

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8497 of 2023

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Bhupendra Kumar Mehta Son of Ramdev Mehta, Resident of village -
Bishunpur Daulat, P.S.- Raghopur, District - Supaul.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. The State Election Commission through its Commissioner, Sone Bhawan, Birchand Patel Path, Patna.
3. The Secretary, State Election Commission, Sone Bhawan, Veer Chand Patel Marg, Patna.
4. The Officer on Special Duty, State Election Commission, Bihar, Sone Bhawan, Veer Chand Patel Marg, Patna.
5. The District Magistrate-cum-District Election Officer (Panchayat), Supaul.
6. The Block Development Officer, Raghopur, Supaul.
7. Smt. Amita Devi, Son of Wife of Srii Mahanand Chaudhari, Resident of Village- Daulatpur, Ward No.04, Vishunpur, District - Madhepura.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amit Shrivastava, Sr. Advocate with Mr. Shyam Kishore and Mr. Rishi Sinha, Advocates
For the State	:	Mr. Kumar Alok, SC 7 with Mr. Satyeshwar Prasad, AC to SC 7
For the SEC	:	Mr. Sanjeev Nikesh, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 03-10-2023

Heard Mr. Amit Shrivastava, learned senior counsel,
duly assisted by Mr. Shyam Kishore, learned counsel for the
petitioner and Mr. Sanjeev Nikesh, learned counsel for the State
Election Commissioner. Mr. Satyeshwar Prasad, learned counsel
for the Sate is also present.

2. The petitioner, who was the elected Mukhiya of



Gram Panchayat, Bishunpur Daulat of Raghopur Block under Supaul district, preferred the present writ application seeking quashing of the order dated 08.05.2023 passed in Case No. 49 of 2021, whereby and whereunder the Commissioner, State Election Commission, Bihar has disqualified the petitioner under Sections 136(1)(g) and 136(2) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the 'Act') and further directed the District Magistrate, Supaul to take action under Section 125(1)(A) of the Act. The petitioner also sought a direction commanding upon the respondent authorities, especially the District Magistrate, Supaul not to take action against the petitioner under Section 125(1)(A) of the Act, in view of the facts enumerated hereinabove.

3. The brief facts of the case, leading to the filing of the present writ petition, are that the election for the post of Mukhiya of the Gram Panchayat Raj, Bishunpur Daulat, was held on 20.10.2021 and the result was declared on 22.10.2021. The petitioner was successfully declared elected by a margin of 936 votes. On 02.11.2021, a complaint was filed by respondent no. 7, alleging non compliance of Section 125A of the Act. On the basis thereof, Case No. 49 of 2021 was registered against the petitioner. It is the case of the petitioner that only on the basis of



the complaint, he came to know that Cr. Appeal No. 13 of 2021 came to be dismissed on 16.07.2018 by the learned Additional Sessions Judge 2nd, Supaul, by affirming the conviction and sentence awarded by the Chief Judicial Magistrate, Supaul on 13.06.2012 in G.R No. 1535 of 2008/Trial No. 397 of 2012, arising out of Bhaptiya P.S. Case No. 69 of 2008, under sections 25(1-B)(a)/35 of the Arms Act for a period of rigorous imprisonment of one year and fine of Rs.1000/-. The petitioner has also been convicted under Sections 26/35 of the Arms Act and sentenced to undergo rigorous imprisonment for six months and fine of Rs. 5000/-.

4. It is the case of the petitioner that the date on which the nomination was filed, the petitioner was acquainted with the fact that while disposing the Cr. Appeal No. 13 of 2012, he has already been acquitted from the charges, as has been gathered from the status report obtained through the e-website. In support of the aforesaid submission, photocopy of the status report, containing ordersheet has been brought on record by way of annexure-P/3.

5. Learned senior counsel appearing on behalf of the petitioner submitted that had the petitioner been knowing this fact, that his conviction has been affirmed by the appellate



court, he would have certainly disclosed the fact in the nomination paper but knowing very well that he has already been acquitted as was reflected from the status report, there was no reason or occasion to furnish such information. He further submitted that it is also the admitted fact that at the time of nomination, none of the candidates has made any objection as the others were also knowing that the petitioner has already been acquitted as per the status report. The petitioner also came to know about dismissal of his appeal, first time when the complaint was made. Thus, he applied for the certified copy of the judgment and get acquainted that the judgment of conviction has been affirmed by the appellate court vide order/judgment dated 16.07.2018.

6. It is next submitted that the moment the petitioner came to know that the order of conviction has been affirmed by the appellate court, he preferred Criminal Revision No. 86 of 2022 before the Hon'ble High Court at Patna along with the limitation petition for condonation of delay. The Hon'ble Court vide order dated 31.03.2022 while granting bail to the petitioner suspended the sentence imposed against the petitioner.

7. The petitioner heavily relied upon the judgment rendered by the Hon'ble Supreme Court in the case of *Navjot*



Singh Sindhu vs. the State of Punjab and others since reported in *2007(2) SCC 574*. Further attention of this Court has also drawn to annexure P/6, an order/judgment passed by this Court in case of *Hira Lal Sah Vs. State Election Commission* (CWJC No. 15215 of 2009). While concluding the submission, learned senior counsel, at the cost of repetition, again submitted that the date on which the nomination was filed neither there was any material to show that the conviction of the petitioner was affirmed by the appellate court nor any objection was made and as such the petitioner could not mention the aforesaid fact in the nomination paper. He further submits that while passing the impugned order the State Election Commissioner, Bihar, Patna has not considered the submissions made on behalf of the petitioner, though the entire order sheet has been produced before this Court annexing the status report suggesting that the petitioner was acquitted.

8. *Per contra*, learned counsel for the State Election Commission submits that it is the admitted fact that the date on which the nomination was filed, the petitioner was convicted and as such in any view of the matter, the petitioner has rightly been disqualified under Section 136(1)(g) of the Act, that apart the impugned order has taken note of the submission made on



behalf of the petitioner and furthermore while disposing of the Case No. 49 of 2021, the State Election Commissioner has relied upon the judgment rendered by this Court in the case of ***Binod Kumar vs. Sate Election Commissioner & Ors.*** (CWJC No. 12889 of 2008) decided on 11.04.2012, which covers the present case.

9. Learned counsel for the State also reiterates the submission made on behalf of the State Election Commission and further submits that the case of the petitioner is not covered by the judgment rendered by the Hon'ble Supreme Court, as the case of ***Navjot Singh Sindhu***(supra) as well as the judgment rendered by the learned coordinate Bench of this Court, are not identical to the present matter as in both the cases cited hereinabove, the disqualification occurred subsequent to the nomination, while in their tenure.

10. Heard the parties and perused the materials available on record.

11. Before parting with the final outcome, it would be apt to quote section 125A(1)(i) and (ii) of the Act, 2006, which reads as follows:

“125A. Furnishing of certain information essential for candidates. - (1) A candidate shall, apart from any information which he is required to furnish in his nomination papers delivered under the Act or the



Rules made thereunder, also furnish information on affidavit on the following aspects in relation to his/her candidature-

(i) Whether he is convicted/acquitted/discharged of any criminal offence in the past-if any, whether he is punished with imprisonment or fine;

(ii) Prior to six months of filing of nominations, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for more than six months, and in which a charge has been framed or cognizance has been taken by a competent court of law. If so, the details thereof.”

(emphasis supplied)

12. Further, section 136 of the Act, 2006 deals with disqualification of candidate; and section 136(1)(g) reads as follows:

“136.Disqualification for Membership.-(1)
Notwithstanding anything contained in this Act, a person shall be disqualified for election or after election for holding the post as Mukhiya, member of the Gram Panchayat, Sarpanch, Panchol the Gram Katchahri, member of the Panchayat Samiti and member of Zila Parishad if such person-

(g) has been sentenced by a criminal court whether within or out of India to imprisonment for an offence, other than a political offence, for a term exceeding six months or has been ordered to furnish security for good behaviour under Section 109 or Section 110 of the Code of Criminal Procedure, 1973 (Act 2,1974) and such sentence or order not having subsequently been reversed;”

13. From the conjoint reading of the provisions enumerated hereinabove, there is no conundrum, that a



candidate is statutorily under obligation to furnish information on affidavit to his conviction, acquittal, discharge of any criminal offence in the past, failing which the nomination of a candidate would be liable to be rejected. In case the candidate is convicted and has been sentenced by a criminal court for an offence, other than a political offence for a term exceeding six months or has been ordered to furnish good behaviour under Sections 109 and 110 of the Code of Civil Procedure and such sentence or order not having subsequently been reversed, the candidate shall be disqualified for contesting an election under the Act, 2006.

14. While considering the claim of the petitioner, the State Election Commission has rightly relied upon the judgments rendered in the case of ***Binod Kumar More Vs. State Election Commission, (2012) 4 PLJR 599*** and ***Bhagwan Singh Vs. State of Bihar, AIR 2005 Pat, 109*** wherein this Court has succinctly held that the date relevant for considering the disqualification in matters of election is the date of filing nomination paper and its scrutiny and if a candidate(s) have suppressed their conviction and sentence by playing fraud in getting their nomination papers accepted as valid and were elected to the election, the action will entail disqualification as



mandated under Section 136(1)(g) of the Act, 2006. The subsequent acquittal or suspension of sentence is not relevant to remove the disqualification as on the date of scrutiny. The Hon'ble Court further held that the acquittal would only wipe off the stigma and restore the benefits to which one has accrued on account of rigors of the law.

15. Further the submission put forth by the petitioner that once the judgment and order of sentence stands suspended by the Hon'ble Court it would have the effect of wiping out disqualification from the back date of scrutiny of nomination has been elaborately discussed and answered by the Constitution Bench, in the case of ***K. Prabhakaran Vs. P. Jayarajan, (2005) 1 SCC 754***, the relevant paragraphs are quoted hereinbelow:

“29. It is trite that the right to contest an election is a statutory right. In order to be eligible for exercising such right the person should be qualified in the terms of the statute. He should also not be subject to any disqualification as may be imposed by the statute making provision for the elective office. Thus, the legislature creating the office is well within its power to prescribe qualifications and disqualifications subject to which the eligibility of any candidate for contesting for or holding the office shall be determined.....

x x x x

41. The correct position of law is that nomination of a person disqualified within the meaning of sub-section (3) of Section 8 of RPA on the date of scrutiny of



nominations under Section 36(2)(a) shall be liable to be rejected as invalid and such decision of the returning officer cannot be held to be illegal or ignored merely because the conviction is set aside or so altered as to go out of the ambit of Section 8(3) of RPA consequent upon a decision of a subsequent date in a criminal appeal or revision.

x x x x

44. We are, therefore, of the opinion that an appellate judgment of a date subsequent to the date of nomination or election (as the case may be) and having a bearing on conviction of a candidate or sentence of imprisonment passed on him would not have the effect of wiping out disqualification from a back date if a person consequent upon his conviction for any offence and sentenced to imprisonment for not less than two years was actually and as a fact disqualified from filing nomination and contesting the election on the date of nomination or election (as the case may be).”

16. In the case in hand, admittedly the date on which the petitioner filed his nomination paper, he was already convicted in connection with G.R. No. 1535 of 2008/Tr. No. 397 of 2012 arising out Bhaptiya P.S. Case No. 69 of 2008 whereby he was convicted under Sections 25(1-B)(a)/35 of the Arms Act and sentenced to undergo rigorous imprisonment of one year and fine of Rs. 1000/- and further has been convicted under Sections 26/35 of the Arms Act and sentenced to undergo rigorous imprisonment of six months and fine of Rs. 5000/- with a further direction that both the sentences shall run concurrently.



Thus, in any view of the matter, the petitioner was disqualified in contesting an election in view of Section 136(1)(g) of the Act, 2006. It is worth noting here that any order of acquittal or suspension of sentence cannot relate back to the date of nomination as the same can only be applied prospectively.

17. It would be thus, obvious that Section 125A of the Bihar Panchayat Raj Act, 2006 has no ambiguity that a candidate is required to furnish information on affidavit in relation to his conviction, acquittal, discharge of any criminal offence in past or whether he is punished with imprisonment or fine. Thus in the opinion of this Court non disclosure by the petitioner of his conviction by the learned CJM, Supaul vide order dated 13.06.2012 on any of the grounds, including the grounds taken in the present application cannot be accepted or given credit to.

18. It is settled proposition of law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eyes of law. The ratio laid down by the Supreme Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or misrepresentation (*vide: S.P. Chengalvaraya Naidu Vs.*



Jagannath AIR 1994 SC 893; Union of India vs. M. Bhaskaran 1995 suppl. 4 SCC 100).

19. Considering the aforesaid facts, circumstances and the position settled in law, this Court does not find any error in the impugned order dated 08.05.2023 passed by the Commissioner, State Election Commission, Bihar. Accordingly, the present writ application stands dismissed.

20. There shall be no order as to cost.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	10.10.2023
Transmission Date	N.A.

