

(2015) 10 PAT CK 0061

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 16817 of 2015

Zafiruddin Khan

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Bihar Municipal Act, 2007 — Section 18(1)(n), 18(2), 49

Citation : (2015) 10 PAT CK 0061

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : Tej Bahadur Singh, Sr. Advocate and Sanjay Parasmani, for the Appellant; Ashok Kumar Verma, AC to SC-17, for the Respondent

Final Decision : Dismissed

Judgement

Jyoti Saran, J.—Heard Mr. Tej Bahadur Singh, learned senior counsel appearing for the petitioner, learned counsel for the State and Mr. Girish Pandey, learned counsel appearing for the State Election Commission.

2. The petitioner, an Ex-Deputy Chief Councillor of Benipur Nagar Parishad in the district of Darbhanga is aggrieved by the order dated 15.9.2015 passed by the State Election Commission in Case No. 12 of 2015, whereby the application filed by the petitioner under section 18(2) of the Bihar Municipal Act, 2007 (hereinafter referred to as "the Act") for seeking declaration of disqualification of the private respondents under section 18(1)(n) of "the Act", inter alia, on grounds that they failed to attend three consecutive meetings held on 4.3.2014, 3.9.2014 and 15.9.2014 did not find favour with the Commission and has been dismissed.

3. Mr. Singh learned senior counsel appearing for the petitioner with reference to a report of the Sub-Divisional Officer, a copy of which is placed at Annexure-8 has submitted that in view of the uncontested position emanating therefrom there is no dispute regarding absence of the petitioner on three consecutive

dates. He thus submits that in view of such circumstances the decision of the Commission to distinguish the meeting held on 15.9.2015 on grounds that it was a special meeting held for considering the no confidence motion and thus did not fall within the consideration of section 18(1)(n) of "the Act" amounts to reading into the provisions. He further with reference to the statutory provisions underlying section 18(1)(n) of "the Act" submits that where the Act does not make any distinction as regarding the nature of meeting rather provides for a disqualification in case of absence of Councillor from three consecutive meetings or special meeting the Commissioner has gone beyond such statutory provisions.

4. I have heard learned counsel for the parties and I have perused the records.

5. A copy of the complaint is placed at Annexure-5 and charges the private respondent Nos. 10 to 14 of willfully absenting from the meetings held on 4.3.2014, 3.9.2014 and 15.9.2014. The report on which Mr. Singh seeks to rely given by the Sub-Divisional Officer present at Annexure-8 manifests that on each of the dates the notice intimating the date of the meeting was received by the private respondents well in advance as per the statutory provisions underlying section 49 of "the Act". Now whereas on 4.3.2014 it is reported by the Sub-Divisional Officer that the respondent Nos. 10, 11, 13 and 14 did not choose to appear, it is specifically mentioned that respondent No. 12 sent his intimation regarding his absence. In so far as the next date 3.9.2014 is concerned, it is specifically mentioned that these private respondents intimated regarding their boycott of meeting to be held on 3.9.2014 by sending intimation well in advance on 2.9.2014. In so far as the 3rd meeting is concerned which was held on 15.9.2014 although the State Election Commission has distinguished the same on grounds that it was special meeting for considering the no confidence motion and thus did not fall within the zone of meeting as envisaged under section 18(1)(n) of "the Act" but without going into the controversy so arising from the opinion the Commission even otherwise it is seen that the meeting scheduled for 15.9.2014 was held to be illegal by the Urban Development Department and was adjourned to 24.11.2014 and on which date all five respondents have appeared. This single instance is sufficient to dismiss the writ petition since by appearance of the respondents on the 3rd date, the disqualification whatsoever that existed stood nullified. There is again no material on record to show that the permission sought by the respondent No. 12 for not attending the meeting on 4.3.2014 or the decision of the private respondents to boycott the meeting on 3.9.2014 was accepted by the Municipality or rejected. In these circumstances, I find no reason to interfere with the opinion expressed by the State Election Commission in rejecting the plea of the writ petitioner for disqualifying the private respondents and the writ petition is accordingly dismissed.