

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12857 of 2024

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Rinku Kumari W/o Amir Yadav, R/o Village- Lodipur, Tola- Naubatpur, P.S.
Khizarsarai, District-Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The State Election Commission, Bihar through its Secretary, Sone Bhawan Birchand Patel Path, Patna.
3. The District Magistrate, Gaya.
4. The Sub Divisional Officer-cum-Returning Officer, Neemchak Bathani, Gaya.
5. The Executive Officer, Khizarsarai Nagarpanchayat.
6. Sobha Devi, W/o Dinesh Singh, R/o Village- Lodipur, P.O. and P.S. Khizarsarai, District- Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amit Shrivastava, Sr. Advocate Ms. Mayuri, Advocate
For the State	:	Mr. AAG-7
For the Election Commission:		Mr. Ravi Ranjan, Advocate
For the Resp. No. 5	:	Mr. Ashok Kumar, Advocate
For the Resp. No. 6	:	Mr. D.K. Sinha, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date : 26-06-2025

Heard Mr. Amit Shrivastava, learned Senior counsel for the petitioner, Mr. AAG-7, learned counsel for the State, Mr. Ravi Ranjan, learned counsel for the State Election Commission, Mr. Ashok Kumar, learned counsel for the Respondent No. 5 and Mr. D.K. Sinha, learned Senior counsel for the Respondent No. 6.



2. The present writ petition has been filed for the following reliefs:-

“(i) Issuance of a direction, order or writ , including a writ in the nature of Certiorari quashing the order dated 28.06.2024 passed by the State Election Commissioner, Bihar whereby the petitioner has been declared disqualified to hold the post of Chief Councillor, Khizarsarai Nagar Panchayat by operation of Clause (m) of Sub-section (1) of Section 18 of the Bihar Municipal Act, 2007.

(ii) Issuance of a direction, order or writ, including a writ in the nature of Mandamus directing the Respondent Authorities to refrain from taking any action in furtherance of the aforementioned order passed by the Learned State Election Commission.

(iii) Issuance of a direction, order or writ, including a writ in the nature of Mandamus directing the Respondent Authorities to stay the operation of the order dated 28.06.2024 passed by the State Election Commission during the pendency of the instant writ petition.

(iv) Issuance of a direction, order or writ, including a writ in the nature of Mandamus directing the Respondent Authorities to compensate the petitioner for the mental and physical harassment caused to him as a result of the aforementioned order.

(v) Any other relief/reliefs that the petitioner may be found to be entitled to in the facts and circumstances of the present case.”



3. The State Government has notified the constitution of the Khizarsarai Nagar Panchayat in the year 2022 and thereafter election to the newly constituted Nagar Panchayat was notified. The petitioner along with others filed their nomination and after due scrutiny of the nomination papers, the petitioner was elected as the Chief Councillor of Khizarsarai Nagar Panchayat. Learned Senior counsel for the petitioner submits that no point of time during the course of scrutiny of the nomination papers of the petitioner or even during the conduct of election, any objection was raised with regard to the nomination of the petitioner. After the petitioner was declared elected, one Sobha Devi (Respondent No. 6) has filed a complaint before the State Election Commission (Respondent No. 2) asserting that the petitioner was disqualified to contest the election by virtue of Section 18(1)(m) of the Bihar Municipal Act, 2007 as she had more three surviving children and at least one of them was born after the cut off date i.e. 05.04.2008. The complaint of Respondent No. 6 led to the registration of Case No. 12 of 2023 before the State Election Commission. The Respondent No. 6 has challenged the candidature of the petitioner on the ground that the petitioner had given birth to a child on 15.04.2008 in a Primary Health Centre, Khizarsarai and she had got an incentive of Rs. 1400 under the



Government Scheme and apart from that the petitioner also gave birth to a male child again in the year 2011 at her home and thereafter she got a sterilization surgery which is registered as 42159 dated 27.09.2012 in the register of Primary Health Centre, Khizarsarai.

4. The petitioner has replied to the aforesaid averments by way of counter affidavit before the State Election Commission stating therein that the petitioner had given birth to a daughter namely, Shweta Kumari on 15.04.2008 and the said child unfortunately passed away on 18.04.2008 (i.e. three days after her birth). The petitioner undoubtedly was entitled to an incentive under the Government Scheme as the same is given to promote institutional delivery and is contingent only upon the birth of a child. The Respondent No. 6 also alleged that the petitioner underwent surgery in 2012 but there is no record to suggest that a child was born to her in the year 2011 without producing any proof with the regard to the same.

5. Learned Senior counsel for the petitioner submits that the petitioner has filed a counter affidavit before the State Election Commission raised a preliminary objection of maintainability of the complaint which was registered as Case No. 12 of 2023 on the ground that the scope of the jurisdiction of the State Election



Commission under sub Section (2) of Section 18 of the Act has been conclusively decided by a Full Bench of this Hon'ble High Court in the case of **Rajani Kumari Vs. The State Election Commission & Others, reported in 2019 (4) PLJR 673** wherein it has been held that while the Election Commission has the power to consider the question of pre and post election disqualification of a candidate, the Commission should refrain from deciding a case which is purely in the nature of an election dispute and cannot be decided without adducement of evidence by a competent court and authority in accordance with law. Learned Senior counsel for the petitioner submits that without inquiry the matter whether there are unimpeachable materials to proceed and that the dispute is a purely election dispute and only if it is not only then he shall proceed to consider the same on the basis of unimpeachable material and it has requested to State Election Commission ought not to have entertained the complaint of Respondent No. 6 and the complaint of Respondent No. 6 should have been relegated to an Appropriate Court/Authority for adjudication of the dispute after taking evidences. Learned Senior counsel for the petitioner submits that in similar case which involved disqualification on the ground of third child born after the cut off date, a Division Bench of this Court has decided in the case of Saryug Mochi Vs. The State of



Bihar and Others has held that before deciding the case it is incumbent upon the State Election Commission to decide the issue of maintainability of the case before it only then proceed to decide the case and the petitioner has brought on the notice of Election Commission about the aforesaid case (Saryug Mochi) but the Commission has not followed the direction of the Hon'ble Court and straight away entered into adjudication and from perusal of the complaint petition, it would manifest that none of the documents relied upon by the complainant which suggests that the petitioner has been a third child after the cut off date i.e. 04.04.2008. Learned Senior counsel for the petitioner submits that the scope of the jurisdiction of the State Election Commission under sub-section 2 of Section 18 of the Act has been conclusively decided by a Full Bench of this Court in the case of *Rajani Kumari* (supra) while answering the question of whether the State Election Commission will have the power to consider disqualification of a candidate after election as such Election Commission is constituted for conduct the elections, the Full Bench in the case of *Rajani Kumar* (supra) has held in no uncertain terms, paragraph nos. 181 and 184 which are as follows :

“181. It is further held that the State Election Commissioner must not entertain pure election disputes and whether a dispute brought before the



Election Tribunal is a purely election dispute or not, must be decided as a preliminary issue. The State Election Commissioner has power to suo-motu take notice of any disqualification of a returned candidate either before or after the election. Disputed questions of facts relating to disqualification cannot be entertained by the State Election Commission and only those cases where there are unimpeachable materials before the State Election Commission should be entertained by the Commission. In other cases where issues can be determined only by a competent court of law after leading evidence, the Commission would be required to await the decision of a competent court/tribunal constituted as a fact finding body which is duly authorized by law to render a decision on the issue.

184. *We are in agreement that the State Election Commission has got power under sub-section(2) of Section 18 of the Bihar Municipal Act, 2007 and sub-section(2) of Section 136 of the Bihar Panchayat Raj Act, 2006 to consider an issue of pre or post election disqualification of a candidate subject to a caution which we have pointed out in our judgments in respect of a case which is in the nature of a purely election dispute and then a matter which cannot be decided without adducement of evidence by a competent court and authority in accordance with law. The State Election Commission shall entertain and consider the 'disqualification' issues on the basis of the unimpeachable materials placed before him. Whether*



a complaint brought before the Commission either suo-moto or by any other person, the Commission shall at the first instance enquire whether it is a purely election dispute and only when it is found that the dispute brought before it is not a purely election dispute, the Commission shall proceed to consider the same on the basis of unimpeachable materials. Whenever a disputed question of facts and a contentious issue is brought before the Commission as a ground and basis to render a candidate disqualified, the Commission would be required to relegate the parties to a competent court/tribunal or a fact finding body competent to decide such contentious issues after taking evidences and till such time the Commission shall not take a decision on such complaint either suo-moto or otherwise.”

6. Learned Senior counsel for the petitioner submits that on the basis of **Rajani Kumari (supra)**, the High Court has already decided the case in the case of **Saryug Mochi and Ors. Vs. The State of Bihar and Ors.** In view of the aforesaid judgment, the Division Bench of this Hon’ble Court has laid down:

(i) The Election Commission has the power under sub-section (2) of Section 18 of the Act to consider the issue of pre or post election disqualification of a candidate subject to a caution that a case which is in



the nature of purely election dispute, it cannot be decided without adducement of evidence by a competent court and authority in accordance with law.

(ii) The State Election Commission, shall, at the first instance, inquire whether it is a purely election dispute only and only when it is found that the dispute brought before it is not a purely election dispute, the Commission shall proceed to consider the same on the basis of unimpeachable material.

(iii) Whenever a disputed question of facts and contentious issue is brought before the Commission as a ground and basis to render a candidate disqualified, the Commission would be required to relegate the parties to a competent court/tribunal or a fact finding body competent to decide such contentious issued after taking evidences and till such time the Commission shall not take a decision on such complaint either suo motu or otherwise.

7. Learned Senior counsel for the petitioner submits that despite the aforesaid, the Commission had decided the matter on the basis of the report of the Additional Collector, Gaya and apart from that the age of the children of the petitioner was as follows:



1. *Sweety Kumari, Date of Birth- 06.01.2025*
2. *Abshishek Kumar, Date of Birth- 22.02.2006*
3. *Abhimanyu Kumar, Date of Birth- 21.03.2007*

8. It appears from the aforesaid that all the children was born before the cut off date i.e. 05.04.2008 and without going to the real fact of the case, the Commission has disqualified the petitioner.

9. Learned Senior counsel for the petitioner has relied upon a judgment in the case of **Tarlochan Dev Sharma Vs. State of Punjab and Others**, reported in **AIR 2001 SC 2524**, paragraph no. 6 which is quoted below :

“6. In a democracy governed by rule of law, once elected to an office in a democratic institution, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law. That a returned candidate must hold and enjoy the office and discharge the duties related there-with during the term specified by the relevant enactment is a valuable statutory right not only of the returned candidate but also of the constituency or the electoral college which he represents. Removal from such an office is a serious



matter. It curtails the statutory term of the holder of the office. A stigma is cast on the holder of the office in view of certain allegations having been held proved rendering him unworthy of holding the office which he held. Therefore, a case of availability of a ground squarely falling within S. 22 of the Act must be clearly made out. A President may be removed from office by the State Government, within the meaning of S. 22, on the ground of "abuse of his powers" (of President), inter alia. This is the phrase with which we are concerned in the present case."

10. Learned Senior counsel for the petitioner also relied upon a judgment in the case of **Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others**, reported in (2012) 4 SCC 407, paragraph nos. 21 to 29, 31 to 37 which are quoted hereinbelow “

“21. The municipalities have been conferred constitutional status by amending the Constitution vide the 74th Amendment Act, 1992 w.e.f. 1-6-1993. The municipalities have also been conferred various powers under Article 243-B of the Constitution.

22. Amendment in the Constitution by adding Parts IX and IX-A confers upon the local self-government a complete autonomy on the basic democratic unit unshackled from official control. Thus, exercise of any power having effect of destroying the Constitutional



institution besides being outrageous is dangerous to the democratic set-up of this country. Therefore, an elected official cannot be permitted to be removed unceremoniously without following the procedure prescribed by law, in violation of the provisions of Article 21 of the Constitution, by the State by adopting a casual approach and resorting to manipulations to achieve ulterior purpose. The Court being the custodian of law cannot tolerate any attempt to thwart the institution.

23. The democratic set-up of the country has always been recognised as a basic feature of the Constitution, like other features e.g. supremacy of the Constitution, rule of law, principle of separation of powers, power of judicial review under Articles 32, 226 and 227 of the Constitution, etc. [Vide Kesavananda Bharati v. State of Kerala, Minerva Mills Ltd. v. Union of India, Union of India v. Assn. for Democratic Reforms, Special Reference No. 1 of 2002, In re (Gujarat Assembly Election Matter) and Kuldip Nayar v. Union of India.]

24. It is not permissible to destroy any of the basic features of the Constitution even by any form of amendment, and therefore, it is beyond imagination that it can be eroded by the executive on its whims without any reason. The Constitution accords full faith and credit to the act done by the executive in exercise of its statutory powers, but they have a primary responsibility to serve the nation and enlighten the citizens to further strengthen a democratic State.



25. *Public administration is responsible for the effective implication of the rule of law and constitutional commands which effectuate fairly the objective standard set for adjudicating good administrative decisions. However, wherever the executive fails, the Courts come forward to strike down an order passed by them passionately and to remove arbitrariness and unreasonableness, for the reason that the State by its illegal action becomes liable for forfeiting the full faith and credit trusted with it. (Vide Scheduled Castes and Scheduled Tribes Officers' Welfare Council v. State of U.P. and State of Punjab v. G.S. Gill.)*

26. *"Basic" means the basis of a thing on which it stands, and on the failure of which it falls. In democracy all citizens have equal political rights. Democracy means actual, active and effective exercise of power by the people in this regard. It means political participation of the people in running the administration of the Government. It conveys the state of affairs in which each citizen is assured of the right of equal participation in the polity (See R.C. Poudyal V. Union of India).*

27. *In People's Union for Civil Liberties v. Union of India, this Court held as under: (SCC pp. 457-58, para 94).*

"94. The trite saying that 'democracy is for the people, of the people and by the people has to be remembered forever. In a democratic republic, it is the will of the people that is



paramount and becomes the basis of the authority of the Government. The will is expressed in periodic elections based on universal adult suffrage held by means of secret ballot. It is through the ballot that the voter expresses his choice or preference for a candidate. 'Voting is formal expression of will or opinion by the person entitled to exercise the right on the subject or issue', as observed by [the] Court in Lily Thomas v. Speaker, Lok Sabha, (SCC pp. 236-37, para 2) quoting from Black's Law Dictionary. The citizens of the country are enabled to take part in the government through their chosen representatives. In a parliamentary democracy like ours, the Government of the day is responsible to the people through their elected representatives. The elected representative acts or is supposed to act as a live link between the people and the Government. The people's representatives fill the role of lawmakers and custodians of the Government. People look to them for ventilation and redressal of their grievances."

28. *In State of Punjab v. Baldev Singh, this Court considered the issue of removal of an elected office-bearer and held that where the statutory provision has very serious repercussions, it implicitly makes it imperative and obligatory on the part of the authority to have strict adherence to the statutory provisions. All*



the safeguards and protections provided under the statute have to be kept in mind while exercising such a power. The Court considering its earlier judgments in Mohinder Kumar v. State and Ali Mustafa Abdul Rahman Moosa v. State of Kerala held as under: (Baldev Singh case, SCC p. 199, para 28)

"28.... It must be borne in mind that severer the punishment, greater has to be the care taken to see that all the safeguards provided in a statute are scrupulously followed."

29. The Constitution Bench of this Court in G. Sadanandan v. State of Kerala held that if all the safeguards provided under the statute are not observed, an order having serious consequences is passed without proper application of mind, having a casual approach to the matter, the same can be characterised as having been passed mala fide, and thus, is liable to be quashed.

31. Undoubtedly, any elected official in local self-government has to be put on a higher pedestal as against a government servant. If a temporary government employee cannot be removed on the ground of misconduct without holding a full-fledged inquiry, it is difficult to imagine how an elected office-bearer can be removed without holding a full-fledged inquiry.

32. In service jurisprudence, minor punishment is permissible to be imposed while holding the inquiry as per the procedure prescribed for it but for removal, termination or reduction in rank, a full-fledged inquiry



is required otherwise it will be violative of the provisions of Article 311 of the Constitution of India. The case is to be understood in an entirely different context as compared to the government employees, for the reason, that for the removal of the elected officials, a more stringent procedure and standard of proof is required.

33. This Court examined the provisions of the Punjab Municipal Act, 1911, providing for the procedure of removal of the President of Municipal Council on similar grounds in Turlochan Dev Sharma v. State of Punjab and observed that removal of an elected office-bearer is a serious matter. The elected office-bearer must not be removed unless a clear-cut case is made out, for the reason that holding and enjoying an office, discharging related duties is a valuable statutory right of not only the elected member but also of his constituency or electoral college. His removal may curtail the term of the office-bearer and also cast stigma upon him. Therefore, the procedure prescribed under a statute for removal must be strictly adhered to and unless a clear case is made out, there can be no justification for his removal. While taking the decision, the authority should not be guided by any other extraneous consideration or should not come under any political pressure.

34. In a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is



removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office-bearer sought to be removed.

*35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (vide *Jyoti Basu v. Debi Ghosa*, *Mohan Lal Tripathi v. District Magistrate, Rae Bareilly* and *Ram Beti v. District Panchayat Raj Adhikari*).*

36. In view of the above, the law on the issue stands crystallised to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency/electoral college is also



deprived of representation by the person of their choice.

37. A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like "no confidence motion", etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period."

11. The Hon'ble Apex Court has repeatedly held that an elected representative cannot be disqualified on vague, indefinite, frivolous or fanciful allegations or on evidence which is of a shaky or prevaricating character.

12. Learned counsel for the Respondent No. 6 has filed a detailed counter affidavit stating therein that the petitioner has been disqualified to hold post of Chief Councillor, Khizersarai Nagar Panchayat, Gaya as the petitioner suppressed the fact that more than two children born after 04.04.2008 in terms of Section 18(1)(m) of Bihar Municipal Act, 2007 read with Section 18(1) of the provision has been upheld in the case of Jawed Vs. The State of Haryana, reported in AIR 2003 SCC 3057 and in the case of Arun Ravidas Vs. The State of Bihar, reported in 2011 (2) PLJR



795. The Respondent No. 6 has obtained an information under Right to Information Act vide letter no. 53 and 54 dated 12.01.2023 which suggests that two male child were born after the cut off date. Petitioner's second child was born on 15.04.2008 and petitioner's third child was born in the year 2011 and apart from that the State Election Commission vide letter no. 886 dated 17.03.2023 directed to hold an inquiry, the enquiry was conducted by Additional Collector, Gaya after serving notice to the petitioner. The Enquiry Officer conducted an enquiry and found that petitioner has submitted false document fabricating the same in support of date of birth of her children which comes under the ambit of criminal act and found that petitioner was elected on the basis of forged and fabricated document. The State Election Commission against issued a direction vide letter no. 1940 dated 09.08.2023 for fresh and proper enquiry of birth certificate of the children of the petitioner to the Deputy Collector, Gaya. The Deputy Collector, Gaya submitted his report dated 20.10.2023 before the State Election Commission to the effect that birth certificate of living children and death certificate is forged and fabricated document.

13. Learned counsel for the State Election Commission submits that the Commission after full fledged enquiry has come



to the conclusion that the petitioner has disqualified from the post in question under Section 18(1)(m) of the Bihar Municipal Act, 2007 which stipulates that if any person is having more than two children after the cut off date 04.04.2008, then she/he is disqualified under the Scheme of the Act and apart from that the petitioner has given false information about the birth of her child at para 9 of “Prapatra” (GA) which is the candidates bio-data form. The State Election Commission only endeavours to check that whether or not a person has more than two living children after the said cut off date and if doing so it only examines and verifies the document placed on record or the statement by the parties and since in most cases the parties relies upon documents issued at the level of Block or District authorities hence the documents inform of certificates or any other document out of verified at the level of district authority itself which is the best competent authority to do so. In the present case, the issue of maintainability was raised by the petitioner after lapse of about nine months but the Commission has dealt and decided and it came to finding that since the information provided under Right to Information Act regarding family welfare payment register which contains entry for the year 2012 which shows that the writ petitioner had two sons and one daughter and as per same last delivery was done one year earlier



i.e. in the year 2011 and the date of delivery was shown to be 15.04.2008. Based upon these documents, the State Election Commission came to a finding that these are unimpeachable documents and thus issue of maintainability came to be rejected.

14. Learned counsel for the Respondent Nos. 1, 3 and 4 submits that on the basis of material available on record, the petitioner has been found guilty of furnishing incorrect facts with respect to the date of birth of her children inasmuch as after being afforded sufficient opportunities, the petitioner was unable to controvert the said charges and accordingly, she has declared disqualified from holding the post of Chief Councillor, Nagar Panchayat, Khizarsarai, Gaya by the State Election Commission. The direction of the State Election Commission/Tribunal, the then ADM, Gaya made a detailed enquiry and submits a report wherein he came to the conclusion that the said Dinku Kumari (petitioner) had contested the election after making false statement and accordingly, the said report was sent to the State Election Commission vide letter no. 847 dated 02.05.2023 by the Respondent No. 3. During course of hearing of Case No. 12 of 2023, the State Election Commission/Tribunal directed the Respondent No. 3 to make specific enquiry with respect to the date of birth certificate of Abhishek Kumar, Abhimanyu Kumar and



Sweety Kumari and accordingly, the then ADM, Gaya made enquiry in the light of the queries raised by the State Election Commission/Tribunal and submitted his report dated 20.10.2023 and the Commission/Tribunal has come to the conclusion that the petitioner had contested the election in question after disclosing wrong facts and the Commission has rightly declared the petitioner disqualified to hold the post of Chief Councillor, Nagar Panchayat, Khizersarai.

15. Having heard the counsel for the parties, it transpired that the impugned order was passed by the State Election Commission/Tribunal is contrary to the law laid down by a Full Bench of this Hon'ble Court in the case of *Rajani Kumari (supra)* as well as in the case of *Saryug Mochi Vs. The State of Bihar & Others*, by a Division Bench of this Court has laid down that *"Whenever a disputed question of facts and contentious issue is brought before the Commission as a ground and basis to render a candidate disqualified, the Commission would be required to relegate the parties to a competent court/tribunal or a fact finding body competent to decide such contentious issues after taking evidences and till such time the Commission shall not take a decision on such complaint either suo motu or otherwise"* but in the present case, the Commission has taken a decision which is



contrary to the law laid down by a Full Bench of this Court as well as a Division Bench of this Hon’ble Court.

16. Therefore, this Court holds that the order dated 28.06.2024 passed by the State Election Commissioner, Bihar in Case No. 12 of 2023 (Annexure-9) is not in accordance with law and the same is set aside.

17. Accordingly, this writ application stands allowed. However, there will be no order as to cost.

(Rajesh Kumar Verma, J)

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AFR/NAFR	NAFR
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