

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11676 of 2024

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Rubi Devi Wife of Kumar Raj, resident of Mohalla-Khas Bazar, Ward No. 12,
P.O. and P.S.-Haweli Khadagpur, District-Munger.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The District Magistrate cum District Election Officer (Municipality), District-Munger.
3. The District Panchayat Raj Officer, Patna.
4. The State Election Commissioner through its Secretary, Sone Bhawan, Patna.
5. The State Electrion Commissioner, Sone Bhawan, Patna.
6. Amreshwar Kumar, S/o Sri Ganesh Prasad Chaurasiya, resident of Mohalla-Khas Bazar, Ward No. 12, P.O. and P.S.-Haweli Khadagpur, District-Munger.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pramod Kumar Singh, Advocate
For the State	:	Mr. Manish Kumar, GP-4
For the SEC	:	Mr. Ravi Ranjan, Advocate
		Mr. Girish Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

2 06-08-2024 Heard the parties.

2. The present writ petition has been preferred
for the grant of following reliefs:-

*“For setting aside the order dated 12.07.2024
passed in Case No.64/2023 as contained in
Letter (Gyapank) No.64/2023 dated 12.07.2024
by the State Election Commissioner, Bihar, Patna
whereby the petitioner has been declared*



disqualified to hold the post of ward councilor (Ward Parshad) by operation of clause (m) of subsection (1) of Section 18 of the Bihar Municipal Act 2007 [As petitioner has been elected on the post of Ward Councilor in ward no.12 Nagar Parishad, Khadagpur, Certificate dated 11-06-2023].

(ii) For issuance of the appropriate writ/writs/ direction / directions / order / orders/ commanding the State respondents to reinstate the petitioner on the post of Ward Councilor, and to allow the petitioner to continue on the post of Ward Councilor in Ward No.12, Nagar Parishad Khadagpur, District-Munger.

(iii) Prayer is made to STAY the operation of impugned order dated 12.07.2024 passed in case no.64/2023 by the State Election Commissioner, Bihar, Patna which is contained in Letter (Gyapank) No.64/2023 dated 02.07.2024.”

3. The facts of the case is that the petitioner was elected as ward councilor of Ward No.12, Haveli Khadagpur, Munger. Subsequently, the complaint was filed that the petitioner is blessed with four children, two of them having come in this world after 04.04.2008, the cut-off date as envisaged in Bihar Municipal Act, 2007 (henceforth for short ‘the 2007 Act’). This led to an inquiry and ultimately the case landed before the State Election Commission, Bihar, (henceforth



for short 'the SEC') where the State Election Commissioner took up the **Case No.64 of 2023 (Amreshwar Kumar vs. Rubi Devi)** and after hearing the parties and perusing the report submitted by the District Magistrate, Munger made the following observations:-

(i) the date of birth of the first son of the petitioner, namely Bittu Kumar, is 01.01.2007 while that of Anand Kumar is 10.03.2008;

(ii) the dates have come through the mark sheet of the matriculation certificate of the of the first son while the second date of birth has come from the school register of +2 High School, Haveli Kharagpur, Munger, where the second son is student of class 10th.

(iii) the third child of the petitioner, namely Riya Kumari is pursuing her studies in the Girls Middle School, Haveli Kharagpur, Munger and her date of birth has been recorded as 01.01.2012 while the fourth child namely Shrishti Kumari is a student of Saraswati Shishu Mandir, Haveli Kharagpur, Munger and his date of birth has been recorded as 16.11.2016.

(iv) in that background, it was clear that two of the children of the petitioner came in this world after 04.04.2008. The petitioner candidly accepted the fact that she has four children of which, two of her children came in this world after 04.04.2008 but one of them (Shrishti



Kumari) has been adopted by a couple namely, Pankaj Kumar and Khusbhu Kumari on 16.11.2021 by an affidavit of Notary Public.

4. The State Election Commissioner further took note of the Section 18(1)(m) of 'the 2007 Act' to come to the conclusion that the petitioner should have been disqualified at the first instance itself after she preferred the nomination papers.

5. Section 18(1)(m) of 'the 2007' Act read as follows:-

“(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:-

(m) If he has more than two living children:- provided that a person having more than two children on or upto the expiry of one year of the commencement of the Act, shall not be deemed to be disqualified.”

6. The State Election Commissioner has also recorded that despite the fact that the nomination paper should have been rejected at the first instance itself, not only the same was cleared, she contested and got elected despite the fact that she was ineligible to contest as per Section 18(1)(m) of 'the 2007' Act.

7. A perusal of the order would show that in the reply of the petitioner, she herself has accepted that two of her



children came in this world after 04.04.2008 out of which one has been adopted, as stated above.

8. In that background, the State Election Commissioner vide order dated 12.07.2024 annulled her election with the further direction to initiate appropriate proceeding against the Officer concerned who cleared the nomination paper (Annexure P/1 to this writ petition).

9. Learned counsel for the petitioner submits that she was not provided the inquiry report and as such her case is squarely covered by a Division Bench Judgment in the case of **Saryug Mochi and Another vs. State of Bihar** (CWJC No. 4175 of 2022) (Annexure P/2) to submit that in that case also, the inquiry report was not provided to the petitioner and the Division Bench held that in absence of the report which was not made available to Saryug Mochi, the order is fit to be set aside.

10. Learned counsel for the State as also learned counsel appearing on behalf of 'the SEC' submits that the case of the petitioner is quite different from the **Saryug Mochi** (supra) case. In that case, the petitioner was not accepting the birth of the children after 04.04.2008 whereas in the present case the petitioner herself accepted about the presence of child



after 04.04.2008 and in that background, she cannot equate herself from the order passed by the Division Bench in **Saryug Mochi** (supra) case.

11. This Court is in full conformity with the order passed by 'the SEC'. Once she accepted in the nomination paper itself about the birth of the child after 04.04.2008, the same should have been rejected. Instead, it was accepted, she was allowed to contest which resulted into her election.

12. Further, a perusal of the order of 'the SEC' would show that the case of the petitioner before the State Election Commissioner that though she has four children, only two have arrived in this world after 04.04.2008 and thus there was no legal impediment in contesting the election.

13. So far as the case of **Saryug Mochi** (supra) case is concerned, the facts of the said case was entirely different. Hence, even if the enquiry report is ignored, there are ample evidence by way of the incorporation in the nomination paper as also her stand before 'the SEC' that she has more than two child and they came in this world after 04.04.2008.

14. The facts have been recorded which takes this Court to only one conclusion the order dated 12.07.2024 passed by the respondent no.4, the State Election



Commissioner, Bihar in Case No. 64/2023 (Annexure P/1)
need no interference.

15. The present writ petition stands dismissed.

(Rajiv Roy, J)

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