

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1816 of 2021

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Kanchan Devi wife of Mukesh Ram resident of Ward No. 3, village - Patra Tola, Kharik Bazar Panchayat- Kharik Bazar, Block, P.S. - Kharik, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary Panchayati Raj Department, Govt. of Bihar, Patna.
3. The Commissioner, Bhagalpur.
4. The District Magistrate, Bhagalpur.
5. The District Panchayat Raj Officer, Bhagalpur.
6. The Sub-Divisional Magistrate, Naugachia, District- Bhagalpur.
7. The Block Development Officer-cum-Returning officer, Kharik, District- Bhagalpur.
8. The Mukhiya, Kharik Bazar, Panchayat and P.O.- Kharik Bazar, P.S. - Kharik District- Bhagalpur.
9. The Panchayat Secretary, Kharik Bazar, P.O. and P.O. and Panchayat- Kharik Bazar, P.S. Kharik, Block- Kharik, District- Bhagalpur.
10. Kamni Devi wife of Arboind Poddar resident of village - Yadav tola, Kharik ward No. 03 Patratola, Kharik Bazar, P.O. - Kharik Bazar, P.S. and Block- Kharik, District- Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Amrendra Kumar, Adv.
For the Respondent/s : Mr.Mritunjay Kumar, AC to AAG-6

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 19-05-2021

The present writ petition has been primarily filed seeking cancellation of membership of the private respondent No. 10 as a ward member and to declare the petitioner as the winning candidate. The petitioner has also prayed to direct the respondents to conduct enquiry regarding illegalities committed by the respondent no. 10 as also for directing the



respondents to lodge FIR against the respondents No. 7 and 10.

2. The learned counsel for the respondents State has raised a preliminary objection with regard to the maintainability of the present writ petition in view of the result of the elections having already been declared long back on 29.5.2016, which is apparent from paragraph no.4 of the writ petition and the petitioner having filed the present writ petition belatedly in the year 2021, when the tenure of the ward members are coming to an end.

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

4. 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 appropriate remedy 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 out rightly not maintainable since the election process is complete and the results have already been declared long back.

5. 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.

6. This Court would further rely on Section 138 of the Bihar Panchayati Raj Act, 2006, which is reproduced herein 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.”

7. At this juncture, 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 herein below:-

“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 Patna High Court CWJC No.1501 of 2020 dt.25-02-2020 9/13 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.”

8. Another aspect of the matter is that there has been an inordinate delay on the part of the petitioner in approaching this Hon'ble Court inasmuch as the results of the Gram Panchayat election 2016 of the Gram Panchayat Kharik Bazar Patra Tola/ Ydadav Tola, P.S. Kharik, Block Kharik, District-Bhagalpur was declared long back on 29.5.2016, however, the petitioner has approached this Court belatedly after almost five years and now the terms of the ward members/ Mukhiya etc. of the Gram Panchayat are almost coming to an end and the Gram Panchayat Elections, 2021 are due to be held any time. It is a well-settled law that the parties should pursue their rights and remedies promptly and not sleep over their rights and remedies for an inordinate long time, it would be just, legal and



appropriate not to interfere in the matter under the discretionary jurisdiction of this Court under Article 226 of the Constitution of India. Thus, the present writ petition is also fit to be dismissed on the ground of delay and laches as well.

9. As far as prayer of the petitioner regarding issuance of directions to the respondents to file FIR against the respondents No. 7 and 10 is concerned, this Court finds that the appropriate remedy of the petitioner lies else where and the present remedy is not the proper remedy for this purpose.

10. Considering the aforesaid facts and circumstances of the case and for the reasons mentioned herein above, 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)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
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