

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1669 of 2025

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Chandan Kumar @ Chandan Sharma Son of Mahendra Sharma, Resident of
Village Mogalapur, Police Station - Sonbhadra, District - Arwal.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Co-operative Societies Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Co-operative Societies Department, Government of Bihar, Patna.
3. The District Magistrate cum District Election Officer, Arwal.
4. The District Co-operative Officer, Arwal cum Deputy District Election Officer, Arwal.
5. The Election Officer Cum Block Development Officer, Sonbhadra Banshi Suryapur, District Arwal.
6. Sonbhadra PACS, Block Sonbhadra Banshi Suryapur, District - Arwal through its Manager.
7. The Bihar State Election Authority through the Chief Election Officer, Harding Road, Patna, Bihar.
8. Pavan Kumar Son of Radheshyam Sharma @ Bhola Sharma, Resident of Village Sonbhadra, Police Station Sonbhadra, District Arwal, PIN Code 804419.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sarvadeo Singh, Advocate Mr. Sanjay Kumar, Advocate
For the State	:	Ms. Divya Verma, AC to AAG 3
For the Election Authority	:	Mr. Mukesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 30-01-2025

Heard learned counsel for the petitioner and
learned counsel appearing on behalf of the respondents.

2. The present writ petition has been filed for
setting aside the election dated 29.11.2024 and declaration of
the result dated 30.11.2024 by which the respondent no. 8 has



been declared as winner and Chairman of the Sonbhadra PACS on the ground that the respondent no. 8 is neither the member nor the voter of the Sonbhadra PACS. The respondent no. 5 has passed the order dated 21.11.2024 and has accepted the nomination paper of respondent no. 8.

3. Learned counsel for the petitioner submits that the petitioner has also prayed to take appropriate action against the Block Development Officer cum Election Officer, Taraiya for not performing his duty as malafidely favouring the respondent no. 8 in accepting the nomination paper improperly.

4. Learned counsel for the state as well as election authority have raised a preliminary objection with regard to the maintainability of the present writ petition in view of the result of the election in question having already been declared long back on 30.11.2024 which is apparent from paragraph no. 11 of the writ petition. The petitioner has filed the present writ petition belatedly on 29.01.2025 after the election of the Sonbhadra PACS concluded.

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

6. This Court finds that there being bar under Article 243-O (b) and Article 243-ZG (b) of the Constitution of



India, interference by Courts in electoral matter and appropriate remedy being taking resources to filing of the election petition for the purpose of calling question and election to any PACS/Panchayat/Municipality, the present writ petition is outrightly not maintainable since the election process is completed and the result has been declared long back.

7. Learned counsel for the petitioner relied upon the paragraph nos. 20 and 21 of the judgment in the case of N. S. Madhavan v. Shyamdeo Prasad reported in 2010 (3) PLJR 578 which are quoted hereinbelow:-

20. The question that emanates in the case at hand whether the order passed by the learned Single Judge can be treated to be one founded on the base of an exceptional circumstance. On a scrutiny of the order of the learned Single Judge it is evident that the writ petitioner was given a "No Due Certificate" by the Assistant Manager, Magadh Central Co-operative Bank, Gaya on 25.9.2009. The same authority before expiry of two days issued another certificate in which it was stated that a certain sum was due. It is worth noting the said certificate was filed by one Satyendra Singh before the Returning Officer. The petitioner was asked to clarify the position. The Returning Officer also asked the District Co-operative Officer to enquire into the matter with regard to issue of the 'No Due Certificate'. On 5.10.2009, on an enquiry a certificate was granted by the Managing Director, Magadh Central Co-operative Bank, Gaya to the District Co-operative Officer clearly stating therein that there was no due as against the writ petitioner. It is also interesting to note that all the nomination papers were rejected. As is evincible, the Returning Officer, for reasons best known to him, did not give weightage to the certificate issued by the Managing Director. When the authority had directed an enquiry and the maze was clear there was no reason to reject the



nomination paper. On the contrary, the second certificate that was given at the instance of another is an erroneous one. Two aspects need to be highlighted. An incorrect certificate was issued to debar the petitioner from contesting the election, and further all the nomination papers were rejected. This tantamounts to total abuse of exercise of power vested in a statutory authority. It is apt to note the certificate of the Managing Director was filed before the Returning Officer but it was not taken note of. When a statutory authority acts in such a manner, it can be said with certitude that the doctrine of abuse of the process of law comes into play. In fact, it would not be an exaggeration to say it creates a concavity in the system which is governed by 'Rule of Law'. When the exercise of power is in total disregard of all canons of justice and violative of acceptable norms and manifestly exposes clear abuse of the process of law, a writ court cannot ignore it. The initial certificate was given regard being had to the fact situation. Another certificate was issued at the instance of a stranger. There is no bar to issue such a certificate but it does not have the semblance of justifiability. The matter was enquired into and the position was clarified by the Managing Director by issuing a certificate. Before granting the second certificate, the authority should have been apprised of the fact whether there was really any due and should have adverted to the issue whether the certificate that had been granted by him on the earlier occasion was erroneous or not. The act of the authority, as we perceive, is not based on any acceptable intelligible principle. There is no difficulty in holding that there was really abuse of the process of law while the second certificate was granted. We are inclined to think even a man of average understanding and intelligence would not have done so. If a statutory authority in position acts in such a manner, not only it will fall in the realm of abuse of the process of law but would frustrate the basic concept of 'Rule of Law' by which the democracy is governed. Such an action is likely to create an atmosphere of anarchy and corrode the basic concept of co-operative movement which has a laudable object. The right of a person should not be curtailed or clipped by such an exercise of law, for the simple reason such an act paves the path towards the darkest hour in a democracy and fossilises the basic tenet of Rule of Law.



21. Because of the prevalent factual matrix, we are disposed to think that the present case is one which can be treated as an exception and, hence, we are not inclined to interfere with the order of the learned Single Judge. That apart, there was no interdiction at the intermediate stage of the election. All the nomination papers were rejected. None had raised any election dispute or filed any election petition before the writ court. Ergo, the interference by the learned Single Judge cannot be found fault with. Though we have not interfered with the order of the learned Single Judge, yet we must hold that the rejection or acceptance of nomination papers at the intermediate stage of election or when the election process is in continuance are not to be interfered with. The writ court should not create an impediment in the completion of the election process. That apart, after the election takes place, the writ court should ask the person aggrieved to take recourse to the election dispute. Only in an exceptional circumstance the writ court may interfere. We have given our reasons to treat the present case as an exception. We reiterate that the writ court should leave the parties to seek their remedy under the statutory law, barring the rare and exceptional cases.

8. In view of the aforesaid judgment of this Hon'ble Court, the writ petition is maintainable.

9. Learned counsel for the State as well as Election Authority also relied upon the paragraph nos. 7, 8, 9, 10, 11, 12 and 13 of the judgment in the case of N. S. Madhavan v. Shyamdeo Prasad reported in 2010 (3) PLJR 578 which are quoted hereinbelow:-

7. Section 10 of the 2008 Act pro vides for Election Petition. The said provision reads as under:—

“10. Election Petition.—(1)(i) The election to any office of a body shall not be called in question except by an election petition as prescribed:

Provided that if an election to any office of a body is under dispute, the election petition shall lie



before such authority as is prescribed under the Act or Rule regulating such body or where administration and functioning of such body is not regulated by any statutory provision, before such Authority, which the State Government may prescribe by issuance of notification.

(2) Parties to the petition.—A petitioner shall join as a respondent to this petition—

(a) Where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidates has been duly elected, all the contesting candidates other than the petitioner; and where no such further declaration is claimed, all the returned candidates; and

(b) Any other candidate against whom allegations of any corrupt practice are made in the petition.”

8. Section 11 which deals with bar to interference by Courts in electoral matters is as follows:—

“11. Bar to interference by Courts in electoral matter.—Notwithstanding anything contained in this Act

(a) The validity of any order relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made shall not be called in question in any court;

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

9. Section 12 specifies the grounds for declaring election to be void. It reads as under:—

“12. Grounds for declaring election to be void.—
(1) Subject to the provisions of sub-section (2) if the prescribed authority is of opinion—

(a) that on the date of his election, a returned candidate was not qualified or was disqualified, to be chosen as a member under this Act; or

(b) that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent; or

(c) that any nomination paper has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—



(i) by the improper acceptance of any nomination; or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent; or

(iii) by the improper reception, refusal or rejection of any vote or reception of any vote which is void; or

(iv) by any non-compliance with the provision of this Act or of any rules or orders made thereunder; the Prescribed Authority shall declare the election of the returned candidate to be void.

(2) If in the opinion of the Prescribed Authority, any agent of a re-turned candidate has been guilty of any corrupt practice, but the Prescribed Authority is satisfied

(a) that no such corrupt practice was committed at the election by the candidate and every such corrupt practice was committed contrary to the orders and without the consent of the candidate;

(b) that the candidate took all reasonable measures for preventing the commission of corrupt practices at the election; and

(c) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agent; then the Prescribed Authority may decide that the election of the returned candidates is not void.”

10. Section 13 deals with the grounds on which a candidate other than the re turned candidate may be declared to have been elected. Section 13 is as follows:—

“13. Grounds on which a candidate other than the returned candidate may be declared to have been elected.— (1) If any person who has filed an election petition has, in addition to calling in question the election of the returned candidate, claims a declaration that he himself or any other candidate has been duly elected and the Prescribed Authority is of opinion—

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes, the Prescribed Authority shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.



(2) The decision of the Prescribed Authority shall be final.”

11. It is worth noting a set of Rules, namely, the Bihar State Election Authority Rules, 2008 has been framed in exercise of the powers conferred in sub-section (1) of Section 16 of the 2008 Act. Chapter-V whereof deals with election petitions. Rules 11 and 12 being relevant are reproduced below:—

“11. Election Petitions.—No election to a post of a body shall be called in question except by an election petition:

Provided that if an election to any office of a body is under dispute, the election petition shall lie before such authority as is prescribed under the Act and/or Rules regulating such body or where administration and functioning of such body is not regulated by any statutory provision, before the Munsif in whose jurisdiction such institution or establishment or organization or body is situated.

12 A petitioner shall add as a respondent to this petition.—(a) Where the petitioner, in addition to claiming a declaration that the election of ali or any of the returned candidates is void, claims a further declaration that he himself or any other candidates has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) Any other candidate against whom allegations of any corrupt practice are made in the petition.”

12. From the aforesaid scheme of things there can be no trace or scintilla of doubt that an election dispute has been provided as a statutory remedy and whole gamut of procedure has been prescribed. Regard being had to the aforesaid, it is to be adjudged whether a writ petition under Article 226 of the Constitution of India under any circumstances would be entertained or not. In this regard we may refer with profit to the decision in N.P. Punnuswami v. Returning Officer, Namakkal, (1952) 1 SCC 94 : AIR 1952 SC 64 wherein it has been held:

“18. The points which emerge from this decision may be stated as follows:—

(1) The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it.

(2) Strictly speaking, it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members, and if the



legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it.”

13. *In Nanhoo Mal v. Hira Mal, (1976) 3 SCC 211 : AIR 1975 SC 2140, a three-Judges Bench of the Apex Court referred to the case of Ponnuswami (supra) and expressed thus:—*

“5. It follows that the right to vote or stand for election to the office of the President of the Municipal Board is a creature of the statute, that is, the U.P. Municipalities Act and it must be subject to the limitations imposed by it. Therefore, the election to the office of the President could be challenged only according to the procedure prescribed by that Act and that is by means of an election petition presented in accordance with the provisions of the Act and in no other way. The Act provides only for one remedy, that remedy being an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. These conclusions follow from the decision of this Court in Ponnuswami's case ((1952) 1 SCC 94 : AIR 1952 SC 64) (supra) in its application to the facts of this case. But the conclusions above stated were arrived at without taking the provisions of Article 329 into account. The provisions of Article 329 are relevant only to the extent that even the remedy under Article 226 of the Constitution is barred as a result of the provisions. But once the legal effect above set forth of the provision of law which we are concerned with is taken into account there is no room for the High Courts to interfere in exercise of their powers under Article 226 of the Constitution. Whether there can be any extraordinary circumstances in which the High Courts could exercise their power under Article 226 in relation to elections it is not now necessary to consider.”

10. This Court would relied upon the judgment rendered in the case of Mohinder Singh Gill & Anr. v. Chief Election Commissioner, New Delhi & 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 writ petition in such cases would not be maintainable.

11. 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 v. State Election Commission (Panchayat)* reported in 2017 (1) PLJR 225, paragraph nos. 78, 79, 80 & 81 which are quoted hereinbelow:-

78. In the light of the principles enunciated in N.P. Ponnuswami v. Returning Officer, Namakkal Constituency ((1952) 1 SCC 94 : AIR 1952 SC 64), Mohinder Singh Gill v. Chief Election Commr., reported in (1978) 1 SCC 405, Anurag Narain Singh v. State of UP, reported in (1996) 6 SCC 303, C. Subrahmanyam v. K. Ramanjaneyullu, reported in (1998) 8 SCC 703, Election Commission of India v. 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 v. 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.*

12. Considering the aforesaid facts and circumstances and the judgment of the Hon'ble Apex Court as well as Division Bench of this Hon'ble Court, 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 place all the issues by way of an appropriate election petition and the writ petition is not maintainable, hence, is dismissed.

(Rajesh Kumar Verma, J)

Vanisha/-

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