsel submits that it absolutely does not



stand to reason that when similar complaint against the petitioner was raised by Reena Devi and the same was inquired in pursuance of the direction passed by the State Election Commission to the respondent No. 5 and based on the inquiry report submitted by the respondent No. 5, a conscious decision after considering the material on record was taken by the State Election Commission to consign the complaint then what prompted the State Election Commission again based on a similar complaint directing the respondent No. 5 to hold an inquiry and to submit a report once again.

Learned counsel submits that any dispute has to come to an end and has to attain finality.

Learned counsel for the petitioner further submits that Rule 47 of the Bihar Municipal Election Rules, 2007 is clear in its operation and with clarity records that any nomination accepted by the Returning Officer as valid after rejecting the objection attains finality. It is thus submitted that the disqualification which is being alleged against the petitioner in terms of Section 18(1)(m) was already considered and rejected by the Returning Officer based on the complaint/objection filed by Reena Devi against which Reena Devi moved before the State Election Commission and even the State Election



Commission after receiving the report of the Committee as recorded hereinabove came to a considered conclusion and consigned the complaint.

The learned counsel after making his elaborate submissions seeks permission to withdraw the present writ application with liberty to the petitioner to raise all these issues before the State Election Commission in Case No. 13 of 2023.

The learned counsel next submits that it may be a possibility that the State Election Commission may not consider the preliminary objection raised by the petitioner for the reason that despite earlier consigning the complaint against the petitioner still the respondent no. 5 has been directed to hold a fresh inquiry.

This apprehension of the learned counsel for the petitioner to the Court appears to be unfounded.

Accordingly, the writ application is permitted to be withdrawn with the liberty aforesaid as the learned counsel for the State and learned counsel for the State Election Commission do not have any objection.

(Satyavrat Verma, J)

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