

IN THE HIGH COURT OF JUDICATURE AT PATNA

Kaushmi Devi @ Kousami Devi

vs

State of Bihar and Others

Civil Writ Jurisdiction Case Number 1682 of 2025

26 June, 2025

(Hon'ble Mr. Justice Alok Kumar Sinha)

Issue for Consideration

1. Whether respondent no. 8 have any locus to file the complaint or not?
2. Whether impugned order dated 17.12.2024 passed in Case No.15 of 2023 (Ashok Kumar Manjhi vs. Kaushmi Devi & Ors.) by the State Election Commission is correct or not?

Headnotes

Bihar Municipal Act, 2007—Sections 18(1)(m) and 18(2)—Disqualification—Respondent filed a complaint before authority that petitioner had given false information about the birth of her third child—disqualification on ground that petitioner found to be having more than two children—petitioner was disqualified from the post of Deputy Chief Councillor of the Bodh Gaya Municipal Council—issue of maintainability raised by the petitioner was not decided by the Commission as a preliminary issue at the thresh-hold.

Held: matter of disqualification can be brought to the notice of State Election Commission in the form of a complaint, application or information by any person or authority—Commission can also take *suo motu* cognizance of matters and decide matters expeditiously after allowing sufficient opportunity to the affected parties—respondent no. 8 have locus to file the complaint—Unimpeachable material would mean such materials/evidences produced by the complaint in support of the allegations levelled in the complaint which cannot be impeached and/or which cannot be doubted or disputed by anyone—any complaint filed under Section 18(2) of Act, 2007 or disqualifying an elected candidate should not be entertained in a cavalier manner, as the consequence of the same may result in dislodging a duly and validly elected candidate—all complaints that are lodged under Section 18(2) of Act, 2007 shall be very carefully scrutinized by the State Election Commission; and the maintainability of the it would be decided as a

preliminary issue at the outset, in all cases, without making it contingent upon the other side challenging the maintainability of the it—impugned order passed in violation of the law laid down by the Full Bench of this Court in the case of Rajani Kumari—writ petition allowed with observations, findings and directions.

(Paras 21 to 27)

Case Law Cited

Rajani Kumari vs. The State Election Commission, 2019 (4) PLJR 673; Arun Kumar & Others vs Union of India & Ors., (2007) 1 SCC 732; Carona Ltd vs M/S Parvathy Swaminathan & Sons., AIR 2008 SC 187; Dr. Jagmittar Sain Bhagat & Ors vs Dir. Health Services, Haryana & Ors., AIR 2013 SC 3060—**Relied Upon.**
Ravi Yashwant Bhoir vs. District Collector, Raigad & Ors., (2012) 4 SCC 407
—Distinguished.

List of Acts

Bihar Municipal Act, 2007.

List of Keywords

Locus, Disqualification, Unimpeachable material, State Election Commission.

Case Arising From

From order dated 17.12.2024 passed in Case No. 15 of 2023 (Ashok Kumar Manjhi vs. Kaushmi Devi & Ors.) by the State Election Commission, which has been further communicated vide Memo No.15 of 2023 /4364 dated 17.12.2024, by which the Respondent State Election Commission.

Appearances for Parties

For the Petitioner: Mr. Amit Shrivastava, Sr. Advocate; Mr. Ranjeet Choubey, Advocate.

For the State Election Commissioner: Mr. Ravi Ranjan, Advocate.

For the Respondent No.8: Mr. Inderdeo Prasad, Representative.

Headnotes Prepared by: ABHAS CHANDRA

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1682 of 2025

Kaushmi Devi @ Kousami Devi Wife of Shri Suresh Manjhi, Resident of Village- Dhanavan, Post- Baghdaha, PS- Bodhgaya, District- Gaya, Bihar (Ex- Deputy Chief Councillor, Bodh Gaya Nagar Parishad, Bodh Gaya).

... .. 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), Gaya.
3. The District Panchayati Raj Officer, Gaya.
4. The Sub Divisional Officer, Gaya Sadar-cum-Election Officer, Nagar Parishad, Bodh Gaya, District- Gaya.
5. The Block Development Officer-cum-Assistant Election Officer, Nagar Parishad, Bodh Gaya, District- Gaya.
6. The Civil Surgeon-cum-Chief Medical Officer, Gaya.
7. The State Election Commissioner, Bihar, Patna State Election Commission, Patna.
8. Ashok Kumar Manjhi Son of Late Amirak Manjhi, Resident of Village and Post Office- Amwan, Police Station- Bodh Gaya, District- Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Amit Shrivastava, Sr. Advocate
		Mr. Ranjeet Choubey, Advocate
For the SEC	:	Mr. Ravi Ranjan, Advocate
For Respondent No.8	:	Mr. Inderdeo Prasad, Representative

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
CAV JUDGMENT

Date: 26-06-2025

Heard the parties.

2. The petitioner in the present writ application has prayed for quashing the order dated 17.12.2024 (Annexure-P-4) passed in Case No.15 of 2023 (Ashok umar Manjhi vs. Kaushmi Devi & Ors.) by the respondent State Election Commission, which has been further communicated vide Memo No.15 of 2023 /4364 dated 17.12.2024, by which the Respondent State Election



Commission, in purported exercise of power under Section 18(2) of the Bihar Municipal Act, 2007, has disqualified the petitioner from holding the duly elected post of Deputy Chief Councillor, Gaya Nagar Parishad, Bodh Gaya under Section 18(1)(m) of the said Act. The petitioner has questioned the decision of the Respondent State Election Commission on the ground that the complaint filed by Ashok Kumar Manjhi (respondent no.8) was not maintainable in law and ought not to have been entertained because the allegation levelled therein was not based on any unimpeachable material. In fact as per the learned Senior Counsel for the petitioner, the complaint was illegally entertained and disputed questions of fact were decided by the Respondent State Election Commission which was beyond the remit of the jurisdiction of the Respondent State Election Commission, exercising power under Section 18(2) of the Bihar Municipal Act, 2007. The learned Senior Counsel appearing on behalf of the petitioner has also questioned the finding given by the Respondent State Election Commission in the impugned order on merit on the ground of being incorrect and contrary to the weight of the materials available before him. (Although no such prayer has been made in paragraph-1 of the writ application).



3. The petitioner has further prayed that after setting aside the order dated 17.12.2024 (Annexure-P/4) passed in Case No.15 of 2023, the petitioner be reinstated to the post of Deputy Chief Councillor, Gaya Nagar Parishad, Bodh Gaya which she was serving before the impugned order was passed by the Respondent State Election Commission.

4. While advancing argument, learned Senior Counsel Mr. Amit Shrivastava appearing for the petitioner submitted that when the State Government notified the constitution of Body Gaya Nagar Parishad/Municipal Council in the year 2022, the State Election Commission conducted the election in the said Nagar Parishad in the year 2022 and after following all the due procedure, the petitioner was duly elected as the Deputy Chief Councillor of Body Gaya Municipal Council after defeating the wife of private respondent no.8 Ashok Kumar Manjhi. He further submits that when the petitioner was lawfully serving as the Deputy Chief Councillor of the Bodh Gaya Municipal Council, a complaint was filed by Ashok Kumar Manjhi (respondent no.8) husband of the candidate who had lost the election to the petitioner. This complaint was instituted by respondent no.8 before the Respondent State Election Commission with a prayer for disqualifying the petitioner from her post under Section 18(1)(m)



of the Bihar Municipal Act, 2007. In the said complaint, it was alleged that the petitioner had given false information about the birth of her third child at para-9 of “Prapatra-Ga”, which was the candidate’s Bio-data Form. Based on the said complaint a case was registered as Case No.15 of 2023 by the State Election Commission. The said complaint has been brought on record as Annexure-P-1 to the writ application. In this complaint filed by respondent no.8, as per the learned Senior Counsel appearing for the petitioner, it was specifically alleged that one female child named Swati Kumari was born to the petitioner after the cut of date i.e. 04.04.2008 and one son and one daughter were born before the said cut of date and hence the petitioner should be disqualified from her elected post in terms of Section 18(1)(m) of the Bihar Municipal Act, which provides that a person shall be disqualified even after election from holding the post as member of the municipality if such person is found to be having more than two children after the cut of date of 04.04.2008.

5. Learned Senior Counsel appearing for the petitioner further submits that even though a compliant was filed by respondent no.8 before the Respondent State Election Commission for disqualification of the petitioner from holding the post of Deputy Chief Councillor of Bodh Gaya Municipal Corporation on



the allegation of third child being born after the cut of date i.e. 04.04.2008, but the said complaint was not supported or accompanied by any unimpeachable material to establish the allegation levelled in the complaint and hence, as preliminary issue, the same ought to have been outrightly rejected as not maintainable in light of the law laid down by the Full Bench of this Court in the case of **Rajani Kumari vs. The State Election Commission** reported in **2019 (4) PLJR 673**.

6. Learned Senior Counsel appearing for the petitioner further submitted that responding to the allegations levelled in the complaint (Annexure-P-1), the petitioner had filed a reply before the Respondent State Election Commission on 22.11.2023, wherein the petitioner had challenged the maintainability of the complaint on the ground that the same should not be entertained as it is not supported or accompanied by any unimpeachable material to establish the allegation levelled in the complaint and that the allegations levelled in the complaint since were totally incorrect, therefore, these disputed questions of fact could not be gone into in a summary proceeding as contemplated under Section 18(2) of the Bihar Municipal Act, 2007. In nutshell, the learned Senior Counsel for the petitioner submits that the sum and substance of the reply filed by the petitioner before the Respondent State Election



Commission was that since the complaint was not supported by any unimpeachable evidence to establish the allegations levelled in the complaint, therefore, it was beyond the remit of the jurisdiction of Respondent State Election Commission to entertain such a complaint which would require evidence for deciding the disputed questions of fact. Learned Senior Counsel, therefore, submits that the issue of maintainability of complaint filed under Section 18(2) of the Bihar Municipal Act, 2007 was specifically raised before the Respondent State Election Commission and the same should have been decided, at the threshold, as a preliminary issue as it involved an issue relating to jurisdictional fact.

7. Learned Senior Counsel for the petitioner emphasized that since the allegations levelled in the complaint were totally incorrect and was specifically disputed by the petitioner in her reply, therefore, these disputed questions of fact required evidence and such nature of allegations could only have been decided by way of election petition before competent Civil Court under Section 476 of the Bihar Municipal Act, 2007, but instead of filing an election petition, the respondent no.8 had mischievously chosen to invoke Section 18(2) of the Bihar Municipal Act for disqualifying the petitioner from her post under Section 18(1)(m) of the said Act.



8. The learned Senior Counsel for the petitioner, therefore, submits that the entire proceeding conducted by the Respondent State Election Commission was wholly without jurisdiction and that it was not within the remit of his jurisdiction to inquire into the disputed questions of fact which could only have been decided after proper collection of evidence. Consequently, the impugned order passed by the State Election Commission by which the petitioner has been disqualified from holding the post of Deputy Chief Councillor, Bodh Gaya Municipal Council is totally illegal and nonest in the eye of law.

9. Per contra, the Respondent State Election Commission has submitted that while it is true that the issue of maintainability raised by the petitioner before the Commission was not decided as preliminary issue, but he submits that the issue of maintainability has been decided in the impugned order dated 17.12.2024 in paragraph-6 of the said order and thereafter finding has been given by the respondent Commission on merits of the matter. The learned Counsel appearing for respondent Commission further submits that it is not correct on part of the petitioner to submit that the case has not been decided by the respondent Commission on unimpeachable evidence/material, but on the basis of evidence collected during the proceeding. The learned counsel



for the Commission also submits that while passing impugned order dated 17.12.2024 the Respondent Commission has not decided disputed questions of fact and hence the impugned order passed by the Respondent Commission was perfectly legal and justified. As per the Respondent commission, it is beyond any shadow of doubt that the conclusion reached at by the Respondent Commission with regard to the issue raised by the complainant that the petitioner's third child was born after 04.04.2008 is correct and based on cogent evidence. He further submits that since it is now established that the petitioner's third child was actually born after 04.04.2008 (the actual date of birth after 04.04.2008 being irrelevant) the petitioner was rightfully disqualified from holding the post of Deputy Chief Councillor as per Section 18(1)(m) of the Bihar Municipal Act, 2007.

10. Mr. Indradeo Prasad who was appearing in the capacity of being the representative of respondent no.8 also supported the contention of the Respondent Commission and submitted that on the basis of findings given in the impugned order it now stands conclusively proved that the third child of the petitioner was born after 04.04.2008 and therefore the petitioner was rightly disqualified as per Section 18(1)(m) of the Bihar Municipal Act, 2007.



11. On a careful consideration of the submissions made by the parties as outlined above, the question that arises for consideration in this case is as follows:

“Given the nature of allegations levelled in the complaint regarding birth of third child of the petitioner after 04.04.2008 and the specific objection of the petitioner disputing the allegations levelled in the complaint filed by the respondent no.8 and also questioning the maintainability of the said complaint under Section 18(2) of the Bihar Municipal Act, 2007, whether it was obligatory on the part of the Respondent State Election Commission to decide the objection as regards maintainability of the complaint as a preliminary issue at the threshold before embarking on the merits of the case? If yes, then whether without deciding the issue of maintainability of such a complaint as a preliminary issue at the threshold, whether the respondent State Election Commission can be said to have acted in teeth of the law laid down by Full Bench decision of this Court in the case of Rajani Kumari vs. The State Election Commission reported in 2019 (4) PLJR 673? If yes, then whether the entire proceeding



conducted by Respondent State Election Commission which has culminated in passing of the impugned order dated 17.12.2024 is flawed, illegal, without jurisdiction and fit to be set aside, without giving much credence to the correctness or otherwise of the finding on merit given by the Respondent Commission in the impugned order?

12. The legal issue as to the remit of jurisdiction of the respondent State Election Commission while exercising power under Section 18(2) of the Bihar Municipal Act, 2007 is no longer *res integra* and stands conclusively decided by Full Bench decision of this Court delivered in the case of **Rajani Kumari vs. The State Election Commission** reported in **2019 (4) PLJR 673**.

13. It is important to quote some of the relevant observations and findings given in this decision, which are relevant for the purpose of adjudication of the present case. They 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.

182. Brother Justice Rajeev Ranjan Prasad has dealt with the issue of 'qualification' and 'disqualification'. In his ultimate analysis brother Justice Prasad has, in paragraph 34 to 51 of the Judgment referred to various decisions on the subject and has reached to a conclusion that Section 135 of the Act of 2006 nowhere prescribes the circumstances under which a person may be disqualified for being elected as a member of the Panchayat or the Municipality and in fact Section 135 talks of qualification 'unless disqualified', therefore the said part of sub-section (2) of Section 136 which reads "subject to any disqualifications mentioned in Section 135" is required to be given a harmonious construction which may be better fitted to the intention of the Act. In order to give an interpretation which advances the remedy, brother Justice Prasad has expressed his views by reading down that part of subsection (2) of Section 136 of the Act of 2006 to the extent that it should be read as 'subject to any disqualifications but not the qualification mentioned in Section 135'. There is no disagreement on this issue in the judgment of sister Justice Smt. Anajana Mishra and myself. The State



Election Commission cannot take upon itself adjudication with regard to an issue of 'qualification' and the contentious issues of disqualifications as observed above. The gist of the entire discussion in the judgment of brother Sri. Justice Prasad are recorded in paragraph 54 of his judgment and I do not find any difference of opinion either in my judgment or in the judgment of sister Justice Smt. Anjana Mishra.

183. I, therefore, find that the cumulative impact of the entire discussion in the separate judgments would take us to answer the reference in the following terms:—

Question No. 1 - Whether the State Election Commission will have power to consider disqualification of a candidate after election as such Election Commission is constituted for conduct of elections?

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.”

[Emphasis Supplied]

14. From the aforesaid judgment it is absolutely clear that whenever maintainability of a complaint filed under Section 18(2) of the Bihar Municipal Act, 2007 is challenged, the same is mandatorily required to be decided at the threshold as a preliminary issue, as being a question of jurisdictional fact. It is, therefore, imperative that whenever an objection as to the maintainability of the complaint is seriously questioned on any ground whatsoever including the ground that the allegations levelled in the complaint are not supported by or based upon any unimpeachable material accompanied with the complaint, the same must be decided at the threshold as a preliminary issue before embarking on the merits. It is further clear from the aforesaid judgment that complaints which are in the nature of disputing the



election but deliberately couched in a language so as to bring it within the fold of Section 18(2), should be carefully examined by the Respondent State Election Commission on its own and such complaints should not be entertained under Section 18(2) of Bihar Municipal Act, 2007 and in fact should be relegated to filing of an election petition before appropriate Civil Court. The Full Bench decision of this Court (Supra) clearly makes it obligatory for the Respondent Commission to first examine and inquire whether the allegations levelled in the complaint qualifies as a purely election dispute and only if it is found that the dispute brought before it is not a purely election dispute, the Commission should proceed to consider the same on the basis of unimpeachable materials. It is thus obligatory for the Commission, of its own, to ascertain whether a disputed question of facts and a contentious issue has been brought before the Commission or not as a ground and basis to render a candidate disqualified? If yes, then the Commission is under the mandate of the law laid down by the Full Bench to relegate the parties to a competent Court/Tribunal to decide such contentious issue after taking evidence.

15. There is a reason why this Hon'ble Court in the Full Bench decision delivered in the case of Rajani Kumari (Supra) held that the Commission at the first instance should decide the



preliminary issue as regards the maintainability of the complaint under Section 18(2) of the Bihar Municipal Act, 2007 because the issue would always relate to existence or non-existence of jurisdictional fact. On the issue of jurisdictional fact reliance is placed on the following decisions of the Hon'ble Supreme Court, which would further make it clear that the issue relating to jurisdictional fact must be decided as a preliminary issue before embarking on the merits of the case:

(a) Arun Kumar & Others vs Union Of India & Ors. reported in (2007) 1 SCC 732.

“74. A “jurisdictional fact” is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.

75. In Halsbury's Laws of England, it has been stated:

“Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive.”



76. The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction.

77. In *Raja Anand Brahma Shah v. State of U.P.* [(1967) 1 SCR 373 : AIR 1967 SC 1081] sub-section (1) of Section 17 of the Land Acquisition Act, 1894 enabled the State Government to empower the Collector to take possession of “any waste or arable land” needed for public purpose even in the absence of award. The possession of the land that belonged to the appellant had been taken away in the purported exercise of power under Section 17(1) of the Act. The appellant objected against the action inter alia contending that the land was mainly used for ploughing and for raising crops and was not “waste land”, unfit for cultivation or habitation. It was urged that since the jurisdiction of the authority depended upon a preliminary finding of fact that the land was “waste land”, the High Court was entitled in a proceeding for a certiorari to determine whether or not the finding of fact was correct.

78. Upholding the contention and declaring the direction of the State Government ultra vires, this Court stated: (SCR p. 380 D-F)

“In our opinion, the condition imposed by Section 17(1) is a condition upon which the jurisdiction of the State Government depends and it is obvious that by wrongly deciding the question as to the character of the land the State Government cannot give itself jurisdiction to give a direction to the Collector to take possession of the land under Section 17(1) of the Act. It is well established that where the jurisdiction of an administrative authority depends upon a preliminary finding of fact the High Court is entitled, in a proceeding of writ of certiorari to determine, upon its independent judgment, whether or not that finding of fact is correct....”

(emphasis supplied)

79. In *State of M.P. v. D.K. Jadav* [(1968) 2 SCR 823 : AIR 1968 SC 1186] the relevant statute abolished all jagirs



including lands, forests, trees, tanks, wells, etc., and vested them in the State. It, however, stated that all tanks, wells and buildings on occupied land were excluded from the provisions of the statute. This Court held that the question whether the tanks, wells, etc., were on “occupied land” or on “unoccupied land” was a jurisdictional fact and on ascertainment of that fact, the jurisdiction of the authority would depend.

80. The Court relied upon a decision in *White & Collins v. Minister of Health* [(1939) 2 KB 838 : 108 LJ KB 768 : (1939) 3 All ER 548 (CA) sub nom *Ripon (Highfield) Housing Order, 1938, Re*] wherein a question debated was whether the court had jurisdiction to review the finding of administrative authority on a question of fact. The relevant Act enabled the local authority to acquire land compulsorily for housing of working classes. But it was expressly provided that no land could be acquired which at the date of compulsory purchase formed part of park, garden or pleasure ground. An order of compulsory purchase was made which was challenged by the owner contending that the land was a part of park. The Minister directed public inquiry and on the basis of the report submitted, confirmed the order.

81. Interfering with the finding of the Minister and setting aside the order, the Court of Appeal stated: (All ER p. 559 G-H)

“The first and the most important matter to bear in mind is that the jurisdiction to make the order is dependent on a finding of fact, for, unless the land can be held not to be part of a park, or not to be required for amenity or convenience, there is no jurisdiction in the borough council to make, or in the Minister to confirm, the order. In such a case it seems almost self-evident that the court which has to consider whether there is jurisdiction to make or confirm the order must be entitled to review the vital finding on which depends the existence of the jurisdiction relied upon. If this were not so, the right to apply to the court would be illusory.”



82. A question under the Income Tax Act, 1922 arose in *Raza Textiles Ltd. v. ITO* [(1973) 1 SCC 633 : 1973 SCC (Tax) 327 : AIR 1973 SC 1362] . In that case, the ITO directed X to pay certain amount of tax rejecting the contention of X that he was not a non-resident firm. The Tribunal confirmed the order. A Single Judge of the High Court of Allahabad held X as non-resident firm and not liable to deduct tax at source. The Division Bench, however, set aside the order observing that:

“... [ITO] had jurisdiction to decide the question either way. It cannot be said that the officer assumed jurisdiction by a wrong decision on this question of residence.” (SCC p. 634, para 3)

X approached this Court.

83. Allowing the appeal and setting aside the order of the Division Bench, this Court stated: (SCC pp. 634-35, para 3)

“The Appellate Bench appears to have been under the impression that the Income Tax Officer was the sole judge of the fact whether the firm in question was resident or non-resident. This conclusion, in our opinion, is wholly wrong. No authority, much less a quasi-judicial authority, can confer jurisdiction on itself by deciding a jurisdictional fact wrongly. The question whether the jurisdictional fact has been rightly decided or not is a question that is open for examination by the High Court in an application for a writ of certiorari. If the High Court comes to the conclusion, as the learned Single Judge has done in this case, that the Income Tax Officer had clutched at the jurisdiction by deciding a jurisdictional fact erroneously, then the assessee was entitled for the writ of certiorari prayed for by him. It is incomprehensible to think that a quasi-judicial authority like the Income Tax Officer can erroneously decide a jurisdictional fact and thereafter proceed to impose a levy on a citizen.”

(emphasis supplied)

84. From the above decisions, it is clear that existence of “jurisdictional fact” is sine qua non for the exercise



of power. If the jurisdictional fact exists, the authority can proceed with the case and take an appropriate decision in accordance with law. Once the authority has jurisdiction in the matter on existence of “jurisdictional fact”, it can decide the “fact in issue” or “adjudicatory fact”. A wrong decision on “fact in issue” or on “adjudicatory fact” would not make the decision of the authority without jurisdiction or vulnerable provided essential or fundamental fact as to existence of jurisdiction is present.”

(b) Carona Ltd vs M/S Parvathy Swaminathan & Sons.
reported in AIR 2008 SC 187.

“31. It is thus clear that for assumption of jurisdiction by a Court or a Tribunal, existence of jurisdictional fact is a condition precedent. But once such jurisdictional fact is found to exist, the Court or Tribunal has power to decide adjudicatory facts or facts in issue.”

16. In the present case the allegation levelled in the complaint as regards the birth of the third child of the petitioner after 04.04.2008 as a ground for disqualification was supported by a document said to have been obtained under the R.T.I Act enclosing a photocopy of the School Admission Register showing the date of birth of the third child of the petitioner to be 17.12.2013. In the eleventh column of the photocopy of the said Admission Register a thumb impression allegedly of Kaushmi Devi was shown to be existing. This document was the only basis produced as unimpeachable material/evidence in support of the allegations levelled in the complaint filed by respondent no.8. Responding to these allegations the petitioner had filed a reply before the Respondent Commission disputing the above



allegations. Paragraphs no.9,10,11, 13, 14, 15, 16, 17 of the reply filed by the petitioner before Respondent Commission is quoted herein below for needful.

9. That so far statement made in Para 3(iv) and (v) of the complaint under reply it is humbly submitted that basis of allegation having fourth children in nomination of Swati Kumari after 04.08.2008 is based upon R.T.I. information given by Block Education Officer, Bodh Gaya on the basis of School Admission Register in Dhanawan Elementary School in year 2018 as contained in Annexure-2 of the complaint petition showing that Swati Kumari Daughter of Kaushmi Devi (Opposite Party No. 1) and Suresh Manjhi whose date of birth is mentioned as 17.02.2013 but no documentary proof of date of birth of Swati Kumari is enclosed and even in name of mother L.T.I. of Opposite Party No. 1 is said to be made despite the fact that Opposite Party No.1 clearly made her signature or wrote her name which may be verified from several documents even in Vakalatnama signed by her and as such documents provided under R.T.I. is prepared with oblique motive only with a view to get Opposite Party No. 1 be disqualified in view of Section 18(1)(M) of Bihar Municipal Act 2007.

10. That it is stated that in fact Opposite Party No. 1 has three children whose description specifying the date of birth are as follows:-

Name of children	Relation	Date of Birth
1. Arti Kumari	Daughter	04.01.2002
2. Vikash Kumar	Son	05.03.2005
3. Suganti Kumari	Daughter	15.01.2007

And she has no any other daughter in name of Swati Kumari who has born after 04.08.2008 and in support of that separate Adhar Card of all the above referred three children mentioning above referred date of birth is correct and specifically deny about the existence of fourth daughter in name of Swati Kumari.

11. That it is further stated that Ration Card has been issued in favour of Opposite Party No. 1 in which description of family members have been mentioned in which also only three



children namely Arti Kumari, Vikash Kumar and Suganti Kumari is mentioned in whose tentative age has also been mentioned. It is specifically stated that Ration Card has been issued much earlier from the date of nomination in Election of 2022 which itself proves that alleged allegation having fourth child in name of Swati Kumari is imaginary only with a view to get Opposite Party disqualified with oblique motive.

13. That it is specifically stated that neither Opposite Party No. 1 nor her husband Ashok Manjhi has ever gone to Dhanwa Primary School for purpose of Admission of their any of children and as such alleged documents enclosed with complaint petition in support of admission of Swati Kumari mentioning date of birth 17.02.2013 is imaginary and fictitious.

14. That it is further submitted that when Opposite Party No. 1 raised objection on School Admission Register mentioning Swati Kumari as daughter of Opposite Party No. 1 then lame excuse is being taken that admission was taken on the basis of endorsement by Anganwari Centre which itself proves that L.T.I. shown in name of Opposite Party No. 1 is forged and fabricated as this aspect has not been mentioned in documents enclosed with complaint petition.

15. That it is stated and submitted that there is no unimpeachable documents or materials have been brought on record by the complaint in support of allegation that alleged Swati Kumari is daughter of Opposite Party No. 1 and her date of birth is 17.02.2013 and as such this dispute question of fact cannot be decided by competent Civil Court after adducing evidence, oral as well as documentary and for that this Hon'ble Commission would be required to amount the necessary declaration made by competent Court.

16. That since complainant had no such documents to prove such fictitious allegation of having fourth children Swati Kumari who took birth after 04.04.2008 and as such did not choose to prefer election Petition as prescribed under section 476 as well as under Section 478 of the Bihar municipal Act 2007."

17. That it is stated and submitted that when complainant could not produce unimpeachable documents in support any of allegation that Swati Kumari is fourth children of Opposite Party No. 1 then in connivance with some officials are adamant



to prove that Suganti Kumari and Swati Kumari are same which is not the part of the allegation made in complaint and as such subsequent improvement of allegation is not permissible in eye of law.”

17. From the aforesaid reply submitted by the petitioner before the Respondent Commission, it is clearly manifest that the question of the date of birth of the third child of the petitioner was under serious dispute and this could only have been decided on the basis of evidence. This disputed question of fact could not have been decided by the Respondent Commission in a summary proceeding under Section 18(2) of the Bihar Municipal Act, 2007, as per the law laid down by the Full Bench in **Rajani Kumari's case** (Supra). Manifestly, the Respondent Commission transgressed its authority and entertained this disputed question of fact and ultimately gave a finding against the petitioner. The finding, (whether right or wrong) is therefore as a result of exercise of jurisdiction which was not available to the Respondent Commission in law. This Court, therefore, is of the view that if an authority gives a finding on disputed question of fact then whether the said finding is correct or not, becomes irrelevant, if the authority concerned did not have the jurisdiction to conduct the proceeding and give such a finding. Only those findings can be upheld in law which are given pursuant to legal and valid exercise of power. In this regard reliance is placed on the judgment of the Hon'ble Apex



Court delivered in the case of *Dr. Jagmittar Sain Bhagat & Ors vs Dir. Health Services, Haryana & Ors.* reported in *AIR 2013 SC 3060*, the relevant paragraph of which is quoted herein below for needful.

“7. Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court, and if the Court passes a decree having no jurisdiction over the matter, it would amount to ity as the matter goes to the roots of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a Court or Tribunal becomes irrelevant and unenforceable/ inexecutable once the forum is found to have no jurisdiction. Similarly, if a Court/Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetuate and perpetrate, defeating the legislative animation. The Court cannot derive jurisdiction apart from the Statute. In such eventuality the doctrine of waiver also does not apply. (Vide: *United Commercial Bank Ltd. v. Their Workmen*, **AIR 1951 SC 230**; *Smt. Nai Bahu v. Lal Ramnarayan and Ors.*, **AIR 1978 SC 22**; *Natraj Studios (P) Ltd. v. Navrang Studios and Anr.*, **AIR 1981 SC 537**; and *Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and Ors.*, **AIR 1999 SC 2213**).”

18. It is to be noted that in the present case, the learned counsel appearing for the Respondent Commission has fairly admitted that the issue of maintainability raised by the petitioner was not decided by the respondent Commission as a preliminary issue at the thresh-hold. Meaning thereby, that without deciding the issue of jurisdictional fact, the respondent Commission in the present case assumed jurisdiction and embarked on the journey to



decide the disputed question of fact on merit. Such an approach is unknown to law and hence the impugned order cannot be sustained for failing to decide the question of maintainability of the complaint as a preliminary issue at the threshold.

19. During the course of argument, learned counsel for the petitioner also stated that the grounds on which the complainant had filed the complaint for disqualification was actually a matter which should have been agitated in an election petition on the ground as mentioned in Section 479(1)(d)(i) of the Bihar Municipal Act, 2007. His contention was that instead of filing the election petition, the respondent no.8 mischievously couched it in such a language so as to bring it within the purview of Section 18(1)(m) of the said Act. As per the law laid down by the Full Bench in Rajani Kumari's case (Supra), it was the duty of the respondent Commission to ascertain whether the complaint contained a purely election dispute or not? The respondent Commission failed to examine this aspect of the matter and thus did not give any finding on this issue which should have been decided as a preliminary issue at the outset.

20. The learned Senior Counsel appearing for the petitioner also questioned the locus standi of the respondent no.8 of having filed the complaint on the ground that he was not the



loosing candidate and was in fact the husband of the loosing candidate and as such he did not have the locus to file the complaint. In this regard, the learned Senior Counsel appearing for the petitioner relied upon paragraphs-58, 59 and 60 of the decision delivered by the Hon'ble Supreme Court in the case of **Ravi Yashwant Bhoir vs. District Collector, Raigad & Ors.** reported in **(2012) 4 SCC 407**. The paragraph-58 to 60 of this judgment is quoted herein below for needful.

“58. Shri Chintaman Raghunath Gharat, ex-President was the complainant, thus, at the most, he could lead evidence as a witness. He could not claim the status of an adversarial litigant. The complainant cannot be the party to the lis. A legal right is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eye of the law because it may not result in injury to a legal right or legally protected interest of the complainant but juridically harm of this description is called damnum sine injuria.

59. The complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In case he has no legal peg for a justiciable claim to hang on, he cannot be heard as a party in a lis. A fanciful or sentimental grievance may not be sufficient to confer a locus standi to sue upon the individual. There must be injuria or a legal grievance which can be appreciated and not a stat pro ratione voluntas reasons i.e. a claim devoid of reasons.

60. Under the garb of being a necessary party, a person cannot be permitted to make a case as that of general public interest. A person having a remote interest cannot be permitted to become a party in the lis, as the person who wants to become a party in a case, has to establish that he has a proprietary right which has been or is threatened to be violated, for the reason that a legal injury creates a remedial right in the injured person. A person cannot be heard as a



party unless he answers the description of aggrieved party. (Vide Adi Pheroze Shah Gandhi v. Advocate General of Maharashtra [(1970) 2 SCC 484 : AIR 1971 SC 385] , Jasbhai Motibhai Desai v. Roshan Kumar [(1976) 1 SCC 671 : AIR 1976 SC 578] , Maharaj Singh v. State of U.P. [(1977) 1 SCC 155 : AIR 1976 SC 2602] , Ghulam Qadir v. Special Tribunal [(2002) 1 SCC 33] and Kabushiki Kaisha Toshiba v. Toshiba Appliances Co. [(2008) 10 SCC 766]) The High Court failed to appreciate that it was a case of political rivalry. The case of the appellant has not been considered in the correct perspective at all.”

21. The aforesaid submission made by learned Senior Counsel was opposed by respondent Commission on the ground that the facts of the case and the statute under interpretation in the aforesaid judgment was different and, therefore, the findings given by the Supreme Court in paras 58 to 60 will not apply to the facts and circumstances of the present case. I agree to the submission made by learned counsel for the respondent Commission. Even the language of Section 18(2) of the Bihar Municipal Act makes it absolutely clear that the matter of disqualification can be brought to the notice of State Election Commission in the form of a complaint, application or information by any person or authority. It further provides that the State Election Commission can also take suo motu cognizance of such matters and decide such matters expeditiously after allowing sufficient opportunity to the affected parties. Section 18(2) of the Bihar Municipal Act, 2007 is quoted herein below for needful.



“[(2) If any question arises as to whether a Member of a Municipality at any level was disqualified before election or has incurred disqualification after election as provided in Article-243-V of the Constitution of India and subject to any of the disqualification mentioned in section -475 or the subject to any of the disqualification mentioned in sub-section (1) of section-18 the question shall be referred for the decision of State Election Commissioner. The matter of disqualification may be brought to the notice of the State Election Commission in the form of a complaint, application or information by any person or authority. The State Election Commission may also take suo-motu cognizance of such matters and decide such matters expeditiously after allowing sufficient opportunity to the affected parties of being heard.]

{Emphasis Supplied}

22. In view of the aforesaid express provision entitling any person to file a complaint or application before the State Election for disqualification and also giving powers to the State Election Commission to suo motu initiate such a proceeding, it cannot be said that only the loosing candidate can file complaint under Section 18(2) of the Bihar Municipal Act, 2007 and consequently, the contention of learned Senior Counsel appearing for the petitioner that respondent no.8 did not have any locus to file the complaint is not correct and therefore such submission made by him is rejected.

23. It is also pertinent to take note of paragraph-5 of the impugned order dated 17.12.2024 wherein at several places the Respondent State Election Commission has referred to collection of evidence indulged into by the District Magistrate. The inquiry conducted by the District Magistrate, therefore, is based on



collection of evidence for which the petitioner was not given opportunity to controvert/rebut. The discussion made in paragraph-5 of the impugned order, therefore, clearly establishes that the entire proceeding which was conducted before the Respondent State Election Commission was in the nature of collecting evidence and thereafter deciding the disputed question of fact on the basis of those evidences so collected. The necessity for instituting two Medical Boards, although on the request of the petitioner, also goes to show that the respondent State Election Commission felt the need to collect evidence for deciding the disputed question of fact. This nature of inquiry is not permissible under Section 18(2) of the Bihar Municipal Act, 2007, which is only to be conducted and decided on the basis of unimpeachable material. Unimpeachable material would mean such materials/evidences produced by the complaint in support of the allegations levelled in the complaint which cannot be impeached and/or which cannot be doubted or disputed by anyone. The moment something produced as evidence along with the complaint is required to be validated/established on the basis of further collection of evidence, then it is clear that the evidence produced or accompanied with the complaint does not qualify as unimpeachable evidence/material.



24. Under the aforesaid facts and circumstances and for the reasons assigned herein above, this Court finds that the impugned order dated 17.12.2024 passed by the respondent Commission by which the petitioner has been disqualified from the post of Deputy Chief Councillor of the Bodh Gaya Municipal Council is flawed, patently illegal and without jurisdiction. The said impugned order has also been passed in violation of the law laid down by the Full Bench of this Court in Rajani Kumari's Case (Supra). Consequently the impugned order dated 17.12.2024 passed in Case No.15 of 2023 (Ashok umar Manjhi vs. Kaushmi Devi & Ors.) by the Respondent State Election Commission is hereby quashed/set aside and the petitioner is reinstated to the post of Deputy Chief Councillor, Gaya Nagar Parishad, Bodh Gaya with immediate effect.

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25. For the reasons given above, and also for the reasons as stated in the interlocutory application and the affidavit, this interlocutory application is allowed and the additional prayer made in paragraph-18 of the said application is directed to be treated as part of the prayer made in the main writ petition. Since this Court has already come to the conclusion that the impugned order dated 17.12.2024 is illegal and without jurisdiction, thereby setting aside



the same and reinstating the petitioner to the post of Deputy Chief Councillor of Bodh Gaya Municipal Council with immediate effect, the schedule of Election contained in letter no.2228 dated 24.05.2025 (Annexure-P-8 to the I.A) issued under the signature of Secretary, State Election Commission, so far as it relates to conducting election for the post of Deputy Chief Councillor, Bodh Gaya Municipal Council is also set aside and the respondent State Election is directed not to conduct the election as far as election to the post of Deputy Chief Councillor of Bodh Gaya Municipal Council is concerned.

26. Before parting with this judgment, it is considered appropriate to observe that any complaint filed under Section 18(2) of the Bihar Municipal Act, 2007 for disqualifying an elected candidate should not be entertained in a cavalier manner, as the consequence of the same may result in dislodging a duly and validly elected candidate. Existence of grassroots democracy is precious and should not be allowed to be assaulted or attacked on the basis of a frivolous complaint, not maintainable in law. It is, therefore, incumbent on the State Election Commission to always of its own examine the maintainability of the complaint as a preliminary issue by applying the tests laid down by the Full Bench decision of this Court in Rajani Kumari's case. It is



expected that henceforth all complaints that are lodged under Section 18(2) of the Bihar Municipal Act, 2007 shall be very carefully scrutinized by the Respondent State Election Commission and the maintainability of the same would be decided as a preliminary issue at the outset, in all cases, without making it contingent upon the other side challenging the maintainability of the same. It is always to be borne in mind that grassroots democracy empowers ordinary citizen to participate directly in decision making processes, fostering a more inclusive and responsive government at the local level. This form of democracy promotes social justice by giving voice to marginalized groups, ensuring that policies are aligned with the needs and values of the community. Furthermore, it enhances civic engagement, strengthen social development and increases Government accountability. It is for these reasons that it is important that the respondent Commission should be extra careful while entertaining a complaint for disqualification of elected representative under Section 18(2) of the Bihar Municipal Act, 2007. At the cost of repetition, it is reiterated that whenever a complaint is filed before respondent Commission, the respondent Commission of its own should first examine the maintainability of the same as a preliminary issue and only thereafter, if it is found to be



maintainable, should the respondent Commission proceed to decide the same within the scope available to it in law. It is, therefore, important for the respondent Commission to put the complainant to strict rigours for satisfying regarding maintainability of the said complaint in light of the law laid down in Rajani Kumari’s case. This must be done at the threshold itself before embarking on the merits of the case.

27. With the aforesaid observations, findings and directions, the present writ application is allowed.

28. All pending I.A.s, if any shall be deemed to have been disposed of.

(Alok Kumar Sinha, J)

Prakash Narayan

AFR/NAFR	AFR
CAV DATE	24.06.2025
Uploading Date	26.06.2025
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