

IN THE HIGH COURT OF JUDICATURE AT PATNA

Manik Lal Prasad

vs.

The State of Bihar And Ors

CIVIL WRIT JURISDICTION CASE NO. 13098 OF 2024

05 December, 2024

(Hon'ble Mr. Justice Nawneet Kumar Pandey)

Issue for Consideration

Whether rejection of nomination paper of petitioner by Returning Officer was correct or not?

Headnotes

Constitution of India, 1950—Article 226—Bihar Municipal Act, 2007—Section 25—Panchayat Election—petitioner was elected as Ward Councillor—thereafter, he contested for the post of Chief Councillor and was elected with majority of the votes—he was removed by no-confidence motion—another member was also removed by no-confidence motion—thereafter, post of the Chief Councillor had fallen vacant—Commission notified the date of election—only two candidates filed their nomination papers for contesting the election and no other nomination was filed—during the course of scrutiny, Returning Officer rejected the application of petitioner on a solitary ground that ‘no confidence motion’ was passed against the petitioner—a person who has been removed from his office on the basis of a no-confidence motion is not debarred from contesting the election—Returning Officer has committed dereliction of duty.

Held: normally, Writ Courts are not exercising jurisdiction for determining the validity of an election, but in extremely exceptional circumstances, the Court are not debarred from invoking jurisdiction under Article 226 of the Constitution of India, 1950—State Election Commission is itself of the opinion that the Returning Officer has committed dereliction of duty and has misused his powers—Returning Officer was aware of the fact that if the nomination paper of the petitioner was rejected, the another candidate would become successful, even without election as only two candidates were left in the electoral arena/fray—writ application—allowed—order rejecting the nomination paper of the petitioner quashed—election of the respondent no.7 for the post of Chief Councillor also quashed with direction to initiate fresh election.

(Paras 20, 22, 23)

Case Law Cited

Vinay Kumar Pappu vs. State Election Commission, Bihar (CWJC No. 12051 of 2015 and its another analogous case); Rama Ballabh Singh Keshri vs. State of Bihar and Others, **2001(2) PLJR 267**; Kuldip Kumar vs. U.T. Chandigarh and Others, **(2024) 3 SCC 526**; N. S. Madhavan vs. Shyamdeo Prasad and Others, **2010 (3) PLJR 578**; Praful Chandra Sudhanshu vs. State Election Commission (Municipality) and Others, **2013 (2) PLJR 114**; Jyoti Basu and Others vs. Debi Ghosal and Others, **AIR 1982 SC 983**; N. P. Ponnuswami vs. The Returning Officer Namakkal, **AIR (39) 1952, SC 64**; Vishwanath Pratap Singh vs. Election Commission of India and Another (Special Leave to Appeal (C) No(s). **13013/2022**, the order dated **09.09.2022**); Sandip Kumar vs. Vinod and Others (Special Leave to Appeal (C) No(s). **15393/2024**, the order dated **10.09.2024**); Jawahar Kumar Jha vs. Election Commission of India and Others (Writ Petition(s) (Civil) No(s). **237/2024**, the order dated **19.04.2024**); Laxmibai vs. Collector, Nanded and Others, **AIR 2020 SC 3393: AIR Online 2020 SC 202—Referred To.**

List of Acts

Bihar Municipal Act, 2007; Bihar Municipal Election Rules, 2007; Representation of the People Act, 1951,

List of Keywords

No-Confidence Motion; Election; Returning Officer; Ward Councillor; Chief Councillor.

Case Arising From

From order of rejection of nomination paper of petitioner by Returning Officer.

Appearances for Parties

For the Petitioner: M. S.B.K.Mangalam; Mr. Awnish Kumar; Mr. Kumar Gaurav; Mr. Vikash Kumar Singh

For the State Election Authority: Mr. Ravi Ranjan; Mr. Girish Pandey

For the Respondent No.7: Mr. Amit Shrivastava, Sr. Advocate; Ranjeet Choubey

For the State: Mr. Ramadhar Singh, GP 25

For the Nagar Panchayat (Khushrupur): Mr.Ashok Kumar

Headnotes prepared by Reporter:- Abhash Chandra, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13098 of 2024

Manik Lal Prasad Son of Late Mahendra Prasad, resident of Ward No.3, Badi Sangat, Chakchanda, P.O. and P.S. Khusrupur, District- Patna, presently Ward Councilor, Nagar Panchayat, Khusrupur, P.O. and P.S. - Khusrupur, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The District Magistrate-cum-District Election Officer (Municipality), Patna District- Patna.
4. The District Land Acquisition Officer-cum-Returning Officer, Patna District- Patna.
5. Nagar Panchayat, Khusrupur, P.O. and P.S. - Khusrupur, District - Patna through the Executive Officer.
6. The Executive Officer Nagar Panchayat, Khusrupur, P.O. and P.S. Khusrupur, District - Patna.
7. Guddu Kumar, Son of Dinanath Prasad, Presently Chief Councilor, Nagar Panchayat, Khusrupur, P.O. and P.S.- Khusrupur, District- Patna.
8. The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna through the Secretary.
9. The Secretary, The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	M. S.B.K.Mangalam Mr.Awnish Kumar Mr. Kumar Gaurav Mr. Vikash Kumar Singh
For the State Election Authority		Mr. Ravi Ranjan Mr. Girish Pandey
For Respondent No.7		Mr. Amit Shrivastava, Sr. Advocate Mr. Ranjeet Choubey
For the State		Mr. Ramadhar Singh, GP 25
For Nagar Panchayat (Khushrupur)		Mr.Ashok Kumar

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

CAV ORDER

9 05-12-2024

I have already heard Mr. S.B.K. Mangalam, the



learned counsel for the petitioner, Mr. Amit Shrivastava, the learned senior counsel for respondent no.7 and Mr. Ravi Ranjan, the learned counsel for the State Election Commission (Municipality), hereinafter to be referred to as 'the Commission' as well as the learned counsel for the State.

2. The petitioner has filed the present writ application for the following reliefs:-

(I) for issuance of an appropriate writ in the nature of CERTIORARI for quashing the order dated 17.08.2024 passed by the Respondent no.4 in the capacity of Returning Officer to conduct the election for the vacant post of Chief Councilor of Khusrupur Nagar Panchayat whereby and where under Respondent no.4 was pleased to reject the nomination of the petitioner to contest for the post of Chief Councilor on the ground that the petitioner was removed from the post of Chief Councilor on 26.04.2022 when a motion of No Confidence was passed against him.

(II) for issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent no.4 to bring on record the result of the election dated 17.08.2024 by which the Respondent no.4 was pleased to declare the Respondent no.7



elected uncontested for the post of Chief Councilor of Khusrupur Nagar Panchayat and on production the same may be quashed by issuance of an appropriate writ in the nature of CERTIORARI on the ground that the uncontested election of the Respondent no.7 as the Chief Councilor of Khusrupur Nagar Panchayat was in a fortuous circumstance because of improper and illegal rejection of petitioner's nomination and there his election as the Chief Councilor cannot be sustained in law.

(III) for issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent nos. 8 and 9 to hold a fresh election for the post of Chief Councilor of Khusrupur Nagar Panchayat in accordance with law.

(IV) For issuance of any other appropriate writ/writs, order/ orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”

3. The brief case of the petitioner is that the petitioner Manik Lal Prasad was elected as Ward Councillor of Khusrupur Nagar Panchayat in the election held in March, 2020. Thereafter, he contested for the post of Chief Councillor of the said Nagar Panchayat and was elected with majority of the



votes. Soon after completion of two years of terms of his office as Chief Councillor, a 'no-confidence motion' was passed against him and the petitioner was removed from his post on 26.04.2022. Thereafter, one Smt. Ranju Singh was elected as Chief Councillor of the said Nagar Panchayat. Smt. Ranju Singh had completed two years term in the office of the Chief Councillor and a 'no-confidence motion' was brought also against her. She was also removed from the said post, since the majority of the Ward Councillors did cast their votes in support of the 'no-confidence motion. Thereafter, the post of the Chief Councillor had fallen vacant. After removal of Smt. Ranju Singh, the Commission notified the date of election on 17.08.2024 and respondent no.4 was the Returning Officer of the election. Only two persons, the petitioner and respondent no.7, filed their nomination papers for contesting the election and no other nomination was filed. During the course of scrutiny, the Returning Officer arbitrarily rejected the petitioner's nomination on a solitary illegal ground that 'no-confidence motion' was passed against the petitioner. The decision of rejection of the nomination by the respondent no.4 was *mala fide* and only with intention to declare respondent no.7 as duly elected Chief Councillor as uncontested for the reasons



that respondent nos. 4 and 7 were aware that majority of the Ward Councillors had made up their minds to support the petitioner in the election. The respondent no.4 rejected the nomination of the petitioner on the ground that earlier the petitioner was removed from the post of Chief Councillor on 26.04.2022, therefore, he is not eligible for re-election as per provision of Section 25(5) of the Bihar Municipal (Amendment) Act, 2022 (hereinafter to be referred to as 'the (Amendment) Act 2022'.

4. The old Section 25 of the Bihar Municipal Act, 2007 (for short 'the Act of 2007'), was substituted by Section 8 of 'the (Amendment) Act 2022', which is as follows:-

“.....25 (1) The Chief Councillor and Deputy Chief Councillor may resign his office by writing under his hand addressed to the Government.

25 (2) Every resignation under sub-section (1) shall take effect on the expiry of seven days from the date of such resignation, unless within the said period of seven days he withdraws such resignation by writing under his hand addressed to the Government.

25 (3) The Chief Councillor/Deputy Chief Councillor may be removed from office by a resolution carried by a majority of the whole number of Councillors holding office for the time being at a special meeting to be called for this purpose in the manner prescribed, upon a requisition made in writing by not



less than one third of the total number of Councillors, and the procedure for the conduct of business in the special meeting shall be such as may be prescribed;

Provided that a no confidence motion shall not be brought against the Chief Councillor/Deputy Chief Councillor within a period of two years of taking over charge of the post;

Provided further that a no confidence motion shall not be brought again within one year of the first no confidence motion;

Provided further also that no confidence motion shall not be brought within the residual period of six months of the municipality;

Provided further also that a no confidence motion shall not be brought against the direct elected Chief Councillor/Deputy Chief Councillor.

25 (4) Without prejudice to the provisions under this Act, if, in opinion of the Government having territorial jurisdiction over the Municipality the Chief Councillor/Deputy Chief Councillor absents himself without sufficient cause for more than three consecutive meetings or sittings or wilfully omits or refuses to perform his duties and functions under this Act, or is found to be guilty of misconduct in the discharge of his duties or becomes physically or mentally incapacitated for performing his duties or is absconding being an accused in a criminal case for more than six months, the Government may, after giving the Chief Councillor/Deputy Chief Councillor a reasonable opportunity for explanation, by order, remove such Chief Councillor/Deputy Chief Councillor from office.



Provided that after appointment of Lok Prahari, under Section 44, the Government, may pass order under this sub-section only on the basis of recommendation of such Lok Prahari.

25 (5) The Chief Councillor/Deputy Chief Councillor so removed shall not be eligible for re-election as Chief Councillor/Deputy Chief Councillor during the remaining term of office of such Municipality.

5. Mr. Mangalam, the learned counsel for the petitioner submitted that bare perusal of Section 25(5) shows that the person removed from his office is debarred only for remaining period of office. His further submission is that the phrase **“so removed”** used in Section 25(5) is related to a person removed under Section 25(4) and not a person who was removed under Section 25(3) on the basis of a no-confidence motion. The learned counsel has submitted that the co-ordinate Bench of this Court in the case of ***Vinay Kumar Pappu Vs. State Election Commission, Bihar (CWJC No. 12051 of 2015 and its another analogous case)*** has clarified the position. As per this decision, a person who has been removed from his office on the basis of a no-confidence motion is not debarred from contesting the election. The act of the Returning Officer was *mala fide* as he was aware of the fact that only two candidates had filed their nomination and if one nomination paper is rejected, the other



would be declared as a successful. By drawing my attention towards Annexure-R8-2, Mr. Mangalam stated that the State Election Authority itself found that the Returning Officer had committed gross dereliction of his duties and he misused his discretion.

6. Annexure-R8-2 is letter no. न. नि. 50-15/2015 3654 dated 27.09.2024 sent by the Officer-on-Special Duty, State Election Commission, Bihar, to the District Election Officer (Municipality)-cum-District Magistrate Patna, which is being extracted hereinbelow: -

“ राज्य निर्वाचन आयोग
बिहार

STATE ELECTION COMMISSION
BIHAR

पत्र संख्या- न. नि. 50-15/2015 3654
प्रेषक,

संजय कुमार (भा0प्र0से0),
विशेष कार्य पदाधिकारी,
राज्य निर्वाचन आयोग, बिहार।

सेवा में,

जिला निर्वाचन पदाधिकारी (नगरपालिका)
-सह-जिला पदाधिकारी, पटना।

पटना, दिनांक 27.09.2024

विषय:- नगर पंचायत-खुशरूपुर के मुख्य पार्षद के रिक्त पद पर निर्वाचन हेतु दिये गये नामांकन पत्र गलत आधार पर अस्वीकृत करने के संबंध में।

प्रसंग:- आपका पत्रांक-4688 दिनांक 09.09.2024 तथा श्री मानिक लाल प्रसाद, वार्ड पार्षद, नगर पंचायत-खुशरूपुर का अभ्यावेदन दिनांक -22.08.2024।

महाशय,

निदेशानुसार उपर्युक्त विषयक श्री मानिक लाल प्रसाद, वार्ड पार्षद, नगर पंचायत- खुशरूपुर से प्राप्त परिवाद पत्र के आलोक में आपके द्वारा प्रासंगिक पत्र के माध्यम से दिनांक-17.08.2024 को निर्वाचन हेतु अपनाई गयी सम्पूर्ण



प्रक्रिया से संबंधित अभिलेखों को प्राप्त कराया गया, जिसकी समीक्षा आयोग स्तर पर की गयी, तो यह पाया गया कि श्री रंजन कुमार चौधरी, जिला भू-अर्जन पदाधिकारी-सह-निर्वाची पदाधिकारी, नगर पंचायत-खुशरूपुर द्वारा बिहार नगरपालिका अधिनियम-2007 (यथा संशोधित) की धारा-25(5) के गलत निर्वचन करते हुए श्री मानिक लाल प्रसाद, वार्ड पार्षद नगर, पंचायत-खुशरूपुर के नामांकन पत्र को अस्वीकृत कर दिया गया है, जबकि मुख्य पार्षद के पद हेतु मात्र दो नामांकन ही प्राप्त हुए थे।

बिहार नगरपालिका अधिनियम-2007 (यथा संशोधित) की धारा-25(5) (संशोधन पूर्व 25(6) का निर्वचन माननीय उच्च न्यायालय, पटना द्वारा C.W.J.C. No-12051/2015 एवं C.W.J.C. No-19507/2014 में पारित न्याय निर्णय दिनांक-30.11.2015 को किया जा चुका है। (छायाप्रति संलग्न)।

उक्त वर्णित स्थिति में जबकि मुख्य पार्षद के पद पर निर्वाचन हेतु मात्र दो नामांकन प्राप्त हुए थे तथा किसी एक के अस्वीकृत या खारिज होने पर निर्विरोध निर्वाचन की स्थिति पैदा होने वाली थी, तो ऐसी स्थिति में निर्वाची पदाधिकारी का उत्तरदायित्व था कि तकनीकी आधार पर नामांकन को अस्वीकृत करने के पूर्व इस बात का पूर्ण रूपेण समाधान कर लिया जाए की अस्वीकृति वैधानिक रूप से शत-प्रतिशत न्यायोचित है, परन्तु निर्वाची पदाधिकारी द्वारा अपने पदीय दायित्व के निर्वहन तथा वैधानिक रूप से प्रदत्त स्वविवेक की शक्ति का दुरुपयोग किया गया, क्योंकि इस संबंध में न तो उनके द्वारा आपसे और न ही आयोग से किसी प्रकार का मार्गदर्शन प्राप्त किया गया। साथ ही मुख्य पार्षद के निर्वाचन के समय प्रतिनियुक्त पर्यवेक्षक द्वारा भी निर्वाची पदाधिकारी के निर्णय में चूक एवं विवेकाधिकार के दुरुपयोग किये जाने की सूचना आपको तथा आयोग को नहीं दिया गया बल्कि निर्वाची पदाधिकारी के निर्णय पर ही सहमति दिया गया जो उनके द्वारा पदीय दायित्वों के निर्वहन में असफलता को दर्शाता है।

अतएव अनुरोध है कि श्री रंजन कुमार चौधरी, जिला भू-अर्जन पदाधिकारी-सह-निर्वाची पदाधिकारी, नगर पंचायत-खुशरूपुर से उनके उक्त पदीय दायित्व के निर्वहन में चूक तथा विवेकाधिकार के दुरुपयोग से निर्वाचन परिणाम को प्रभावित करने के प्रथम दृष्टया प्रमाणित आरोप के आलोक में एवं श्री पुष्पेश कुमार, अपर समाहर्ता, विभागीय जांच, पटना को इस संबंध में सूचित नहीं करने के संबंध में स्पष्टीकरण प्राप्त करते हुए अपने स्पष्ट मंतव्य के साथ प्रतिवेदन 10 दिनों के अन्दर उपलब्ध कराने की कृपा की जाए, ताकि अग्रेतर कार्रवाई सुनिश्चित की जा सके।

अनुलग्नक:- यथोक्त।”

7. Mr. Mangalam, the learned counsel submitted that bare perusal of the letter of the Officer-on-Special Duty of the



State Election Commission shows that the Returning Officer has committed grave error in discharge of his official duty and he misused his powers and discretion. As such, it is a peculiar case in which the writ jurisdiction may be invoked.

8. Mr. Amit Shrivastava, the learned senior counsel, appearing for respondent no.7, has submitted that however erroneous the act of the Returning Officer might be, it cannot be challenged in the writ jurisdiction. The learned senior counsel submitted further that after election of a candidate, the only remedy available to an aggrieved person is to file an election petition. Except an election petition, the election of an elected candidate cannot be challenged. Learned senior counsel drew my attention towards Section 478 of 'the Act 2007' read with Rule 102 of Bihar Municipal Election Rules, 2007 (for short 'the Rules, 2007'), and submits that these provisions provide in explicit and unambiguous terms that the election of office of the Municipal Councillor, Chief Councillor or Deputy Chief Councillor cannot be challenged except by way of an election petition. The learned senior counsel has submitted that the opening line of Section 478 of 'the Act 2007' starts with *non obstante* clause. Clause (b) of Section 478 of 'the Act 2007' makes clear that the Election of Municipality cannot be called in



question, except otherwise than an election petition. For ready reference, Clause (b) of Section 478 of 'the Act 2007' and Rule 102 of 'the Rules 2007, are being extracted hereinbelow:-

“478. Bar to interfere by Courts in electoral matters.-Notwithstanding anything contained in this Act.-

(a) xxx xxx xxx

(b) no election to any Municipality shall be called in question except by an election petition presented to the Prescribed Authority under this Act.”

Rule 102 of 'the Rules 2007' reads as under:-

“102. Election Petitions.- *No election to the office of the Municipal Councillor, Chief Councillor or Deputy Chief Councillor under these Rules shall be called in question except by an election petition presented in accordance with this part.”*

9. Mr. Shrivastava relied upon a decision of Hon'ble the Supreme Court in the case of ***Jyoti Basu and others Vs. Debi Ghosal and others***, reported in ***AIR 1982 S.C. 983***. In para-4 of the decision it has been held that no election to either house of the Legislature of a State shall be called in question, except by an election petition. The learned senior counsel submitted that though the decision of Hon'ble the



Supreme Court relates to the Representation of the People Act, 1951 (for short 'the Act of 1951', but the provisions of Section 478 of 'the Act 2007' and Rule 102 of 'the Rules 2007' are in *pari materia* with Section 80 of 'the Act of 1951'.

The relevant Section 80 of 'the Act of 1951' is being extracted hereunder:-

“80. Election petition.- No election shall be called in question except by an election petition presented in accordance with the provisions of this part.”

In the case of ***Jyoti Basu*** (supra), the election of one successful candidate of Lok Sabha was challenged by the election petitioner, making allegation that corrupt practices were made in collusion with the then Chief Minister of West Bengal and one of the Ministers of the State. The election petitioner impleaded the Chief Minister and the said Minister as respondents in his election petition. The Hon'ble Supreme Court held that they are not necessary parties. The necessary parties are only those who have been mentioned in Section 82 of 'the Act of 1951'.

The second decision relied upon by Mr. Shrivastava is the case of ***N.P.Ponnuswami Vs. The Returning Officer Namakkal (AIR (39) 1952, SC 64)***. By drawing my attention



towards para 16(2) of that decision, Mr. Shrivastava has submitted that the Hon'ble Supreme Court has held that the election can be called in question only by way of an election petition. Paragraph No. 16(2) of the said decision is being extracted hereinbelow:-

“16(2) In conformity with this principles, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the “election”, and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the “election” and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any Court while the election is in progress.”

10. Mr. Shrivastava Submitted that in *pari materia* provision, the Hon'ble Supreme Court held that the election of an elected candidate can only be challenged by way of an election petition and the *ratio decidendi* of those cases must be followed in the present case.

11. Mr. Shrivastava has also relied upon three recent



decisions of Hon'ble the Supreme Court, which are detailed as under:-

(i) The first case is of ***Vishwanath Pratap Singh Vs. Election Commission of India and another (Special Leave to Appeal (c) No(s). 13013/2022, the order dated 09.09.2022***). In this case, the petitioner was not allowed to file nomination for the office of Rajya Sabha member, as there was no proposer for him. The Hon'ble Supreme Court not only dismissed his Special Leave to Appeal but also imposed a cost of Rs. 1,00,000/-.

(ii) The second decision is ***Sandip Kumar Vs. Vinod and others (Special Leave to Appeal (c) No(s). 15393/2024, the order dated 10.09.2024***), in which the Hon'ble Supreme Court declined to interfere with the order, rejecting the nomination paper of a candidate, an aspirant for the post of Sarpanch on the ground that he had not done the matriculation from a recognized Board, which was mandatory qualification.



(iii) The third decision is of ***Jawahar Kumar Jha Vs. Election Commission of India and others (Writ petition(s) (Civil) No(s). 237/2024, the order dated 19.04.2024***), in which the Hon'ble Supreme Court declined to interfere with the order of rejection of nomination papers of a candidate in parliamentary election from Banka Constituency in Bihar.

12. After relying upon aforesaid decisions, Mr. Shrivastava, the learned senior counsel submitted that the precedent settled by the Hon'ble Supreme Court makes it clear that the courts are not interfering with the order of improper rejection or improper acceptance of the nomination papers. He also relied upon a decision of the Hon'ble Supreme Court in case of ***Laxmibai Vs. Collector, Nanded and others (AIR 2020 SC 3393;AIR Online 2020 SC 202***. He submitted that in case of ***Laxmibai*** (supra) after relying upon the decisions of ***Jyoti Basu*** (supra) and ***N.P.Ponnuswami*** (supra), the Hon'ble Supreme Court in a *para materia* provision held that no election of either house shall be called in question, except by an election petition and it has been held that Article 226 of the Constitution of India



has been pushed out where dispute takes the form of calling in question an election, except in special situations pointed out, but left unexplored. Para-40 of the decision rendered by the Apex Court in ***Laxmibai*** (supra) is being extracted hereinbelow:-

“40. A Constitution Bench in Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors. examined the N.P. Ponnuswami's case and held that Article 329 of the Constitution of India starts with a non obstante clause that notwithstanding contained in this Constitution, no election to either house shall be called in question except by an election petition. Therefore, Article 226 of the Constitution of India stands pushed out where the dispute takes the form of calling in question an election, except in special situations pointed out but left unexplored in Ponnuswami. It was held that there is a remedy for every wrong done during the election in progress although it is postponed to the post-election stage. The Election Tribunal has powers to give relief to an aggrieved candidate.”

13. Mr. Shrivastava submitted that, as per the settled proposition, the election of an elected candidate cannot be called in question, except by way of an election petition.

14. Mr. Ravi Ranjan, the learned counsel, appearing for respondent no. 8, the State Election Commission (Municipality) submitted that the Commission is of the *prima facie* view that the Returning Officer has committed dereliction



of duty and he misused the discretion while discharging his official duties. The Election Commission has issued a letter, calling for an explanation from the Returning Officer (respondent no.4). He submitted further that despite all the things, the present case cannot be said to be rarest of rare and exceptional case. Though the constitutional courts used to interfere with the election but it is not a normal phenomenon. Only in the extreme exceptional circumstances, the constitutional courts used to do so. The learned counsel has submitted further that it might be a case of misconceived interpretation of the phrase “**so removed**” used in Section 25(5) of the Act by the Returning Officer (respondent no.4), but on this ground the jurisdiction vested in this Court under Article 226 of the Constitution of India is not required to be exercised. Mr. Mangalam, the learned counsel for the petitioner, in reply, has submitted that the Returning Officer was not misconceived about the provision of Section 25 (5) of the Act which shows from the counter affidavits filed by the respondent nos. 3 and 4. Respondent no.3 is the District Magistrate-cum-District Election Officer (Municipality), Patna and respondent no.4 is the Returning Officer himself. In their joint counter affidavits, they specifically mentioned that the reason for rejecting the



nomination paper of the petitioner was his disqualification under Section 25(5) of the Act. Mr. Mangalam has submitted that respondent nos. 3 and 4 have not stated in their counter affidavits that due to misconception of law the nomination paper of the petitioner was rejected. He submitted that the conduct of the respondent no.4 shows that his act was intentional and deliberate.

15. Mr. Mangalam, the learned counsel for the petitioner submitted that what a peculiar circumstance may arise worse than the present case, in which the Returning Officer in collusion with respondent no.7, rejected the nomination paper of the petitioner with intent to benefit the respondent no.7 as only two candidates were left in the electoral fray/arena.

16. Mr. Mangalam has relied upon a decision of the Division Bench of this Court in case of ***Rama Ballabh Singh Keshri Vs. State of Bihar and others***, reported in ***2001(2) PLJR 267***, in which the Returning Officer had rejected the nomination paper of a candidate for election to the post of Mukhiya on the ground that he had submitted the nomination papers in four sets, where only two sets were required as per the Rule 39(2) of the Bihar Panchayat Election Rules, 1995.

The Division Bench in ***Rama Ballabh Singh***



Keshri (supra) held as follows:-

“.....The law is well settled that when the election process has started, this Court will not interfere in the matter unless the same has resulted in manifest injustice. In the present case, the nomination paper of the appellant has been rejected on the ground of violation of Rule 39(2) of the Rules which provides that no candidate will file more than two sets of nomination papers. In this case, the appellant has filed four sets of nomination papers. In our view, the appellant has filed two more sets than required according to the aforesaid Rules and in that case the Returning Officer should have rejected the excess sets of nomination papers instead of rejecting the nomination paper of the appellant. The present case is one case where non-interference will result in miscarriage of justice and is unconscionable. There appears to be a complete non-application of mind on the part of Returning Officer.”

17. Mr. Mangalam submitted further that if there is gross injustice, this Court should invoke its power under Article 226 of the Constitution of India. He also relied upon a decision of Hon'ble the Supreme Court in case of **Kuldip Kumar Vs. U.T. Chandigarh and others**, reported in **2024(3) SCC 526**. In that case, there was an allegation of malpractice during



counting of votes. The Hon'ble Supreme Court not only set aside the election of the returned candidate, but also declared the appellant in that case as validly elected candidate and also directed for criminal proceeding under Section 340 of the Code of Criminal Procedure, 1973. The relevant para-39 and 40 of the said decision are reproduced hereinbelow:-

“39. We accordingly order and direct that the result of the election as declared by the Presiding Officer shall stand quashed and set aside. The Appellant, Kuldeep Kumar, is declared to be the validly elected candidate for election as Mayor of the Chandigarh Municipal Corporation.

40. Further, we are of the considered view that a fit and proper case is made out for Invoking the jurisdiction of this Court Under Section 340 of the Code of Criminal Procedure 1973 in respect of the conduct of Shri Anil Masih, the Presiding Officer. In paragraph 2 of the order dated 19 February, 2024, we have recorded the statement which was made by the Presiding Officer when he appeared personally before this Court. As Presiding Officer, Shri Anil Masih could not have been unmindful of the consequences of making a statement which, prima facie, appears to be false to his knowledge in the course of judicial proceedings.



18. By drawing my attention towards the case of *N.S.Madhavan Vs.Shyamdeo Prasad and others*, reported in *2010 (3) PLJR 578*, Mr. Mangalam has submitted that in para-20 of that decision the Hon'ble Division Bench of this Court held that though only remedy in case of improper acceptance or improper rejection of nomination papers is by way of an election petition, however, when there are exceptional circumstances the writ court would not refuse the writ. Para-20 of this decision is being extracted hereinbelow:-

“.....The issue of rejection or acceptance of the nomination paper can be raised in an election dispute. However, when there are exceptional circumstances the writ court would not refuse to entertain the writ. If such circumstances exist, the alternative remedy can be by-passed. For taking the path of departure, there should be circumstances which would justify the same.”

19. Mr. Mangalam has also relied upon the case of *Praful Chandra Sudhanshu Vs. State Election Commission (Municipality) and others*, reported in *2013 (2) PLJR 114*. In this case, the petitioner *Praful Chandra Sudhanshu* had filed his nomination papers for the election to the post of Councillor



of Ward No.40, Danapur Nagar Parishad. His nomination paper was accepted by the Returning Officer, but subsequently it was rejected. The Hon'ble Division Bench treating it to be exceptional circumstances, directed the authorities to declare **Praful Chandra Sudhanshu** as an elected candidate as he was the sole candidate who had filled his nomination.

20. From perusal of the precedents/decisions relied upon by the parties, it is abundantly clear that normally the writ courts are not exercising jurisdiction for determining the validity of an election, but in extremely exceptional circumstances, the Court are not debarred from invoking jurisdiction under Article 226 of the Constitution of India. In the present case, the State Election Commission, which is enshrined with the duty of conducting free and fair election, is itself of the opinion that the Returning Officer has committed dereliction of duty and has misused his powers. The Returning Officer was aware of the fact that if the nomination paper of the petitioner was rejected, the respondent no.7 would become successful, even without election as only two candidates were left in the electoral arena/fray.

21. In my view, there may not be worse case than that of the present one, which can be termed as exceptional and



the rarest of rare. It is a flagrant example of denial of substantial justice where non-interference will result into miscarriage of justice.

22. Accordingly, the writ application is allowed and the order dated 17.08.2024 passed by the respondent no.4, rejecting the nomination paper of the petitioner, is quashed.

23. Consequently, the election of the respondent no.7 for the post of Chief Councillor of Khusrupur Nagar Panchayat is also quashed and respondent nos. 8 and 9 are directed to initiate the process for fresh election for the post of Chief Councillor of Khusrupur Nagar Panchayat in accordance with law.

(Nawneet Kumar Pandey, J)

HR/-

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