IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4175 of 2022

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Saryug Mochi Son of Ganauri Mochi Resident of Village-Akopur, (Arokur) P.O. Amarpura, P.S.- Naubatpur, District-Patna.

... ... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The District Magistrate-Cum-District Election Officer (Municipality), Patna.
3. The State Election Commission, Bihar through its Secretary, Sone Bhawan, Patna.
4. The District Panchayati Raj Officer, Patna.
5. Usha Kaushik, W/o-Sri Kaushal Kaushik, Resident of Village-Nisarpur, P.O.-Amarpura, P.S.-Naubatpur, District-Patna.

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 4030 of 2022

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Punam Devi Wife of Late Pintu Saw Resident of Village, PO and P.S. - Naubatpur, District- Patna.

... ... Petitioner

Versus

1. The State of Bihar Through Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The District Magistrate - cum- District Election Officer (Municipality) Patna.
3. The District Panchayati Raj Officer, Patna.
4. The State Election Commission, Bihar through its Secretary, Sone Bhawan, Patna.
5. Usha Kaushik W/o - Sri Kaushal Kaushik, Resident of Village - Nisarpur, P.O. - Amarpura, P.S. - Naubatpur, District- Patna.

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 4358 of 2022

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Vijay Paswan, son of Janki Paswan, Resident of Village Parsa, PO-Nagwan, P.S. Naubatpur, District-Patna.

... ... Petitioner

Versus

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1. The State of Bihar through Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The District Magistrate-cum-District Election Officer (Municipality), Patna.
3. The District Panchayati Raj Officer, Patna.
4. The State election Commission, Bihar through its Secretary, Sone Bhawan, Patna.
5. Usha Kaushik, W/o Sri Kaushal Kaushik, Resident of Village Nisarpur, PO-Amarpura, P.S. Naubatpur, District-Patna.

... ... Respondents

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Appearance :
(In Civil Writ Jurisdiction Case No. 4175 of 2022)
For the Petitioner/s : Mr. P.N. Shahi, Sr. Advocate
Mr. Ranjeet Kumar, Advocate
For the Respondent/s : Mr. P.K. Shahi, Sr. Advocate
Mr. Abbas Haider (SC-6)
For Election Commission: Mr. Sanjeev Nikesh, Advocate
Mr. Girish Pandey, Advocate
(In Civil Writ Jurisdiction Case No. 4030 of 2022)
For the Petitioner/s : Mr.Rana Vikram Singh, Advocate
Ms. Rasika, Advocate
For the Respondent/s : Mr.Yogendra Pd. Sinha (AAG-7)
Mr. Rajeev Kumar Sinha, Advocate
(In Civil Writ Jurisdiction Case No. 4358 of 2022)
For the Petitioner/s : Ms. Nivedita Nirvikar, Sr. Advocate
Mr. Ranjeet Kumar, Advocate
For the Respondent/s : Mr.Yogendrsa Prasad Sinha (AAG-7)
Mr. Rajeev Kumar Sinha, Advocate
Mr. S.B.K. Manglam, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 09-05-2022

Sub-section (1) of Section 18 of Bihar Municipal Act, 2007 (‘Act’ for short) lays down the disqualifications of a person for election, or after election for holding the post, as a member of municipality. One of such disqualifications is laid down as:

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"(m) If he is more than two living children:-

Provided that a person having more than two children on or up to the expiry of one year of the commencement of the Act, shall not be deemed to be disqualified."

2. The Act came into force with effect from the date of its publication in Bihar Gazette (Extraordinary) dated 05.04.2007. Clearly thus, a person having more than two children up to 05.04.2008 does not suffer disqualification by operation of Clause (m) of sub-section (1) of Section 18 of the Act. Sub-section 2 of the Act empowers the State Election Commission to decide the matters of disqualification on a complaint, application or information by any authority or upon taking *suo motu* cognizance of such matters, after allowing sufficient opportunity to the affected parties of being heard. 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 Vs. The State Election Commission and Ors.*** reported in ***2019 (4) PLJR 673.*** 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 of elections, the Full Bench in case of ***Rajani Kumari*** (supra) has held in no

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uncertain terms as follows:-

> *"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."*

It can be easily culled out from what has been laid down in case of ***Rajani Kumari*** (supra) that;

(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

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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 issues after taking evidences and till such time the Commission shall not take a decision on such complaint either suo motu or otherwise.

3. In the present batch of three writ applications filed under Article 226 of the Constitution of India, an order dated 02.03.2022 passed by the State Election Commissioner, Bihar, whereby it has declared the petitioners disqualified to hold the post of ward councilor by operation of Clause (m) of sub-section (1) of Section 18 of the Act is under challenge. After having declared so, the petitioners have been ordered to be removed

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from the posts of ward councillors of respective councils of the *Nagar Panchayat,* Naubatpur in the District of Patna. The petitioners have put to challenge the said order dated 02.03.2022 passed by the Commission.

4. The primordial issue that requires determination in the present batch of cases is as to whether the impugned action of the Commission is based on unimpeachable materials before reaching a conclusion that the petitioners incurred disqualification because of child/children born to them after the cut off date of 05.04.2008, in the given facts and circumstances of the case. It is worthwhile mentioning that the Full Bench decision in the case of ***Rajani Kumari*** (supra) has made it mandatory for the Commission to enquire, at the first instance, whether it was a purely election dispute and only when it is the Commission is satisfied that the dispute brought before it is not a purely election dispute, the it shall proceed to consider the same. Whether the Commission has adhered to the statutory mandate as enunciated by the Full Bench in the case of ***Rajani Kumari*** (supra) is a question which needs consideration in these cases. The legal framework, for the exercise of power under Section 18 (2) of the Act has been set out at the very beginning of the present judgment and order in order to appreciate the

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controversies involved in this batch of cases with reference to the law settled by the Full Bench of this Court in the case of ***Rajani Kumari*** (supra).

5. We have heard Mr. P.N. Shahi, learned Senior counsel for the petitioner, Mr. P.K. Shahi, learned Senior counsel for the respondent, and Mr. Abbas Haider, learned Standing Counsel No. 6 in CWJC No. 4175 of 2022; Mr. Rana Vikram Singh, learned Counsel for the petitioner, Mr. S.B.K. Manglam, learned counsel for the respondent, and Y.P. Sinha, learned Additional Advocate General No. 7 for the State of Bihar in CWJC No. 4030 of 2022; Ms. Nivedita Nirvikar, learned Senior Counsel for the petitioner, Mr. Y.P. Sinha, learned Additional Advocate General No. 7 in CWJC No. 4358 of 2022 and Mr. Sanjeev Nikesh and Mr. Girish Pandey learned counsel for State Election Commission in all the three cases.

6. The petitioners Saryug Mochi, Punam Devi, and Vijay Paswan were elected as the Ward Councillors of the *Nagar Panchayat,* Naubatpur for Ward Nos. 14, 6, and 2 respectively in the election held on 23.02.2020. Certificates were issued to them on 25.02.2020. One Usha Kaushik (the Respondent No. 5 in all the cases) filed an application before the State Election Commissioner asserting therein that the

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petitioners were disqualified to contest the election by operation of Clause (m) of Section 18 (1) of the Act since they had more than two surviving children and the last child/chilren born to them was after the cut-off date, i.e., 05.04.2008.

7. In respect of Saryug Mochi, she asserted that his 5th female child was studying in the Upgraded Middle School, Akopur under Naubatpur Anchal of Patna district, and according to the Respondent No. 5, as per the date of birth recorded in the Admission Register she was born on 05.03.2010. She was admitted to the said school in standard one in the year 2014. Respondent No. 5, thereafter, said to have made an enquiry about the dates of birth of the children of said Saryug Mochi during the course of which she learnt that in connivance with the Headmaster of the School, the said Saryug Mochi had made certain interpolation in the original Admission Register to suit his interest and protect his post. There were interpolations and cuttings made in the Admission Register which were visible with the naked eye. She also relied on an entry made in account of the daughter of the petitioner Saryug Mochi, maintained for direct benefit transfer of payment against dress allowance under the Poshak Yojna of the Government, wherein her date of birth was mentioned as 05.03.2010. On these two entries, respondent

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No. 5 asserted in her complaint that the 5th child of Saryug Mochi was born much after the cut-off date.

8. In respect of Punam Devi, the petitioner of CWJC No. 4030 of 2022, the respondent No. 5 relied on Ration Card which disclosed age of said Punam Devi and her children in years. She asserted that Ration Card in question was delivered to the consumers including Punam Devi in the year 2019 for which applications were received in 2017. Based on the age (not the date of birth) mentioned in the Ration Card, respondent No. 5 asserted that the eldest daughter was born 'sometime in 2009' and, therefore, other two children were apparently born after the cut off dated, i.e., 05.04.2008.

9. In respect of Vijay Paswan, the petitioner of CWJC No. 4358 of 2022, respondent No. 5 asserted in her complaint that he was the father of 5 children and his last child was born on 07.07.2013. In support of this claim, respondent No. 5 relied on an entry made in the records maintained by Anganwari Center No. 141 under Naubatput *Nagar Panchayat.*

10. A copy of the complaint filed by respondent No. 5 has been brought on record by way of supplementary affidavit (Annexure-3), in CWJC No. 4030 of 2022.

11. Based on the pleadings on record including the

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averments made in the counter affidavit filed by respondent No. 5 in these cases, the Court has not been able to discern as to when the complaint was filed. It is not clear from the complaint of respondent No. 5 that how was she aggrieved with the election of these petitioners, inasmuch as, there is no disclosure in her complaint that she had either contested for the posts in question or was an elector of either of the wards.

12. Be that as it may, the Court is conscious of the statutory provision under Section 18(2) of the Act which confers jurisdiction upon the State Election Commission to take a decision on the basis of any complaint or information regarding the disqualification of a candidate. The said complaint of respondent No. 5 led to the registration of the case No. 12/2020 before the Commission.

13. As is evident from the complaint filed by respondent No. 5 that she referred to date of birth as mentioned in the School Register with certain interpolations and direct benefit transfer account in respect of the child of the petitioner Saryug Mochi, age as disclosed in the Ration Card in respect of petitioner Punam Devi and entries made in the register of Anganwari Center in respect of Vijay Paswan. The Election Commissioner proceeded on the basis of said complaint with the

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issuance of notices to the petitioners.

14. The petitioners filed their replies to the notices before the Commission denying the allegation of disqualification on the grounds mentioned in the complaint of respondent No. 5.

15. The petitioner, Saryug Mochi asserted in his reply that the date of birth of his last child was 15.03.2008. He relied on a birth certificate issued by the Gram Panchayat, Nisarpur, wherein the date of birth of his last child was recorded as 15.03.2008. He also relied on certificates relating to UTI Mutual Fund purchased in the year 2012 in the name of his last child Swati Kumari in which also her date of birth was mentioned as 15.03.2008. In relation to the interpolations in the admission register maintained by the school, the petitioner Saryug Mochi stated before the State Election Commission stated that a wrong entry made in the admission register was rectified on his request on the basis of valid documents.

16. The petitioner Punam Devi in her reply asserted that one Rohit Kumar, who had been described as her son was, in fact, the son of her brother Santosh Kumar. As her brother Santosh Kumar had lost his wife, he had allowed his son Rohit Kumar to stay with the petitioner Punam Devi. In the said

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background, Rohit Kumar was disclosed in the Ration Card as her dependent and the father's name of said Rohit Kumar was wrongly recorded in the Ration Card. In support of her case, she relied on birth certificate of Rohit Kumar issued by the *Nagar Panchayat*, Vikram on 02.12.2016, wherein his father's name was mentioned as Santosh Sao and mother's as late Urmila Devi. She also relied on a family tree certificate issued by the Circle Officer, Vikram**,** wherein the petitioner's name had been recorded as the grand-daughter Bhagiram Sao and his brother Santosh Sao as grandson of the said Bhagiram Sao.

17. The petitioner Vijay Paswan also disputed the allegation of respondent No. 5 based on the entries made in the register of Anganbari Centre.

18. From the impugned order of the State Election Commissioner, it is clear that the State Election Commissioner adopted a unique method of getting the matter enquired into by the district administration, on the allegations made in the complaint petition by respondent No. 5. There is a brief reference of some evidence recorded in the enquiry report so submitted by the District Election Officer, Patna.

19. The Enquiry Officer in his report recorded that the allegations contained in the Complaint Petition were correct. In

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terms of the opinion recorded in the report, Saryug Mochi had 5 children and the 5th child was born on 05.03.2010. Further, Punam Devi had 3 children, all of whom were born after 2008 and Vijay Paswan with 4 children with the last child born on 07.07.2013. The District Election Officer (Municipality)-cum-District Magistrate, Patna also mentioned in his report that during the course of enquiry, the persons against whom the allegations were made had used abusive language and had resorted to physical assault on the enquiry-team to influence the enquiry. The State Election Commissioner, thereafter, on the basis of analysis of the cases put forth before him by the rival parties and the enquiry report submitted by the District Administration recorded his findings in the impugned order.

20. In the impugned order, the State Election Commissioner accepted the allegation of Respondent that the last child of Saryug Mochi was born on 05.03.2010 and not on 15.03.2008. He based his finding on the entries made in the School Register and documents related to direct benefit transfer under Poshak Yojana. Claim of Saryug Mochi, based on the entries made in the UTI Mutual Fund certificate and immunization documents has been held to be 'illegal'. He refused to accept the birth certificate issued by *Gram*

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Panchayat, Nisarpur on the ground that on the date of issuance of said certificate *Gram Panchayat,* Naubatpur had already come into existence. Similarly, in respect of petitioner Vijay Paswan also, the State Election Commissioner, relying on the entries made in the Anganwari Center No. 141 and entries available in Referral Hospital, Naubatpur accepted the allegation of the complainant and rejected the denial made by the petitioner Vijay Paswan. The case put forth by the petitioner Punam Devi about 'Sanjeev Kumar' has been held to be imaginary.

21. The birth certificate of Sanjeev Kumar has been held to be, according to the State Election Commissioner, an act of afterthought to defend the allegation of disqualification.

22. After having recorded the findings to the aforesaid effect that the petitioners suffered disqualification under Clause (m) of Section 18 (1) of the Act, the State Election Commissioner by the impugned order has directed the removal of these petitioners from the post of Ward Councillors of the aforesaid 3 Wards with the observation that such posts shall be treated to be vacant.

23. Mr. Pushkar Narayan Shahi, learned Senior Counsel appearing on behalf of the petitioner in CWJC No.

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4175 of 2022 has placed heavy reliance on the Full Bench decision of this Court in the case of ***Rajani Kumari*** (supra) to contend that the State Election Commissioner ought not to have gone into the disputed questions of fact in relation to the birth of the petitioner's 5th child in the absence of any unimpeachable material available before the Commission. He has contended that the State Election Commission ought not to have entertained the complaint at all and instead the complainant ought to have been relegated to appropriated Court/Authority for adjudication upon dispute after taking evidences. He has argued that the nature of the dispute raised by the rival parties before the Commission could not have been adjudicated in a summary proceeding without taking evidence of witnesses and permitting parties to cross-examine such witnesses. According to him, the enquiry which was conducted at the instance of the State Election Commission by the District Officials was held behind the back of the petitioner, inasmuch as, the petitioner was not given any opportunity of hearing. He has asserted that the correction in the date of birth recorded in the register of the School was bona fide and was carried out after taking into account the birth certificate issued by the competent authority. He has submitted that the finding recorded by the Commission

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is based on presumption, assumption, and fanciful imagination. In relation to the date of birth of the petitioner's daughter Swati, i.e., 15.03.2008, as recorded in the certificate issued by the *Gram Panchayat,* Naubatpur dated 25.09.2010, he has submitted that the same was issued in accordance with the provisions under the Registration of Births and Deaths Act, 1969 read with the Bihar Registration of Births and Deaths Rule, 1999. He has submitted that the rejection by the State Election Commissioner of the entry made in the birth certificates issued by the *Gram Panchayat* on the ground that on the date of issuance of said certificate, the *Gram Panchayat* was not in existence with the creation of Naubatpur Gram Panchayat is erroneous on the face of it as the said birth certificate was issued by the then Panchayat Secretary, Nisarpur along with 19 other children under the direction of the then Deputy Collector, Danapur as contained in the letter No. 2774 dated 27.08.2010. He has contended that there could be no occasion to enter an incorrect date of birth in the UTI Mutual Fund certificates issued on 10.01.2012 in the name of the petitioner's daughter Swati Kumari which clearly showed her date of birth as 15.03.2008. Said Swati Kumari was vaccinated in State Health Society, Bihar and in the vaccination receipt also, date of birth of Swati

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Kumari is endorsed as 15.03.2008. He has submitted that by no stretch of imagination, date of birth which was incorrectly entered in the School Register and which was subsequently corrected could be treated to be an unimpeachable material for the State Election Commissioner to reach a conclusion that said Swati Kumari was born on 05.03.2010. Such finding, he contends, the Commission could not have recorded without adducement of evidence and without any unimpeachable material available before him.

24. Mr. Rana Vikram Singh, learned counsel for the petitioner in CWJC No. 4030 of 2022, while adopting the submissions advanced by Mr. Pushkar Narayan Shahi, learned Senior Counsel has argued that the finding recorded by the State Election Commissioner that Rohit Kumar was not her son rather the son of her brother and said Rohit Kumar was living with her because of the demise of her brother's wife. Instead of Rohit Kumar, the State Election Commissioner has mentioned Sanjeev Kumar, about whom the petitioner allegedly developed an imaginary story. He has reiterated that such disputed questions of fact ought not to have gone into by the State Election Commissioner in the light of Full Bench Decision in case of ***Rajani Kumari*** (supra).

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25. Ms. Nivedita Nirvikar, learned Senior Counsel appearing on behalf of the petitioner in CWJC No. 4358 of 2022 has referred to the finding recorded by the State Election Commissioner in the impugned order on the point of the petitioner's disqualification and has submitted that the finding is based on the report of the enquiry-team, which enquiry was held behind the petitioner’s back. The State Election Commission ought not to have treated the so-called entry in the register of Anganwari Center of the date of birth, contends she has submitted that no child was born to the petitioner after 05.04.2008 which plea was specifically taken by the petitioner before the State Election Commissioner. She would argue that after learning about the enquiry being conducted by the District Officials, the petitioner had attempted to persuade the enquiry team about the unfounded allegation made by the complainant which was no heeded and an *ex parte* enquiry report was submitted which apparently is the foundation of the finding recorded by the State Election Commissioner. She has placed reliance on a Supreme Court’s decision in the case of ***Roop Singh Negi Vs. Punjab National Bank and Ors.*** reported in ***2009 (2) SCC 570*** submitted that doubt howsoever strong cannot take place of evidence.

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26. Mr. P.K. Shahi, learned Senior Counsel appearing on behalf of respondent No. 5 in CWJC No. 4175 of 2022 has vehemently argued that the petitioner cannot dispute the date of birth as entered in the school register at his instance. He has contended that in order to avoid the consequence of date of birth of his child born after 05.04.2008, the petitioner managed to make interpolations in the admission register interfering with the originally entered date of birth which was based on the information furnished by himself. According to him, the Full Bench decision in the case of ***Rajani Kumari*** (supra) has no application in the facts and circumstances of the present case. He has submitted that the petitioner has placed reliance on a birth certificate issued by the *Gram Panchayat Raj,* Nisarpur which is a fabricated document since one month prior to the application of issuance of birth certificate, the *Gram Panchayat*, Nisarpur was not in existence. He has submitted that since the petitioner has claimed the date of birth of his daughter Swati Kumari to be 15.03.2008 on the basis of fabricated documents, therefore, the finding of the State Election Commissioner to the effect that last child of the petitioner, Swati Kumari, was born after 05.04.2008 cannot be said to be suffering from any infirmity requiring this Court’s interference.

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27. Mr. S.B.K. Manglam, learned counsel has represented respondent No. 5 in CWJC No. 4030 of 2022 and 4358 of 2022 referring to the case of Vijay Paswan, he has submitted that the enquiry was conducted by the District Panchayat Raj Officer in the presence of the writ petitioners and respondent No. 5, a copy of which was made available to the petitioner. Upon hearing the parties in detail, the judgment was reserved. However, the matter was re-heard by the State Election Commission and, whereafter, the judgment was pronounced on 02.03.2022. He has reiterated that the enquiry was held by the Panchayat Raj Officer in the presence of this petitioner. He has relied on the counter affidavit filed on behalf of the respondent No. 5 in support of his contentions. In relation to the case of Punam Devi, he has contended that it is evident on analysis of the Ration Card that the petitioner had 3 children one of whom was born after 05.04.2008. He has submitted that there is no illegality in the impugned finding recorded by the State Election Commissioner.

28. Mr. Sanjeev Nikesh, learned counsel appearing on behalf of the petitioner has submitted that the impugned order of the Commission has been passed after hearing the parties and the petitioners, at no point of time, took a plea before the

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Commission that report of the District Panchayat Raj Officer was not supplied to them nor any objection raised in this regard. He has contended that the finding recorded by the State Election Commissioner at the point of disqualification of the petitioners is based on materials which were available before him and do not require any interference by this Court in the present proceeding under Article 226 of the Constitution of India.

29. After having examined the pleading on record, substance of which has been referred to hereinabove and the submission advanced on behalf of the parties, it is crystal clear that the complaint of respondent No. 5 raising the issue of disqualification on the ground of operation of Clause (m) of Section 18 (1) of the Act was based on the entries in the admission register, Anganbari Center, Ration Card, etc.. The entries in the school admission register maintained by the School was got corrected at the instance of petitioner Saryug Mochi which fact is being disputed by respondent No. 5 alleging it to be a case of interpolation/illegal interference with the documents. Punam Devi has asserted before the State Election Commissioner that Rohit Kumar, whose name figured in the Ration Card was not her son rather son of her brother who was dependent on her. The State Election Commissioner, in his

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judgment, rejected the claim of Punam Devi recording a finding that the story developed by her about 'Sanjeev Kumar' was imaginary though no such story was developed by her. The entry in the Referral Hospital about birth of a child to Vijay Paswan was disputed by Vijay Paswan which has been rejected by the State Election Commissioner on the basis of the report of Panchayat Raj Officer. In this view of the matter, the question which has arisen is whether, there was such unimpeachable material available before the State Election Commissioner as would have authorized him to exercise jurisdiction under sub-section (2) of Section 18 of the Act.

30. The very fact that the State Election Commissioner required an enquiry to be held on the basis of the complaint made by respondent No. 5 suggests that the materials produced by respondent No. 5 before the State Election Commissioner in his/her opinion were not unimpeachable for him to exercise his powers under sub-section (2) of Section 18 of the Act, rather the same required verification by way of an enquiry. Had it been otherwise, the State Election Commissioner could have proceeded on the basis of such materials, which in his opinion were unimpeachable, by taking a decision after giving an opportunity of hearing to the petitioners.

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31. Whether the enquiry held at the district level at the instance of State Election Commissioner was an *ex parte* enquiry or the petitioners had participated in the said enquiry can be deciphered from the impugned order of the State Election Commissioner and the counter affidavits filed on behalf of the State Election Commission in these cases. It is to be noted that, whereas, the petitioner have alleged that the enquiry was held *ex parte*, it is the case of private respondent No. 5 that the petitioners had participated in the enquiry and copies of the enquiry report were furnished to them. The impugned order, however, does not indicate any opportunity given to the petitioners to participate in the so-called enquiry ordered by the State Election Commission. In such situation, we record without any demur that the petitioners were not given any opportunity to participate in the so-called enquiry ordered by the State Election Commission. The impugned order does not disclose that the enquiry report was ever supplied to them. In the counter affidavit filed on behalf of the State Election Commission, there is no clear averment that the petitioners were given a opportunity to participate in the enquiry conducted at the district level. The only plea which has been taken in the counter affidavit is that the petitioner did not raise before the State

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Election Commission any objection to the effect that the enquiry report was *ex parte,* which was not supplied to them.

32. Whether the children were born to the petitioner after the cut-off date i.e. 05.04.2008. So as to attract disqualification by operation of Clause (m) of Section 18 (1) of the Act is the dispute which is at the core of the controversy involved in the present case. The allegations made by the complainant against these petitioners alleging disqualification under Clause (m) of Section 18 (1) were based on certain materials which were disputed by the petitioners. The materials which were placed by respondent No. 5, the complainant can not be said to be unimpeachable to the extent that the same could not be disputed. The nature of disputes raised by the petitioners as noted above cannot be said to be completely unfounded to be brushed aside at the threshold,on the ground that materials brought before the State Election Commission by the complainant were unimpeachable in nature.

33. In the Court's opinion, the State Election Commission proceeded casually in considering the serious allegation of statutory disqualification under Clause (m) of Section 18 (1) of the Act by referring the matter to the District Election Officer (Municipality)-cum-District Magistrate, Patna

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for a fact finding enquiry. The State Election Commissioner, apparently, ignored the authoritative pronouncement of law laid down by Full Bench of this Court in the case of ***Rajani Kumari*** (supra) which has held in no uncertain terms that the Commission can proceed to consider the issue of disqualification on the basis of unimpeachable materials only. In no ambiguous terms, the Full Bench in the case of ***Rajani Kumari*** (supra) has held that whenever a disputed question of fact 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 parties to a Competent Court/Tribunal or a fact-finding body competent to decide such contentious issues after taking evidence. The Full Bench is in clear terms held that till such time such contentious issues are decided after taking evidences, the Commission shall not take a decision on such complaint either *suo motu* or otherwise. The Commission, it seems, was totally unmindful of the significance of these observations made in the case of ***Rajani Kumari*** (supra) in which the Commission was the first respondent.

34. It may be noted that in case of ***Purohit Lal Gupta Vs. Dharamsheela Devi and Ors.*** reported in ***2015(4) PLJR***

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933, a Co-ordinate Bench of this Court deprecated the conduct of the Election Commission in undertaking fishy enquiry based on which the first respondent was held to be disqualified to contest the Municipal Election in which he was declared elected.

35. In view of the discussions above, the impugned order, in our opinion, is unsustainable being beyond jurisdiction in view of the law laid down by the Full Bench in case of ***Rajani Kumari*** (supra). In the Court's opinion, the authority exercising power under Section 18(2) of the Act by invoking Clause (m) of Section 18 (1) of the Act must always keep in mind the disasterous consequences of a declaration made in respect of date of birth of a child to a person before or after cut off date, i.e., 05.04.2008. Once, there is a finding recorded by the Commissioner that a person is disqualified by operation of Clause (m) of Section 18(1) of the Act, such disqualification shall permanently debar him to contest a Panchayat/Municipal Election. Further, such finding would also have serious bearing on the date of birth of such child/children for their own purpose on various counts. A conclusive finding recorded by Statutory Authority touching the date of birth of such persons is capable of creating multifaceted complications. In such view of the matter, extra care and caution is required by the authorities in

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determining such disputes exercising power under Section 18 (2) of the Act by applying Clause (m) of Section 18 (1) of the Act. More serious the consequence the stricter must be the degree of proof. In the present case, not only that the State Election Commissioner overlooked the Full Bench decision rendered in case of ***Rajani Kumari*** (supra) for the purpose of resolution of dispute in the light of the complaint made by respondent No. 5 and resistance made by the petitioner to such complaint, he undertook a casual procedure of causing an *ex parte* fact finding enquiry through the District Magistrate-cum-District Election Officer (Municipality).

36. From careful reading of the impugned order, we have noticed that the same does not disclose issuance of any notice to these petitioners for their participation in the enquiry conducted at the district administration level.

37. In view of the aforesaid discussion, in our opinion, the impugned order is unsustainable being illegal, arbitrary and in violation of principles of natural justice as well as contrary to the law laid down by the Full Bench in the case of ***Rajani Kumari*** (supra). Accordingly, the impugned order dated 02.03.2022 passed by the State Election Commissioner, Bihar in case No. 12/20 is hereby set aside. The consequences of

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quashing of the said order dated 02.03.2022 shall follow.

38. These applications are accordingly allowed with a cost of Rs. 5,000/- (Rupees Five Thousand Only) each payable to the petitioners by the State Election Commission. The cost must be paid within one month from the date of receipt/production of a copy of this order.

39. We have considered imposing cost as we are of the view that the Commission has comletely ignored the enunciation of law by the Full Bench of this Court in the case of ***Rajani Kumari*** (supra) in which the Commission was the first respondent.

(Chakradhari Sharan Singh, J)

I agree
Madhuresh Prasad, J:-

(Madhuresh Prasad, J)

K.K.RAO/-

AFR/NAFR	NAFR
CAV DATE	11.04.2022
Uploading Date	11.05.2022
Transmission Date	N/A

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