

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11071 of 2024

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Usha Devi Wife of Jailal Mukhiya Resident of Ward No. 11, Sursand, P.O.
and P.S.- Sursand, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. The District Magistrate-cum-District Election Officer (Panchayat), Sitamarhi, District- Sitamarhi.
3. The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna through the Secretary.
4. The State Election Commissioner, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
5. The Officer on Special Duty, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
6. Ram Naresh Vadik, Son of Bindu Prasad, Resident of North Sursand, Ward No. 14, P.O. and P.S.- Sursand, District- Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjeet Choubey, Advocate
For the Respondent/s	:	Mr. Sunil Kumar Mandal, SC-3
For the State Election Commission	:	Mr. Girish Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT
Date : 07-04-2025

Heard Mr. Ranjeet Choubey, learned counsel for the petitioner, Mr. Sunil Kumar Mandal, learned Standing Counsel No.-3 for the State and Mr. Girish Pandey, learned counsel for the State Election Commission.

2. The present writ petition has been filed for quashing of the order dated 30.05.2024 passed by the State Election Commission (Panchayat), (respondent no. 3) in Case No. 58 of 2023, which communicated to the petitioner through the

respondent no. 5. By which the petitioner has been disqualified from the post of the Ward Councilor of Ward No. 11 of Nagar Panchayat, Sursand, Sitamarhi District.

3. Learned counsel for the petitioner submits that the aforesaid order was passed by respondent no. 3 without giving any opportunity to the petitioner, which is contrary to the principle of natural justice. He further submits that the Election Commission published the notification for conducting the general Municipal Election, 2022 and the petitioner being qualified in all the aspects filled her nomination paper for the post of Ward Councilor of the Ward No. 11 of Sursand Nagar Panchayat. The petitioner secured the highest vote and thus she was declared as a returned candidate for the post of the Ward Councilor for Ward No. 11 of Sursand Nagar Panchayat. During the process of the scrutiny, one frivolous objection came to be filed against the writ petitioner claiming that since she has more than two living children after the cut off date 04.04.2008, she stands disqualified under the provision of the Section 18 (1) (m) of the Bihar Municipal Act, 2007, but the Returning Officer has rejected the objection and the writ petitioner got elected to the post of Ward Councilor. He further submits that the petitioner has no third child rather she has only two children, namely, Soni Kumari and Ayush Kumar and the third child, namely, Tannu Kumar is the son of her brother-in-law (brother

of the husband) of the petitioner and the petitioner has produced the Adhaar Card bearing Adhaar No. 526784564265, which suggests that Tannu Kumar is the son of Padarath Mukhiya and the Commission has directed the District Authority to enquire into the matter and submit a report. He further submits that the petitioner has categorically stated that she has only two children, one son and one daughter and apart from that she has not got any third child and thus she does not fall under the disqualification Clause of the Section 18 (1) (m) of the Act, 2007.

4. In view of the aforesaid, it emerges that the petitioner should not be disqualified under the provision of Section 18 (1) (m) of the Act, 2007 and the respondent no. 6 has filed a frivolous complaint before the State Election Commission. Apart from that the petitioner has filed a petition before the respondent-Commission to decide as a primary objection as to whether complaint filed before it qualifies as a case of unimpeachable evidence and only then to proceed further in the case but the Commission has not taken any action as yet.

5. A counter affidavit has been filed on behalf of the respondent-Commission stating therein that a Complaint Case No. 58 of 2023 Ram Naresh Vadik Vs. Usha Devi was filed before the State Election Commission (Municipality) Bihar, Patna by

respondent no. 6 for declaring the petitioner disqualified for holding the post of Ward Councilor of Ward No. 11 of Nagar Panchayat, Sursand on the ground that the petitioner has three surviving children and the last child was born to the petitioner after the cut off date i.e. 04.04.2008 where as per the provisions contained in Section 18 (1) (m) of the Bihar Municipal Act, 2007, a person having three surviving children after the cut off date is not qualified to contest the Municipal Election. Learned Commission has come to a conclusion on the basis of the application filed by the Jailal Mukhiya, who happens to be the husband of the petitioner and he has informed that the third son i.e Tannu Kumar's date of birth is 11.01.2016 and Jailal Mukhiya husband of petitioner has given his son i.e Tannu Kumar to the brother-in-law of the petitioner.

6. After hearing the counsels for the parties and perused the enquiry report which was submitted by the District Election Officer-cum-District Magistrate, Sitamarhi vide Letter No. 11 dated 03.01.2024, and the Commission has come to the conclusion that the petitioner had three surviving children after the cut off date i.e. 04.04.2008 and accordingly the petitioner has been disqualified under provision contained under Section 18 (1) (m) read with Section 18 (2) of the Bihar Municipal Act, 2007, and apart from that the Commission has also issued a direction to

lodge a criminal proceeding against the petitioner.

7. Having heard the learned counsels for the parties and perused the material available on record, it transpired that the petitioner has three surviving children after the cut off date i.e 04.04.2008, namely, Soni Kumari, Ayush Kumar and Tannu Kumar and petitioner has given her third child to her brother-in-law and accordingly the provision contained under Section 18 (1) (m) read with Section 18 (2) of the Bihar Municipal Act, 2007, the Commission has rightly disqualified the petitioner from the post of the Ward Councilor of Ward No. 11, Nagar Panchayat, no case is made out for interference of this Court.

8. Accordingly, the writ petition stands dismissed.

(Rajesh Kumar Verma, J)

Jyoti Kumari/-

AFR/NAFR	NAFR
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