

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1501 of 2020

Nasima Khatoon W/o Md. Abdus Samad Village/Mohalla- Daniyalpur, P.S.-
Teghra, District- Begusarai

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary Urban Development and Housing Department,
Govt. of Bihar, New Secretariat, Patna
3. The Director Panchayati Raj Department, Govt. of Bihar, Patna
4. The State Election Commission (Panchayat) Bihar, through the State
Election Commissioner
5. The Commissioner Munger Division, Munger
6. The District Magistrate Begusarai
7. The Sub Divisional Officer Teghra, District- Begusarai
8. The Municipal Executive Officer Nagar Panchayat Teghra, District-
Begusarai
9. Nagar Panchayat Teghra District- Begusarai through the Municipal
Executive Officer
10. Smt. Asha Devi, W/o Dashrath Paswan, Village/Mohalla- Hariharpur, P.s.-
Teghra, District- Begusarai at present Municipal Councillor, Ward No. 01 of
Nagar Panchayat, Teghra in the District of Begusarai
11. Shri Mukesh Kumar Singh, S/o Rambhej Singh, Village/Mohalla- Hasanpur,
P.s.- Teghra, District- Begusarai at present Municipal Councillor, Ward No.
02 of Nagar Panchayat, Teghra in the District of Begusarai
12. Smt. Lipi Devi, W/o Mukesh Kumar, Village/Mohalla- Salempuritu, P.s.-
Teghra, District- Begusarai at present Municipal Councillor, Ward No. 03 of
Nagar Panchayat, Teghra in the District of Begusarai
13. Smt. Renu Singh, W/o Shri Babloo Singh, Village/Mohalla- Hasanpur, P.s.-
Teghra, District- Begusarai at present Municipal Councillor, Ward No. 04 of
Nagar Panchayat, Teghra in the District of Begusarai
14. Smt. Ragini Devi, W/o Shri Santosh Kumar Rai, Village/Mohalla-
Daniyalpur, P.s.- Teghra, District- Begusarai at present Municipal
Councillor, Ward No. 05 of Nagar Panchayat, Teghra in the District of
Begusarai
15. Shri Suresh Prasad Raushan, S/o Shri Shiv Prasad Agrawal,
Village/Mohalla- Daniyalpur, P.s.- Teghra, District- Begusarai at present
Municipal Councillor, Ward No. 06 of Nagar Panchayat, Teghra in the
District of Begusarai
16. Md. Mahboob Alam, S/o Late Khalil, Village/Mohalla- Near Congress
Office, P.s.- Teghra, District- Begusarai at present Municipal Councillor,
Ward No. 07 of Nagar Panchayat, Teghra in the District of Begusarai
17. Shri Kanhaiya Kumar Singh, S/o Vijay Shankar Singh, Village/Mohalla-



- Bajalpura, P.s.- Teghra, District- Begusarai at present Municipal Councillor, Ward No. 08 of Nagar Panchayat, Teghra in the District of Begusarai
18. Smt. Sangam Kumari, W/o Shri Amar Kumar, Village/Mohalla- Paigambarpur, P.s.- Teghra, District- Begusarai at present Municipal Councillor, Ward No. 09 of Nagar Panchayat, Teghra in the District of Begusarai
 19. Shri Hare Ram Pandit, S/o Late Lakhan Pandit, Village/Mohalla- Ayodhya, P.s.- Teghra, District- Begusarai at present Municipal Councillor, Ward No. 10 of Nagar Panchayat, Teghra in the District of Begusarai
 20. Shri Sunil Sah, S/o Late Ram Khelawan Sah, Village/Mohalla- Purani Bazaar, P.s.- Teghra, District- Begusarai at present Municipal Councillor, Ward No. 11 of Nagar Panchayat, Teghra in the District of Begusarai
 21. Smt. Meena Devi, W/o Shri Laxman Singh, Village/Mohalla- Bajalpura, P.s.- Teghra, District- Begusarai at present Municipal Councillor, Ward No. 12 of Nagar Panchayat, Teghra in the District of Begusarai
 22. Smt. Rupam Devi, W/o Raushan Kumar, Village/Mohalla- Bajalpura, P.s.- Teghra, District- Begusarai at present Municipal Councillor, Ward No. 13 of Nagar Panchayat, Teghra in the District of Begusarai
 23. Shri Shiv Shankar Paswan, S/o Shri Vishundev Paswan, Village/Mohalla- Teghra Ganj, P.s.- Teghra, District- Begusarai at present Municipal Councillor, Ward No. 14 of Nagar Panchayat, Teghra in the District of Begusarai
 24. Smt. Suman Devi, W/o Kanhaiya Kumar, Village/Mohalla- Purani Bazaar, P.s.- Teghra, District- Begusarai at present Municipal Councillor, Ward No. 15 of Nagar Panchayat, Teghra in the District of Begusarai
 25. Shri Chandra Bhushan Singh, S/o Late Ram Udit Singh, Village/Mohalla- Madhurapur, P.s.- Teghra, District- Begusarai at present Municipal Councillor, Ward No. 16 of Nagar Panchayat, Teghra in the District of Begusarai
 26. Smt. Archana Kumari, W/o Shri Sunil Kumar, Village/Mohalla- Daniyalpur, P.s.- Teghra, District- Begusarai at present Municipal Councillor, Ward No. 17 of Nagar Panchayat, Teghra in the District of Begusarai
 27. Shri Ram Pravesh Singh, S/o Shri Mahendra Singh, Village/Mohalla- Daniyalpur Ghorha Tol, P.s.- Teghra, District- Begusarai at present Municipal Councillor, Ward No. 19 of Nagar Panchayat, Teghra in the District of Begusarai
 28. Shri Raj Kumar Singh, S/o Late Janardan Singh, Village/Mohalla- Naukhuti Madhurapur 2, P.s.- Teghra, District- Begusarai at present Municipal Councillor, Ward No. 20 of Nagar Panchayat, Teghra in the District of Begusarai
 29. Shri Sikandar Singh, S/o Shri Ram Sagar Singh, Village/Mohalla- Madhurapur Dakshin Tola, P.s.- Teghra, District- Begusarai at present Municipal Councillor, Ward No. 22 of Nagar Panchayat, Teghra in the District of Begusarai
 30. Smt. Sanju Devi, W/o Shri Ram Kumar, Village/Mohalla- Madhurapur Dakshin Tola, P.s.- Teghra, District- Begusarai at present Municipal



Councillor, Ward No. 23 of Nagar Panchayat, Teghra in the District of Begusarai

31. Shri Ramashish Thakur, S/o Late Ram Gulam Thakur, Village/Mohalla-Madhurapur Dakshin Tola, P.s.- Teghra, District- Begusarai at present Municipal Councillor, Ward No. 24 of Nagar Panchayat, Teghra in the District of Begusarai
32. Smt. Asma Khatoon, W/o Md. Mahboob Alam, Village/Mohalla-Paigambarpur, P.s.- Teghra, District- Begusarai at present Municipal Councillor, Ward No. 25 of Nagar Panchayat, Teghra in the District of Begusarai

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Arun Kumar
For the State Election Commission	:	Mr. Amit Shrivastava
For the State	:	Mr. Rajeev Kumar Sinha, AC to AAG-7

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 25-02-2020

The petitioner has prayed for the following reliefs:-

“(i) For issuance of an appropriate writ in the nature of certiorari for quashing the notice as contained in letter number 1232 dated 21st of November 2019 issued under the signature of Municipal Executive Officer, Nagar Panchayat, Teghra (Annexure-6) by which notices have been issued to all the Municipal councillors of different wards to participate in special meeting to be convened on 27th of November 2019 for no confidence on Chief Councillor and Deputy Chief Councillor as the said notice was without



jurisdiction.

(ii) For issuance of an appropriate writ in the nature of certiorari for quashing the entire proceeding of the special meeting convened on 27th of November 2019 by which the voting for no confidence for Chief Councillor of Nagar Panchayat, Teghra was held and after counting of votes, it was declared that the post of Chief councilor, Nagar Panchayat, Teghra to be vacant from 27th of November 2019.

(iii) For issuance of an appropriate writ holding and declaring the convening of a special meeting on 27th of November 2019 for the purposes of discussion and vote on no confidence against the Chief Councillor was wholly unwarranted and in teeth of the Bihar Municipal Act and the Bihar Municipal no confidence motion process rules, 2010.

(iv) For issuance of an appropriate writ holding and declaring the requisition as submitted by the Municipal Councillors for bringing no confidence against the chief councillor of Nagar



Panchayat, was not in accordance with the provisions of Bihar Municipal Act and the Bihar Municipal no confidence motion process Rules, 2010.”

2. It is not in dispute that elections to the vacant post of Chief Councillor, Nagar Panchayat, Teghra, which was declared to be vacant from 27.11.2019, in pursuance to the voting on no confidence motion, has already been held whereupon the successful candidate has been declared to have been elected.

3. The learned counsel for the respondents has raised a preliminary issue with regard to the maintainability of the present writ petition in view of the result of the elections having already been declared.

4. Per contra, the learned counsel for the petitioner submits that since no confidence motion itself is de hors the provisions of law, the writ petition is maintainable. The learned counsel for the petitioner has also relied on a judgment reported in **2016 (2) PLJR 253 (Vinay Kumar Pappu vs. State Election Commission, Bihar & Ors.)** to contend that in the present case, the writ petition would definitely be maintainable.

5. I have heard the learned counsel for the parties and gone through the materials on record.



6. First of all, I find from the judgment reported in **2016 (2) PLJR 253 (Vinay Kumar Pappu vs. State Election Commission, Bihar & Ors.)** that the same is distinguishable in the facts and circumstances of the present case inasmuch as in the said case, the election process was not over since the result of the elections had not been declared on account of the Hon'ble High Court, though having permitted the elections to be held but simultaneously directing the result of the said election to be kept in a sealed cover. However, the situation in the present case is different inasmuch as the election process has already been completed since the results have already been declared and the name of the successful candidate has also been announced, whereafter the legal consequences have also taken effect. Thus, the reliance of the learned counsel for the petitioner on the case of **Vinay Kumar Pappu** (supra) is unfounded and fit to be rejected.

7. This Court finds that there being Bar under Articles 243-O(b) and 243-Z G (b) of the Constitution of India to interference by Courts in electoral matters and the remedy provided therein being taking recourse to filing of an election petition for the purposes of calling in question an election to any panchayat /municipality, the present writ petition is outrightly not



maintainable since the election process is complete and the results have already been declared.

8. This Court would rely on a judgment rendered by the Hon'ble Apex Court in the case of ***Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi and Ors.***, reported in ***1978 (1) SCC 405*** wherein it has been held that the sole remedy for an aggrieved party, if he wants to challenge any election, is filing of an election petition and the constitutional remedy under Article 226 of the Constitution of India is excluded and a writ petition in such cases would not be maintainable.

9. This Court would further rely on Section 138 of the ***Bihar Panchayati Raj Act, 2006***, which is reproduced hereinebelow:-

“ 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.”

10. Lastly, it would also be relevant to refer to a judgment rendered by a learned Division Bench of this Court, in the case of ***Bibha Devi & Anr. vs. The State Election Commission (Panchayat) & Ors***, reported in ***2017(1)PLJR 225***, paragraphs no. 78 to 81 whereof are reproduced hereinbelow:-

“78. In the light of the principles enunciated in *N.P. Ponnuswami vs. Returning Officer, Namakkal Constituency* (AIR 1952 SC 64), *Mohinder Singh Gill vs. Chief Election Commr.*, reported in (1978)1 SCC 405, *Anurag Narain Singh vs. State of UP*, reported in (1996) 6 SCC 303, *C. Subrahmanyam vs. K. Ramanjaneyullu*, reported in (1998) 8 SCC 703, *Election Commission of India vs. Ashok Kumar*, reported in (2000)8 SCC 216], *P. Manjula vs. 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.”

11. Considering the aforesaid facts and circumstances of the case and for the reasons mentioned hereinabove, this Court is of the view that since the election process is already over and has stood concluded with the declaration of the results, the only



recourse to the petitioner is to raise all the issues by way of appropriate election petition and the writ petition is not maintainable, hence, is dismissed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18.3.2020
Transmission Date	NA

