

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4137 of 2024

Krishna Kumari Yadav wife of Ranveer Yadav, resident of Shambhavi Sadarm, Bajrangbali, Tole-Chukti, P.O. Mansi, P.S. Mansi, District-Khagaria.

... .. Petitioner/s

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 Officer on Special Duty, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
4. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
5. The Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, Patna.
6. The District Magistrate cum District Election Officer (Panchayat), Khagaria, District-Khagaria.
7. The Deputy Development Commissioner cum Chief Executive Officer, Khagaria, District-Khagaria.
8. Smt. Nikita Kumari, wife of Deepak Kumar, Resident of Village-Saidpur, P.O. Saidpur, P.S. Mansi, District-Khagaria.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S.B.K. Manglam Mr. Awnish Kumar
For the State Election Commission (Panchayat)		Mr.Ravi Ranjan Mr.Girish Pandey
For the State		Mr. Kumar Alok, SC 7
For Zila Parishad		Mr.Nikesh Kumar
For Respondent no.8		Mr.Amit Shrivastava, Sr. Advocate Mr. Prashant Bhushan Mr. Aditya Anand

CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV ORDER

10 22-11-2024 I have already heard the learned counsel for the parties.

2. The present writ application has been preferred by the petitioner for quashing the order dated 12.01.2024 passed by respondent no.2 in Case No.72 of 2023, for quashing the order dated 21.02.2024 passed by respondent no.2 in Case No.13 of



2024, including directing the Respondents-Authorities for reinstatement of the petitioner to the post of Adhyakash of Zila Parishad, Khagaria, among other reliefs.

3. The petitioner Smt. Krishna Kumari Yadav was elected as a member of Khagaria Zila Parishad on 4th November, 2021. She was elected as the Adhyaksh of the Zila Parishad, Khagaria on 28.12.2021. She was convicted on 07.10.2023 by the learned Additional Chief Judicial Magistrate-1st, Khagaria in Khagaria P.S.Case No. 637 of 2005 under Section 387/120(B) of the IPC. Her husband was also convicted under the same sections of the IPC. The petitioner and her husband were sentenced to undergo rigorous imprisonment for three years and a fine of Rs. 10,000/- was also imposed on them.

4. Since the conviction was for a period of more than six months, the State Election Commissioner (respondent no.2) declared her as disqualified vide order dated 12.01.2024, under the provisions of Section 136(1)(g) of Bihar Panchayat Raj Act, 2006, hereinafter to be referred to as 'the Act of 2006'. This order was passed on the application of respondent no.8 Smt. Nikita Kumari. Her application was registered as Case No. 72 of 2023.

Section 136(1)(g) of 'the Act of 2006' is being



extracted hereinbelow:-

*“136 **Disqualification for Membership.**_(1)
Notwithstanding anything contained in this Act,
a person shall be disqualified for election or
after election for holding the post as Mukhiya,
member of the Gram Panchayat, Sarpanch,
Panch of the Gram Katchahri, member of the
Panchayat Samit and member of Zila Parishad,
if such person-*

*.....(g) has been sentenced by a criminal
court whether within or out of India to
imprisonment for an offence, other than a
political offence, **for a term exceeding six
months** or has been ordered to furnish security
for good behavior under Section 109 or Section
110 of the Code of Criminal Procedure, 1973
(Act 2, 1974) and such sentence or order not
having subsequently been reversed”.*

5. Against the order of conviction and sentence, the petitioner preferred Criminal Appeal No.18 of 2023 in the court of Sessions Judge, Khagaria, which is still pending. Prior to filing of the said criminal appeal, a petition for interim bail and suspension of sentence was moved by the petitioner before the learned trial court. The learned trial court allowed the application. Accordingly, the petitioner furnished the interim bail bond, which was later on confirmed by the appellate court.



Since only sentence was suspended, and not the conviction, the petitioner filed an application before the appellate court on 19.10.2023 with a prayer to stay the conviction. The appellate court (Sessions Judge, Khagaria) rejected that application on 02.12.2023. Being aggrieved by that order, the petitioner preferred Cr.Misc.No. 406 of 2024 before this Court. The coordinate Bench of this Court, vide order dated 31.01.2024, stayed the conviction of the petitioner till the next date of hearing which was 11.03.2024, but the coordinate Bench vacated the stay order dated 31.01.2024, vide order 17.05.2024. While vacating the order of stay against the conviction, the coordinate Bench of this Court observed that at the time of hearing on the stay application on 31.01.2024, it was argued by the learned counsel for the petitioner that the petitioner would stand disqualified had the order not been stayed, but as a matter of fact, she was already disqualified vide order dated 12.01.2024 passed by the State Election Commissioner. Being aggrieved by the order vacating the stay, the petitioner preferred Special Leave to Appeal (Crl) No.7964/2024 before the Hon'ble Supreme Court. The Hon'ble Supreme Court pleased to stay the operation of the order, whereby the stay was vacated.

6. It is pertinent to mention here that when the



coordinate Bench granted the stay on conviction of the petitioner, vide order dated 31.01.2024, the petitioner filed an application before respondent no.3 to recall/ review the order of her disqualification dated 12.01.2024. That application was registered as Case No. 13 of 2024, but that application was rejected by respondent no.2, vide order dated 21.02.2024 and while rejecting the application, the respondent no.2 observed that he has no jurisdiction to review/recall his earlier order, since 'the Act of 2006' does not make a provision for review/recall of the order.

7. Mr. S.B.K.Mangalam, the learned counsel for the petitioner has submitted that the order of the coordinate Bench, vacating the stay, has subsequently been stayed by the Hon'ble Supreme Court, meaning thereby the conviction is inoperative till date. His further submission is that if a candidate is disqualified only because he is convicted and sentenced for a period of more than six months and the conviction is stayed by a superior court, the disqualification does not remain operative and the candidate is entitled to be reinstated.

8. Mr. Mangalam next submitted that a coordinate Bench of this Court in case of ***Hira Lal Sah Vs. The State Election Commission (Panchayat) and others 2010 (2) PLJR***



page 505 has held that if the sentence is suspended in appeal, it means that there is no sentence. If there is no sentence, then Section 136(1)(g) of 'the Act of 2006' does not come into play. In the same decision, the co-ordinate Bench has held that the State Election Commissioner if possesses the power of disqualification, it implies that he has also power to recall that order. The learned counsel also relied on the decision of *Navjot Singh Sidhu Vs. The State of Punjab and another*, reported in *(2007) 2 SCC page 574 = 2007(1) PLJR (SC) page 329*, which was considered in *Hira Lal Sah* (supra).

9. In the case of *Navjot Singh Sidhu* (supra), the elected member of Lok Sabha was disqualified due to his conviction, but his conviction was stayed by the Hon'ble Supreme Court. The similar provision is also there in Section 8 of the Representation of People Act, 1951 (hereinafter to be referred to as 'the Act of 1951'). The relevant portion of Section 8 of 'the Act of 1951' is being extracted herein under:-

"8. Disqualification on conviction for certain offences-- and sentence to imprisonment for not less than six months, shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.***

(3) A person convicted of any offence



and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (1) or sub-section (2)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.....”

10. In case of **Hira Lal Sah** (supra) the Hon’ble coordinate Bench held that the provision of ‘the Act of 2006’ is *pari materia* with the provision of Section 8 of ‘the Act of 1951’ which was under consideration in **Navjot Singh Sidhu’s case** (supra).

11. Mr. Mangalam, the learned counsel for the petitioner submitted further that it has been held in the case of **Navjot Singh Sidhu** (supra) that generally criminal appellate court does not stay the conviction invoking its jurisdiction under Section 389(1) of the CrPC, but it does not mean that the appellate court is not vested with the power of granting stay against conviction.

12. The relevant portion of para-4 of **Navjot Singh Sidhu’s Case** (supra) is being extracted hereinbelow:-

“4. Before proceeding further it may be seen whether there is any provision which may enable the Court to suspend the order of conviction as normally what is suspended is the



*execution of the sentence. Sub-section (1) of Section 389 says that pending any appeal by a convicted persons, the appellate court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond. This sub-section confers power not only to suspend the execution of sentence and to grant bail but also to suspend the operation of the order appealed against which means the order of conviction. This question has been examined in considerable detail by a three-Judge Bench of this Court in *Rama Narang v Ramesh Narang and Ahmadi*, C.J., speaking for the Court, held as under (para 19 of the reports): (SCC p. 527)*

"19. That takes us to the question whether the scope of Section 389(1) of the Code extends to conferring power on the appellate court to stay the operation of the order of conviction. As stated earlier, if the order of conviction is to result in some disqualification of the type mentioned in Section 267 of the Companies Act, we see no reason why we should 30 give a narrow meaning to Section 389(1) of the Code to debar the court from granting an order to that effect in a fit case. The appeal under Section 374 is essentially against the order of conviction because the order of sentence is



merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, when an appeal is preferred under Section 374 of the Code the appeal is against both the conviction and sentence and therefore, we see no reason to place a narrow interpretation on Section 389(1) of the Code not to extend it to an order of conviction, although that issue in the instant case recedes to the background because High Courts can exercise inherent jurisdiction under Section 482 of the Code if the power was not to be found in Section 389(1) of the Code. We are, therefore, of the opinion that the Division Bench of the High Court of Bombay was not right in holding that the Delhi High Court could not have exercised jurisdiction under Section 482 of the Code if it was confronted with a situation of there being no other provision in the Code for staying the operation of the order of conviction. In a fit case if the High Court feels satisfied that the order of conviction needs to be suspended or stayed so that the convicted person does not suffer from a certain disqualification provided for in any other statute, it may exercise the power because otherwise the damage done cannot be undone; the disqualification incurred by Section 267 of the Companies Act and given effect to cannot be



undone at a subsequent date if the conviction is set aside by the appellate court. But while granting a stay or suspension of the order of conviction the Court must examine the pros and cons and if it feels satisfied that a case is made out for grant of such an order, it may do so and in so doing it may, if it considers it appropriate, impose such conditions as are considered appropriate to protect the interest of the shareholders and the business of the company.

5. The aforesaid view has recently been reiterated and followed by another three-Judge Bench in Ravikant S. Patil v. Sarvabhuma S. Bagali. After referring to the decisions on the issue viz. State of T.N. v. A. Jaganathan, K.C. Sareen v. CBI, B.R. Kapur v. State of T.N and State of Maharashtra v. Gajanan, this Court concluded (SCC p. 681, para 16.5)

"16.5. All these decisions, while recognizing the power to stay conviction, have cautioned and clarified that such power should be exercised only in exceptional circumstances where failure to stay the conviction would lead to injustice and irreversible consequences."

13. From perusal the above-noted decision of Hon'ble the Supreme Court, it is clear that the criminal appellate court is vested with the power to grant stay also on the conviction and not only against the sentence. So, if the sentence is stayed and



conviction is also stayed, it means that the conviction and sentence both are rendered in an inoperative and dormant state. The Hon'ble Supreme Court in case of ***Ravikant S Patil (2007) 1 SCC 673*** has though recognized the power of criminal appellate court to grant stay on the conviction, but cautioned that such power should be exercised only in exceptional circumstances.

14. Mr. Mangalam, the learned counsel for the petitioner submitted further that the effect and consequence of the stay on conviction has been dealt with by the Hon'ble Apex Court in the case of ***Lok Prahari Vs. Election Commission of India and others*** reported in ***(2018) 18 SCC 114*** and also in case of ***Rama Narang Vs. Ramesh Narang and others, (1995) 2 SCC 513***. The Hon'ble Supreme Court in the case of ***Lok Prahari*** (supra) has held that once the conviction has been stayed by the appellate court, the disqualification cannot remain in effect. Para-16 of this judgment is being extracted hereinbelow:-

“16. These decisions have settled the position on the effect of an order of an appellate court staying a conviction pending the appeal. Upon the stay of a conviction under Section 389 CrPC, the disqualification under Section 8 will not operate. The decisions in Ravikant S. Patil and



Lily Thomas conclude the issue. Since the decision in Rama Narang, it has been well settled that the appellate court has the power, in an appropriate case, to stay the conviction under Section 389 besides suspending the sentence. The power to stay a conviction is by way of an exception. Before it is exercised, the appellate court must be made aware of the consequence which will ensue if the conviction were not to be stayed. Once the conviction has been stayed by the appellate court, the disqualification under sub-sections (1), (2) and (3) of Section 8 of the Representation of the People Act, 1951 will not operate. Under Article 102(1)(e) and Article 191(1)(e), the disqualification operates by or under any law made by Parliament. Disqualification under the above provisions of Section 8 follows upon a conviction for one of the listed offences. Once the conviction has been stayed during the pendency of an appeal, the disqualification which operates as a consequence of the conviction cannot take or remain in effect. In view of the consistent statement of the legal position in Rama Narang and in decisions which followed, there is no merit in the submission that the power conferred on the appellate court under Section 389 does not include the power, in an appropriate case, to stay the conviction. Clearly, the appellate court does possess such a power. Moreover, it is untenable that the disqualification



which ensues from a conviction will operate despite the appellate court having granted a stay of the conviction. The authority vested in the appellate court to stay a conviction ensures that a conviction on untenable or frivolous grounds does not operate to cause serious prejudice. As the decision in Lily Thomas has clarified, a stay of the conviction would relieve the individual from suffering the consequence inter alia of a disqualification relatable to the provisions of sub-sections (1), (2) and (3) of Section 8.”

15. The Hon’ble Supreme Court in case of **Rama Narang** (supra) has also considered the effect of stay of conviction on disqualification. It has been held by the Hon’ble Supreme Court that if the conviction is stayed, the disqualification is not operative because the continuation of the disqualification shall cause damage to the candidate. The relevant portion of para-19 of the said case is being extracted hereinbelow:-

“.....In a fit case if the High Court feels satisfied that the order of conviction needs to be suspended or stayed so that the convicted person does not suffer from a certain disqualification provided for in any other statute, it may exercise the power because otherwise the damage done cannot be undone;



the disqualification incurred by Section 267 of the Companies Act and given effect to cannot be undone at a subsequent date if the conviction is set aside by the Appellate Court. But while granting a stay of (sic or) suspension of the order of conviction the Court must examine the pros and cons and if it feels satisfied that a case is made out for grant of such an order, it may do so and in so doing it may, if it considers it appropriate, impose such conditions as are considered appropriate to protect the interest of the shareholders and the the business of the company.....”

16. Mr. Ravi Ranjan, the learned Counsel for the Respondent-State Election Commission has submitted that the impugned orders dated 12.01.2024 passed in Case No. 72 of 2023 and 21.02.2024 passed in Case No. 13 of 2024 by the State Election Commission are based on the disqualification of the petitioner due to her conviction and sentence for more than six months. He submitted further that bare perusal of Section 136(1) (g) of ‘the Act of 2006’ clarifies that the convict becomes disqualified as soon as he/she is convicted and sentenced for a period of more than six months. The disqualification cannot be wiped out/obliterated merely because the stay has been granted on conviction. The learned counsel



submitted that the phrase used in Section 136(1)(g) of 'the Act of 2006' **"...such sentence or order not having been reversed"** clarifies that unless the order of conviction and sentence is reversed, the disqualification attached to the conviction and sentence shall continue. The disqualification shall only be wiped out on reversion of conviction and sentence. He next submitted that under Section 386(c) (i) of the CrPC only, the criminal appellate court can reverse the sentence. In the present case, the appeal of the petitioner is still pending before the Sessions Judge, Khagaria and till date the conviction and sentence has not been reversed, so the disqualification of the petitioner attached to the conviction cannot be wiped out. The further submission of the learned counsel is that Section 136(1)(g) of 'the Act of 2006' is within the legislative competence and this provision has been held intra vires in the case of *Manoj Bind @ Manoj Kumar Bind Vs. The State of Bihar and others* [(2009) 4 PLJR 35] and also in the case of *Tapendra Kumar Singh Vs. State of Bihar and others* (2020 SCC OnLine Pat 4234). His further submission is that the legislative wing of the State in its wisdom had enacted this provision with an intent to oust a person of criminal background from holding the post in Panchayat and if the disqualification is



wiped out due to stay of conviction, the legislative intent shall be rendered otiose. He has also submitted that there is no provision of review/recall of the order promulgated by the State Election Commissioner, as such, he could not recall or review his earlier order.

17. Mr. Amit Shrivastava, the learned senior counsel for respondent no.8 is in agreement with the submissions of the learned counsel for the Respondent-State Election Commission. He also submitted that bare perusal of Section 136(1) (g) of 'the Act of 2006' shows that the legislative intent is to disqualify a candidate on his (the candidate's) conviction and sentence for a period of more than six months and disqualification continues till its reversion by the appellate court. He submitted further that the criminal appeal preferred by the petitioner is still pending and the conviction and sentence is not reversed by the appellate court till date, consequently the petitioner is disqualified as per the provision of Section 136(1) (g) of 'the Act of 2006'. He also submitted that the decision of the coordinate Bench of this Court in ***Hira Lal Sah's*** case (supra) is *per incuriam* since it was in utter disregard of two earlier decisions of the coordinate Benches of this Court. The first decision is of ***Chandeshwari Prasad Vs. State Election Commission and others*** reported in



2005 (1) PLJR 560 and the second decision is of ***Md. Neyaz Vs. The State of Bihar and others***, reported in **2010 (2) PLJR 453**.

18. From perusal of para-8 of ***Chandeshwari Prasad's*** case (supra) it appears that only sentence of the accused (Chandeshwari Prasad) was suspended, and not the conviction. Similar is the fact in ***Hira Lal Sah's*** case (supra) and in the case of ***Md. Neyaz Ahmad*** (supra).

19. The case of the present petitioner is quite distinguishable from those cases. In the present case, the conviction of the petitioner was stayed by the coordinate Bench of this Court, vide order dated 31.01.2024 passed in Cr.Misc.No. 406 of 2024. Subsequently, it was withdrawn/vacated vide order dated 17.05.2024, but the Hon'ble Supreme Court has been pleased to stay the operation of the order dated 17.05.2024 passed by the coordinate Bench of this Court. It means that the position prior to 17.05.2024 was restored, so the order dated 31.01.2024 passed by the coordinate Bench in Cr.Misc.No. 406 of 2024 becomes operative, when the order dated 17.05.2024 was stayed by the Hon'ble Supreme Court.

20. Mr. Shrivastava, the learned Sr. Counsel for the respondent no.8 has submitted further that the decision of ***Hira***



Lal Sah (supra) is based on the case of ***Navjot Singh Sidhu*** (supra). The case of ***Navjot Singh Sidhu*** (supra) was relating to Section 8 of 'the Act of 1951'. The coordinate Bench, while rendering the decision in ***Hira Lal Sah*** (supra) has observed that the provision of Section 8 of 'the Act of 1951' is in *pari materia* with Section 136(1)(g) of 'the Act of 2006'. The learned counsel submitted that the decision of ***Hira Lal Sah's*** Case (supra) is *per incuriam* on this score because Section 8 of 'the Act of 1951' is not in *pari materia* with Section 136(1)(g) of 'the Act of 2006'. The distinguishable feature between the provisions of these two enactments is that Section 8(4) of 'the Act of 1951' makes a special provision, by virtue of which the disqualification on the basis of conviction under Section 8 of 'the Act of 1951' does not take effect immediately after conviction. A grace period of three months (under Section 8(4) of 'the Act of 1951') has been provided to the convict for preferring the appeal. In these three months, the disqualification shall not take effect and if the appeal/application or revision is preferred against the conviction, the disqualification shall not take effect until disposal of the appeal on the application. But so far as Section 136(1)(g) of 'the Act of 2006' is concerned, it takes effect immediately after conviction. There is no such grace



period in Section 136(1)(g) of 'the Act of 2006', similar to Section 8(4) of 'the Act of 1951'. As such, these two provisions cannot be said to be in *pari materia* with each other.

21. I am not in agreement with the submissions of Mr. Shrivastava, the learned senior counsel for respondent no.8 because Section 8(4) of 'the Act of 1951' has been declared *ultra vires* in the case of ***Lily Thomas Vs. Union of India and others [(2013) 7 SCC 653]***. The reason for declaring it as *ultra vires* is that according to Article 101 of the Constitution of India, the seat of a convicted member becomes vacant on his disqualification owing to conviction under Article 102(1) & (2) of the Constitution of India. The parliament ignoring the specific provision of the Constitution had enacted Section 8(4) of the 'the Act of 1951', giving a grace period to a convicted member for filing appeal. After declaring Section 8(4) of 'the Act of 1951' as *ultra vires*, Section 136(1)(g) of 'the Act of 2006' and Section 8 of 'the Act of 1951' are in *pari materia* with each other.

22. Section 8 of the 'the Act of 1951' and Section 136(1)(g) of 'the Act of 2006' both relate to disqualification of a candidate on his conviction. So the basis of disqualification in both these enactments are on similar ground i.e. the conviction



and sentence for minimum period prescribed in these two enactments are equal. Therefore, in my view, both the provisions in these two enactments are in *pari materia* and the *ratio decidendi* of a decision in case of Section 8 of 'the Act of 1951' is applicable to the case of Section 136(1)(g) of 'the Act of 2006'.

23. So far as the submissions of the learned senior counsel Mr. Amit Shrivastava for respondent no.8 and Mr. Ravi Ranjan for the Respondent-State Election Commission (Panchayat) that the disqualification of the petitioner can be wiped out only on the reversion of the sentence by the appellate court is concerned, I am not in agreement with their submissions for the reasons that it is true that the condition precedent of obliteration of disqualification is the reversion of conviction and sentence by the appellate court, as provided under Section 136(1)(g) of 'the Act of 2006'. Similarly, under Section 8 of 'the Act of 1951', there is also condition precedent that disqualification under Section 8 of 'the Act of 1951' shall continue for a period of six years. The relevant portion of Section 8(1) of 'the Act of 1951' is extracted hereinbelow:-

“.....and sentenced to imprisonment for not less than six months, shall be disqualified from the date of such conviction and shall continue



to be disqualified for a further period of six years since his release....”

24. So in both the enactments, there is condition precedent for wiping out/obliteration of the disqualification.

25. The effect of the stay on conviction has already been discussed in the case of **Lok Prahari** (supra) and **Rama Narang** (supra). In these two cases, the Hon’ble Supreme Court has held that if the conviction is stayed, the disqualification attached to the conviction goes.

26. On the basis of above-mentioned observation, the order passed by respondent no.2 dated 12.01.2024 in Case No. 72 of 2023 as well as the order dated 21.02.2024 in Case No. 13 of 2024 are set aside. Accordingly, the writ application is allowed and the petitioner is directed to be reinstated to the post, from which she was removed.

27. Needless to say that this order shall be subject to the final outcome of the Special Leave to Appeal (Crl.) No. 7964/2024 pending before the Hon’ble Supreme Court.

(Nawneet Kumar Pandey, J)

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