

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.213 of 2024**

**In**

**Civil Writ Jurisdiction Case No.5501 of 2022**

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1. The State Election Commission (Panchayat) Sone Bhawan, Bir Chand Patel Path, Patna through the State Election Commissioner
  2. The State Election Commissioner, The State Election Commission(Panchayat), Sone Bhawan, Bir Chand Patel Path, Patna
  3. The Secretary, The State Election Commission (Panchayat), Sone Bhawan, Bir Chand Patel Path, Patna, Bihar

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The District Election Officer (Panchayat, Sitamarhi, District- Sitamarhi.
3. The Returning Officer, Panchayat Election, 2021, Runnaisaidpur Block, District- Sitamarhi.
4. Saji Ahmad son of Safi Ahmad, Resident of Village and P.O. Mehsaul, P.S. Runnaisaidpur, District- Sitamarhi.
5. Dev Narayan Sahu @ Dev Narayan Sah, Son of Late Ram Vriksh Shah, resident of Village- Mehsaul, Ward no. 7, P.O. Mehsaul, P.S. Runnaisaidpur, District- Sitamarhi

... .. Respondent/s

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with

**Civil Writ Jurisdiction Case No. 4484 of 2024**

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Sajee Ahmad Son of Safi Ahmad Resident of Village and P.O. Mehsaul, Police Station Runnaisaidpur, District Sitamarhi

... .. Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary, Government of Bihar, Patna.
2. The State Election Commissioner (Panchayat), Sone Bhawan, Bir Chand



- Patel Path, Patna through the State Election Commissioner.
- 3. The State Election Commission, the State Election Commission (Panchayat), Sone Bhawan, Bir Chand Patel Path, Patna.
  - 4. The Secretary, the State Election Commission (Panchayat), Sone Bhawan, Bir Chand Patel Path, Patna.
  - 5. The District Election Officer (Panchayat), Sitamarhi, District- Sitamarhi.
  - 6. The Returning Officer, Panchayat Election, 2021, Runnisaidpur Block, District-Sitamarhi.
  - 7. Dev Narayan Sahu @ Dev Narayan Sah, son of late Ram Vriksh Shah, Resident of Village-Mehsaul, Ward No.7, P.O.- Mehraul, Police Station-Runnisaidpur, District-Sitamarhi.

... .. Respondent/s

**Appearance :**

(In Letters Patent Appeal No. 213 of 2024)

For the Appellant/s : Mr.Ravi Ranjan, Advocate  
Mr. Girish Pandey, Advocate  
For the State : Mr. Ajay, GA-5  
For Respondent No. 5 : Mr. S.B.K. Manglam, Advocate  
For Respondent No. 4 : Mr. Sarv Deo Singh, Advocate  
Mr. Sanjay Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 4484 of 2024)

For the Petitioner/s : Mr.Sanjay Kumar, Advocate  
Mr. Sarv Deo Singh, Advocate  
For the State : Mr. Sanjeet Kumar Singh, A.C. to AAG-6  
For Respondent No. 7 : Mr. S.B.K. Manglam, Advocate  
For S.E.C : Mr. Girish Pandey, Advocate  
Mr. Ravi Ranjan, Advocate

**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE MR. JUSTICE PARTHA SARTHY**  
**CAV JUDGMENT**  
**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 16-07-2024**

The writ petition is placed along with the LPA by virtue of an order passed by the learned Single Judge. The order impugned in the writ petition is a direct consequence of the



order impugned in the appeal. Hence, we heard the appeal first.

2. The appeal is filed by the State Election Commission (Panchayat) against the directions issued by the learned Single Judge to the Election Tribunal constituted under the Bihar Panchayat Raj Act to consider the validity of the re-polling conducted on the ground of defect in one of the Electronic Voting Machine (EVM) with respect to Booth No. 213. The Election Tribunal on the directions issued in the impugned order in appeal interfered with the re-polling in which the 4<sup>th</sup> respondent was declared elected. The writ petition is filed against the order of the Election Tribunal. We refer to the parties from the appeal.

3. The issue agitated is with respect to the re-polling in one of the booths, in an election conducted for the post of *Mukhiya* of Gram Panchayat, Gangwara Bujurg. The election as scheduled was initially conducted on 12.12.2021 in all the 13 booths. The 5<sup>th</sup> respondent in the appeal obtained 1073 votes as against the 4<sup>th</sup> respondent's 1048 votes.

4. A re-polling was ordered finding that there was a defect in the EVM in Booth No. 213 and on the re-polling conducted on 15.12.2021 the 4<sup>th</sup> respondent was declared elected by a margin of 62 votes. It was the contention of the



writ-petitioner that there was no objection raised on behalf of any of the candidates and the action of the District Election Officer in carrying out a re-poll was illegal.

5. The learned Single Judge relying on decisions of the Hon'ble Supreme Court found that the direction of the District Election Officer to carry out a re-poll on the basis of the submission of the Engineer of the Bharat Electronics Limited (BEL) without any authenticated expert scientific report from the company itself was bad. Finding the action of the District Election Officer to be against the law regarding elections, the re-poll was found to be unsustainable. However, the 5<sup>th</sup> respondent, the lost candidate, was directed to file an Election Petition and the 4<sup>th</sup> respondent, the returned candidate, was directed to appear before the Election Tribunal within one week. The Election Commission was directed to produce an expert report in relation to the EVM and on failure to produce that it was directed that the subsequent election would be declared to be not held in accordance with the provisions of the Bihar Panchayat Raj Act, 2006.

6. Shri Ravi Ranjan, learned Standing Counsel appearing for the appellants, urged that the learned Single Judge erred in issuing the directions in the impugned judgment,



especially since, after a candidate is returned, any person aggrieved with the election has to prefer an Election Petition before the Election Tribunal constituted. The said Election Petition has also to be filed within 30 days as provided under Section 137 of the Bihar Panchayat Raj Act read with Rule 106 of the Bihar Panchayat Election Rules, 2006. The 5<sup>th</sup> respondent had not filed any such Election Petition and this Court under Article 226 ought not to have entertained the matter. The peremptory findings entered into by the learned Single Judge, in any event, would regulate the decision of the Election Tribunal. As anticipated, the Election Tribunal has passed an order interfering with the election of the 4<sup>th</sup> respondent, which is challenged in the writ petition. The remedy of filing an Election Petition having not been availed by the 5<sup>th</sup> respondent; the lost candidate, he cannot invoke the extraordinary jurisdiction under Article 226. The delay in filing an Election Petition is crucial and it cannot be condoned, as held by the Hon'ble Supreme Court in *Hukumdev Narain Yadav v. L.N. Mishra; (1974) 2 SCC 133* and a Division Bench of this Court in *Anil Kumar Jha v. The State of Bihar & Ors.; 2010 (4) PLJR 475*. The appeal has to be allowed setting aside the judgment of the learned Single Judge, in which event, the writ petition also will



have to be allowed.

7. Shri S.B.K. Mangalam, learned Counsel appearing for the 5<sup>th</sup> respondent, pointed out that there was no objection filed against the polling when the counting was going on. Merely on the ground of some defect having been alleged in an EVM, a re-poll was ordered, that too, on the next day of the date of counting. The learned Counsel urged that there are very many factual aspects which have to be looked into while adjudicating the validity of the re-poll conducted. It is also argued that the Hon'ble Supreme Court had extended the time in all instances where limitation is prescribed by statute, due to the pandemic situation and this would also enable the petitioner to file a proper Election Petition within the extended time.

8. Shri Sarva Deo Singh, learned Counsel appeared for the 4<sup>th</sup> respondent and the writ-petitioner and adopted the contention raised by the State Election Commission.

9. Section 137 of the Bihar Panchayat Raj Act specifically interdicts any election to be called in question except by an Election Petition as prescribed and also provides for the Election Tribunal before whom the Election Petition has to be filed and tried. Rule 106 of the Bihar Panchayat Election Rules provides for an Election Petition to be filed under Section



137 of the Act within thirty days from the date of declaration of the results. Admittedly, in the present case, the result was declared on 15.12.2021 and an Election Petition should have been filed on 14.01.2022.

10. The Hon'ble Supreme Court has extended the limitation in *Suo Motu Writ Petition (C) No. 3 of 2020, Cognizance for Extension of Limitation, In Re (2021) 5 SCC 452*. Therein, due to the pandemic situation limitation was saved between 15.03.2020 till 28.02.2022. It was also directed that an appeal could be filed within ninety days from 01.03.2022. Hence, an appeal could have been filed on or before 29.05.2022. The Hon'ble Supreme Court also declared that if a longer period than 90 days is provided in a Statute, then that longer period will apply. In so far as an Election Petition there is only 30 days time to file an Election Petition, as per the statute.

11. Since the expiry of limitation to file an Election Petition as per the statute, in the instant case fell on 14.01.2022, during the period of the pandemic; when the Hon'ble Supreme Court had extended the limitation, the lost candidate could have filed an Election Petition on or before 29.05.2022, which is the day on which the 90 days expired, as permitted by the Hon'ble Supreme Court, though the limitation as provided under the



Election Rules was of 30 days. No such Election Petition was filed within that time.

12. In this context, we refer to a decision of the Hon'ble Supreme Court in **Hukumdev Narayan Yadav v. Lalit Narain Mishra;(1974) 2 SCC 133**. Therein the question was whether the limitation in presenting an election petition could be extended and the delay occasioned condoned. The respondent was declared elected on 02.02.1972 and the election petition was filed on 20.03.1972. The election petition was dismissed as delayed since Section 81 of the Representation of the People Act, 1951, provided that *inter alia* it had to be filed within a period of forty-five days from the date of the election of the returned candidate. The election petition was filed on 20.03.1972 since the 18<sup>th</sup> and 19<sup>th</sup> day of March were Saturday and Sunday. On Saturday, the Judges do not sit and Sunday is a holiday for the Court and the contention was that Section 10 of the General Clauses Act could be availed. It was also contended that even otherwise Section 5 of the Limitation Act is applicable. On the first question, which is not relevant in the present case, it was found that though the Judges were not sitting, the Rules of the Patna High Court permitted the election petition to be moved before the Registrar. Having held so, the question as to whether Section 5 of the



Limitation Act would apply was elaborately considered, with reference to Section 29(2) of the Limitation Act as has been done by the High Court of Calcutta. It was held so in para-17.

*“17. Though Section 29(2) of the Limitation Act has been made applicable to appeals both under the Act as well as under the Code of Criminal Procedure, no case has been brought to our notice where Section 29(2) has been made applicable to an election petition filed under Section 81 of the Act by virtue of which either Sections 4, 5 or 12 of the Limitation Act has been attracted. Even assuming that where a period of limitation has not been fixed for election petitions in the Schedule to the Limitation Act which is different from that fixed under Section 81 of the Act, Section 29(2) would be attracted, and what we have to determine is whether the provisions of this Section are expressly excluded in the case of an election petition. It is contended before us that the words “expressly excluded” would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual the meaning given in the Dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the*



*provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. The provisions of Section 3 of the Limitation Act that a suit instituted, appeal preferred and application made after the prescribed period shall be dismissed are provided for in Section 86 of the Act which gives a peremptory command that the High Court shall dismiss an election petition which does not comply with the provisions of Sections 81, 82 or 117. It will be seen that Section 81 is not the only Section mentioned in Section 86, and if the Limitation Act were to apply to an election petition under Section 81 it should equally apply to Sections 82 and 117 because under Section 86 the High Court cannot say that by an application of Section 5 of the Limitation Act, Section 81 is complied with while no such benefit is available in dismissing an application for non-compliance with the provisions of Sections 82 and 117 of the Act, or alternatively if the provisions of the Limitation Act do not apply to Section 82 and Section 117 of the Act, it cannot be said that they apply to Section 81. Again Section 6 of the Limitation Act which provides for the extension of the period of limitation till after the disability in the case of a person who is either a minor or insane or an idiot is inapplicable to an election petition. Similarly, Sections 7 to 24 are in terms inapplicable to the proceedings under the Act, particularly in respect of the filing of election petitions and their trial.”*

Under the R.P. Act, if the provisions of Section 81 are not



complied with, Section 86 mandates that the High Court shall dismiss the petition; which was found to be an exclusion of Section 5 of the Limitation Act.

13. In the teeth of the binding precedent noticed above, and also the decision of the Hon'ble Supreme Court extending limitation for 90 days from 28.02.2022, it has to be found that the remedy under Section 137 read with Rule 106 stood expired. Section 137, it has to be emphasized, statutorily prohibits any election to be challenged other than by an Election Petition. The facts which led to the re-poll and also the validity of such re-poll could have been examined by the Election Tribunal. The 5<sup>th</sup> respondent having not availed the remedy within the period provided and even within the extended period, as per the directions of the Hon'ble Supreme Court; the learned Single Judge could not have directed an Election Petition to be entertained long after the delay. We cannot hence sustain the order of the learned Single Judge and we allow the appeal setting aside the judgment in the writ petition.

14. In the writ petition placed before us, the challenge is against the order of the Tribunal setting aside the election of the writ-petitioner. The order is in the petition directed to be filed by the learned Single Judge; which direction has been



found to be illegal by reason of the statutory mandate in filing an Election Petition within a period of 30 days. The pandemic situation taken into account by the Hon’ble Supreme Court and the extension of limitation provided therein was also not availed of by the respondent who was before the Tribunal.

15. The writ petition hence has to be allowed setting aside the order of the Election Tribunal.

16. Ordered accordingly.

**(K. Vinod Chandran, CJ)**

**Partha Sarthy, J:** I agree.

**(Partha Sarthy, J)**

P.K.P./-

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