

(2017) 04 PAT CK 0035

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3179 of 2017

Manoj Kumar

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 04-04-2017

Acts Referred:

Bihar Municipal Act, 2007 — Section 12
Bihar Municipal Election Rules, 2007 — Rule 31

Citation : (2017) AIR(Patna) 97 : (2017) 2 BLJud 217

Hon'ble Judges : Ahsanuddin Amanullah, J.

Bench : Single Bench

Advocate : Mr. M.N. Parbat, Senior Advocate and Mr. Ratna Deep Prasad, Advocate, for the Petitioners; Mr. Rajiv Roy, G.P. 1 and Mr. Suresh Kumar, A.C. to G.P. 1, for the State; Mr. Prasoon Sinha, Advocate, for the PMC; Mr. Amit Shrivastava and Mr. Girish Pandey, Advocates, for the SEC

Final Decision : Dismissed

Judgement

Ahsanuddin Amanullah, J. (Oral)—Heard learned counsel for the petitioner, State and the State Election Commission.

2. The petitioner has moved the Court for setting aside the list of wards reserved for the purpose of election of Councillors of the Patna Municipal Corporation as issued in Form-10 as far as it relates to Ward No. 30.

3. Learned counsel for the petitioner submitted that in terms of Section 12 of the Bihar Municipal Act, 2007 (hereinafter referred to as the "Act") read with Rule 31 of the Bihar Municipal Election Rules, 2007 (hereinafter referred to as the "Rules"), the reservation of Ward No. 30 of the Patna Municipal Corporation is incorrect. Learned counsel submitted that Section 12(2)(d) of the Act provides for reservation for women belonging to the Scheduled Castes, the Scheduled Tribes, the Backward Classes and unreserved category by rotation under the direction, control and supervision of the State Election Commission to different constituencies. It was submitted that Ward No. 30 was reserved for woman,

though belonging to the unreserved category, in the two previous elections and this time also, the same was reserved for Female belonging to the Backward Class. Learned counsel submitted that women, constituting a specific category, a particular seat cannot be reserved again and again for the same category i.e., women, which is violation of the aforesaid provision of the Act where it provides for rotation. Learned counsel further submitted that in terms of Rule 31(1) of the Rules, prior to the amendment in the year 2009, there was a proviso that if any constituency was reserved for woman in a specific category, it may be reserved for women of another category in the subsequent election, but after the amendment in the year 2009, such proviso has been omitted and only the second proviso that if any constituency was reserved for woman under others (unreserved) category, it shall not be reserved for women in the subsequent election for the other (unreserved) category, has been retained. He submitted that the same clearly implies that even with regard to reservation for woman in a previously unreserved category to that in a reserved category, in a subsequent election having been specifically omitted by the amendment, the same is not permissible.

4. Learned counsel for the State Election Commission submitted that the contention of learned counsel for the petitioner is misconceived for the reason that Section 12 (2)(c) provides that as nearly as but not exceeding 50% of the total number of seats not reserved for Scheduled Castes, Scheduled Tribes and Backward Classes shall be reserved for women. He submitted that thereafter sub Clause 12(2)(d) clarifies that such total number of seats reserved for women belonging to Scheduled Castes, the Scheduled Tribes, the Backward Classes and unreserved category may be allotted by rotation under the direction, control and supervision of the State Election Commission, to different constituencies, in a Municipality in such manner as may be prescribed by it after two consecutive General Election. Learned counsel submitted that women do not belong to a separate category as they come within their respective category i.e., Scheduled Castes, Scheduled Tribes, Backward Classes and unreserved category. Learned counsel submitted that among the same category, the reservation has to be by rotation, as may be prescribed after two consecutive General Election and such provision having been added by way of amendment in the year 2009, learned counsel submitted, that it is the first time that the Ward No. 30 has been reserved for Backward Class and thus, the reservation for woman would be in terms of Rule 29(2)(iv)(iii) which provides that those wards which have highest total population in descending order, shall be reserved for Backward Class in admissible number and out of the wards so reserved for Backward Classes, those wards shall be reserved for Backward Class women in admissible number, which come first in descending order of total population.

5. Learned counsel submitted that Ward No. 30 has been reserved for the first time for the Backward Class and there are seven seats to be reserved for Backward Classes and Ward No. 30, having second highest total population has rightly been reserved for Backward Class women.

6. Having considered the rival contentions, this Court does not find any merit in the writ application. The stand taken by the petitioner is clearly erroneous as women cannot be categorized as a separate category for the simple reason that the categories are only as in the vertical line i.e., for Scheduled Castes, Scheduled Tribes, the Backward Classes and the unreserved category. The reservation for women is horizontal reservation i.e., reservation within a particular category, and not by way of separate category.

7. in view of the discussions made herein above, the exercise undertaken by the State Election Commission and its Authorities cannot be faulted.

8. Accordingly, the writ petition stands dismissed.