

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1639 of 2016

IN

Civil Writ Jurisdiction Case No. 9918 of 2016

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Bibha Devi wife of Abinash Kumar Thakur, Resident of village and P.O. Kansi,
Police Station- Simri and District - Darbhanga.

.... Appellant

Versus

1. The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
2. The State Election Commissioner, the State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
3. The Secretary, the State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
4. The District Magistrate, Darbhanga -cum- District Election Officer (Panchayat), Darbhanga, District - Darbhanga.
5. The Block Development Officer-cum-Returning Officer (Panchayat Election, 2016), Sadar Darbhanga Block, District Darbhanga.
6. Sri Taukir Kaisar, son of not known to the petitioner, presently posted as the Block Development officer, Kewati, District Darbhanga.
7. Usha Devi, wife of Pawan Kumar Chaudhary, Resident of Village and P.O.- Kansi, Police Station- Simri, District - Darbhanga.

.... Respondents

With

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Letters Patent Appeal No. 1643 of 2016

IN

Civil Writ Jurisdiction Case No. 9918 of 2016

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Akila Khatoon wife of Neyaz Ahmad, resident of village and P.O.- Kansi, Police
Station- Simri and District- Darbhanga.

.... Appellant

Versus

1. The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
2. The State Election Commissioner, the State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
3. The Secretary, the State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
4. The District Magistrate, Darbhanga -cum- District Election Officer (Panchayat), Darbhanga, District - Darbhanga.
5. The Block Development Officer -cum- Returning Officer (Panchayat Election, 2016), Sadar Darbhanga Block, District Darbhanga.
6. Sri Taukir Kaisar, Son of not known to the Petitioner, Presently posted as the B.D.O., Kewati, District Darbhanga.
7. Bibha Devi Wife of Abinash Kumar Thakur, Resident of village and P.O. Kansi, P.S. Simri, District - Darbhanga
8. Usha Devi, Wife of Pawan Kumar Chaudhary, Resident of village and P.O. Kansi, P.S. Simri, District - Darbhanga.

.... Respondents

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Appearance :

(In LPA No.1639 of 2016)

For the Appellant:

Mr. P.K. Shahi, Senior Advocate
Mr. Manish Kumar No. 2,

(In LPA No.1643 of 2016)

For the Appellant:

Mr. Ajay Thakur, Advocate
Mr. Gajendra Singh, Advocate

For the Respondent State:

Mr. Kaushal Kumar Jha, AAG -8
Mr. K.C. Jha, Advocate
Mr. Amish Kumar, Advocate
Mr. S.K. Choudhary, Advocate

For State Election Commission: Mr. Amit Srivastava, Advocate

Mr. Girish Pandey, Advocate

For Private Respondent:

Mr. S.B.K. Mangalam, Advocate
Mr. Ravi Ranjan, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

JUDGMENT AND ORDER

C.A.V.

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 18-10-2016

Issue, involved in the present appeals, is: *Upon the completion of an election to Gram Panchayat and after declaration of the results of such election, whether, in the light of Article 243-O, read with Section 138 of the Bihar Panchayat Raj Act, 2006, any challenge by a contesting candidate, attributing illegality to the manner of counting of votes, can be entertained by a High Court under Article 226 of the Constitution of India?*

2. The issue, indicated above, has been thrown up in these appeals, which have arisen out of the judgment and order, dated 12.08.2016, passed by a learned single Judge of this Court, in C.W.J.C. No. 9918 of 2016, which came to be registered as a writ petition, under Article 226 of the Constitution of India, at the instance of Smt. Usha Devi, a candidate, who unsuccessfully

contested the Panchayat Election, 2016, for the post of Mukhiya, Gram Panchayat Raj, Kansi, challenging the result of the said election, impleading therein the returned candidate, namely, Bibha Devi, who was respondent No. 6 in the writ petition aforementioned, and no other contesting candidates of the said election.

3. The said Bibha Devi, being aggrieved by the judgment and order, dated 12.08.2016, aforementioned, whereby the writ application stands allowed, has preferred Letters Patent Appeal No. 1639 of 2016. Another Letters Patent Appeal, bearing L.P.A. No. 1643 of 2016, has been preferred by another unsuccessful candidate of the said election, namely, Akila Khatoon, who was not arrayed as party-respondent, in the writ application aforementioned, questioning the legality of the judgment and order aforementioned passed by the learned single Judge. This is the reason why both these appeals have been heard together, with the consent of the parties, and are being disposed of by this common judgment and order.

4. Before we advert to the submissions advanced, on behalf of the appellant, for assailing the order under appeal, relevant facts need to be taken note of.

(i) Pursuant to the notification, issued under Section 124 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as "the Act") and the Bihar Panchayat Election Rules, 2006 (hereinafter referred to as "the Rules") framed thereunder, by

the State Election Commission, the process of filling up of the various posts under the Act by holding election was set in motion and, thus, the process of election for the post of Mukhiya, Gram Panchayat Raj Kansi, District Darbhanga, which is the subject matter of the present case, commenced.

(ii) The Block Development Officer, Darbhanga Sadar, was notified as the Returning Officer and the date of election was fixed on 26.05.2016.

(iii) The writ petitioner, both the appellants herein and one more candidate filed their nominations and, upon scrutiny, since their nominations were found valid and none of the candidates, nominated validly, withdrew their nomination, all the said four candidates were accordingly allotted election symbols on 19.04.2016.

(iv) The State Election Commission established 16 booths for holding the election, in question, which was peacefully held on 26.05.2016.

(v) The counting of the booth-wise votes cast was held on 02.06.2016 and booth-wise result sheet, in Form 20(part-1) read with Rule 76 (2) of the Rules as also a compilation of final result sheet, in Form 20 (part-2) under Rule 76(2) of the Rules, were prepared and, accordingly, the result of the election was prepared, in Form 21 under Rule 81(1) of the Rules, and, in terms thereof, declared that respondent No.6 (i.e., appellant of LPA No.1639, namely, Bibha Devi) was the returned candidate.

(vi) It is the claim of the writ petitioner, in her writ petition, that she had obtained the attested copies of the result-sheets, prepared by the Counting Supervisors in Form-20, Part 1, with regard to all the 16 booths and, on taking into account total booth-wise votes secured by her, it became apparent to her that even though she had obtained majority of the votes, respondent No. 6 had been declared as the returned candidate by respondent No.5, namely, the Block Development Officer-cum-Returning Officer, by deliberately not taking into account the votes polled, in her favour, at Booth No.8, Ward No.7.

(vii) It is the case of the writ petitioner that since neither the candidate nor her agent had any access to either the process of finalizing the result-sheets or to the result-sheets, the discrepancies, as alleged by the writ petitioner, could not be brought to the notice of the returning officer, i.e., respondent No.5, and it was only after declaration of the results that she could procure the necessary/relevant materials and filed an exhaustive representation before respondent No.4, namely, the District Magistrate, Darbhanga-cum-District Election Officer (Panchayat), Darbhanga, for correcting the aforesaid discrepancy in the result; but as nothing came forth from the side of respondent No.4, she was compelled to move this Court with her writ petition, under Article 226 of the Constitution, giving rise to C.W.J.C. No. No. 9918 of 2016.

(viii) By the order under appeal, the learned single Judge has not only negated the objection, raised on behalf of the appellant-respondent No.6, in the writ petition, questioning the maintainability of the writ petition on the ground that the High Court cannot interfere with the result of an election, but has allowed the writ application and has set aside the result of the election, whereby respondent No.6, i.e. the appellant herein, had been declared the returned candidate.

(ix) The learned single Judge has also directed the State Election Commissioner and the District Election Officer-cum-District Magistrate, Darbhanga, i.e., respondent Nos. 2 and 4 respectively, to the writ petition, to take expeditious steps for preparation of the result sheet afresh in Form 20 (part 2) under Rule 76(2) of the Rules by taking into account the votes cast at all the 16 booths including Booth No.8 and for declaration of the results of the election, under Rule 81 in Form 21, within two weeks of receipt/production of a copy of the judgment.

5. In the backdrop of the above facts, the present Letters Patent Appeals have been preferred.

6. We have heard Mr. P. K. Shahi, learned Senior Counsel, appearing for the appellant in L.P.A. No. 1639 of 2016, and Mr. Ajay Kumar Thakur, learned Counsel, appearing for the appellant in L.P.A. No. 1643 of 2016. We have also heard Mr. Kaushal Kumar Jha, learned Additional Advocate General No.8, appearing for the State respondents, and Mr. Amit Srivastava,

learned Counsel, appearing for the respondent State Election Commission. We have heard Mr. S. B. K. Mangalam, learned Counsel, appearing for the writ petitioner-respondent, too, and carefully considered submissions made by learned counsel appearing for the parties concerned.

Submissions on behalf of appellants:

7. It is the case of both the appellants that the writ petitioner has obtained the judgment and order, under appeal, by suppressing materials facts, such as, the fact that the writ petitioner had, prior to moving this Court, under Article 226 of the Constitution, already instituted Election Petition No.10 of 2016, in the Court of the Munsif, at Darbhanga.

8. In addition to the grounds of challenge, mentioned above, the appellant of LPA No. 1643 of 2016 has raised a specific grievance by pointing out that the writ petitioner had deliberately not arrayed her as a party-respondent so as to suppress the most vital and material fact, the fact being that the writ petitioner had herself filed an election petition and the fact that this appellant, too, had instituted Election Petition No.3 of 2016, in the Court of the Munsif, at Darbhanga. Hence, according to this appellant, the order of the learned Single Judge has resulted into a grave miscarriage of justice inasmuch as the election petition, filed by this appellant, i.e., appellant in LPA No.1643 of 2016, has become infructuous.

9. Mr. P. K. Sahi, learned Senior counsel, appearing on behalf of the appellant, in L.P.A. No. 1639 of 2016, has, assailing the order, under appeal, submitted that the result of the election, in question, has been declared after adhering to the due process of law and the dispute, which had been raised in the writ petition, ought not to have been entertained by the learned writ Court inasmuch as the forum for any dispute, arising out of any election dispute, on completion of the process of election and declaration of result, lies before the election tribunal, i.e., the Munsif herein, under Section 137 of the Bihar Panchayat Raj Act, 2006.

10. Elaborating his contention, Mr. Sahi, learned Senior counsel, has submitted that once the results of the elections to post of Mukhiya of a Panchayat were declared, the only remedy, with regard to a dispute arising out of such election, is a statutory remedy as provided in Section 137 of the Act.

11. Mr. Sahi, learned Senior counsel, points out that the writ petitioner-respondent has also filed an election petition, under Section 137 of the Bihar Panchayat Raj Act, 2006, on 01.07.2016, and, therefore, the learned single Judge has, reiterates Mr. Sahi, committed grave error by virtually allowing the reliefs sought for in the election petition, which is still pending before learned Munsiff, Darbhanga, and making thereby infructuous not only the Election Petition, which the writ petitioner

had filed, but also the Election Petition filed by Akila Khatoon, in E. P. No. 03 of 2016.

12. In other words, the submission is that due to the interference by the learned single Judge, both the election petitions have become infructuous without any evidence being considered as to whether the irregularities, as alleged in the counting process, were true or not and without ascertaining the veracity of the allegations made in the two election petitions.

Submissions on behalf of writ petitioner- respondent:

13. Per Contra, Mr. S. B. K. Mangalam, learned counsel for the writ petitioner-respondent herein, has submitted that the issue, in the factual context of the present case, is whether the election of a person to Gram Panchayat, constituted under the Act, can be challenged, under Article 226, on the ground that the process of counting of votes was not done, in accordance with law, by the authorities conducting the election and thereby the law, relating to the counting of votes, was violated.

14. Mr. S.B.K. Mangalam, learned Counsel for the writ petitioner-respondent, has relied on the decision of the this Court, in ***Rama Ballabh Singh Keshan vs State of Bihar***, reported in **2001 (2) PLJR 267**, and submitted that, in the present case, grave illegality is manifest in the process of counting of votes, because the result of the election is declared without counting all the ballot boxes and, therefore, the election

of the returned candidate is untenable and this Court has the jurisdiction, under Article 226 of the Constitution, to set aside the declared result of the election on the ground that the decision, declaring the result, was marred by absolute arbitrariness and non-application of mind and also violative of the provisions of the Act inasmuch as the returning officer has failed in discharging his responsibility, when it is his responsibility to ensure counting of all the votes cast in an election and, then, declare the result of the election.

15. It is the case of the writ petitioner-respondent that once election is concluded and the result is declared under the Act, the Election Commission of the State would have no jurisdiction or power to entertain any challenge to the election of a candidate, who has been declared as elected under the provisions of the Act. Reliance, in this regard, has been placed on the decision of this Court in ***Sanjay Kumar vs. State of Bihar***, reported in **2009 (3) PLJR 933**.

16. As to the scope of powers of the High Court under Article 226, Mr. Mangalam, learned counsel appearing for the respondent-writ petitioner, has referred to the decision of Supreme Court in ***K. Venkatachalam v. A. Swamickan***, reported in **(1999) 4 SCC 526**, and submitted that the position of law is that the jurisdiction of a High Court, under Article 226, to entertain a writ petition, challenging election to a Gram Panchayat, is not completely barred and the High Court can

interfere to prevent fraud on the Constitution of India. It is submitted by the learned counsel that the bar, under Article 243-O (b), to the jurisdiction of High Court is not absolute and, in such cases, where there is gross violation of fundamental principles to an election process under the scheme of the Constitution, the High Court would be competent to exercise jurisdiction under Article 226 of the Constitution and pass directions to enable fair elections.

Submissions on Behalf of Election Commission:

17. Mr. Amit Srivastava, learned counsel, appearing on behalf of Election Commission of Bihar, has drawn our attention to the decision of this Court in ***Sanjay Kumar vs. State of Bihar***, reported in **2009 (3) PLJR 933**, and submitted that once the result of an election is declared, the election process is completed, thereafter, the Election Commission has no jurisdiction to entertain any dispute with respect to such election. In support of his contention, Mr. Srivastava, learned Counsel, has elaborately referred to the following passages from the decision in ***Sanjay Kumar*** (supra), which read:

"9. Legal position is no more res Integra that upon issuance of election certificate after declaration of the election result, the election process comes to an end. The authorities including Returning Officer or the State Election Commission become functus officio in so far as said election is concerned. Thereafter any challenge to the election, legality



or otherwise, has to be brought in by way of election petition or as per the process provided in the relevant law under which election was held. In this backdrop of legal position, once the respondent No. 7 was declared elected having secured maximum valid votes and certificate to that effect was issued to him, his election could have been undone only through the remedy provided in Bihar Panchayat Raj Act and the Rules framed thereunder.

10. However, the present case despite the fact that the result of the election was declared by the Returning Officer on 27th December, 2007 and election certificate under Form-22 as contemplated in Rule 82 of Rules, 2006 was issued to respondent No. 7 having secured maximum valid votes, on the complaint of the appellant that EVM at booth No. 146 did not function properly, the State Election Commission cancelled the certificate issued to respondent No. 7 under Rule 82 (Form-22) of Rules, 2006. We are afraid, the State Election Commission possessed no such power under the provisions of Bihar Panchayat Raj Act, 2006 (for short, 'Act, 2006'). It is true that the wholesome provisions concerning the elections are provided in Chapter-VII of the Act, 2006. Section 123, thereof, empowers the State Election Commission for superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayat bodies in the State under the Act, 2006 and the Rules made



thereunder, but upon declaration of result and issuance of certificate to a returned candidate, their role comes to an end vis-a-vis such election.

11. **Obviously, it is the obligation and duty of the State Election Commission to ensure that the election so held under its superintendence, direction and control are free and fair but, once the election process is complete, concluded and over in all respects, Election Commission is not clothed with the power of undoing the declaration of result.** In the scheme of Bihar Panchayat Raj Act, 2006 and the Rules framed thereunder, those concerned to the election cease to have any power, authority or competence of any nature whatsoever upon issuance of certificate under Rule 82 of Rules, 2006 in relation to that election. **Such election can be got undone only through the machinery provided therein and not by the Returning Officer or the State Election Commission.**"

(Emphasis is supplied)

18. Mr. Srivastava, learned Counsel, appearing on behalf of the Election Commission, submits that there is no inherent or constitutional right, in the writ petitioner-respondent, to contest an election to Gram Panchayat and the right to contest or challenge an election to a Gram Panchayat, under the Act, is a statutory right under the Act and, therefore, any challenge to the election, on the grounds enumerated in the Act, must be

governed by provisions of the Act dealing with the remedies provided for in the Act. Learned counsel, referring to Section 138 of the Act, reiterated that upon the completion of an election, any dispute, arising out of such election, can be entertained only through the remedy provided in the Act and the Rules framed thereunder.

19. The learned counsel for the Election Commission has also submitted that once there is a legislation enacted in furtherance of Article 243-K(4) of the Constitution and if such law provides for remedy for the grievance with regard to election to Panchayat, Article 243-O (b), in such a situation, mandates a complete ouster of the jurisdiction of the High Court under Article 226 of the Constitution. Learned counsel has further submitted that this proposition of law is supported by the decision of the Supreme Court in ***Gurdeep Singh Dhillon v. Satpal*, [(2006) 10 SCC 616]**.

20. Mr. K.K. Jha, learned counsel, appearing for State of Bihar, has adopted the arguments of the learned counsel for the Election Commission. Referring to the judgment of Supreme Court, in ***Jaspal Singh Arora v. State of M.P.***, reported in **(1998) 9 SCC 594**, Mr Jha, learned counsel, has submitted that if the statute, whereunder elections to the Panchayat were conducted, provides for the remedy of a dispute, then, the jurisdiction of the High Court would stand barred. Learned counsel has submitted that under the scheme of the Act,

any dispute, with regard to election of a person to Panchayat, has to be dealt with by the Election Tribunal and, therefore, the impugned order is liable to be set-aside, because it ignores the mandate of Article 243-O (b) of the Constitution of India.

Discussion:

21. As pointed out above, not only the learned counsel, appearing on behalf of both the appellants, but also the learned counsel, appearing for the Election Commission, have drawn our attention to Article 243-O of the Constitution and contended that the High Court is barred by Article 243-O from exercising jurisdiction under Article 226 of the Constitution of India.

22. A preliminary issue of maintainability of the present writ petition, under Article 226 of the Constitution of India, challenging the result of an election to a Gram Panchayat under the Bihar Panchayati Raj Act, 2006, has, thus, been raised.

23. It is the contention of the learned Counsel that a challenge to the result of an election can be posed only by way of an election petition under Section 138 of the Bihar Panchayati Raj Act, 2006, and not by taking recourse to writ jurisdiction of the High Court.

24. Before we further proceed, it is apposite that the provisions, embodied in Chapter VII of the Act, dealing with elections, more particularly, Section 138 of the Act, which has great relevance in the present, is borne in mind.

25. Section 138 is, therefore, reproduced below:-

138. Bar to interference by Courts in electoral matters-

Notwithstanding anything contained in this Act-

(a) The validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243-K of the Constitution of India shall not be called in question in any Court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to the prescribed authority under this Act.

26. At this stage, we may also refer to Article 243-K (4) and Article 243-O of the Constitution of India. The relevant provisions of Article 243-K read as under:-

243-K. Elections of the Panchayats.—

* * *

(4) Subject to the provisions of the Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

27. The provisions, contained in Article 243-O, being, as a whole, relevant, are also produced below:

243-O. Bar to interference by courts in electoral matters.—*Notwithstanding anything in this Constitution,—*





(a) *the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243-K, shall not be called in question in any court;*

(b) *no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.]*

Article 226 vis-à-vis Article 243-O:

28. Elections form foundation of a constitutional democracy. There cannot be a democracy without elections. Therefore, the Constitution of India has elaborately dealt with the matter of elections at various levels. Article 243 (d) of the Constitution defines a 'Panchayat' to mean "*an institution (by whatever name called) of self-government constituted under article 243-B, for the rural areas;*". The mandate of Article 243-B is that the '*institution of self-government*', as understood by clause (d) of Article 243, shall be constituted in every State, at the village, intermediate and district levels in accordance with the provisions of Part IX of the Constitution. Disqualifications of membership of a Panchayat have been dealt with by Article 243-F of the Constitution and clause (2) of Article 243-F provides that disputes, as to disqualification of a member, would be decided by such authority and such procedure as provided by law enacted by State legislature. The heading of Article 243-O of the Constitution

leaves no room for doubt that the provisions contained therein deal with jurisdiction of '*courts*'. We must follow established principles of construing provisions of the Constitution and, therefore, we shall be abided by the contents and language of the Article given primacy to the language of the provisions embodied therein.

29. In our view, Article 243-O(b) of the Constitution of India imposes a limitation on the powers of the High Court, under Article 226 of the Constitution, with respect to matters relating to election of a Panchayat as defined under Article 243(d). The mandate of Article 243-O is as supreme as mandate of any other Article or provision in the Constitution of India. Therefore, upon a harmonious construction of Article 226 and Article 243-O of the Constitution and because of the *non-obstante* clause with which Article 243-O commences, it appears that the jurisdiction of a High Court, under Article 226 of the Constitution of India, would be barred in matters concerning election to Gram Panchayat under Part IX of the Constitution.

30. We shall, now, address the principal issue arising in these appeals, namely, whether, a writ petition, under Article 226 of the Constitution, calling, in question, election to the post of Mukhiya of a Gram Panchayat, is maintainable?

31. Conversantly speaking, whether quashing of a certificate of election, issued under Section 82 of the Act, would amount to *interference in the process of election* or *calling an*

election in question, and therefore, ousting the jurisdiction of the High Court under Article 226 of the Constitution of India?

32. Before answering the question, posed above, we must hasten to point out that broadly speaking, Section 138 of the Act imposes two fold restrictions on the powers of the High Court under Article 226 of the Constitution of India. It (Section 138) disables the High Court from exercising jurisdiction in the process of election. It also — it is of crucial importance to note — imposes a bar on the High Court's jurisdiction, under Article 226 of the Constitution, to allow an election to be called in question by way of a writ petition under Article 226 of the Constitution.

33. In the case at hand, obviously, the writ petition, did not call in question the process of election inasmuch as the result of the election had already been announced and the certificate to the elected candidate, rightly or wrongly, stood issued under Section 82 of the Act.

34. What the writ petition, in the present case, therefore, did was to call in question the result of the election on the ground that all the votes, polled in the election, had not been counted or, more explicitly, all the votes, polled in the election, had not been correctly counted.

35. The issue has been dealt with by the Supreme Court in a catena of judgments and the decision of the Constitution Bench of Supreme Court, in ***N.P. Ponnuswami v. Returning Officer, Namakkal Constituency***,

(AIR 1952 SC 64), is a landmark in the realm of interpretation of Article 329(b), which bars intervention by '*courts*' with the election process for elections to either House of Parliament or either House of State legislature and is identical with Article 243-O of the Constitution of India.

36. In ***Ponnuswami's*** case (supra), the appellant's nomination papers, for election to the legislative assembly, had been rejected by the Returning Officer. The appellant approached the High Court seeking a writ of *certiorari* and directions to the Returning Officer to include his name in the list of valid nominations to be published. The Appellant, in ***Ponnuswami's*** case (supra), challenged the order of the High Court, whereby the High Court had dismissed his writ petition on the ground that '*it had no jurisdiction to interfere with the order of the Returning Officer by reason of the provisions of Article 329(b) of the Constitution.*' The Supreme Court, in ***Ponnuswami's*** case (supra), dismissed the appeal, affirmed the view so taken by the High Court and held that, in such circumstances, a writ petition, under Article 226 of the Constitution, was not maintainable.

37. In ***Ponnuswami's*** case (supra), the Supreme Court analysed the effect of negative language used in Article 329(b) and held that Article 329(b) is "*primarily intended to exclude or oust the jurisdiction of all courts in regard to electoral matters and to lay down the only mode in which an election could be challenged.*"

38. The issue, which arose, in **Ponnuswami's** case (supra), is best explained in the words of Fazl Ali, J., speaking for unanimous decision of the Constitution Bench. The relevant part thereof is extracted as follows:-

"6. Now, the main controversy in this appeal centres round the meaning of the words "no election shall be called in question except by an election petition" in Article 329(b), and the point to be decided is whether questioning the action of the Returning Officer in rejecting a nomination paper can be said to be comprehended within the words, "no election shall be called in question."

39. The Supreme Court, in **Ponnuswami's** case (supra), construed the meaning of the word '**election**' as used and understood in Part XV of the Constitution. It was held that *the word "election" can be and has been appropriately used with reference to the entire process, which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process. (vide Para-7)"*

40. The Constitution Bench, in **Ponnuswami's** case (supra), rejected the argument that, in the facts and circumstances of that case, the High Court could exercise jurisdiction, under Article 226 of the Constitution, and held accordingly as follows:-

"14. It was argued that since the Representation of the People Act was





enacted subject to the provisions of the Constitution, it cannot bar the jurisdiction of the High Court to issue writs under Article 226 of the Constitution. This argument however is completely shut out by reading the Act along with Article 329(b). It will be noticed that the language used in that article and in Section 80 of the Act is almost identical, with this difference only that the article is preceded by the words "notwithstanding anything in this Constitution". **I think that those words are quite apt to exclude the jurisdiction of the High Court to deal with any matter, which may arise while the elections are in progress."**

(Emphasis supplied)

41. From the above observations made in **Ponnuswami's** case (supra), it becomes transparent that even though the Representation of the People Act, 1951, was enacted subject to the provisions of the Constitution, it would be wrong to say that it cannot bar the jurisdiction of the High Court to issue writ under Article 226, when one cannot escape the fact that Article 329(b) starts with non-obstante clause and thereby bars intervention of 'courts' with the election process. Article 243-O is identical with Article 329(b) of the Constitution of India and, by virtue of the non-obstante clause, makes other provisions of the Constitution subject to Article 243-O of the Constitution of India.



42. Pithily put, therefore, the Supreme Court, in **Ponnuswami's** case (supra), that the language of the Representation of Peoples Act, 1951, read with Article 329 (b), excludes the jurisdiction of the High Court with respect to matters arising out of a dispute with regard to an election, while the elections are in progress. No wonder, therefore, that in the context of the facts of **Ponnuswami's** case (supra), wherein the appellant was agitating against rejection of his nomination papers by the Returning Officer and seeking his name to be included in the list of valid nominations, the High Court did not interfere and the decision was upheld by the Supreme Court.

43. Thus, the question, which had arisen, in **Ponnuswamy's** case (supra), was whether the ouster of the jurisdiction of High Court by the bar, created under Article 329(b), was absolute or subject to such exceptions as may, in special circumstances, be permissible.

44. The vital question, posed above, was *not answered* by the Constitution Bench in **Ponnuswami's** case (supra), when the Constitution Bench observed thus,

"19. It should be mentioned here that the question as to what the powers of the High Court under Articles 226 and 227 and of this Court under Article 136 of the Constitution may be, is one that will have to be decided on a proper occasion."

45. The **Ponnuswami's** case (supra), being a landmark case, fell for consideration before a Constitution Bench, in **Mohinder Singh Gill v. Chief Election Commr.**, reported in **(1978) 1 SCC 405**, wherein the Constitution Bench, taking into account various provisions of Part XV of the Constitution and the power of a High Court to entertain a writ petition, in matters concerning challenge to the process of an election to the Parliament of India, further clarified the law on the subject.

46. The Constitution Bench, in **Mohinder Singh Gill's** case (supra), framed the main issues in the following words:-

"Is Article 329(b) a blanket ban on all manner of questions which may have impact on the ultimate result of the election, arising between two temporal termini viz., the notification by the President calling for the election and the declaration of the result by the returning officer? Is Article 226 also covered by this embargo and, if so, is Section 100 broad enough to accommodate every kind of objection, constitutional, legal or factual, which may have the result of invalidation of an election and the declaration of the Petitioner as the returned candidate and direct the organisation of any steps necessary to give full relief?"

(Emphasis is supplied)

47. The issues, relevant for our purpose, and which fall for consideration in ***Mohinder Singh Gill's*** case (supra), were, (i) whether Article 329 (b) puts a blanket ban on the High Court's power, under Article 226 of the Constitution, to interfere with every matter, which may have an impact on the ultimate result of an election arising between commencement of the process of election and culmination into the declaration of result by the Returning Officer; (ii) whether Article 226 of the Constitution is covered by the embargo, which Article 329(b) puts, and if so, whether Section 100 of the Representation of the People Act, 1951, is wide enough to cover every kind of objection, constitutional, legal or factual, which would result in validating an election and declaration of the result of an election.

48. The principal issue, thus, decided by the Supreme Court, in ***Mohinder Singh Gill's*** case (supra), was whether the mandate of Article 329(b) of the Constitution of India completely bars the jurisdiction a High Court under Article 226 of the Constitution of India.

49. Interpreting Article 329(b) of the Constitution, the Constitution Bench, in ***Mohinder Singh Gill's*** case (supra), observed that **"the sole remedy for an aggrieved party, if he wants to challenge any election, is election petition. And this exclusion of all other remedies includes constitutional remedies like Article 226 because of the non-obstante clause.** If what is impugned is an election, the ban operates

*provided the proceeding 'calls in question' or puts it in issue; not otherwise...". (Emphasis is supplied). The Constitution Bench, in **Mohinder Singh Gill's** case (supra), also observed that in **Ponhuswami's** case (supra), what had been approved and applied was the *well-recognized* principle that "where a right or liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by that statute only must be available."*

50. The Constitution Bench, in **Mohinder Singh Gill's** case (supra), interpreted Section 100 of the Representation of People Act, 1951, in the light of Article 329(b) of the Constitution and concluded that the mandate of Article 329(b) is that, ordinarily, an election petition before an authority, established or designated by the law, is the only remedy available to a person challenging the election. However, this principle is not wholly inflexible inasmuch as special circumstances may arise, though rarely, wherein the High Court's interference may be called for in order to smoothen or facilitate the process of election. However, once the election is over and the result is announced, the result of the election cannot be called in question by way of writ petition under Article 226 and the only remedy, available to an aggrieved person, is to challenge the result of the election by way of an election petition.

51. It was, thus, clarified, in ***Mohinder Singh Gill's*** case (supra), that the jurisdiction of the High Court, under Article 226, is not completely barred in all situations.

52. What is important to note is that the Supreme Court, in ***Mohinder Singh Gill's*** case (supra), broadly classified the cases, (with regard to an election, wherein the jurisdiction of a High Court is sought to be invoked) in two categories. While one category relates to proceedings, which call interference with the process of election, the other category helps and accelerates the completion of election and, thus, acts in furtherance of an election. The relevant observations made, in this regard, in ***Mohinder Singh Gill's*** case (supra), read as under:-

"29. Thus, there are two types of decisions, two types of challenges. The first relates to proceedings which interfere with the progress of the election. The second accelerates the completion of the election and acts in furtherance of an election.

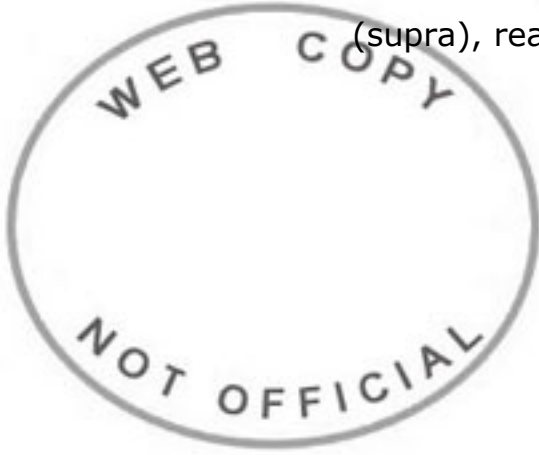
(Emphasis supplied)

53. Having pointed out the two categories of challenge to an election, the Supreme Court clarified that every decision, sought for and/or rendered, would not amount to "calling in question" an election if it subserves the progress of the election and facilitates the completion of the election". Logically extended, it would mean that a challenge to the process of election is possible if the answer to the challenge subserves the

process of election and facilitates effective completion of election.

The relevant observations, appearing in **Mohinder Singh Gill**

(supra), read thus:



*"28. What emerges from this perspicacious reasoning, if we may say so with great respect, is that **any decision sought and rendered will not amount to "calling in question" an election if it subserves the progress of the election and facilitates the completion of the election.** We should not slur over the quite essential observation "Anything done towards the completion of the election proceeding can by no stretch of reasoning be described as questioning the election." Likewise, it is fallacious to treat "a single step taken in furtherance of an election" as equivalent to election."*

(Emphasis is supplied)

54. What surfaces from the decision of the Supreme Court, in **Mohinder Singh Gill's** case (supra), is that if the jurisdiction of a High Court, under Article 226 of the Constitution of India, is invoked for facilitating the election process, Article 329(b) is no bar to the exercise of such jurisdiction and the High Court can pass orders to smoothen and facilitate the process of elections; but once the process of election is over, the jurisdiction of the High Court, under Article 226, stands ousted.

55. Having, thus, considered the decision in **Ponnuswami's** case (supra), the Supreme Court clearly pointed

out that a High Court can, in matters of election, exercise jurisdiction under Article 226 of the Constitution, if it facilitates the process of election.

56. Clearly, therefore, the law laid down, in ***Mohinder Singh Gill's*** case (supra), is that in the context of Article 329(b) read with Section 100 of the Representation of People Act, which is in *pari materia* Section 138 of the Bihar Panchayat Raj Act, 2006, if an election is challenged on the grounds, which have been articulated in the Representation of People Act, 1951, then, such a challenge to the election can be called only by an election petition under the provisions of Representation of People Act, 1951, and the jurisdiction of High Court, under Article 226 of the Constitution of India, could only be exercised to facilitate and subserve the process of election and not to thwart or derail the process of election. In no uncertain words, the Constitution Bench, in ***Mohinder Singh Gill's*** case (supra), held that once the election process is complete, the result of election or election itself can be called in question only by way of an election petition and not by invoking High Court's jurisdiction under Article 226.

57. We are led to reach the conclusions, which we have reached above, on the basis of the observations made, in ***Mohinder Singh Gill's*** case (supra), that the jurisdiction of a High Court, under Article 329(b), is barred "*only if an act impeached is done for the apparent object of furthering a free and fair election and the protective armour drops down if the act challenged is*

either unrelated to or thwarts or taints the course of the election."

These observations of the Supreme Court, in **Mohinder Singh Gill's** case (supra), followed the illustration of one of such situations, where the jurisdiction of a High Court under Article 226 of the Constitution of India, would not, according to **Mohinder Singh Gill's** case (supra), be barred:-

*"34...For example, after the President notifies the nation on the holding of elections under Section 15 and the Commissioner publishes the calendar for the poll under Section 30, if the latter orders Returning Officers to accept only one nomination or only those which come from one party as distinguished from other parties or independents, is that order immune from immediate attack. We think not. **Because the Commissioner is preventing an election, not promoting it and the Court's review of that order will facilitate the flow, not stop the stream. Election, wide or narrow be its connotation, means choice from a possible plurality, monolithic politics not being our genius or reality, and if that concept is crippled by the Commissioner's act, he holds no election at all"***

(Emphasis is added)

58. In **Election Commission of India vs. Ashok Kumar**, reported in **(2000) 8 SCC 216**, a three judge bench of

the Supreme Court had the occasion to consider **Punnuswamy's** case (supra) and also the case of **Mohinder Singh Gill**.

59. In **Ashok Kumar's** case (supra), the Election Commission had, after the completion of voting for general election to Lok Sabha, notified a specific procedure to count votes cast by mixing all ballot papers after taking them out of ballot-boxes, instead of proceeding with the common practice of polling-station wise counting of votes, so as to erase the possibility of identification of groups of voters on the basis of territorial identification of ballot boxes. The three Judge Bench of the Supreme Court framed the issue, in **Ashok Kumar's** case (supra), in the following words:-

"12. The issue arising for decision in these appeals is the jurisdiction of the High Court to entertain petitions under Article 226 of the Constitution of India and to issue interim directions after commencement of the electoral process."

(Emphasis is supplied)

60. The petitioners therein, in **Ashok Kumar's** case (supra), contended that the Election Commission exercised powers *mala fide* and the procedure of counting of votes was notified with the intention of supporting and favouring one party over other contestants. **Ashok Kumar's** case (supra) fell for consideration before the Supreme Court, at the stage, when the result of the election was yet to be declared. Naturally, therefore,

one of the vital issues was whether the High Court was right, in passing, in exercise of its jurisdiction under Article 226, interim directions after commencement of electoral process.

61. Thus, the important and distinct factor, in **Ashok Kumar's** case (supra), is that writ petitions were filed before the counting of votes began and the petitioners therein challenged the notification, whereby the Election Commission had laid down the procedure for counting of votes. The Supreme Court considered its previous decisions in **N.P. Ponnuswami** (supra) and **Mohinder Singh Gill** (supra), since both these decisions considered the issue of "*the jurisdiction conferred on the High Courts by Article 226 of the Constitution and the embargoes created by Article 329...*" and made following important observations as to the law laid down therein:-

"19. However, the Constitution Bench in Mohinder Singh Gill case [(1978) 1 SCC 405: AIR 1978 SC 851] could not resist commenting on Ponnuswami case [AIR 1952 SC 64] by observing (vide para 25) that the non obstante clause in Article 329 pushes out Article 226 where the dispute takes the form of calling in question an election, except in special situations pointed out at, but left unexplored in Ponnuswami case [AIR 1952 SC 64] ."

(Emphasis is supplied)

62. The Supreme Court, in **Ashok Kumar's** case (supra), held that the High Court was not justified in issuing interim directions, while the election process was still going on.

63. The *ratio decidendi*, in **Ashok Kumar's** case (supra), is that the High Court will not have jurisdiction, under Article 226 of the Constitution of India, to pass interim directions with respect to ongoing election process, which do not subserve the progress of elections and facilitate the election process.

64. In **Ashok Kumar's** case (supra), having considered its two Constitution Bench decisions, in **N.P. Ponnuswami** (supra) and **Mohinder Singh Gill** (supra), the Supreme Court laid down the position of law, on the subject, in the following words:-

"30. *To what extent Article 329(b) has an overriding effect on Article 226 of the Constitution? The two Constitution Benches have held that Representation of the People Act, 1951 provides for only one remedy; that remedy being by an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. The non obstante clause, with which Article 329 opens, pushes out Article 226, where the dispute takes the form of calling in question an election (see para 25 of Mohinder Singh Gill's case [(1978) 1 SCC 405 : AIR 1978 SC 851]). The provisions of the Constitution and the Act read together do not totally exclude the*



right of a citizen to approach the court so as to have the wrong done remedied by invoking the judicial forum; nevertheless the lesson is that the election rights and remedies are statutory, ignore the trifles even if there are irregularities or illegalities, and knock the doors of the courts, when the election proceedings in question are over. Two-pronged attack on anything done during the election proceedings is to be avoided — one during the course of the proceedings and the other at its termination, for such two-pronged attack, if allowed, would unduly protract or obstruct the functioning of democracy.

31. *The founding fathers of the Constitution have consciously employed use of the words "no election shall be called in question" in the body of Section 329(b) and these words provide the determinative test for attracting applicability of Article 329(b). If the petition presented to the Court "calls in question an election" the bar of Article 329(b) is attracted. Else it is not."*

(Emphasis is supplied)

65. Leaving no one in doubt, the three Judge Bench, in Ashok Kumar's case (supra), speaking through Lahoti, J., thus, observed that Article 329(b), read with Article 243-O, does not completely exclude the right of an aggrieved person to approach a High Court, under Article 226 of the Constitution, seeking undoing of the wrong done, but the *non obstante* clause, with which starts Article 329(b) as well as Article 243-O, pushes

out Article 226 if and when the dispute takes the form of calling in question the election. Observed the Supreme Court, in *Ashok Kumar's* case (supra), if we may quote, once again, thus, '*If the petition presented to the Court "calls in question an election" the bar of Article 329(b) is attracted. Else it is not*'.

66. Finally, the three Judge Bench, in **Ashok Kumar's** case (supra), summed up their conclusions restating the law, at paragraph 32 and 33, as follows:

"32. For convenience sake, we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:

(1) **If an election**, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) **is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.**

(2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. **Anything done towards completing**



or in furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

(4) **Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.**

(5) The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. **Care has to be taken to see that there is no attempt to**



utilise the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end.

Needless to say that in the very nature of the things the court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.

33. *These conclusions, however, should not be construed as a summary of our judgment. These have to be read along with the earlier part of our judgment wherein the conclusions have been elaborately stated with reasons."*

(Emphasis is supplied)

67. We must notice that the issue, which was adjudicated upon by the Supreme Court, in **Ashok Kumar's** case (supra), was substantially different from the issue, which arises for our consideration in the present case, inasmuch as the election stands concluded in the case at hand and the result of the election also stands declared. Thus, the process of election has come to its conclusion. It cannot, therefore, be reasoned that the writ petition was filed to facilitate the election process; whereas, **Ashok Kumar's** case (supra) is a case, wherein the process of election was still in progress and the challenge to the manner of counting, notified by the Election Commission of India,

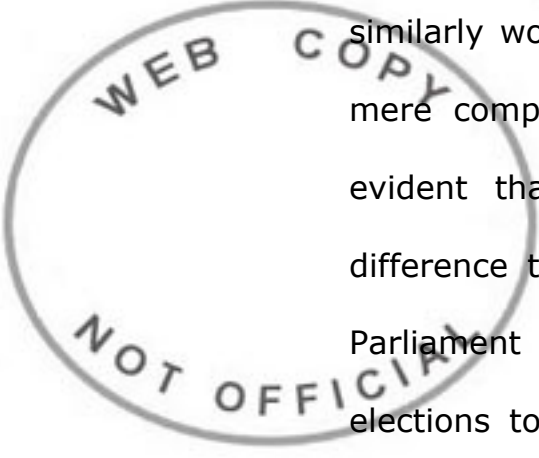
was put under challenge by way of a writ petition under Article 226 of the Constitution of India.



68. Coupled with the above, one cannot lose sight of the fact that the writ petitioner did suppress material facts from this Court inasmuch as she did not disclose to the writ Court that she had already filed an *election petition* in the prescribed tribunal nor did she, at any stage, mention the fact that another *election petition*, calling in question the election, also stood filed. The writ petitioner, thus, did not come to this Court with clean hands and was, therefore, not entitled to the exercise of this Court's discretion under Article 226 of the Constitution. Carefully chosen words of the Supreme Court, in **Ashok Kumar's** case (supra), are most relevant and appropriate, when it observed, '*Care has to be taken to see that there is no attempt to utilise the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end.*'

69. Moreover, having availed the statutory remedy, under the Bihar Panchayat Raj Act, 2006, as an aggrieved party, against the declared result and the issuance of certificate under Rule 81 of the Rules, the writ petitioner could not have, at the same time and in the same breath, sought for the same remedy by way of a writ petition under Article 226 of the Constitution of India.

70. We may, however, point out that the decisions of the Supreme Court, in **Mohinder Singh Gill** case (supra), in



Ponnuswami's case (supra), and in **Ashok Kumar's** case (supra), are based on the interpretation of Article 329(b), which is similarly worded as Article 243-O(b) of the Constitution. From a mere comparison of Article 329(b) and Article 243-O(b), it is evident that the articles are in *pari materia* with the only difference to the effect that the former deals with elections to Parliament and State legislature, while the latter deals with elections to a Panchayat. In this regard, the position of law is expressed in the decision of Supreme Court **Anurag Narain Singh vs. State of UP**, reported in **(1996) 6 SCC 303**, wherein the Supreme Court relied on the decisions, dealing with Article 329 of the Constitution, to construe and interpret Article 243-O of the Constitution, in an election for Panchayat, in the manner as follows:

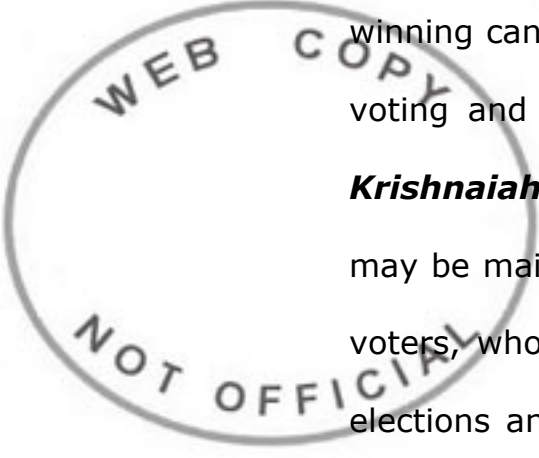
"17. In Lakshmi Charan Sen case [(1985) 4 SCC 689] , this Court was dealing with Part XV of the Constitution which deals with preparation of electoral rolls for, and the conduct of, all elections to Parliament, and to the Legislatures of different States and all elections to the offices of the President and the Vice-President. We are in this case, concerned with the elections to municipal bodies. But the principles laid down in **Lakshmi Charan Sen's** case [(1985) 4 SCC 689] will apply in full force to municipal elections because various articles dealing with holding of municipal elections in Part IX-A of the Constitution are similarly worded. In fact, highest importance has been



*attached to holding of panchayat as well as municipal elections by the Constitution. Parts IX and IX-A of the Constitution were introduced by the Constitution (73rd Amendment) Act, 1992 and (74th Amendment) Act, 1992. By these two Parts, it was intended to take democracy to the grass-root level. Part IX deals with constitution of panchayats, composition of panchayats and holding of regular elections to the panchayats. **Article 243-O contains a bar to interference by Court in electoral matters. This bar is similar to the bar contained in Article 329 of the Constitution in Part XV, the implication of which was explained by this Court in the case of Lakshmi Charan Sen[(1985) 4 SCC 689].***

(Emphasis is added)

71. A three Judge Bench of the Supreme Court in ***Boddula Krishnaiah v. State Election Commissioner, A.P.***, reported in **(1996) 3 SCC 416**, had the occasion to construe Article 243-O(b) of the Constitution. The issue before the Court was "*whether the High Court would be justified in giving direction, firstly, that Respondents 6-42, in particular, 20 persons, be allowed to participate in the process of election after the election process was completed and consequently whether the High Court would be justified in interfering with the election process.*" In the case of ***Boddula Krishnaiah*** (supra), the writ petitions were filed by the voters, who could not participate in the voting for the election to Gram Panchayat, even though the High Court had



passed a direction to that effect a day prior to the day of voting, and, hence, the dispute was not the challenge to election of the winning candidate, but to the rights of voters to participate in the voting and election. The Supreme Court observed, in **Boddula Krishnaiah** (supra), that in such circumstances, the writ petition may be maintainable, because the writ petitions were filed by the voters, who were competent to vote, but not allowed to vote in elections and the matter concerned with the rights of the voters to participate in the election. However, as the election was over and what was left was declaration of the result of the election, interference by the High Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution and restraining the Election Commission from declaring the result, was held to be not tenable in law. The relevant observations, appearing in **Boddula Krishnaiah** (supra), read as follows:

"7. Article 243-O of the Constitution envisages bar on interference by courts in election matters. Notwithstanding anything contained in the Constitution, under sub-clause (b) "no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State". Thus there is a constitutional bar on interference with the election process except by an election petition, presented to an Election Tribunal as may be made by or under law by the competent



legislature and in the manner provided thereunder. Power of the court granting stay of the election process is no longer res integra."

"8. In N. P. Ponnuswami v. Returning Officer, Namakkal Constituency [1952 SCR 218 : AIR 1952 SC 64] a Constitution Bench of this Court had held that having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time-schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over so that the election proceedings may not be unduly retarded or protracted. In conformity with the principle, the scheme of the election law 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." (Emphasis Supplied)

"11. Thus, it would be clear that once an election process has been set in motion, though the High Court may entertain or



may have already entertained a writ petition, it would not be justified in interfering with the election process giving direction to the election officer to stall the proceedings or to conduct the election process afresh, in particular when election has already been held in which the voters were allegedly prevented from exercising their franchise. As seen, that dispute is covered by an election dispute and remedy is thus available at law for redressal."

"12. Under these circumstances, we hold that the order passed by the High Court is not correct in law in giving direction not to declare the result of the election or to conduct fresh poll for 20 persons, though the writ petition is maintainable..."

(Emphasis is added)

72. In later cases, the law has been more clearly stated by the Supreme Court to the effect that in the cases, where there is challenge to an election, a writ petition will not be maintainable. In ***P. Manjula v. State of A.P.***, reported as **(2007) 15 SCC 766**, a writ petition was filed after the result of election to Gram Panchayat was declared and after passing of the period stipulated by law to challenge an election before the Election Tribunal. The Supreme Court held that the writ petition is not maintainable in the light of Article 243-O of the Constitution and observed as follows:-



"8. Apart from the delay in approaching the High Court **it is settled law that election dispute could not have been raised in a petition under Article 226 of the Constitution.** This Court ***in Boddula Krishnaiah v. State Election Commr., A.P.***, [(1996) 3 SCC 416] held that in case of an election dispute, remedy is available at law for its redressal. Therefore, the High Court was not correct in law in giving directions not to declare the result of election or to conduct fresh poll...."

"9. Hence, the High Court committed a patent error in entertaining the writ petition and holding that election was a nullity and directing fresh elections."

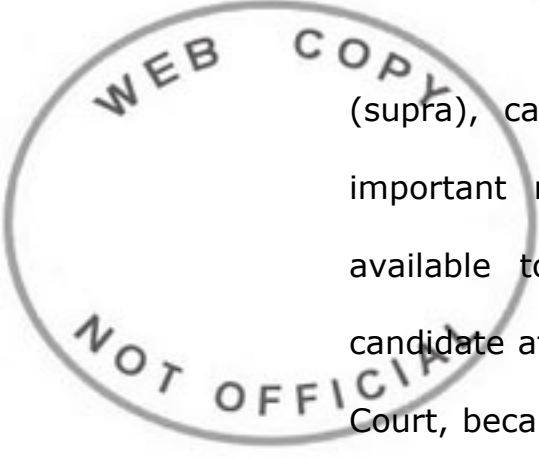
(Emphasis is supplied)

73. In ***C. Subrahmanyam v. K. Ramanjaneyullu***, reported in **(1998) 8 SCC 703**, a three Judges' Bench of the Supreme Court considered the argument that if a remedy is made available in the statute providing for elections to Panchayat, whether jurisdiction of the High Court, under Article 226, would be barred. The Supreme Court, in ***C. Subrahmanyam*** (supra), held that in a situation, where there is non-compliance with the provisions of the law, whereunder election to a Panchayat is held, the writ petition, under Article 226, will not be maintainable if the law provides for remedy for such violations.

74. Coming back to the decision of the Supreme Court in **K. Venkatachalam vs. A. Swamickan, (1999) 4 SCC 526**, on which heavy reliance has been placed by Mr. Mangalam, learned counsel for the writ petitioner-respondent, we find that reliance on this decision is wholly misplaced. In **K. Venkatachalam** case (supra), facts were peculiar, because the elected candidate had, admittedly, contested the election in violation of Article 173(c) of the Constitution read with Section 5 of the Representation of Peoples Act, 1950, which mandated that a person to be elected from an Assembly constituency has to be an elector of that constituency. It was admitted by the successful candidate, whose election had been put to challenge, that he was disqualified from being a member of the assembly constituency and that he had impersonated himself for another person bearing the same name as his own name. However, the election was never challenged by an election petition under the Representation of Peoples Act, 1950. Consequently, the period of limitation of 45 days to file election petition had already expired. The elected candidate, even though admitted that he was not entitled to represent the constituency he was elected from, continued to act as a member of the Assembly in derogation of law.

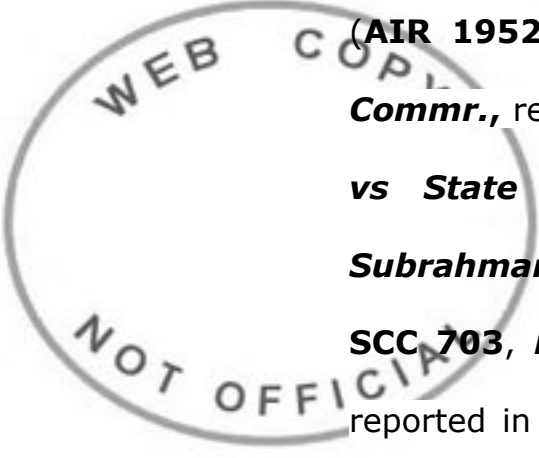
75. In such peculiar factual matrix, as indicated above, the Supreme Court held, in **K. Venkatachalam** case (supra), that the High Court has correctly exercised jurisdiction under Article 226 of the Constitution and declared that such

candidate was not entitled to sit or participate in the legislative assembly.



76. The Supreme Court, in ***K. Venkatachalam*** case (supra), came to the conclusions, mentioned above, for two important reasons. Firstly, there was no alternative remedy available to the person challenging the election of such a candidate at the time of filing of the Writ Petition before the High Court, because the period of limitation to file an election petition, under the Representation of Peoples Act, 1951, had expired and, therefore, the election could not have been challenged by any means other than a writ petition. Secondly, such exercise by the High Court was necessary to uphold the supremacy of the Constitution, for, by his conduct and admission of such conduct, the elected candidate had played *fraud on the Constitution*. The Supreme Court, in ***K. Venkatachalam*** case (supra), noticed that *"if in such circumstances he is allowed to continue to and vote in the Assembly his action would be a fraud on the Constitution."*

77. Thus, the decision of the Supreme Court, in ***K. Venkatachalam*** case (supra), does not apply to the facts of the present appeal, firstly, because the writ petitioner-respondent filed an election petition in the Election Tribunal on the same day she filed the writ petition before the High Court, and, secondly, because the dispute is with regard to counting of votes and the conduct of the appellants herein does not amount to playing fraud upon the Constitution.



78. In the light of the principles enunciated in ***N.P. Ponnuswami v. Returning Officer, Namakkal Constituency*** (**AIR 1952 SC 64**), ***Mohinder Singh Gill v. Chief Election Commr.***, reported in (**1978**) **1 SCC 405**, ***Anurag Narain Singh vs State of UP***, reported in (**1996**) **6 SCC 303**, ***C. Subrahmanyam v. K. Ramanjaneyullu***, reported in (**1998**) **8 SCC 703**, ***Election Commission of India vs. Ashok Kumar***, reported in (**2000**) **8 SCC 216**], ***P. Manjula v. State of A.P.***, reported in (**2007**) **15 SCC 766**, and the decision of this court, in ***Sanjay Kumar vs. State of Bihar***, reported in **2009 (3) PLJR 933**, we are clearly of the view that the mandate of Article 243-O of the Constitution is that extraordinary jurisdiction of a High Court can only be invoked to facilitate and subserve the process of election and not to thwart or derail the process of election. In clear and unequivocal terms, the Constitution Bench, in ***Mohinder Singh Gill's*** case (supra), held that once the election process is complete, the result of election or election itself can be called in question only by way of an election petition and not by invoking High Court's jurisdiction under Article 226.

79. Upon a careful consideration of the Bihar Panchayati Raj Act, 2006, and the Rules framed thereunder, there can be no doubt that the Bihar Panchayati Raj Act, 2006, is a law in terms of Article 243-K (4) of the Constitution of India. A law, under Article 243-K (4) of the Constitution, is subject to other provisions of the Constitution of India and, therefore, the remedy,



under Article 226 of the Constitution of India, would have been available if Article 243-O (b) of the Constitution did not form part of the Constitution of India. The authority of Article 243-O is as supreme as the authority of Article 226. The non-obstante clause of Article 243-O makes the mandate and bar under Article 243-O override the remedy under Article 226. Therefore, in tune with the mandate of Article 243-O of the Constitution, the Act, incorporates, in Section 138, the principle enumerated in Article 243-O. The jurisdiction of a High Court to exercise powers, under Article 226, stands barred in matters relating to election of a Panchayat, because of the overriding effect of Article 243-O, which supports the *non-obstante* clause. This is the view taken by the Constitution Bench of the Supreme Court, in **Ponnuswami's** case (supra), with respect to elections conducted under Part-XV of the Constitution. Resultantly, therefore, recourse to a remedy, under Article 226 of the Constitution, would not be available to a person, who had contested the election if the process of election for panchayat is concluded by declaration of result.

80. To put a little differently, Article 243-O(b) of the Constitution of India, imposes, in our considered view, a limitation on the powers of the High Court, under Article 226 of the Constitution, with respect to matters relating to election of a Panchayat as defined under Article 243(d). We must construe the provisions of the Constitution harmoniously, for, the mandate of Article 243-O is as supreme as mandate of any other Article or

provision in the Constitution of India. Thus, upon a harmonious construction of Article 226 and Article 243-O of the Constitution and because of the *non-obstante* clause with which Article 243-O commences, it transpires, and we hold, that the jurisdiction of a High Court, under Article 226 of the Constitution of India, would be barred in matters concerning election to Gram Panchayat under Part IX of the Constitution unless such jurisdiction is invoked to facilitate the process of election.

81. In the present appeals, writ petition was not seeking directions to *facilitate or subserve* to the election process. The process of election stood concluded with the declaration of result. The bar, therefore, created by Section 138 of the Act had, in the light of Article 243-O, come into play and no writ petition, calling in question the result of the election, and omission in counting of valid votes or wrong counting of votes, could not have been made a ground of challenge thereto in a writ petition under Article 226 of the Constitution of India.

82. In the case at hand, undisputed and crucial fact, which one cannot ever ignore, is that the respondent-writ petitioner filed an election petition under Section 137 of the Bihar Panchayat Raj Act, 2006, and on the same day an application under Article 226 of the Constitution was filed in this Court.

83. We hold that in the present case, the writ petition, made under Article 226, was not maintainable and the remedy, provided under Section 137 of the Bihar Panchayat Raj

Act, 2006, having already been availed of, but not disclosed to the Court, the writ petitioner-respondent was disentitled to any relief in the writ petition. The writ petition ought to have, therefore, been dismissed.

84. In the result and for the foregoing reasons, these appeals succeed and the judgment and order, under appeal, dated 12.08.2016, passed in C.W.J.C. No. 9918 of 2016, shall accordingly stand hereby set aside and writ petition stands dismissed.

85. The parties will bear their own cost.

(I. A. Ansari, CJ)

Chakradhari Sharan Singh, J : I agree.

(Chakradhari Sharan Singh, J)

Pawan/-

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