

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19245 of 2024

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Kismati Devi W/O Krishna Prasad R/o Village-Man Road Mairwa, P.S
Mairwa, District - Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through its Additional Chief Secretary cum Principal Secretary, Urban Development and Housing Department Bihar, Patna.
2. The Additional Chief Secretary cum Principal Secretary, Urban Development and Housing Department Bihar, Patna.
3. The State Election Commissioner, Patna.
4. The District Magistrate, Siwan, Bihar.
5. The Municipal Executive Officer, Nagar Panchayat Mairwa, Siwan, Bihar.
6. Durgesh Kumar S/o Late Dulare Prasad, R/o Ashok Medical Hall, Adarsh Nagar, Loharpatti, Mairwa, P.S.- Mairwa, District- Siwan, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amit Srivastava, Sr. Advocate
	:	Mr. Anuj Kumar, Advocate
For the State	:	Mr. Abbas Haider, S.C.-6
For respondent No.5	:	Mr. Siddarth Shankar Pandey, Advocate
For respondent No.6	:	Mr. Sanjay Kumar, Advocate
For State Election Commission:		Mr. Ravi Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date : 26-06-2025

Heard Mr. Amit Srivastava, learned senior counsel
appearing for the petitioner, Mr. Abbas Haider, learned S.C.-6 for
the State, Mr. Siddarth Shankar Pandey, learned counsel for
respondent No.5, Mr. Sanjay Kumar, learned counsel for
respondent No.6 and Mr. Ravi Ranjan, learned counsel for the
State Election Commission.

2. The respondent No.3 in its order dated 06.12.2024
disqualified the petitioner from the post of Chief Councillor for



violation of Section 18(1)(k) read with Section 18(2) of the Bihar Municipal Act, 2007. The disqualification of the petitioner was based on the ground that the petitioner was participated in election process for the post of Chief Councillor without paying holding tax for other two properties even though no demand for the same was ever made by the respondent authority to the petitioner. The aforesaid order of the respondent No.3 by which the petitioner has been disqualified for the post in question. The order dated 06.12.2024 is arbitrary, illegal and based on without jurisdiction. The petitioner was not served any demand notice, hence, the aforesaid order is in complete violation of principles of natural justice.

3. The petitioner filed her nomination paper for the post of Chief Councillor of Nagar Panchayat Mairwa, Siwan on 12.09.2022 in which it was mentioned that the petitioner is own three houses. Before the nomination, the holding tax was paid for one holding registered at House No.46 in Ward No.6, Nagar Panchayat Mairwa, Siwan by the petitioner. The petitioner was elected as Chief Councillor in the Municipal Election and the election member of the Nagar Panchayat Mairwa, Siwan took their oath on 13.01.2023 the holding tax for Holding No.221 and Holding No. 298 was deposited by the petitioner on 12.04.2023.



Both the holdings are located in Ward No.12 Holding No.221 is registered in the name of the petitioner's husband vide Holding No.298 is registered in the name of the petitioner. On 05.03.2024 a complaint was made by the private respondent before the State Election Commission seeking the removal of the petitioner from the post of Chief Councillor, Nagar Panchayat Mairwa, Siwan on the ground of disqualification under Section 18(1)(k) of the Bihar Municipal Act. Learned counsel for the petitioner submits that under Section 479(1)(a) and (d)(i) of the Bihar Municipal Act, 2007. There is specific allegation for filing complaint petition under Sections 476 and 477 of Bihar Municipal Act, 2007. It is well settled principle that when the statute provides for general remedy and also special remedy. The special remedy has to be preferred/prevalled as such the election petition should have been entertained and adjudicated the said complaint dated 05.03.2024 of the private respondent. Learned counsel for the petitioner submits that on 12.04.2023, the petitioner voluntarily deposited the holding tax for the remaining two holdings i.e. House No.221 (in the name of her husband) and House No.298 (in the name of the petitioner herself) before filing of the complaint filed by the private respondent. The private respondent has filed a complaint petition on 05.03.2024 but before filing of the aforesaid complaint the



petitioner had already deposited the holding tax for the remaining two holdings i.e. House No.221 and House No.298 respectively. Apart from that, there was no prior notice or demand was ever issued by the municipal authorities for payment of remaining two holdings i.e. House No.221 and House No.298. From a bare perusal of the complaint petition of the private respondent, the private respondent has alleged in the complaint petition that the petitioner had not paid the holding tax for House Nos.221 and 298 and also alleged that the petitioner had not disclosed the deposit of said holding taxes in her nomination papers. The complaint against the petitioner was filed much later on 05.03.2024 i.e. nearly eleven months after the voluntary payment was already made. The appropriate remedy available to the complainant (respondent No.6) was to file an election petition under Sections 476 and 477 read with Section 479(1)(a) and (d) (I) of the Bihar Municipal Act, 2007.

4. Learned counsel for the petitioner submits that it is very surprising that upon receipt of the complaint, the State Election Commission initiated proceedings in the matter and sought a report from the concerned authorities. In compliance thereof the Sub Divisional Officer, Siwan (Sadar) submitted his report to the District Officer, Siwan dated 02.07.2024 and the said



report was subsequently forwarded by the District Officer, Siwan (Sadar) to the Officer on Special Duty, State Election Commission, Bihar Patna vide letter No.1614/Panchayat dated 03.07.2024. It is most surprising that the base solely on this inquiry report, the respondent No.3 has passed the impugned disqualification order dated 06.12.2024 against the petitioner under Section 479 of the Bihar Municipal Act, 2007 provides for ground for declaring election to be void and the dispute in the present petition will fall under Section 479(1)(d)(i) and therefore the appropriate remedy is to file election petition under Section 476 and 477 of the Bihar Municipal Act, 2007 and not under Section 18(2) of the Bihar Municipal Act, 2007.

Section 479 of the of Bihar Municipal Act, 2007 is as follows:

*“Section 479 of The Bihar Municipal Act, 2007 -
Grounds for declaring election to be void.*

*(1) Subject to the provisions of sub Section (2) if the
Prescribed Authority is of opinion-*

*(a) that on the date of his election, a returned
candidate was not qualified or was disqualified, to be
chosen as a member under this Act; or*



(b) that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent; or

(c) that any nomination paper has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

(i) by the improper acceptance of any nomination; or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent; or

(iii) by the improper reception, refusal or rejection of any vote or reception of any vote which is void; or

(iv) by any non-compliance with the provisions of this Act or of any Rules or orders made thereunder;

the Prescribed Authority shall declare the election of the returned candidate to be void.”

5. Learned counsel for the petitioner has relied upon the judgment in the case of **C.M.D., City Union Bank Limited Vs. R. Chandramohan**, reported in **AIR 2023 SC 1762**, para-12 wherein it has been held in summary proceeding that disputed



questions can't be agitated when substantive proceeding is same statue, that substantive procedure has to be followed.

Para-12 of the said judgment, which is being quoted herein below:

"The proceedings before the Commission being summary in nature, the complaints involving highly disputed questions of facts or the cases involving tortious acts or criminality like fraud or cheating, could not be decided by the Forum/Commission under the said Act. The "deficiency in service", as well settled, has to be distinguished from the criminal acts or tortious acts. There could not be any presumption with regard to the wilful fault, imperfection, shortcoming inadequacy in the quality, nature and manner of performance in service, contemplated in Section 2(1)(g) of the Act. The burden of proving the deficiency in service would always be upon the person alleging it".

"Summary Jurisdiction" is defined in BLACK'S LAW DICTIONARY, SEVENTH EDITION:

1. A court's jurisdiction in a summary proceeding.



2. The court's authority to issue a judgment or order (such as a finding of contempt) without the necessity of a trial or other process.

3. English law... (not relevant for the present writ application).

6. Under Section 18(1)(k) of the Bihar Municipal Act, 2007, provides that a person is disqualified if "*he has not paid all taxes due by him to the Municipality at the end of the financial year immediately preceding that in which the election is held.*" The word "**due**" implies a formal assessment and demand from the authority concerned. Since no such demand was ever made against the petitioner, the taxes cannot be considered to be "due". The Petitioner has acted in bonafide and voluntarily deposited the holding tax for the remaining two holdings on 12.04.2023, well before the complaint dated 05.03.2024. Although the State Election Commission was empowered under section 18(2)(k) of the Bihar Municipal Act, 2007 to entertain the Complaint date 05.03.2024 as the said complaint is based upon not filing nomination paper in accordance with law. The only remedy available to respondent No.6 with the Election Petition.

7. The State Election Commission has exceeded its jurisdiction by deciding a disputed question of fact without



referring the matter to a competent tribunal, as required under law

In the present case, the Commission not only initiated proceedings based on the complaint but also conducted a full-fledged enquiry by collecting evidence from various authorities. It sought reports from the Sub-Divisional Officer and the District Officer, assessed those reports, made factual determinations, and acted upon them to the detriment of the petitioner. By doing so, the Commission went beyond its statutory mandate under the Bihar Municipal Act, 2007, and effectively assumed the role of an enquiry agent. Such conduct amounts to a colourable exercise of power and violates the basic principles of adjudication.

8. Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Full Bench of this Hon'ble Court in the case of **Rajani Kumari v. State of Bihar**, LPA No. 566 of 2017, since reported in **2019 (4) PJLR 673 (Para 181 and 184)**, has held that *“where a disputed question of fact arises, the Commission must refer the matter to a competent forum and not decide it itself.”* *“...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 evidence and till such time the commission shall not decide on such complaint either suo-motu or otherwise."

9. Learned counsel for the petitioner has also relied upon the judgment of this Court in the case of **Purohit Lal Gupta v. Dharamsheela Devi**, passed in **LPA 812 of 2014 in CWJC 16861 of 2013**, has held that "*disqualification under Section 18(1) must be based on clear, undisputed material and cannot be determined summarily where facts are contentious*".

10. Learned counsel for the petitioner has also relied upon the judgment in the case of **State Election Commission v. Manager Prasad**, passed in **LPA No. 443 of 2014 in CWJC No. 17493 of 2013**, it was held that "*unless an assessment of property tax is done and demand raised, the Commission cannot conclude that taxes were concealed or unpaid*". "

"Disqualification on ground of non-payment of holding tax a candidate would be deemed to be disqualified only if he failed to comply with the provision of Section 18(1) there was no assessment made in respect of holding respondent no. 1 prior to election and there was no demand raised and no notice was given to him to make the payment of tax



duty in respect of said holding therefore, it could not be held that respondent no. 1 had not paid all taxes due to him to the municipality as per Section 18(1)(k) further, Single Judge rightly held that there were serious contentious issues which were unfit to be entered into and determined by the State Election Commissioner in a proceeding which is summary in nature no infirmity in order of Single Judge".

11. The Interpretation of "taxes due" has been Judicially clarified to mean only those taxes which are either demanded or assessed and not hypothetical dues under Rule 13 of the Bihar Municipal Property Tax Rules, 2013.

12. Learned counsel for the petitioner respectfully submits that the impugned disqualification of the Petitioner under Section 18(1)(k) of the Bihar Municipal Act, 2007 is vitiated by arbitrariness, lack of jurisdiction, and procedural impropriety, inasmuch as it is based on vague, unsubstantiated allegations and was passed without conducting a fair and lawful summary proceeding as contemplated under the statutory scheme. The respondent No.3 instead of referring the matter for adjudication by a competent authority, the respondent No.3 assumed the role of an enquiry agent and undertook a full-fledged fact finding exercise as



it actively collected evidence by calling for reports from the Sub Divisional Officer and the District Officer.

13. Learned counsel for the petitioner has relied upon the judgment in the case of **Karim Uddin Barbhuiya vs. Aminul Haque Laskar, reported in AIR 2024 SC 2193**, para-17 of the said judgment, which is quoted hereinbelow: -

“17. As transpiring from the Election Petition, the Respondent No. 1 along with 13 other candidates including the present Appellant had submitted their nomination papers for LA-10 Senai LAC, however according to the Respondent No. 1, the affidavit in Form 26 filed by the Appellant along with his nomination paper was invalid and defective as the same contained false statements, and suppression and misrepresentation of facts with regard to the educational qualification and suppression of facts with regard to his liability in respect of the loan availed by him by way of a Cash Credit Limit (CCL) for a partnership firm namely M/s. Allied Concern of which he was an active partner, and suppression of facts with regard to his default in deposit of employer's contribution of provident fund in respect



of the employees of the said Ms. Allied Concern. As regards the false claim of educational qualification, the Respondent No. 1 has alleged in the Election petition inter alia that the Appellant had mentioned in Column No. 9 of his affidavit in Form 26 appended to his nomination paper that his educational qualification was Bachelor of Arts (BA.) which he passed from Chaudhary Charan Singh University, Meerut in Uttar Pradesh in the year 2019, but the Appellant had never passed B.A. from the said University or from any other Institution or University. It is further alleged in the Election petition that the Appellant did not mention about his so called technical qualification of diploma in Civil Engineering in the nomination paper, which he had mentioned in the affidavit in Form 26 when he contested 2016 General Election. The Respondent No. 1 has also alleged that though the Appellant was a partner in Ms. Allied Concern, which availed a loan from United Bank of India (PNB), Tarapur Branch at Silchar, the Appellant had deliberately suppressed the details of the CC Limit Loan Account



with the said bank and also the defaults made in repayment of the said loan. The Respondent No. 1 has also alleged that the Appellant had deliberately not mentioned about the liabilities of the Appellant as the partner of Ms. Allied Concern with regard to the employer's contribution of provident fund for its employees. According to the Respondent No. 1 he had raised an objection before the returning officer on the date of scrutiny that is on 15.03.2021 that the Appellant did not possess the educational qualification of B.A. from Chaudhary Charan Singh University, Meerut and therefore his nomination paper was liable to be rejected. According to him, another independent candidate Karim Uddin Barbhuiya, (the Respondent No. 8 in the Election petition) had also raised an objection by submitting a written complaint dated 15.03.2021 before the returning officer, however the returning officer had failed to exercise his jurisdiction and authority Under Section 36 of the RP Act and refused to make even a summary enquiry by calling upon the Appellant to meet with the objections raised by him.



Thus, according to the Respondent No. 1, there was an improper acceptance of the nomination paper of the Appellant. He also alleged that the misrepresentation and false representation of educational qualification by the Appellant in the affidavit in Form 26 and suppression and misrepresentation of the liability of the Appellant in the said affidavit in respect of the cash credit facility, and non- disclosure of the default of the Appellant in respect of his liabilities towards employer's contribution to the provident fund tantamount to commission of "Corrupt practice" of undue influence within the meaning of Section 123(2) of the RP Act. The Respondent No. 1 therefore has filed the Election Petition Under Section 100 of the Act seeking declaration that the election of the Appellant-the returned candidate, was void".

14. Learned counsel for the petitioner submits that Sections 30,35 and 36 of the Representation of the People Act, 1951 are in principle and intent same on Rules 43 to 47 of Bihar Municipal Election Rules, 2007 and paragraphs-8,17 and 23 of the judgment in the case of **Karim Uddin** (Supra) squarely



completely applicable to the case of the petitioner as admittedly no objection was ever raised by any person much less the respondent No.6 at the time of presenting of nomination paper of petitioner.

15. Learned counsel for the petitioner submits that applying the aforesaid principles to the facts of the present case, the impugned disqualification of the petitioner under Section 18(1) (K) of the Bihar Municipal Act, 2007 is legally unsustainable, being based on vague and unsubstantiated allegations.

16. Learned counsel for the State Election Commission submits that in fact the petitioner was duly elected as Chief Councillor of Nagar Panchayat, Mairwa. The respondent No.6 has filed a complaint before the State Election Commission for disqualifying the petitioner from her post by way of disqualification under Section 18(1)(K) of the Bihar Municipal Corporation Act, 2007 which stipulates that if any person has not paid all the taxes due by him to the Municipality at the end of the financial year immediately preceding that in which the election is held then she/he is disqualified under the scheme of the Act. A copy of the complaint was sent to the District Authority for verification process and notices were issued to both the parties to participate in the hearing process. Learned counsel for the Commission submits that it is pertinent to mention here that from a



bare perusal of the Statute in unambiguous terms states that if any person who has not paid all taxes due to the Municipality in previous financial of the year which such election is held meaning thereby mere fact of non-payment of municipal tax would amount to disqualification. The election was conducted in the year 2022 and thus any person having municipal dues for the year 2021 it came to light that since the election was conducted in the year 2022 and thus any person having municipal dues for the year 2021-2022 was disqualified under Section 18 of the Bihar Municipal Act. As per Section 13 of the Bihar Municipal Property Tax (Assessment, Collection and Recovery) Rules, 2013, which states as follows:

“13. Self-declaration /self assessment-(1). Self-assessing their holding tax and paying it to the Municipality without waiting for a demand notice shall be the responsibility of the tax payer or owner of the building”.

17. Learned counsel for the State Election Commission submits that it clearly transpires that the petitioner had two holdings in Nagar Panchayat Mairwa bearing House No.46 and House No.298 while another Holding bearing House No.221 stood in the name of her husband. Admittedly the petitioner had paid



holding tax for House No.46 on 10.09.2022 while for other two holding she paid holding tax. This fact is even admitted by the petitioner, thus, it is established that the petitioner failed to pay or her dues against her holding prior to when she contested election, the disqualification stipulated under Section 18(K) of Bihar Municipal Act clearly comes into play. In the present case, there is clear admission part of the petitioner regarding two holdings in her name and payment of one of the holdings after the election was conducted clearly apply the disqualification in the present case. Although the election petition ought to file within a period of 30 days from the date of declaration of the result but there is no such limitation for filing such complaint under Section 18 of the Bihar Municipal Act. In light of the Rule 13 of the Bihar Municipal Property Tax Rules, it is incumbent upon the person who has a holding in his or her name to self-determine the holding tax and pay accordingly and in light of the same the argument that unless there would be a demand by the authority and failure to pay such demand will make out a case of dues is not applicable in the present case. The State Election Commission also come into existence not only for conducting election to various posts of the Panchayat as also Municipality but several other functions connected with same and one of such functions is disqualification



of an elected representative meaning thereby the power flow from the Constitution itself based upon which provision were also inserted in this Statute. The petitioner herself admits of paying holding tax after the election was conducted. This fact in itself is unimpeachable evidence to disqualify the petitioner. The order passed by the Commission is in accordance with law and no interference is required.

18. Learned counsel for respondent No.6 has submitted that it is admitted fact that the petitioner has deposited the holding tax after the election was conducted on 10.09.2022 and the petitioner was declared elected on 20.12.2022 and for other two holdings, the petitioner has paid the tax after result of the election.

19. Having heard the learned counsel for the parties, perused the material available on the record and also come to the judgment in the case of **C.M.D., City Union Bank Limited Vs. R. Chandramohan**, reported in **AIR 2023 SC 1762**, in para-12 of the said judgment, it has been held in summary proceeding that disputed questions can't be agitated when substantive proceeding is same statue, that substantive procedure has to be followed and apart from that, the State Election Commission has exceeded its jurisdiction by deciding a disputed question of fact without referring the matter to a competent tribunal, as required under



Sections 476 and 477 of the Bihar Municipal Act, 2007 and not under Section 18(2) of the Bihar Municipal Act, 2007. In the present case, the Commission not only initiated proceedings based on the complaint but also conducted a full-fledged enquiry by collecting evidence from various authorities. By doing so, the Commission went beyond its statutory mandate under the Bihar Municipal Act, 2007 and effectively assumed the role of an enquiry agent. Such conduct amounts to a colourable exercise of power and violates the basic principles of adjudication and apart from that, the judgment of the Hon'ble Full Bench of this Hon'ble Court in the case of **Rajani Kumari v. State of Bihar (Supra)**, has held that “*where a disputed question of fact arises, the Commission must refer the matter to a competent forum and not decide it itself.*” “*...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 evidence and till such time the commission shall not decide on such complaint either suo-motu or otherwise.*”



20. Therefore, this Court holds that the order dated 06.12.2024 (Annexure-4) is not in accordance with law and the same is set aside.

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

(Rajesh Kumar Verma, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	07.04.2025
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