

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12123 of 2023

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Sachchidanand Rai Son of Late Jaleshwar Rai, Resident of Flat No. 13, New
MLC Aawashiya Parishar, Near R Block, District- Patna, Pin Code- 800001.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Law and Justice, 4th Floor, A- Wing, Shastri Bhawan, New Delhi- 110001.
2. Secretary, Ministry of Parliamentary Affairs, Parliament House New Delhi- 110001.
3. The State of Bihar through the Secretary-Cum-Legal Remembrancer, Law Department, Government of Bihar, Patna.
4. Additional Chief Secretary, Parliamentary Affairs Department, Old Secretariat, Bailey Road, Patna- 800001.
5. Secretary, Bihar Legislative Council, Bihar Vidhan Parishad Secretariat, 1st Floor, Main Building, Patna- 800015.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Advocate Mr. Raushan, Advocate
For the State	:	Mr. P. K. Shahi, AG Mr. Vikas Kumar, Advocate Mr. Amish Kumar, Advocate
For the UOI	:	Mr. Awadesh Kumar Pandey, Sr. CGC Mr. Ramesh Kumar, CGC Mr. Lokesh, Advocate
For the Bihar Legislative Assembly	:	Mr. Ashar Mustafa, Advocate Mr. Vikash Kumar Jha, Advocate Mr. Aditya Ranjan Sahay, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-08-2023

The petitioner by the above writ petition wants



an “advance ruling” from the High Court as to whether, in the facts and circumstances of his anticipated formation of a political party, he would attract the disqualification under provision 2(2) of the Schedule X to the Constitution of India.

2. On facts, suffice it to notice that the petitioner, not being given a chance to contest the elections to the Legislative Council by the political party to which he was aligned, broke away and stood as an independent and won the election to the Legislative Council. He took charge as a member of the Legislative Council on 07.04.2022 and the normal term of a member of the Legislative Council is 6 years from the date of his election. The petitioner now proposes to form a political party of his own and in such circumstances was apprehensive as to whether he would be disqualified.

3. The petitioner sought an opinion from the Election Commission by way of a query made under the Right to Information Act, 2005. The query is produced at Annexure-P-7. The Election Commission promptly replied by Annexure-P-8 holding that the information sought is not



covered under the definition of information as defined under Section 2 (1)(f) of the Right to Information Act, 2005. The petitioner relentlessly pursued his peremptory attempts to strike down an anticipated disqualification by filing an application before the Chairman of the Legislative Council, wrongly referred to as the Speaker of the Legislative Council, by Annexure-P-9. The Chairman of the Legislative Council took the opinion of the learned Advocate General, produced as Annexure-P-10, which is against the petitioner . The petitioner by the above writ petition seeks a declaration that, there shall be no disqualification made of the petitioner, if he forms a political party, while his tenure in the Legislative Council continues.

4. As we noticed at the outset, the writ petition is based on anticipated actions by the Chairman of the Legislative Council, again on the proposed formation of a political party by the petitioner. As of now, the petitioner has neither formed a political party nor is the Chairman called upon to take a decision as to the disqualification. We are of the opinion that there can be no such peremptory writ petition filed to pre-empt or restrain the Chairman from



disqualifying, especially when the proposed cause of action for disqualification itself has not been occasioned.

5. We find absolutely no reason to entertain the writ petition and dismiss the same in *limine*. We make it very clear that we have not expressed any opinion on the merits of the matter, this way or the other.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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AFR/NAFR	NAFR
CAV DATE	
Uploading Date	04.09.2023
Transmission Date	

