

# The State Election Commission & Anr vs Manager Prasad & Ors on 23 September, 2014

**Author: Anjana Mishra**

**Bench: Anjana Mishra**

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.443 of 2014

In

Civil Writ Jurisdiction Case No. 17493 of 2013

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1. THE STATE ELECTION COMMISSION , BIHAR THROUGH  
ITS COMMISSIONER, SONE BHAWAN, BIRCHAND PATEL  
PATH, PATNA - 1
2. THE ADDITIONAL SECRETARY, STATE ELECTION  
COMMISSION, SONE BHAWAN, BIRCHAND PATEL PATH,  
PATNA-1

.... APPELLANTS

VERSUS

1. MANAGER PRASAD S/O LATE SITA RAM SAH RESIDENT  
OF MOHALLA HAJIPUR GOLA, P.S. RAFIGANJ, DISTRICT -  
AURANGABAD, AT PRESENT WARD COUNCILLOR OF  
WARD NO. - 1, RAFIGANJ NAGAR PANCHAYAT N THE  
DISTRICT OF AURANGABAD
2. THE STATE OF BIHAR THROUGH PRINCIPAL SECRETARY,  
URBAN DEVELOPMENT DEPARTMENT, PATNA
3. THE DISTRICT MAGISTRATE CUM DISTRICT ELECTION  
OFFICER (MUNICIPALITY) DISTRICT - AURANGABAD
4. THE EXECUTIVE OFFICER, AURANGABAD
5. THE SUB-DIVISIONAL OFFICER, AURANGABAD SADAR,  
AURANGABAD
6. THE CIRCLE OFFICER, AURANGABAD
7. THE CIRCLE OFFICER, RAFIGANJ, DISTRICT -  
AURANGABAD
8. THE EXECUTIVE OFFICER, NAGAR PANCHAYAT  
RAFIGANJ, DISTRICT - AURANGABAD
9. SHRI RAVINDRA PRASAD S/O LATE RAM PUKAR SINGH  
R/O VILLAGE HAJIPUR GOLA, WARD NO. 4, NAGAR  
PANCHAYAT AT POST OFFICE AND POLICE STATION -  
RAFIGANJ, DISTRICT - AURANGABAD

.... RESPONDENTS

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WITH

Letters Patent Appeal No.119 of 2014

IN

Civil Writ Jurisdiction Case No. 17493 of 2013

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1. Sri Rabindra Prasad Son Of Late Ram Pukar Singh  
Resident Of Village- Hajipur Gola, Ward No. 4, Nagar

Panchayat, At Post Office And Police Station- Rafiganj,  
District- Aurangabad

.... Appellant

VERSUS

1. Manager Prasad Son Of Late Sita Ram Sah Resident Of  
Mohalla- Hajipur Gola, Police Station- Rafiganj, District-  
Aurangabad, At Present Ward Councilor Ward No. 1,  
Patna High Court LPA No.443 of 2014 (4) dt.23-09-2014

- Rafiganj Nagar Panchayat In The District Of Aurangabad
2. The Bihar State Election Commission, Bihar Through Its  
Commissioner, Sone Bhawan, Birchand Patel Path,  
Patna-1
  3. The Additional Secretary, State Election Commission,  
Sone Bhawan, Birchand Patel Path, Patna-1
  4. The State Of Bihar, Through Principal Secretary, Urban  
Development Department, Patna
  5. The District Magistrate-Cum-District Election Officer,  
(Municipality), District- Aurangabad
  6. The Executive Officer, Aurangabad
  7. The Sub-Divisional Officer, Aurangabad Sadar,  
Aurangabad
  8. The Circle Officer, Aurangabad
  9. The Circle Officer, Rafiganj, District- Aurangabad
  10. The Executive Officer, Nagar Panchayat, Rafiganj,  
District- Aurangabad

.... Respondents

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Appearance :

(In LPA No.443 of 2014)

|                             |   |  |
|-----------------------------|---|--|
| For the Appellants          | : | Mr. Amit Shrivastava, Advocate<br>Mr. Girish Pandey, Advocate    |
| For the Respondent No. 1    | : | Mr. S. B. K. Mangalam, Advocate<br>Mr. Ranjeet Choubey, Advocate |
| For the Respondent Nos. 2-8 | : | Mr. Manoj Kr. Sinha, AC to SC 30                                 |
| For the Respondent No. 9    | : | Mr. Siya Ram Sahi, Advocate<br>Mr. Santosh kr. Pandey, Advocate  |

(In LPA No.119 of 2014)

|                           |   |  |
|---------------------------|---|--|
| For the Appellant         | : | Mr. Siya Ram Sahi, Advocate<br>Mr. Santosh Kr. Pandey, Advocate  |
| For the Respondent No. 1  | : | Mr. S. B. K. Mangalam, Advocate<br>Mr. Ranjeet Choubey, Advocate |
| For the State Elec. Comm. | : | Mr. Amit Shrivastava, Advocate<br>Mr. Girish Pandey, Advocate    |

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

AND

HONOURABLE MR. JUSTICE I. A. ANSARI

CAV ORDER

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

4 23-09-2014

The two appeals, presented before us, seek to challenge the order, dated 13.12.2013, passed in CWJC No. 17493 of 2013, whereunder a learned single Judge of this Court has set aside the order, dated 02.08.2013, passed by the State Election Commissioner, Bihar, disqualifying the writ petitioner on the ground that on the date of filing his nomination, he was in default of payment of tax in respect of Holding No. 177 of Rafiganj Nagar Panchayat. The learned single Judge has further held that the Commissioner's power is limited to adjudicating a dispute summarily and he has no jurisdiction to direct lodging of a First Information Report and the Commissioner has, thus, exceeded its jurisdiction, while making the order, dated 02.08.2014, aforementioned.

2. Being aggrieved by the findings of the learned single Judge that the State Election Commissioner, Bihar, has the limited jurisdiction to adjudicate dispute, which can be dealt with and disposed of, summarily and that it has no authority to direct lodging of a First Information Report, the State Election Commission, Bihar, has preferred appeal, which has given rise to L.P.A. No. 443 of 2014.

3. Similarly, Ravindra Prasad (i.e. respondent No. 10 in the writ petition), being aggrieved by the decision of the learned single Judge allowing the writ application in favour of the writ petitioner and setting aside, thereafter, the order, dated 02.08.2014, passed by the State Election Commissioner, Bihar, has also preferred an appeal, which has come to be registered as L.P.A. No. 119 of 2014.

4. With the consent of all the parties, both the appeals have been taken up together and are being disposed of by this common order at the stage of admission itself.

5. The facts, giving rise to the present appeals, may be set out as under:

(i) The writ petitioner, namely, Manager Prasad, filed his nomination for being elected to the office of the Councillor of Ward No. 1 of Rafiganj Nagar Panchayat under Aurangabad district. Ravindra Prasad, respondent No. 10 in the writ petition, was also a candidate in the said election. On scrutiny of the nomination papers of all the candidates, Returning Officer accepted all the nomination papers, which included the nomination papers of the writ petitioner and respondent No. 10 in the writ petition, and, then, the Returning Officer published the list of contesting candidates. At that juncture, there was no dispute regarding the validity of nomination paper of any of the candidates leave alone the writ petitioner. The writ petitioner contested the election and, in course of time, he was declared elected by the Returning Officer. Following the declaration of the result of the writ petitioner, Manager Prasad, as the Councillor of Ward No. 1 of Rafiganj Nagar Panchayat, a certificate was, in this regard, issued to him and he took oath of the office accordingly.

(ii) On 20.6.2012, respondent No. 10, in the writ petition, Ravindra Prasad, filed a complaint before the State Election Commissioner, Bihar, alleging therein, inter alia, that the writ petitioner, Manager Prasad, had not deposited tax of Holding No. 177,

he had not paid his electricity bills and also not made a declaration with regard to the loan, availed by his wife, during the financial year 2008-2009 to 2011-2012, a sum of Rs. 880/- was still lying due, as tax, against the writ petitioner and that the writ petitioner, Manager Prasad, being a defaulter in respect of payment of tax, could not have participated in the election.

(iii) Pursuant to the complaint aforementioned, so filed against the writ petitioner, Manager Prasad, the State Election Commissioner, Bihar, directed, on 13.06.2012 and 03.07.2012, the District Magistrate-cum-

District Election Officer (Municipality), Aurangabad, to make an enquiry on the allegations levelled against the writ petitioner, Manager Prasad, by respondent No. 10 in the writ petition, namely, Ravindra Prasad. Consequently, the District Magistrate-cum-District Election Officer, Aurangabad Nagar Palika, submitted a report to the State Election Commissioner, Bihar, vide letter No. 438/Election, dated 21.11.2012, and, on the basis thereof, Case No. 41 of 2012 was instituted against the writ petitioner herein by the State Election Commissioner, Bihar.

(iv) The writ petitioner, Manager Prasad, appeared in Case No. 41 of 2012 aforementioned and, on 12.02.2013, filed his reply to the notice of show cause, with relevant annexures, stating therein, inter alia, that he had made several applications, addressed to the Executive Officer, Rafiganj Nagar Panchayat, prior to the filing of his nomination papers, seeking assessment of tax of Holding No. 177, but no action was taken by the said Nagar Panchayat on his applications and while filing his nomination papers, he had indicated therein, and enclosed therewith, 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 regarding assessment of the tax of the said Holding No. 177 nor was any notice of demand was served on 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. This apart, he (i.e., the writ petitioner) had also given, along with his nomination papers, a no dues certificate, issued by the Executive Officer, on 16.04.2012, vide certificate no. 29, dated 16.4.2012 (Annexure 6) in favour of the writ petitioner, Manager Prasad. The writ petitioner had submitted before the State Election Commissioner, Bihar, that though he had filed several applications before the authorities concerned seeking assessment of tax of Holding No. 177, the same was not done. It was further submitted by the writ petitioner before the State Election Commissioner, Bihar, that respondent No. 10 in the writ petition, i.e., Ravindra Prasad, was the Vice-Chairman of Rafiganj Nagar Panchayat, prior to the election in the year 2012, and had manufactured documents with the motive of disqualifying the writ petitioner because he (Ravindra Prasad) and the writ petitioner (Manager Prasad) are residents of the same Ward and had been contesting the elections held in the years 2007 and 2012 of Ward No. 1 of Rafiganj Nagar Panchayat.

(v) The writ petitioner alleged before the State Election Commissioner, Bihar, that since the said Ravindra Prasad had surfaced as the nearest contestant in the election, in question, he had been creating serious disturbances and had manufactured documents in order to debar the writ petitioner and have his election set aside. In this regard, the writ petitioner pointed out that the records of Rafiganj Nagar Panchayat were not being maintained properly and the then Executive Officer had

been working with malice against the writ petitioner and had not maintained proper records of Holding Assessment Register and that the District Magistrate-cum-District Election Officer, Aurangabad, had, on this aspect, issued a letter, vide Memo No. 136, dated 29.04.2012, to the Secretary, State Election Commission, Bihar, regarding irregularities committed by the Tax Collector and the Executive Officer.

(vi) The writ petitioner, Manager Prasad, further pointed out that no sooner he came to know that the tax of Holding No. 177 had been assessed, he made payment thereof.

(vii) Rabindra Prasad, the complainant before the State Election Commissioner, Bihar, however, succeeded and, by order, dated 02.08.2013 (Annexure

14), passed by the State Election Commissioner, Bihar, in Case No. 41 of 2012, the writ petitioner, Manager Prasad, was held disqualified from holding the post of Councillor of Ward No. 1 of Rafiganj Nagar Panchayat inasmuch as the State Election Commissioner, Bihar, came to the finding that on the date of his election, the writ petitioner had not deposited the tax of Holding No. 177. This apart, the State Election Commissioner, Bihar also directed lodging of a First Information Report against the writ petitioner. By order, dated 02.08.2013, aforementioned, the State Election Commissioner, Bihar, further directed that the vacancy, caused on account of the writ petitioner, having been found disqualified to contest the election, be filled up by holding a fresh election. The said order was passed in view of Section 18(1)(k) read with Section 18(2) of Bihar Municipal Act, 2007.

6. The order, dated 02.08.2014, aforementioned, passed by the State Election Commissioner, Bihar, was put to test before the learned single Judge. Ravindra Prasad (appellant in LPA No. 119 of 2014), who was respondent No. 10 in the writ petition, appeared in the said writ petition and actively contested the writ petition.

7. The writ petitioner, Manager Prasad, contended, in the writ petition, that the said order, dated 02.08.2014, was beyond the power conferred upon the State Election Commissioner as envisaged by Section 18(2) of Bihar Municipal Act, 2007, inasmuch as the State Election Commissioner could not have doubted the genuineness of the documents produced by the writ petitioner during the proceedings before the State Election Commissioner and that the finding, arrived at by the State Election Commissioner, as regards prosecution of the writ petitioner without taking note of the fact that there is a provision under Chapter XVI of the Bihar Municipal Act, 2007, regarding assessment of tax as described under Sections 137 to 144 of the Bihar Municipal Act, 2007.

8. Ravindra Prasad (appellant in LPA No. 119 of 2014), respondent No. 10 in the writ petition, on the other hand, submitted that by virtue of the power conferred on the State Election Commissioner by Section 18(1)(K) of Bihar Municipal Act, 2007, the writ petitioner, Manager Prasad, was rightly declared disqualified on account of non-payment of tax of Holding No. 177 to the Municipality at the end of the financial year immediately preceding the election, in question. The decision of the State Election Commissioner, Bihar, disqualifying the writ petitioner was well within the jurisdiction of the State Election Commissioner, Bihar, inasmuch as the impugned order was passed after giving due opportunity to the writ petitioner and after obtaining enquiry report from the concerned

authority with regard to the allegations levelled against the writ petitioner; more so, when the enquiry report conveyed that the allegations were true. It was further averred by Ravindra Prasaad (appellant in LPA No. 119 of 2014) that the writ petitioner had not paid his electricity dues and was a defaulter to Bihar State Electricity Board. It was also alleged by respondent No. 10 in the writ petition, namely, Ravindra Prasad, that no dues certificate, issued to the writ petitioner by the Municipality concerned, was with regard to Holding No. 172 situated at Ward No. 1; whereas the writ petitioner had concealed the due amount of taxes with regard to Holding No. 177 located at Ward No. 3 and had obtained a 'No Dues Certificate' by playing fraud on the authorities concerned. Ravindra Prasad, respondent No. 10 in the writ petition, further contended that since the provisions of Section 18(1)(K) made it mandatory for any candidate, contesting elections of the Municipality, that on the date of filing of his/her nomination paper, he/she must not have any dues pending, the writ petitioner, Manager Prasad, was justifiably held disqualified, when he had not paid the dues of the Municipality.

9. The learned single Judge, on considering the submissions made on behalf of the parties concerned and on perusal of the materials on record, came to the finding that the writ petitioner had filed his nomination with due diligence and had submitted a no dues certificate at the relevant period with no objection having been raised to the same from any quarter, especially, Ravindra Prasad (appellant in LPA No. 119 of 2014), who was also a contesting candidate. It was noted by the learned single Judge that there were serious allegations made by the writ petitioner regarding documents being prepared against him as most of the documents filed were undated and needed to be verified. The learned single Judge also noted that the respondents concerned were also denying issuance of certain documents, which had been placed by the writ petitioner on the record, and were doubting the signatures on the documents annexed to the writ petition.

10. The learned single Judge pointed out that as the veracity of the documents, placed on record, were questioned, the issue had become contentious and, hence, in a summary proceeding, the State Election Commissioner ought not to have entered into adjudication of such a dispute. This apart, the learned single Judge came to the conclusion that when a person applied for no dues certificate and the same was granted to him, it was sufficient to hold that he had no dues for the purposes of filing his nomination papers. The learned Single Judge has accordingly held that the nomination of Manager Prasad, writ petitioner, was valid and he was not disqualified from contesting the election and, in this view of the matter, the impugned order, passed by the State Election Commissioner, has been set aside and, in consequence thereof, the learned single Judge has held that the writ petitioner will suffer no disqualification.

11. Considering the matter further, the learned single Judge has held that the State Election Commissioner, having limited jurisdiction to adjudicate election disputes, has no jurisdiction to lodge a First Information Report and, hence, no First Information Report could have been registered at all since no cognizable offence had been committed calling for prosecution.

12. We have heard learned counsel for the appellants, learned counsel for the State Election Commission, and also the learned counsel appearing on behalf of the writ petitioner.

13. Before proceeding any further in the matter, we deem it necessary to analyse the provisions of Section 18 of Bihar Municipal Act, 2007, which relates to disqualification of candidates for election. Section 18 of Bihar Municipal Act, 2007, reads as under:

18. Disqualifications.- (1) Notwithstanding anything contained in this Act, a person shall be disqualified for election or after election for holding the post as member of the Municipality if such person -

(a) is not a citizen of India;

(b) xx xx xx

(c) xx xx xx

(d) xx xx xx

(e) xx xx xx

(f) xx xx xx

(g) xx xx xx

(h) xx xx xx

(i) xx xx xx

(j) xx xx xx

(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.

(l) xx xx xx

(m) xx xx xx

(n) xx xx xx

14. The disqualification, as prescribed by Section 18(1)(k), clearly shows that a person shall be disqualified for election or after election for holding the post as a member of the Municipality if such a person 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. The contention of the writ petitioner is that while filing his nomination papers, he had taken care to make payment of taxes due by him to the Municipality with regard to one holding held by him, namely, Holding No. 172; but with regard to

Holding No. 177, in Ward No. 3, though he had made several applications seeking assessment of taxes, the assessment was illegally delayed at the behest of the respondent No. 10, i.e., Ravindra Prasad, and, therefore, the writ petitioner, Manager Prasad, cannot be penalized for the same. The further contention of the writ petitioner was that no demand having been made for payment of taxes in respect of the said holding (i.e., Holding No. 177), it could not have been said that the writ petitioner had defaulted in making payment of taxes and, hence, the declarations made by the writ petitioner, while filing his nomination papers, were true and legally valid and there was no valid reason for the election held to be declared invalid. The disqualification, as alleged, was, according to the writ petitioner, non-existent on the date of filing of his nomination papers and no recourse to the provisions of Section 18(1)(k) of the Bihar Municipal Act, 2007, could have been taken.

15. While considering the present appeal, what needs to be noted is that a candidate would be deemed to be disqualified only if he failed to comply with the provisions of Section 18(1)(k) of 2007 Act.

16. It is of utmost importance to note that there was no assessment made in respect of Holding No.177. This apart, there was, admittedly, no demand raised and no notice was given to the writ petitioner, Manager Prasad, asking him to make payment of tax due in respect of Holding No.177.

17. In the circumstances indicated above, it could not have been, in our considered view, held, and ought not to have been held, that the writ petitioner had not paid all taxes due to him to the Municipality at the end of the financial year immediately preceding that in which the election is held.

18. Notwithstanding the fact that respondent No.10 in the writ petition, namely, Ravindra Prasad, who is appellant in L.P.A. No.119 of 2014, had known that no assessment of tax in respect of Holding No.177 had been made and no notice of demand for payment of tax, in this regard, had been served upon the writ petitioner, Manager Prasad, he (Ravindra Prasad, i.e., appellant in L.P.A. No.119 of 2014,) lodged a complaint before the State Election Commission seeking to get the results of the election set aside.

19. Considering the fact that no document was placed, in the proceedings conducted before the State Election Commissioner, Bihar, to show that the assessment of tax in respect of Holding No.177 had been made prior to the election and/or any notice of demand, as regards payment of tax in respect of Holding No.177, was served on the writ petitioner, Manager Prasad, the no dues certificate, which was issued by the Municipality concerned in favour of the writ petitioner, could not have been legally ignored and the writ petitioner could not have been considered disqualified to contest the election on the date of the filing of the nomination paper. This apart, as the learned single Judge has rightly pointed out, there were serious contentious issues,



which were unfit to be entered into, and determined, by the State Election Commissioner in a proceeding, which is summary in nature.

20. While considering the present appeal, it needs to be also pointed out that in the case at hand, what has clearly surfaced from the material on record, and had to be conceded by learned Counsel for the appellant, is that no assessment of valuation, in respect of Holding No. 177, had been made nor any demand for payment of tax was raised. In the complete absence of any assessment having been made in respect of Holding No. 177 and no consequential demand of payment of tax having been raised, one could not have held, and the State Election Commissioner ought not to have held, that writ petitioner had not paid all taxes due to the Municipality at the end of the financial year immediately preceding that in which the election is held.

21. Though we find it difficult to agree, contrary to what the learned single Judge has observed, that a no dues certificate, granted by the Municipality, is conclusive of the question as to whether any tax is due to be paid by a person, we must hasten to add that in the facts and attending circumstances of the present case, neither before the State Election Commissioner nor before the learned single Judge, there was any material, as already indicated above, to show that any assessment of valuation of Holding No. 177 had been made and/or any demand for payment of tax had been raised.

22. In the complete absence of the twin requirements, as indicated above, the wrath of disqualification, embodied in Section 18(1) (k) of 2007 Act, could not have been made to fall on the writ petitioner and he could not have been held to stand disqualified. The finding, therefore, of the State Election Commissioner that the writ petitioner was not qualified to be elected is wholly incorrect and did call for interference.

23. We, therefore, find no infirmity, legal or factual, in the decision arrived at by the learned single Judge that the impugned order, dated 02.08.2013, passed by the State Election Commissioner, Bihar, whereby the writ petition had been disqualified from being elected as a Councillor, was wholly incorrect and deserved to be set aside.

24. Coming to the contention of the appellant, in L.P.A. No. 119 of 2014, that the learned single Judge has exceeded in observing that since there was no cognizable offence shown to have been committed by the writ petitioner-

respondent, no First Information Report could have been directed to be registered, we notice, as has been pointed out by the learned Counsel for the appellant, in L.P.A. No. 119 of 2014 (i.e., the State Election Commissioner, Bihar), that Section 447 of 2007 Act reads as follows:

□447. Penalty for filing false affidavit, etc. -- A candidate who himself or through his proposer, with intent to be elected in an election, --

(i) fails to furnish information relating to section 472, or

(ii) gives false information which he knows or has reason to believe to be false;

or

(iii) conceals any information, in his nomination paper or in his affidavit which is required to be delivered, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to one year or with fine, or with both.

25. A careful perusal of the provisions of Section 447 of 2007 Act shows that a candidate, who himself or through his proposal, with intend to be elected in an election, fails to furnish information relating to section 472, and/or gives false information which he/she knows or has reason to believe to be false; and/or conceals any information, in his/her nomination paper or in his/her affidavit which is required to be delivered, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to one year or with fine, or with both.

26. We may, now, reproduce hereinbelow Schedule-II of the Code of Criminal Procedure, which reads as follows:

## II. CLASSIFICATION OF OFFENCES AGAISNT OTHER LAWS:

Offence Cognizable Bailable or By what non-bailable court triable If punishable  
Cognizable Non-bailable Court of with death, Sessions imprisonment for life, or  
imprisonment for more than 7 years If punishable for Cognizable Non-bailable  
Magistrate imprisonment of the first for 3 years and class upwards but not more than  
7 years If punishable Non- Bailable Any with Cognizable Magistrate imprisonment  
for less than 3 years or with fine only

27. From a bare reading of Schedule II of the Code of Criminal Procedure, which embodies classification of offences against other laws, i.e. other than Indian Penal Code, it becomes clear that if an offence is punishable with imprisonment for a period less than 3 years and/or with fine only, such an offence, under any law other than the Indian Penal Code, shall be non-cognizable offence.

28. In the case at hand, since the punishment prescribed by Section 447 of 2007 Act is one year or with fine, or with both, the offence is, in the light of what has been indicated above, a non-cognizable offence.

29. From a close and combined reading of Sections 154 and 155 of the Code of Criminal Procedure, it become clear that though a police officer cannot investigate non-cognizable offence without the order of the Magistrate, he is, nonetheless, required to record the information, which he may have received as regards commission of any non cognizable offence, and it is his duty to enter substance

of the information in a book to be kept by the officer-in-charge of the Police Station and refer the informant to the Magistrate.

30. Situated thus, it becomes abundantly clear that though no Police Officer can investigate a non-cognizable case without an order of a Magistrate having the power to try such case or commit the case for trial, no one is prevented from reporting an information to the police officer regarding commission of a non-cognizable offence and it is the duty of the police officer concerned, on receiving such information, to enter substance of the information in a book to be kept by the officer-in-charge of the Police Station and refer the informant to the Magistrate.

31. It is, therefore, wholly incorrect that under no circumstances, the State Election Commissioner can give to police information with regard to the commission of an offence, under Section 447 of 2007 Act, which is non-cognizable.

32. In the case at hand, apart from the fact that the no dues certificate had been furnished to the writ petitioner-respondent, the fact remains that there was no material to show, as already held above, that any assessment of valuation of Holding No. 177 had been made and/or any demand for payment of tax, so assessed, had been raised. In such circumstances, there was no occasion for the State Election Commissioner to have arrived at the finding that the writ petitioner-respondent had furnished false information or concealed or failed to furnish any information, which is sine qua non for applying Section 447 of 2007 Act.

33. Consequently, in the facts of the case at hand, no direction by the State Election Commissioner, Bihar, to lodge a First Information Report could have been legally given against the writ petitioner.

34. In our considered view, the State Election Commissioner, in the context of the case at hand, exceeded its jurisdiction and its direction, therefore, to lodge a First Information Report against the writ petitioner could not have been, in the factual backdrop of the present case, sustained and has been rightly struck down by the learned single Judge. We find no reason to interfere with the impugned order passed by the learned single Judge.

35. In terms of the above discussion, these appeals shall stand dismissed.

36. No order as to costs.

(Anjana Mishra, J.)

I. A. Ansari, J.:

I agree.

SNkumar/Anand/  
AFR

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