

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18090 of 2023

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Akbari Talak @ Akabri Talak Wife of Md. Nasim Resident of Village Khaisa,
P.S.- Jamalpur, District- Darbhanga, Presently Mukhiya of Khaisa Gram
Panchayat, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. District Magistrate- cum- District Election Officer (Panchayat), Darbhanga.
3. State Election Commission, Bihar, Patna through the State Election Commissioner, 3rd floor, Sone Bhawan, Veer Chand Patel Path, Patna.
4. The State Election Commissioner, 3rd floor, Sone Bhawan, Veer Chand Patel Path, Patna.
5. Officer on Special Duty, State Election Commission, 3rd floor, Sone Bhawan, Veer Chand Patel Path, Patna.
6. Ruhi Praveen, Wife of Md. Nasrullah Resident of Village- Khaisa, P.S.- Jamalpur, District- Darbhanga.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 14245 of 2023

=====

Ruhi Parveen @ Ruhi Praveen Wife of Md Nasrullah, resident of Village-
Khaisa, Police Station - Jamalpur, District - Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
3. The District Electrol Officer cum District Magistrate, Darbhanga.
4. The District Panchayati Raj Officer, Darbhanga.
5. The Officer on Special Duty, State Election Commission, Bihar, Patna.
6. Akabari Talak, wife of Md Nasim, resident of village - Khaisa, Police Station - Jamalpur, District - Darbhanga.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 18090 of 2023)

For the Petitioner/s : Mr. Amit Srivastava, Sr. Advocate



For the Respondent no.6 : Mr.Ranjeet Choubey, Advocate
Mr.Anand Kumar Ojha, Advocate
Mr. Ashok Kumar Karna, Advocate
Mr. Shankar Kumar, Advocate
(In Civil Writ Jurisdiction Case No. 14245 of 2023)
For the Petitioner/s : Mr.Anand Kumar Ojha, Advocate
Mr. Ashok Kumar Karna, Advocate
Mr. Shankar Kumar, Advocate
For the Respondent/s : Mr.Ajay, G.A.-5

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
CAV JUDGMENT
Date : 13-09-2024

Heard Mr. Amit Srivastava, learned Senior
Counsel for the petitioner in **CWJC No. 18090 of 2023**
(Akbari Talak @ Akabri Talak vs the State of Bihar & ors.)
and Mr. Anand Kumar Ojha who represents the petitioner in
CWJC No. 14245 of 2023 (Ruhi Parveen @ Ruhi Praveen vs
the State of Bihar & ors.)

(A) PRAYER:

2. The writ petition has been preferred by
Akbari Talak @ Akabri Talak (CWJC No. 18090 of 2023) for
following reliefs:

*(i) for issuance of an appropriate
writ in the nature of certiorari or any
other similar writ in nature for partly
quashing the order dated in part 16-
08-2023 passed in Case No. 72/2022
(Ruhi Pravin vs Akbari Talak) by
Respondent State Election*



Commission, Bihar, Patna and further communicated under memo no.72/2022/2967 dated 16-08-2023 in as much as part "Kha" of the said order is concerned wherein while finding the allegation of concealing details of educational qualification in her biodata filed along with nomination paper, Respondent District Magistrate, Darbhanga has been directed to take legal action against the writ petitioner under section 125A(3) of the Bihar Panchayat Raj Act, 2006(for sake of brevity herein after to be referred as the Act, 2006) as also other relevant sections on the ground It said direction is thoroughly illegal and without jurisdiction;

(ii) for a declaration It unless the requirement of section 125A of the Act, 2006 is fulfilled the direction of



*imposition of penalty prescribed
cannot be imposed;*

*(iii) for issuance of any other
appropriate writ/writs, order/orders,
direction/directions for which the
writ petitioner is entitled under the
facts and circumstances of the case.*

3. The reliefs sought for by **Ruhi Parveen @ Ruhi
Praveen (CWJC No. 14245 of 2023)** read as follows:

*(i) for quashing of the order dated
16.08.2023 contained in Memo No.
2967 dated 16.08.2023 to the extent
of Part-Ka whereunder the State
Election Commissioner (SEC) had
refused to disqualify the Private
Respondent cum elected Mukhiya on
the ground of Learned section 136(1)
(kha) of the Act. 2006 on the
erroneous ground of absence of
unimpeachable document ignoring
the admitted position It the date of
birth recorded on the basis of Aadhar*



Card could at best be a self declaration and not a definite document to declare the candidate as over 21 years of age and It fraudulent suppression of education related facts including the different date of birth in the school records since 2014 had been suppressed by the Private Respondent. The Petitioner further prays for an order of restrain against the private Respondent restraining and interdicting her from taking financial decision as a Mukhiya during the pendency of the Writ Application.

4. Since both the writ petitions arising out of order dated 16.08.2023 passed by the State Election Commission, Bihar, Patna though with different prayers, this Court with the consent of the parties have taken up the cases together.

(B) PETITIONER'S CASE [Akbari Talak @]



Akbari Talak:- (in C.W.J.C. No. 18090 of 2023)]

5. In the Panchayat election held in the year 2021, the writ petitioner, **Akbari Talak @ Akabri Talak** filed her nomination and having polled the highest number of votes was declared elected as the '**Mukhiya**' of **Khaisa-Jamalpur Gram Panchayat** in the district of **Darbhanga**.

6. It is further case of the petitioner that no sooner she got elected, a complaint came to be filed by Ruhi Parveen @ Ruhi Praveen before the respondent **State Election Commission, Bihar, Patna** (henceforth for short '**the Commission**') wherein it was alleged that the petitioner was not of qualifying age of 21 years when she contested the election for the post of '**Mukhiya**' of Khaisa Jamalpur Gram Panchayat and thus a prayer was made for her disqualification on the said ground.

7. Thus, the thrust of above complaint was about her age and an interference was sought for by the complainant which according to the petitioner was clearly beyond the jurisdiction of '**the Commission**'.

8. Based upon the said complaint, '**the Commission**' called for inquiry report from the concerned District authorities while registering **Case no. 72/2022**. Both



the complainant and the writ petitioner were noticed asking them to present their respective cases before it.

9. The petitioner submitted her reply and maintained her stand that the entire complaint is not maintainable in the light of dictum laid down in case of **Rajani Kumari vs State Election Commission & Ors.** reported in **2019(4) PLJR 673(FB)** as there was no unimpeachable evidence before 'the Commission' based upon which she could be disqualified and secondly being in light of several evidences also, since admittedly, the writ petitioner was above 21 years of age on the date of scrutiny, she was qualified to contest the election

10. Initially, the maintainability was challenged by the petitioner before 'the Commission' and then in order to prove her case, several evidences were also relied upon like the Aadhar Card, EPIC card(Voter ID card), PAN Card, registration slip and admit card for 'Faukania' examination, birth certificate, all of which showing her date of birth as 05-02-2000. In addition to it, updated Voter list downloaded from National Voter Service Portal as also Covid vaccination certificate were provided to show her to be more than 21 years of age on the date of her nomination.



11. On the direction of 'the Commission', an inquiry report was submitted by the respondent, District Magistrate, Darbhanga vide letter no. 3135 dated 14-11-2022. However, 'the Commission' sought another report which resulted in submission of second inquiry report vide letter no. 1260 dated 23-03-2023.

12. According to the learned Senior Counsel, this too failed to convince 'the Commission' which again paved the way for another report contained under letter no 2352 dated 26-06-2023 and letter no 2647 dated 17-07-2023. However, in all the reports, the factum of writ petitioner being above 21 years of age was found.

13. The case of the petitioner is that based upon all the inquiry reports, '**the Commission**' ultimately vide an order as contained under **memo no. 72/2022/2967** dated **16-08-2023** was pleased to hold that the allegation of Akbari Talak being below 21 years of age as on the date of scrutiny could not be proved and thus claim of complainant was rejected.

14. However, while rejecting the complaint, 'the Commission' was pleased to hold that the writ petitioner is guilty of concealing relevant facts in her bio-data filed along with nomination paper regarding her educational status and thus



directed that District Magistrate, Darbhanga to take action against her under section **125(A)(3)** of the **Bihar Panchayat Raj Act, 2006** (henceforth for short 'the Act') as also other relevant sections for submitting false affidavit.

15. Aggrieved by the said part of the order dated 16.08.2023 wherein respondent District Magistrate, Darbhanga has been asked to take action under 'the Act', the present writ petition bearing **CWJC No 18090 of 2023** by the '**Mukhiya**', **Akbari Talak**.

16. The case of Akbari Talak is that she had appeared for 'Wastania' examination which is equivalent to Class 8th of Secondary Examination and she also filled up form for 'Fauquania' examination which is equivalent to class X.

17. However, she appeared only for 'Wastaniya' examination and though she filled up form for the 'Faukania' examination and the admit card/registration certificate were issued but she could not appear in the said examination. It was for the said reason that in her educational qualification part in bio-data filed along with nomination paper, she only mentioned '**literate**'.

18. According to the learned Senior Counsel, Mr. Amit Srivastava, the 'Mukhiya' rightly wrote '**literate**' in the



column and the definition of literate as per 2011 census is as follows:-

"For the purpose of census 2011, a person aged seven and above, who can both read and write with understanding in any language, is treated as literate. A person, who can only read but cannot write, is not literate. In the censuses prior to 1991, children below five years of age were necessarily treated as illiterates".

19. According to him, 'the Commission' failed to appreciate this fact and has passed the impugned order for taking action against the petitioner under Section 125(A)(3) of **'the Act'** which is illegal and misuse of power.

20. The submission is that the petitioner has not concealed any statement or fact or has made any misleading statement but the respondent no. 3 has failed to appreciate the word **"Literate"** and based on this, had directed to initiation of proceeding under Section-125(A) (3) of 'the Act'.

21. Learned Senior Counsel took this Court to **section 125A of 'the Act'** which is reproduced herein below :-

"125-A (1) Furnishing of certain information



essential for candidates. 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) xxx xxx xxx xxx

(ii) xxx xxx xxx xxx

(iii) xxx xxx xxx xxx

(iv) xxx xxx xxx xxx

(v) The educational qualifications of the candidate.

In case of non-furnishing of the affidavit by any candidate, the nomination of the concerned candidate shall be liable to rejection by the returning officer at the time of scrutiny of nominations for such non-furnishing of the affidavit.

The information so furnished by each candidate in the aforesaid affidavit shall be disseminated by the respective returning officer by displaying a copy of the affidavit on the notice board of his office and also by making the copies thereof available freely and liberally



to the representatives of the print and electronic media and to any other candidate of person on deposit of fee prescribed by the Commission,

If any rival candidate furnishes information to the contrary by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with the affidavit of the candidate concerned in the manner directed above.

(2) Candidate to furnish information only under the Act and the Rules. Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the State Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made thereunder.

(3) 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 sub-section (2);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."

22. He submits that a bare reading of same clearly manifest that there are certain prerequisite conditions upon fulfillment of which an offence under section 125A of 'the Act' is made out and for same, it is necessary that the information which is required to be disclosed under the provisions of the act, has either not been disclosed or disclosed knowing it to be false or information so required to be disclosed has been concealed. Clearly, the impugned order is completely silent as to which part of section 125A of 'the Act' has been not complied.

23. Learned Senior Counsel submits that even otherwise, the District Magistrate who is otherwise authorized to act and take steps under 'the Act' for electoral offences alone



and not for penalty under section 125A(3). Thus, 'the Commission' could not have given the said direction to the District Magistrate.

24. He submits that so far as age determination is concerned, it has already been held by 'the Commission' that she was 21 years of age on the day she filed nomination.

25. In support of case of Akbari Talak, learned Senior counsel cited an order of Hon'ble Apex Court in the case of **Karim Uddin Barbhuiya vs. Aminul Haque Laskar and others** reported in **AIR 2024 SC 2193** with reference to paras 6 and 23 which read as follows:-

6. Mr. Sibal taking us to the particulars disclosed by the appellant in Form No. 26 F submitted that there was neither suppression of educational qualification nor suppression of bank loan details or of un-liquidated provident fund dues, as alleged by the respondent No.1. He further submitted that the respondent No. 1 had admittedly not raised any objection in writing at the time of scrutiny of the nomination papers by the Returning Officer, and therefore it could not



*be said that there was improper acceptance of nomination of the appellant. He pressed into service I various provisions contained in the RP Act, (particularly Section 100 and Section 123 to submit that the allegations and averments made in the Election Petition could never constitute "undue influence" much less "corrupt practices" as contemplated in Section 123, for declaring the Election to be void under Section 100 of the RP Act. Much reliance has been placed by him on the decision of this court in case of **Kanimozhi Karunanidhi v. A. Santhana Kumar and Others'** to submit that the Election Petition filed by the respondent No. I be dismissed at the threshold under Order VII Rule 11, CPC read with Section 83 of the RP Act.*

23. As transpiring from the Election Petition, the respondent No. 1 himself had not raised any objection in writing against the nomination filed by the Appellant, at the time



of scrutiny made by the Returning Officer under Section 36 of the Act. According to him, he had raised oral objection with regard to the education qualification stated by the Appellant in the Affidavit in Form-26. If he could make oral objection, he could as well, have made objection in writing against the acceptance of nomination of the Appellant, and in that case the Returning Officer would have decided his objection under sub-section (2) of Section 36, after holding a summary inquiry. Even if it is accepted that he had raised an oral objection with regard to the educational qualification of the Appellant before the Returning Officer at the time of scrutiny, the respondent No. 1 has failed to make averment in the Election Petition as to how Appellant's nomination was liable to be rejected by the Returning Officer on the grounds mentioned in Section 36(2) of the Act, so as to make his case fall under clause



(d)(i) of Section 100(1) that there was improper acceptance of the nomination of the Appellant. The non-mentioning of the particulars as to how such improper acceptance of nomination had materially affected the result of the election, is apparent on the face of the Election Petition.

(underline by the Court)

26. He further cited the case of Hon'ble Apex Court in **Union of India vs. Association for Democratic Reforms and another** reported in **(2002) 5 SCC 294** and para-22 read as follows:

22. For health of democracy and fair election, whether the disclosure of assets by a candidate, his/her qualification and particulars regarding involvement in criminal cases are necessary for informing voters, maybe literate, so that they can decide intelligently, whom to vote for. In our opinion, the decision of even an illiterate voter, if properly educated and informed about the contesting candidate, would be



based on his own relevant criteria of selecting a candidate. In democracy, periodical elections are conducted for having efficient governance for the country and for the benefit of citizens voters. In a democratic form of government, voters are of utmost importance. They have right to elect or re-elect on the basis of the antecedents and past performance of the candidate. The voter has the choice of deciding whether holding of educational qualification or holding of property is relevant for electing or re-electing a person to be his representative. Voter has to decide whether he should cast vote in favour of a candidate who is involved in a criminal case. For maintaining purity of elections and a healthy democracy, voters are required to be educated and well informed about the contesting candidates. Such information would include assets held by the candidate, his qualification including educational



qualification and antecedents of his life including whether he was involved in a criminal case and if the case is decided its result, if pending-where The charge is framed or cognizance is taken by the court. There is no necessity suppressing the relevant facts from the voters.

27. Learned Senior Counsel submits that it was neither part of nomination nor affidavit and further no such objection was raised either during the nomination and/or the petition before the Election Commission by the complainant.

28. He concludes by submitting that when 'the Commission' decided to issue necessary direction against her for concealment of educational qualification which was neither in the complaint nor discussed at any point of time, it was duty bound to seek her response before proceeding further in the matter. In absence of that, the order stands vitiated so far as the direction to the District Magistrate, Darbhanga, is concerned.

(C) CASE OF THE PETITIONER [RUHI PARVEEN @ RUHI PRAVEEN:- (IN C.W.J.C. NO. 14245 OF 2023)]

29. Mr. Anand Kumar Ojha represents the



complainant, Ruhi Praveen. Learned counsel submits that it is an admitted fact that the Akbari Talak herself has stated that she is 'literate' (साक्षर) without any details of her education and/or any educational document. Further, the returned candidate submitted affidavit stating that the Voter List of 2021 General Election had wrongly mentioned her age to be 20 years and she has completed 21 years of age.

30. He submits that the Voter I card of the year 2021 general election declared Akbari Talak as 20 years 10 months and 26 days. He submits that the previous three lists of the years 2019, 2020 and 2021 had shown her to be 18 years, 19 years and 20 years respectively. Thus, in the affidavit, her declaration that the age mentioned in the 2021 voter list has been incorrect has to be rejected.

31. Further, the school records of 'Vastaniya' (Class-VIII) showed her date of birth as 06.01.2000 as evident from the marks sheet/certificate of 2014 examination issued by the Bihar State Madarsa Education Board, Patna.

32. However, contrary to the date of birth mentioned in the Madarsa Board, she on her own fraudulently mentioned 05.02 2000 as the date of birth in the registration for 'Fauquaniya' Examination, 2020 though, she chose not to



appear in the above mentioned 'Fauquaniya' examination.

33. Learned counsel submits that as such, **Ruhi Parveen** rightly wanted action against elected 'Mukhiya' for her fraudulent declaration of age. The said proceeding was converted into Case No. 72/2022. He submits that the position as existed on 27.11.2020 would be relevant as the correctness of affidavit as on the said date of scrutiny would be taken into account.

34. Further, once she challenged the election, all the desperate action of production of documents started to justify 05.02.2000 as her valid date of birth. However, as per the report/letter dated 20.05.2023 of the District Panchayat Raj Officer, Darbhanga, the petitioner got her admission in Class-Xth on 04.04.2018 and the admission register of the School mentioned 06.01.2000 as her date of birth. He also enclosed the copy of the School Register along with the report before 'the Commission' with forwarding letter of the District Magistrate, Darbhanga vide letter no. 2352 dated 26.06.2023.

35. Learned counsel submits that as she was caught in the web of her own fraudulent action, the 'Mukhiya', Akbari Talak herself wrote letter dated 21.06.2023 stating that all the details in the certificate of 'Vastaniya' are wrong



claiming that she applied for the correction in the year 2015 itself.

36. Learned counsel submits that the only document which forms the basis for age of Akbari Talak is/was the Aadhar Card which contained the date of birth as 05.02.2000. However, Aadhar Card is only a document of identification and its issuance is either based on the school records or self declaration. The entries in the Aadhar Card is open to correction as there is no guarantee of other details mentioned as correct as it is based on the self declaration of the person and cannot be considered a reliable document.

37. He submits that the date of birth as per the Aadhar Card led to a piquant situation wherein her own elder brother has become only one month and four days older.

38. The further submission is that 'the Commission' wrongly took the self declared date of birth in the 10th Registration (05.02.2000) as most vital evidence for the correct date of birth.

39. Learned counsel submits that though 'the Commission' held her to be guilty of suppression of facts in the affidavit with respect to her educational qualification but failed to see the designed/conspiracy to actually use the different dates



of birth as the main motive behind suppression of facts.

40. Mr. Ojha submits that 'the Commission' arbitrarily took up the date of birth 06.01.2000 as relevant even though admittedly, the candidate denied 06.01.2000 to be the correct date of birth even seeking a correction. So far as 05.02.2000 date of birth is concerned, it makes the difference between her and brother of only one month.

41. Learned counsel submits that 'the Commission' wrongly concluded that whether it is 06.01.2000 or 05.02.2000, the candidate is either way above 21 years of age ignoring that the date of birth could be the one document and completing 21 years is not important rather the genuineness of declaration on affidavit would alone qualify or disqualify the candidate.

42. The complainant as such is aggrieved by that part of the order by which 'the Commission' has held that the 'Mukhiya' is above 21 years of age. He concludes by submitting that the decision arrived at by 'the Commission' regarding the age of the petitioner is erroneous and needs interference.

(D) CASE OF STATE ELECTION COMMISSION (RESPONDENT NOS. 3 to 5) in C.W.J.C. No. 18090 of 2023.

43. On the complaint of Ruhi Parveen @ Ruhi Praveen before 'the Commission' under section 136 of 'the



Act' wherein prayer for removal of **Akbari Talak** from the post of '**Mukhiya**' of **Khaisa Gram Panchayat block Kiratpur, District Darbhanga** was made on the ground that she was below the qualify age of 21 years on the date she submitted her nomination paper.

44. Pursuant thereto, a case was registered as **Case no. 72 of 2022 (Ruhi Pravin Vs Akhari Talak)** wherein not only both the parties were noticed to prove their cases but also inquiry reports were called from concerned district authorities

45. During the course of hearing before 'the Commission', different documentary evidences were produced by both parties in support of their claim as also the report submitted by the district authorities pertaining to the complaint preferred.

46. Ultimately, vide speaking order dated 16-08-2023, 'the Commission' was pleased to reject the prayer made on behalf of Ruhi Parveen on the ground that on the date of scrutiny, i.e. 27-11-2021, Akbari Talak was below 21 years of age could not be proved. However, since it came to light that the '**Mukhiya**' concealed her educational qualification in the candidate bio-data filed along with her nomination paper which



was apparent from the records. Thus, the District Magistrate, Darbhanga was directed to take action under the provision of section 125 A (3) of 'the Act' as also other relevant section in accordance with law. The same as such is justified and the writ petition be dismissed.

(E) FINDINGS:

47. Having heard the parties and after perusing the records, the question that comes before this Court:

- (i) whether 'the Commission' came to a definite conclusion that the petitioner, Akbari Talak on the date of her nomination was 21 years of age;*
- (ii) whether the question of hiding of her educational qualification as 'literate' was ever raised by the complainant, Ruhi Parveen and/or whether before taking a decision on this aspect, the affected person, Akbari Talak was asked to submit her reply on the fact.*

48. The complainant, Ruhi Praveen had submitted her complaint regarding the age of the returned candidate,



Akbari Talak alleging that she was less than 21 years of age as per her details in the successive Voters list of the year 2019, 2020 and 2021 where her age was recorded as 18 years, 19 years and 20 years respectively and which was/were never corrected.

49. Akbari Talak upon notice submitted her response showing the date of birth as 05.02.2000 in the Birth Certificate, the Aadhar Card (xxxx2577x161) as also PAN CARD 'Faukaniya' Admit card issued by the Bihar State Madarsa Board.

50. The complainant countered the same stating that her brother, Md. Mojahid Islam was born on 01.01.2000 and if 'the Commission' accepts date of birth as 05.02.2000, her brother is just a month older to her which is not biologically possible. Further, the birth certificate has been issued on 12.04.2022 i.e. after the election.

51. Further, as per the earlier examination (Vastaniya) which she took, her date of birth has been recorded as 06.01.2000. Thus two valid points were raised by the complainant:

*i) the successive Voters list show that
she did not completed 21 years of age*



on the date of nomination/scrutiny;

ii) if her date of birth (05.02.2000) is accepted, it has to be considered that her brother's date of birth has been recorded as 01.01.2000 and as such the same is not biologically possible.

52. 'The Commission' took note of the fact that while her 'Vastaniya' admit card shows the date of birth as 06.01.2000, the 'Faukaniya' Admit card records it as 05.02.2022.

53. 'The Commission' however, instead of asking the returned candidate to answer on the charges of one month difference between her elder brother with her went ahead and held that whether it is 06.01.2000 or 05.02.2000, taking either of the two, the age moves beyond 21 years making her eligible to fight the election. In the process, the question that was raised by the complainant remained unanswered.

54. Similar is the case of Akbari Talak. According to her, neither the complainant had made her 'literate' incorporation in the bio-data attached with the nomination/affidavit as an issue in the complaint nor it was raised during the pendency of the complaint before 'the



Commission’.

55. Further, no enquiry was ever held on this aspect nor the returned candidate ever got any opportunity to answer/satisfy ‘the Commission’ on this issue before deciding her case. Thus, while her contention of being 21 years of age and as such being eligible to contest the election was accepted, ‘the Commission’ thereafter directed the District Magistrate, Darbhanga to act against her under section 125A(3) of the Bihar Panchayat Raj Act, 2006 as also other relevant sections for suppression of her educational status.

56. The returned candidate has raised a valid point that given a chance and/or having put on notice on this aspect, she would have come up with the facts/documents/legal aspects/submissions to satisfy ‘the Commission’.

57. Having failed to notice the returned candidate particularly when neither it was part of the complaint nor ever argued, the direction has greatly prejudiced her cause as pursuant thereto, Jamalpur P.S. Case No. 146 of 2023 was lodged against her under sections 420, 177 and 182 of the Indian Penal Code and cognizance too has been taken accordingly.

58. This Court thus holds that ‘the Commission’ while passing the order dated 16.08.2023 in Case No.72 of 2023



failed on both counts inasmuch as:

(i) it failed in coming to a definite conclusion regarding the returned candidate being 21 years of age on the date of her nomination;

(ii) it further failed to put the returned candidate on notice before holding her guilty of suppression of facts and thereafter gave direction for taking action against her.

59. In the aforesaid circumstances, in the considered opinion of the Court, 'the Commission' will have to give a re-look to the **case no. 72 of 2023 (Ruhi Parveen vs Akbari Talak)** afresh both on the age of returned candidate as also the charge of suppression of her educational status.

60. As the Court has decided to remit the matter back to 'the Commission', to decide it afresh, it has not discussed the legal issues raised in the matter and both the parties shall be free to raise all the issues before 'the Commission' once they are noticed.

61. So far as the cognizance order taken in the Jamalpur P.S. Case No. 146 of 2023 is concerned, as the Court



is remitting the matter back to ‘the Commission’ to hear and pass an order afresh, the same shall remain in abeyance till a decision is taken by ‘the Commission’ and shall merge with the final order passed by ‘the Commission’.

62. The order dated **16.08.2023** passed in **Case No. 72 of 2023 (Ruhi Parveen vs Akbari Talak)** by the State Election Commission, Bihar, Patna is set aside and the matter is remitted back to hear the same afresh in accordance with law.

63. Both the writ petitions are disposed of with the aforesaid observation.

(Rajiv Roy, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	02.09.2024
Uploading Date	13.09.2024
Transmission Date	

