

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17466 of 2023

Madhu Devi @ Renu Devi Wife of Shri Soga-rath Paswan, Resident of Village- Basuham, Post- Bahera, Benipur Nagar Parishad, Ward No. 9, Police Station- Bahera, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State Election Commission through the Chief Election Commissioner, Bihar, Patna.
2. The Special Officer on Duty, State Election Commissioner, Bihar, Patna.
3. The State of Bihar, through the Secretary, Urban Development and Housing Department, New Secretariat, Patna.
4. The District Magistrate-cum-District Election Officer (Municipality), Darbhanga.
5. The Sub-Divisional Officer-cum-Election Officer, Benipur, District- Darbhanga.
6. The Block Development Officer-cum-Assistant Election Officer, Benipur, District- Darbhanga.
7. Samta Devi, Wife of Shri Ramesh Paswan, Resident of Village- Basuham, Post- Bahera, Benipur Nagar Parishad, Ward No. 9, Police Station- Bahera, District- Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Sarvdeo Singh, Advocate
For SEC	:	Mr.Girish Pandey, Advocate
		Mr.Ravi Ranjan, Advocate
For the Respondent/s	:	Mr.Subhash Pd. Singh (GA3)
		Mr.Dilip Kumar, AC to GA 3

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 14-12-2023

Heard Mr. Sarvdeo Singh, learned counsel appearing
on behalf of the petitioner; Mr. Girish Pandey with Mr. Ravi
Ranjan, learned counsel for the State Election Commission and
Mr. Subhash Pd. Singh (GA 3) with Mr. Dilip Kumar (AC to GA
3), learned counsel for the respondents.

2. The petitioner has claimed for following relief(s) in
paragraph no.1 of the writ petition :-



“That the petitioner prays for issuance of an appropriate writ/writs, order/orders, direction/directions for quashing the ex-parte order which contained in Memo No.3343 dated 22.9.2023 issued by the respondent no.2 (Special Officer on Duty, State Election Commissioner, Bihar, Patna) by which direction has been issued to the District Election Officer to take action against this petitioner under Section 447 of Bihar Municipal Act, 2007 which is penal provision and one year punishment has been prescribed with fine for suppression of facts during filing the nomination. However, the such order has been passed and direction has been issued without issuing the notice to the petitioner and without hearing in violation of principle of natural justice said direction has been issued.

The petitioner further prays for direction to the State Election Commission to produce the complain which was filed by the private respondent for perusal and necessary direction. However, before issuance of direction no notice was served therefore the complaint in question is not available to the petitioner.

The petitioner further prays for quashing of letter which contained in Memo No.1401 dated 19.10.2023 by which Assistant Election Officer has been directed to take appropriate action against the petitioner.

And for any other relief/reliefs the petitioner may be found entitled under the facts and circumstances of the case.”

3. Learned counsel appearing on behalf of the petitioner submitted that a complaint was filed by one Samta Devi, who had also contested the Municipal Election in the year, 2022 and was unsuccessful, therefore, she chose to file a complaint petition before the S.D.O.-cum-Election Officer, Benipur and the District Magistrate- cum- District Election Officer, Darbhanga, in which no notice was issued. The Election Commission communicated to the District Magistrate- cum- District Election Officer vide letter



dated 22.09.2023 for holding inquiry and forthwith submit a report. In compliance of the said letter, the Election Officer- cum -District Magistrate submitted his report contained in Annexure 4 bearing letter dated 02.06.2023 and thereafter the State Election Commission proceeded to pass final order as contained in Annexure 5 bearing memo No.3343 dated 22.09.2023 without giving any opportunity to the petitioner whereas the action had to be taken under Section 447 of the Municipal Act, 2007.

4. In these backgrounds, learned counsel submitted that before taking any penal action, minimum opportunity of hearing is required as contained in Section 18(2) of the Municipal Act, 2007.

5. Learned counsel is further apprehensive that the authority can lodge FIR at any point of time even though he is ready to file affidavit to the extent that Madhu Devi and Renu Devi are the same person, wife of Sogarath Paswan, resident of village Basuham, Post Bahera, Benipur Nagar Parishad, Ward No.9, P.S. Bahera District Darbhanga.

6. *Per contra* Mr. Girish Pandey and Mr. Ravi Ranjan, learned counsels for the State Election Commission, have jointly submitted that the writ petition is pre-mature. No action has been taken till date in pursuance of the provisions to hold that she is not the same person and still no notice has been issued, the



petitioner has proceeded to file the writ petition. As per memo no.1401 dated 19.10.2023, the action will be taken against the petitioner and the petitioner having not availed the remedy, the writ petition is premature.

7. Heard the parties.

8. The statement made by the State Election Commissioner is surprising and shows that they are unaware of law and the basic principle of natural justice. No notice was issued before proceeding to take penal action against the petitioner. In this regard, law is well settled. Relevant paragraph nos. 28 and 29 of a recent judgment of The Apex Court in the case of ***Chairman State Bank of India and Anr. v. M.J. James*** reported in (2022) 2 ***SCC 201*** is reproduced hereinunder:

“28. Traditional English law recognized and valued the rule against bias that no man shall be a judge in his own cause i.e. nemo debet esse iudex in propria causa; and the obligation to hear the other or both sides as no person should be condemned unheard i.e. audi alteram partem. To these, new facets sometimes described as subsidiary rules have developed, including a duty to give reasons in support of the decision. Nevertheless, time and again the courts have emphasised that the rules of natural justice are flexible and their application depends on facts of each case as well as the statutory provision, if applicable, nature of right affected and the consequences. In *A.K. Kraipak v. Union of India* [A.K. Kraipak v. Union of India, (1969) 2 SCC 262] the Constitution Bench, dwelling on the role of the principles of natural justice under our Constitution, observed that as every organ of the State is controlled and regulated by the rule of law, there is a requirement to



act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a quasi-judicial or administrative power are those which facilitate if not ensure a just and fair decision. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of law under which the enquiry is held and the constitution of the body of persons or tribunal appointed for that purpose. When a complaint is made that a principle of natural justice has been contravened, the court must decide whether the observance of that rule was necessary for a just decision in the facts of the case.”

29. Legal position on the importance to show prejudice to get relief is also required to be stated. In *State Bank of Patiala v. S.K. Sharma* [State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364] a Division Bench of this Court distinguished between “adequate opportunity” and “no opportunity at all” and held that the prejudice exception operates more specifically in the latter case. This judgment also speaks of procedural and substantive provisions of law embodying the principles of natural justice which, when infringed, must lead to prejudice being caused to the litigant in order to afford him relief. The principle was expressed in the following words : (SCC p. 389, para 32).

“32. Now, coming back to the illustration given by us in the preceding paragraph, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests of justice or would it be its negation? In our respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot



be perverted to achieve the very opposite end.
That would be a counterproductive exercise.”

9. The action taken by the Assistant Election Officer, as contained in memo no.1401 dated 19.10.2023 amounts to having provided no opportunity to the petitioner, is held to be without jurisdiction and as such it loses its force being nullity in the eye of law.

10. The District Magistrate-cum-Election Commissioner is directed to issue notice to the petitioner so that the petitioner can avail opportunity to produce evidences in support of her claim that she is Madhu Devi @ Renu Devi and the same person. The District Magistrate is directed to call for all the necessary documents with respect to the name of the petitioner. The office order as contained in memo no.3343 dated 22.09.2023 and in memo no.1401 dated 19.10.2023 being without jurisdiction are set side and quashed.

11. With the above direction/observation, the present writ petition stands disposed of.

(Purnendu Singh, J)

chn/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.12.2023
Transmission Date	NA

