

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.16 of 2024

In
Civil Writ Jurisdiction Case No.9954 of 2022

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1. Angad Kumar Singh S/o Rameshwar Singh, Member of Managing Committee Indian Red Cross Society, Motihari, R/o Ambika Nagar, P.S.-Town Motihari, East Champaran-845401.
 2. Meena Mishra, W/o Sri Hemant Mishra, Member of Managing Committee Indian Red Cross Society, Motihari. R/o Gayatri Nagar, P.S. Town, Motihari, East Champaran-845401.
 3. Dr. Chandra Subhash, S/o Late Vijay Kumar, Member of Managing Committee Indian Red Cross Society, Motihari. R/o Belbanwa, P.S. Town, Motihari, East Champaran-845401.
 4. Pushpa Kishore, w/o Er. Kishore Prasad, Member of Managing Committee Indian Red Cross Society, Motihari. R/o Dhaka, P.S. Dhaka, Dhaka, East Champaran-845418.
 5. Bibhuti Narayan Singh, S/o Mahesh Chandra Singh, Member of Managing Committee Indian Red Cross Society, Motihari. R/o New Gopalpur, P.S. Town, Motihari, East Champaran-845401.
 6. Dilip Kumar Singh, S/o Rajeshwar Prasad Singh, Member of Managing Committee Indian Red Cross Society, Motihari. R/o Miscot, P.S. Town, Motihari, East Champaran-845456.
 7. Sanjay Kumar Jaiswal, S/o Late Lalan Prasad Jaiswal, Member of Managing Committee Indian Red Cross Society, Motihari. R/o V.K. Garden, Janpul, P.S. Town, Motihari, East Champaran-845401.
 8. Ujjwal Kumar Srivastava @ Shekhar Srivastava, S/o Pramod Prasad, Member of Managing Committee Indian Red Cross Society, Motihari. R/o Lalita Homeo Pharmacy, P.S. Town, Motihari, East Champaran-845401.
 9. Dr. Omprakash, S/o Sri Vidhyasagar Arya Member of Managing Committee Indian Red Cross Society, Motihari. R/o Om Sai Hospital, Agarwa, P.S. Town, Motihari, East Champaran-845401.
 10. Dr. Amit Kumar, s/o Sri Shankar Prasad, Member of Managing Committee Indian Red Cross Society, Motihari. R/o Miscot, P.S. Town, Motihari, East Champaran-845401.
 11. Rakesh Kumar Sinha, S/o Er. Ashok Kumar Sinha, Member of Managing Committee Indian Red Cross Society, Motihari. R/o Om Gopalpur, P.S. Town, Motihari, East Champaran-845401.
 12. Mahesh Prasad Sinha, S/o Kailash Prasad Sinha, Member of Managing Committee Indian Red Cross Society, Motihari. R/o Chandmari, P.S. Town, Motihari, East Champaran-845401.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Health, Patna, Bihar.
2. The District Magistrate, East Champaran at Motihari.
3. The Additional District Magistrate, East Champaran at Motihari/Executive President, Indian Red Cross Society, District Branch, Motihari.



4. The Officer in Charge, District General Section, Motihari.
5. The Civil Surgeon, East Champaran at Motihari.
6. The District Transport Officer, East Champaran at Motihari.
7. The Sub Divisional Officer, Sadar, Motihari.
8. The Treasury Officer, East Champaran at Motihari.
9. President IMA, Motihari.
10. Government Advocate, East Champaran at Motihari.
11. Indian Red Cross Society, New Delhi.
12. Indian Red Cross Society, through its General Secretary, State Branch, Patna.
13. Deepak Kumar, S/o Khanaiya Prasad, R/o Main Road, Motihari, East Champaran Bihar 845401.
14. Dr. Ashutosh Sharan, S/O Late Shambu Sharan, Member of Managing Committee, Indian Red Cross Society, R/O Belanwa, P.S.- Town, Motihari, East Champaran
15. Ajay Kumar, S/O Late Brij Kishore Singh, Member of Managing Committee, Indian Red Cross Society, Motihari, R/O Sudhna, Plot No. 125, Patna, 800025.
16. Ashesh Kumar, S/O Chendeshwar Prasad Singh, Member of Managing Committee, Indian Red Cross Society, Motihari,, R/O Gram Bangro, Post-Saganli, East Champaran.

... .. Opposite Party/s

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with
CIVIL REVIEW No. 43 of 2024
In
Civil Writ Jurisdiction Case No.9954 of 2022

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1. Ashesh Kumar Son of Chandeshwar Prasad Singh, Member of Managing Committee, Indian Red Cross Society, Motihari, resident of Gram Bangra, Post- Sangauli, P.S. - Sangauli, East Champaran- 845456.
2. Ajay Kumar, Son of Late Brajkishore Singh, Member of Managing Committee, Indian Red Cross Society, Motihari, resident of Shudhna Plot No.- 125, Patna- 800025.

... .. Petitioner/s

Versus

1. Deepak Kumar Son of Khanaiya Prasad, Resident of Main Road, Motihari, East Champaran, Bihar, PIN- 845401.
2. The State of Bihar, Through Principal Secretary, Department of Health, Patna, Bihar.
3. The District Magistrate, East Champaran at Motihari.
4. The Additional District Magistrate, East Champaran at Motihari/Executive President, Indian Red Cross Society, District Branch, Motihari.
5. The Officer- in- Charge, District General Section, Motihari.



6. The Civil Surgeon, East Champaran at Motihari,
7. The District Transport Officer, East Champaran at Motihari.
8. The Sub Divisional Officer, Sadar, Motihari.
9. The Treasury Officer, East Champaran at Motihari.
10. The President IMA, Motihari.
11. The Government Advocate, East Champaran at Motihari.
12. Indian Red Cross Society, New Delhi.
13. Indian Red Cross Society, through its General Secretary, State Branch, Patna.
14. Dr. Ashutosh Sharan, S/o Late Dr. Shambhu Sharan, Member of Managing Committee Indian Red Cross Society, Motihari, R/o Belanwa, P.S.- Town, Motihari, East Champaran- 845401.
15. Angad Kumar Singh, S/o Rameshwar Singh Member of Managing Committee Indian Red Cross Society, Motihari, R/o- Ambika Nagar, P.S.- Town, Motihari, East Champaran- 845401.
16. Meena Mishra, W/o Sri Hemant Mishra, Member of Managing Committee Indian Red Cross Society, Motihari, R/o Gayatri Nagar, P.S.- Town, Motihari, East Champaran- 845401.
17. Dr. Chandra Subhash, S/o Late Vijay Kumar Varma Member of Managing Committee Indian Red Cross Society, Motihari, R/o- Belbanwa, P.S.-Town, Motihari, East Champaran- 845401.
18. Bibhuti Narayan Singh, S/o Mahesh Prasad Singh Member of Managing Committee Indian Red Cross Society, Motihari, R/o- Gopalpur, P.S.-Town, Motihari, East Champaran- 845401.
19. Pushpa Kishore, W/o Er. Kishore Prasad Member of Managing Committee Indian Red Cross Society, Motihari, R/o- Dhaka, P.S.-Dhaka, Dhaka, East Champaran- 845418.
20. Dilip Kumar Singh, S/o Rajeshwar Prasad Singh Member of Managing Committee Indian Red Cross Society, Motihari, R/o- Miscot, P.S.-Town, Motihari, East Champaran- 845401.
21. Sanjay Kumar Jaiswal, S/o Late Lalan Garden, Member of Managing Committee Indian Red Cross Society, Motihari, Janpul, Champaran-845401 Prasad Jaiswal R/o- P.S.-Town, Motihari, V.K. East.
22. Ujjwal Kumar Srivastava alias Shekhar Srivastava, S/o Pramod Prasad Member of Managing Committee Indian Red Cross Society, Motihari, R/o- Lalita Homeo Pharmacy, Balua Taal, P.S.- Town, Motihari, East Champaran- 845401.
23. Dr. Omprakash, S/o Sri Vidhyasagar Arya, Member of Managing Committee Indian Red Cross Society, Motihari, R/o Om Sai Hospital Agarwa, P.S.- Town, Motihari, East Champaran- 845401.
24. Dr. Amit Kumar, S/o Sri Shankar Prasad, Member of Managing Committee Indian Red Cross Society, Motihari, R/o- Miscot, P.S.- Town Motihari, East Champaran- 845401.
25. Rakesh Kumar Sinha, S/o Er. Ashok Kumar Sinha, Member of Managing



Committee Indian Red Cross Society, Motihari, R/o Gopalpur, P.S.- Town, Motihari, East Champaran- 845401.

26. Mahesh Prasad Sinha, S/o Not known Member of Managing Committee Indian Red Cross Society, Motihari, R/o Chandmari, P.S.- Town, Motihari, East Champaran- 845401.

... .. Opposite Party/s

Appearance :

(In CIVIL REVIEW No. 16 of 2024)

For the Petitioner/s : Mr. Lalit Kishore, Sr. Advocate
Mr. Mukesh Kant, Advocate
For the State : Mr. Braj Bhushan Mishra, AC to AAG 9
For the Society : Mr. Dhananjay Kumar, Advocate
Mr. Dhananjay Kumar, Advocate

(In CIVIL REVIEW No. 43 of 2024)

For the Petitioner/s : Mr. Venkatesh Kirti, Advocate
For the State : Mr. Braj Bhushan Mishra, AC to AAG 9
For the Society : Mr. Dhananjay Kumar, Advocate
Mr. Dhananjay Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT**

Date : 11-07-2025

Heard Mr. Lalit Kishore, learned Senior Counsel along with Mr. Mukesh Kant, Mr. Venkatesh Kirti, learned counsel appearing on behalf of the petitioners and Mr. Braj Bhushan Mishra, learned AC to AAG 9 for the State.

2. The issue and ground of review involved in both the civil review is similar, they are being disposed of by a common judgment.

3. Mr. Lalit Kishore, learned Senior Counsel along with Mukesh Kant, learned counsel appearing on behalf of the petitioners submitted that the Indian Red Cross Society has directed to convene a meeting of Managing Committee of Indian Red Cross Society, Bihar State Branch for conducting election of Chairman, Vice Chairman and Treasurer of new



State Managing Committee on 21.07.2025 at 11:00 a.m at Darbar Hall, Raj Bhawan, Patna but the voter list don't find names of the present review petitioners due to malafide act of the present chairman of the State Unit. He further submitted that name of representative of District Brnach Head of Motihari, Dr. Ajay Kumar also don't figure in the voter list, which has been brought on record by way of Annexure 2.

4. Petitioners have sought review of the order dated 11.12.2023 passed in CWJC No.9954 of 2022 firstly on the ground that the writ petition is not maintainable under Article 226 of the Constitution of India as the Red Cross Society don't come within the purview of the State or other authority or instrumentality or agency to discharge the public function and as such is not amenable to the writ jurisdiction of the High Court, secondly the High Court under Article 226 of the Constitution of India cannot interfere with the election process or with the result of the election declared.

5. The present review petitions arise out of CWJC No.9954 of 2022. The aforesaid writ petition was filed for the following reliefs:-

“i. Issue a writ, order or direction in the nature of certiorari quashing the election and election result held on 12.06.2022 and declaring the election as illegal and ultra vires as the same was conducted by the District Magistrate and District administration Motihari against the rules and regulations of Indian Red Cross



Society and against basic tenants of election laws.

ii. Issue a writ, order or direction in the nature of mandamus commanding the respondent authorities to hold a free and fair election of the Managing Committee of Indian Red Cross Society, District branch, Motihari in accordance with the rules and regulations of Indian Red Cross Society and in accordance with basic tenants of election laws.

iii. Issue a writ, order or direction in the nature of mandamus commanding the Managing committee of Indian Red Cross Society, District branch, Motihari not to use financial power and not to function as office bearer of the Indian Red Cross Society, District branch, Motihari.

iv. Pass any other or further order as this Hon'ble Court may deem fit and proper in the interest of justice."

6. The writ petition was filed for quashing the entire election result held on 12.06.2022 and declaring the result as illegal. The main grievance of the petitioner of the writ petition was that against the action of the District Magistrate, Motihari who had allegedly conducted the election in unfair, unreasonable and illegal manner by flouting the Indian Red Cross Society Uniform Rules (hereinafter referred as IRCS – Uniform Rules and guidelines. The review petitioners support the result of the election held on 12.06.2022.

7. The writ petition was heard on several dates and was finally disposed of vide order dated 11.12.2023 and the same is reproduced hereinafter

"Heard Mr. Kumar Amit along side Mr. Dhananjay Kumar, learned counsels appearing on behalf of the petitioner; Mr .Rajeshwar Singh, learned GA 10 for the State and Mr. Dhananjay Kumar, learned counsel for respondent no.12.

2. In continuation of order dated 28.11.2023, certain documents have been produced



before this Court on behalf of the Red Cross Society to show that no approval of National Committee with respect to the voters who had participated in the 2022 election relating to District Chapter, Motihari was taken prior to holding of the election by the Collector. The Clause 3 of Chapter VI provides for registration of new members which is reproduced hereinafter:-

3. Certain communication was made by the Chairman of the Red Cross Society-cum-District Magistrate, East Champaran with the Chairman of the Indian Red Cross Society seeking certain guidelines for holding the election which was to be held on 12.06.2022, duly attested by Public Relation Officer has been produced in the Court in support that upto 12.06.2022, 2322 members were to be registered and from 06.07.2022 as per revised list, 1351 members were to be added after notification of the election, which goes to show that no approval of National Committee was obtained by the Chairman of the State Chapter of Red Cross Society, Bihar.

4. In view of above discussion made hereinabove, the writ petition is allowed. The election held on 12.06.2022 is declared to be invalid. The 'Red Cross Society' may proceed to hold election of East Champaran society in accordance with the provision of the bye-law.

5. The Chairman of the Bihar State Red Cross Society is directed to be more vigilant in future by giving specific instruction to the President-cum-District Magistrate with respect to the valid members of voters in future to avoid negligence on his part."

8. The writ petition was filed by the life member of East Champaran, District Branch of Indian Red Cross Society on being aggrieved by the action of the District Magistrate and district administration, Motihari whereby the election of the members of the Managing committee of Indian Red cross society, District Branch, Motihari was conducted in unfair, unreasonable and adopting illegal means flouting the Indian Red



Cross Society and Uniform Rules and the basic tenets of the election laws.

9. The Indian Red Cross Society was represented through its General Secretary, State Branch, Patna (respondent no.12) and respondents no.13 to 27 were impleaded as respondents being the member of the Managing Committee, Indian Red Cross Society.

10. Both the review petitions have been filed by the members of the Managing Committee who were made respondents in the writ petition. The grounds apart from maintainability of the writ petition, the other ground of challenge is the election result dated 12.06.2022 on the ground that the writ petitioner was not a candidate in the election of Indian Red Cross Society, Motihari and was not prejudiced with the election and had filed the writ petition on improper consideration of disqualifying 1351 members who had participated in the election without issuing notice to them or without adding them parties - respondents to the writ petition in complete disregard of principle of natural justice. The respondent no.12 and the petitioner in the writ petition had concealed the fact that 1351 members were added as voters (enrolled as members) much early to the notification of the



election. The respondent no.12 and the petitioner of the writ petition misrepresented the fact that for voting right of a candidate, prior approval of the National Committee will be required, even if the members had submitted membership and subscription much early and could be processed before the National Committee for the reasons not attributable to them respectively. It has further been contended that the alleged category of 1351 members had paid the membership amount to the State Branch on the date indicated in the list of voters they were enrolled as life members of the Indian Red Cross Society, District Branch, East Champaran, Motihari.

11. On the basis of the above facts and information, grounds have been taken for review of the order dated 11.12.2023 passed in CWJC No. 9954 of 2022, which are as under:-

“(i) For that the order under review, in the absence proper representation of the petitioners all issues of facts could not be brought in course of hearing of the case.

ii) For that the order under review, where the election of Red Cross Society Motihari, East Champaran declared to be invalid without deciding the question of maintainability of the writ.

iii) For that the order under review that 1351 members including petitioners were made member between 24.01.2022 to 23.05.2022 before the publication of Voter list.

iv). For that the impugned judgment and order is causing serious prejudices to the elected members as well as those 1351 voters which have been decided in their absence and without their representation.



v) For that the impugned orders required reconsideration on other legal grounds to be urged during course of hearing of the case.

12. It is well settled that review is permissible only when

(I) new and important evidence is discovered and that could not have been produced earlier with due diligence,

(ii) there is a mistake or error apparent on the face of the record or any other sufficient reason.

13. A review by its very nature contemplates reconsideration of the same subject by the same Judge or Judges while an intra court appeal is heard by another Division Bench of this Court. Section 114 of the Civil Procedure Code creates a right to make an application for review under certain conditions and Order 47 provides for mode, manner and circumstances under which review petition can be made, heard and determined. No doubt procedure is meant to advance justice and as such cannot be treated as mandatory procedure, however, should be followed as far as possible, keeping in view the cause of justice.

14. The power under 226 of the Constitution of India is exercised by the High Court in its equity jurisdiction and thus as it has to do equity to the parties and to do complete justice to them its power of review cannot be limited only in terms of



Section 114 or Order 47 Rule 1 of the Code of Civil Procedure.

By parity of reasoning, Order 47 and Rule 5 *ipso facto* would not be attracted in the writ proceeding, whereas a civil Court trying a suit (or the High Court in exercise of original jurisdiction) is bound by the provision of Order 47 Rule 5 of the Code of Civil Procedure. The power to review is taken recourse to guide the High Court in exercise of its inherent jurisdiction.

15. The reason, as to why, the provision of Code of Civil Procedure is not applicable in the writ proceeding has been explained by the Apex Court in the case of **Puran Singh & Ors vs State Of Punjab & Ors.** reported in **AIR 1996 SC 1092.** The Apex Court in case of **Puran Singh (Supra)** held that the provision of Code of Civil Procedure were not applicable even before coming into force of Civil Procedure code (Amendment) Act 1976. It is further held that if because of the explanation, proceeding under Article 226 of the Constitution has been excluded, there is no question of making applicable the procedure of Code as far as it can be made applicable to such proceeding. The procedures prescribed in respect of suit in the Code if are made applicable to the writ proceedings then in many cases, it may frustrate the exercise of extra-ordinary powers by the High Court under Articles 226 and 227 of the



Constitution. High Court Rules is silent whether, the Code of Civil Procedure is to apply *mutatis mutandis* as far as they are not inconsistent with the said Rules. It is well settled that when abuse of process of law comes into play and 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 basic concept of Rule of Law by which the democracy is governed, the action which is likely to create an atmosphere of anarchy and curtails the right of a person to exercise his vote, paves the path towards the darkest hour in a democracy and fossilises the basic tenet of Rule of Law.

16. I find to deal with the relevant rules. The ground of review is prominently on the basis of information given by the review petitioners who have been declared elected and they are the paid members and have been enrolled as life members of the Indian Red Cross Society, District Branch, East Champaran, Motihari and, as such, total 1351 members were added as voter (enrolled as a member) much before the notification of the election, but the petitioner of the Writ Petition No.9954 of 2022 and respondent no.12 in the writ petition in connivance with each other had not presented the correct facts before this Court



by misleading that 1351 members were added as a voter after notification of the election or during the course of election and as such, the election declared could not have been held to be invalid by the Court vide order dated 11.12.2023, also on the ground that the Court in exercise of Article 226 should not have interfered with the election result, which could only be challenged by filing an election petition.

17. From the perusal of my order dated 11.12.2023, on the basis of documents produced before the Court on behalf of the Red Cross Society, after verifying the records, I could find that no approval of National Committee with respect to the voters who had participated in 2022 election relating to District Chapter Motihari was taken prior to holding of the election by the Collector which is mandatory as per the Clause 3 of Chapter VI which deals with the registration of new members which is reproduced hereinafter:-

“3. Members enrolled by the District Branches are members of the Indian Red Cross Society. Enrolments shall be in accordance with the rules, subscription and grades of membership laid down by the Managing Body at National Headquarters. District Branches shall submit to the General Secretary of the respective State/UT branch monthly list of new members enrolled along with 30% share of membership subscription of the State Branch and National Headquarters. As soon as new members have been duly registered, certificates will be issued by the National



Headquarters through the State/UT branch concerned.

A District branch will be expected to enroll, within one year of its formation, a minimum of 500 members of different categories.”

18. Section 5(1) of the Indian Red Cross Society Act, 1920 provides that the Managing Body with the approval of the President may make rules for the management, functions, control and the procedure of the Society. The rules may provide for the procedure of election of members by State Branch Committee. The section 5(1)(j) also provides that the rules may provide for the regulation of the procedure generally of the society and the Managing Body. Therefore, it is evident that the Managing Body of the Indian Red Cross Society can frame rules for conduct of elections to the District Managing Body.

19. The supervisory role of the National Headquarters of the Indian Red Cross Society is evident from Rule 1(f) of the Uniform Rules for state/UT Red Cross Branches of Indian Red Cross Society. It provides that the National Headquarters shall, in consultation with the State Branches, develop policies and strategies for the better functioning of the Branches keeping in mind the principle of unity. All Branches shall work within these guidelines, framework and strategic directions agreed with the National Headquarters.



20. Chapter III, Rule G(e) provides that the Managing Committee of the National Headquarters has the power to make rules for the management, functions, control and procedure of the state/UT/District Branch (including the service rules for the staff). Chapter VI, Rule 1(a) provides that the Managing Committee of the State/UT Branches shall form District Branches and that all the District Branches shall be under the control of the respective State/UT Branch.

21. Chapter VI, Rule 11(9) provides that District branches shall be subject to all rules and regulations issued from time to time by the National Headquarters of Indian Red Cross Society and from the State Branch. Rule 12 again provides that any District branch whose administration in the opinion of the State Branch Managing Committee has not been in accordance with the principles and policies laid down by the State Branches Committee, subject to the approval by the National Headquarters, may be taken over by the State Branch and any funds and property at their disposal added to the general funds of the State Branch. The afore provisions would undoubtedly establish the strong supervisory role of the State Branch and National Headquarters over the District Branches.

22. The Indian Red Cross Society headquarters has



issued Circular dated 08.01.2013 (Ext.P3 in WP(C) No.7205/2022) providing for the manner in which elections are to be conducted in District branches. Clause 1 of Ext.P3 provides that the concerned Managing Committees are required to pass resolution for appointment of Returning Officer and forward to the next superior branch 30 days prior to expiry of the term. The Chairman of the Managing Committee who receives the resolution shall appoint a person who is not a voter of the Branch for which the election is to be conducted, as Returning Officer. As per Clause 3, the Returning Officer Shall inform the election proceedings to the voters/members either personally or through paper publication, at least 21 days before the election. As per Clause 4, it is for the Returning Officer to prepare the voters list of the Branch where the election is to be conducted and publish the draft voters list, providing time for filing objections.

23. In the present case, neither of the parties have brought on record the resolution passed by the District Managing Committee who conducted the election which was held on 12.06.2022 and it could not be ascertained even if the said resolution was forwarded to the State Branch for seeking appointment of a Returning officer. However, if statement made



in paragraph no.7 of the review application to the extent that members under the alleged category of 1351 has paid membership amount, as well as, the amount to be paid to the State Branch were paid much early to the process of election was initiated and were all enrolled as life members of Indian Red Cross Society, District Branch, East Champaran, Motihari, Certainly review petitioners have ground for review. In this regard, vide annexure 2, the petitioners have brought on record a list of enrolled life members subscription of Indian Red Cross Society, District Branch, East Champaran, Motihari.

24. After thoroughly scrutinizing the same, I find that in civil review petition no.16 of 2024, the name of members start from serial no.1 to 1351, total membership amount received was Rs.1351000/- and total amount of Rs. 405300/- was paid to the State Branch, whereas the list which is annexed by the review petitioners of review No. 43 of 2024, the names of members start from serial no.1 and ends at serial no.3639. There is no reference regarding the total amount paid in respect of those members to the State Branch.

25. Insofar as civil Review No. 43 of 2024 is concerned, the list of members don't mention the membership amount paid to the State Branch which was required to be duly



forwarded by the Chairman of the District Managing Committee, which required approval by the State branch.

26. The lists as contained in the two review petitions relating to the members, which the review petitioners claim that the said lists were approved by the State Branch after receiving the membership fees, much before the election process has begun, creates doubt.

27. In CWJC No.9954 of 2022, counter affidavit was filed on behalf of the respondent nos.2 to 4, 6 to 8 and 10 and they denied the averments made in the writ petition. Certain provisions of the Indian Red Cross Society Act have been referred and it has been stated in paragraph nos.5 to 9 which is reproduced hereinafter:

“5. That it is noted from Annexure P-1 to the writ application it transpires that chapter III read with clause 2 (c) of chapter VI deals with Governance, Functions, Powers and Terms of Office Bearers. Clause (d) states that the terms (tenure) of the Managing Committee, the tenure of its Chairman, Vice-Chairman and treasures shall be for three years.

The tenure of the previous Managing Committee of East Champaran district branch of Indian Red Cross Society ended much earlier. The District Magistrate, East Champaran-cum-President of the district branch proceeded to make the district branch well functioning as such he invited members of different class of the society to advice in proper and effective functioning of East Champaran district branch Indian Red Cross Society. An advisory committee was formed to advice for smooth and proper functioning of the district branch. The answering respondent did not form any Managing Committee of district branch of Indian Red Cross Society.

6. That it is evident from



paragraph no. 11 of writ application itself, it transpires that a general body meeting of the members of the district branch of Indian Red Cross Society was called for and held on 26-04-2022. In the meeting it was resolved that election for constituting Managing Committee be held on 12-06-2022.

That from paragraph no. 1 of the writ application it also transpires that election was held on 12-06-2022.

The election was fairly and impartially held through secret ballots. On counting of votes members obtaining votes in higher number were declared elected.

7. That the election concerned was conducted with consultation of Bihar State Unit of Indian Red Cross Society. The State Unit appointed an observer to supervise the election. The Sub Divisional Officer, Motihari Sadar was appointed returning officer to conduct the election. The Additional Collector, East Champaran was deputed to provide administrative assistance in the fair and smooth election. The election was fairly and impartially conducted. No regulation of Indian Red Cross Society was violated in constituting the Managing Committee of East Champaran District branch. The newly elected members, except Dr. Ajay Kumar, took their oath on 26-06-2022. The Managing Committee is properly constituted and functioning.

8. That from Annexure P-4 it transpires that the matter of election was presented before the state Unit. Also, from paragraph no. 2 of Annexure P-4 it transpires that participation of new member in voting has not been declared against the norms or void. The payment of contribution of membership has been sent to the State Unit, delay payments of contribution of membership by the district unit do not deprive the members to participate in voting. Thus, voting right of member is a constitutional right and no member can be deprived of his right.

That legal opinion from Advocate General, Bihar was sought for in respect of validity of election of respondent Dr. Ajay Kumar, Legal opinion dated 01-07-2022 was received. Then, on receipt of legal opinion Dr. Ajay Kumar took oath. Financial activity was allowed after receipt of legal opinion.”

28. The writ petition was adjourned on several occasions and detailed hearing was made by the respective



parties on 28.11.2023 and after considering the provisions of Indian Red Cross Society Act, 1920 which has been brought on record in the writ petition by way of Annexure P/1 to consider the veracity of the main objection of the petitioner of the writ petition that some of the persons claiming themselves to be members had participated in the election without approval of the Central Committee as per the provisos of Chapter II of the Act. This Court has directed the Chairman of the Society to provide all the evidences relating to the members, who had participated in the election which was held on 12th June, 2022. The Chairman must ensure to send the records along with an officer having knowledge with respect to the affairs of the Society.

29. Finally, the writ petition was heard on 11.12.2023 when the Chairman of the Indian Red Cross Society had produced certain communication seeking guidelines for holding the election duly attested by the Public Relation Officer was produced in the Court which gave information that 2322 members to be registered and from 6.7.2022 as per revised list, 1351 members to be added after notification of election i.e, 12.06.2022. Therefore, this Court concluded that there was no approval of National Committee in respect of 1351 members was obtained by the State Chapter of Red Cross Society, Bihar



and in this circumstances and the record which was made available before this Court, the election held on 12.06.2022 was declared to be invalid and directed the Red Cross Society to proceed to hold election of East Chamapaan Society in accordance with the provision of by-law and the Indian Red Cross Society Act. This Court also cautioned the Chairman of the Bihar State Red cross Society to be more vigilant in future by giving specific instruction to the President-cum-District Magistrate with respect to the valid members of voters in future to avoid negligence on his part.

30. The question arises whether this Court in exercise of jurisdiction under Article 226 of the Constitution of India could have adjudicated the dispute. In regard to the jurisdiction of the writ Court to entertain a writ petition involving disputed question of facts is no more *res integra* and in appropriate cases, the writ Court has jurisdiction to entertain writ petition. Reference in this regard can be made to the following judgments of the Apex Court.

I. Century Spinning and Manufacturing Company Ltd. & Another Vs. the Ulhasnagar Municipal Council and another, reported in (1970) 1 SCC 582

II. ABL International Ltd. & Another Vs. Export Credit



Guarantee Corporation of India Ltd. & Others, reported in
(2004) 3 SCC 553

III. ***Unitech Ltd. & Others Vs. Telagana State Industrial Infrastructure Corporation (TSIIC) & others***, reported in
(2021) 16 SCC 35

Iv. . ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahostav Smarak Trust V. V.R. Rudani***
reported in ***(1989) 2 SCC 69***

V. In case of ***Board of Control for Cricket in India Vs. Cricket Association of Bihar & Others***, reported in ***(2015) 3 SCC 251***, the Hon'ble Supreme Court observed in paragraph nos.22 to 35 after taking note of the judgment in case of ***Zee Telefilms Ltd. & Another vs. union of India & Others*** , reported in ***(2005) 4 SCC 649*** and opined that though BCCI may not be a State under Article 12 of the Constitution, the BCCI certainly was amenable to the writ jurisdiction under Article 226 of the Constitution.

31. The case of ***Board of Control for Cricket in India Vs. Cricket Association of Bihar & Others***, reported in ***(2018) 9 SCC 624*** is a continuation of its first case between the said parties wherein the Hon'ble Supreme Court passed consequential direction pursuant to the Lodha Committee report



and held that the BCCI though not a State within the meaning of Article 12 of the Constitution but when the BCCI exercises public functions it would be amenable to Article 226 of the Constitution. The Hon'ble Supreme Court in case of ***Ramakrishna Mission & Another vs. Kago Kunya & Others***, reported in ***(2019) 16 SCC 303*** had dealt with the question, as to whether, proceedings under Article 226 of the Constitution was maintainable against Ramakrishna Mission.

32. Recently, in the case of ***St. Mary's Education Society and Another vs. Rajendra Prasad Bhargava and Others***, reported in ***(2023) 4 SCC 498***, the Supreme Court after dealing with various judgments summed up as to when a writ petition would be maintainable against the person or body discharging public functions. Paragraph No.75 and its sub-paragraphs being relevant are quoted herein under:-

“75.1. An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element.”

33. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ.



Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of "State" within the expansive definition under Article 12 or it was found that the action complained of has public law element.

34. The issue regarding maintainability of a writ petition against Indian Red Cross Society came before the High Court of *Madhya Pradesh, Jabalpur Bench in case of M/S New Balaji Chemist Vs. Indian Red Cross Society (Madhya Pradesh State Branch) & Anr.* reported in *AIR 2018 (NOC) 804 (M.P.)* Answering the preliminary objection raised that the Indian Red Cross Society is neither the State nor the Instrumentality of State or authority within the meaning of Article 12 of the Constitution of India, after relying on the judgment of the Supreme Court in case of **k K. Saksena Versus International Commission on Irrigation and Drainage and others** reported in *(2015) 4 SCC 670*, maintainability of the writ under Article 226 of the Constitution of India has been considered and after finally relying upon the judgment of



Supreme Court in case of Pradeep Kumar Biswas and taking note of majority view has held in paragraph no. 7 as follows:

"7. The Constitution has to an extent defined the word "State" in Article 12 itself as including "the Government...under the control of the Government of India". That an 'inclusive' definition is generally not exhaustive is a statement of the obvious and as far as Article 12 is concerned, has been so held by the Supreme Court. The words "State" and "authority" used in Article 12 therefore remain among "the great generalities of the Constitution"

35. The circumstances under which this Court can exercise to review its own order as has been explained by the Hon'ble Supreme Court and as per the provision of Order 47 Rule 1 and the extra ordinary, equitable and discretionary jurisdiction of this Court under Article 226, I can hold that the writ petitioner had not approached the writ Court with clean hand and at the same time, the action of the Chairman of the State Branch can also be said to be *mala fide*, which calls for the interference with the order dated 11.12.2023. However, it has been informed that the Hon'ble Governor, who is the *ex officio* president of the Indian Red Cross Society, has taken a decision to convene a meeting of Managing Committee of the Society, Bihar State Branch for conducting election of Chairman, Vice Chairman and Treasure of new State Managing Committee on Monday, i.e., 21.07.2025 at 11 a.m. at Darbar Hall, Raj Bhavan, Patna.



36. Now question arises, once the election has been announced, whether this Court can interfere with the election process, even otherwise, the review petition is allowed, considering the *mala fide* action of the Chairman of the State Branch in course of election process, which was held on 12.06.2022, in which the review petitioners were declared elected. It is well settled that in exercise of power of judicial review under Article 226 of the Constitution of India, any challenge, once the election has been announced, the same can be challenged by way of election petition. In this regard, I may refer with profit to decision in **N.P. Punnuswami V. Returning Officer, Namakkal and others** reported in 1952 SC 64.

37. In **Nanhoo Mal and others v. Hira Mal and others**, reported in **AIR 1975 SC 2140**, a three-Judge 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 of 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 (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."

38. In this context I may fruitfully refer to the decision in **Jyoti Basu v. Debi Ghosal**, reported in (1982) 1 SCC 691 wherein it has been held as under:

"A right to elect, fundamental though it is to democracy, is, anomalously enough neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected, and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A court has no right to resort to them on considerations of alleged policy because policy in such matters, as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, court is put in a strait-jacket."

39. In **Gajanan Krishnaji Bapat and another v. Dattaji Raghobaji Meghe and others**, reported in (1995) 5



SCC 347, the Apex Court has ruled thus:

"12. The right to elect and the right to be elected are statutory rights. These rights do not inhere in a citizen as such and in order to exercise the right certain formalities as provided by the Act and the Rules made thereunder are required to be strictly complied with. The statutory requirements of election law are to be strictly observed because the election contest is not an action at law or a suit in equity but it is a purely statutory proceeding unknown to the common law. The Act is a complete code in itself for challenging an election and an election must be challenged only in the manner provided for by the Act."

40. In this context I think it appropriate to refer to another three-Judge Bench decision of the Apex Court in **K.K. Shrivastava v. Bhupendra Kumar Jain and others**, reported in AIR 1977 SC 1703, wherein V.R. Krishna Iyer, J., speaking for the Court, laid down as under:

"It is well settled law that while Art. 226 of the Constitution confers a wide power on the High Court there are equally well settled limitations which this Court has repeatedly pointed out on the exercise of such power. One of them which is relevant for the present case is that where there is an appropriate or equally efficacious remedy the Court should keep its hands off. This is more particularly so where the dispute relates to an election. Still more so, where there is a statutorily prescribed remedy which almost reads in mandatory terms. While we need not in this case go to the extent of stating that if there are exceptional or extraordinary circumstances the Court should still refuse to entertain a writ petition it is perfectly clear that merely because the challenge is to a plurality of returns of elections, therefore, a writ petition will lie, is a fallacious argument. It is important to notice what the High Court has overlooked is that the period of limitation prescribed by the rules is 15 days and if writ petitions are to be entertained long afterwards it will stultify the statutory provision."



Again in the present case an election petition covering the same subject matter is actually pending. There is no foundation whatever for thinking that where the challenge is to an 'entire election' then the writ jurisdiction springs into action. On the other hand the circumstances of this case convince us that exercise of the power under Article 226 may be described as mis-exercise. It is unfortunate that an election petition, which probably might have been disposed of long ago, is still pending because the writ petition was pending in the High Court and later on special leave having been granted these appeals have been pending in this Court. How injurious something writ petitions are where they should not be is illustrated by this very case."

41. In Gujarat University v. Shri N.U. Rajguru and others, reported in **AIR 1988 SC 66**, a two-Judge Bench of the Apex Court has held thus:

"6. It is well settled that where a statute provides for election to an office, or an authority or institution and if it further provides a machinery or forum for determination of dispute arising out of election, the aggrieved person should pursue his remedy before the forum provided by the statute. While considering an election dispute it must be kept in mind that the right to vote, contest or dispute election is neither a fundamental or common law right instead it is a statutory right regulated by the statutory provisions. It is not permissible to invoke the jurisdiction of the High Court under Article 226 of the Constitution by-passing the machinery designated by the Act for determination of the election dispute. Ordinarily the remedy provided by the statute must be followed before the authority designated therein. But there may be cases where exceptional or extraordinary circumstances may exist to justify by-passing the alternative remedies. In the instant case, there existed no circumstances justifying departure from the normal rule as even the challenge to the validity of statute 10 was not pressed by the respondents before the High Court. 7. We do not consider it necessary to burden the judgment by referring to decisions of this Court laying down the principle that where a statute provides a complete machinery for obtaining relief against the orders passed by the authorities a petitioner cannot be



permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution. We would however refer to a decision of this Court in K.K. Shrivastava etc. v. Bhupendra Kumar Jain and other; AIR 1977 SC 1703 where a defeated candidate at the election to the membership of the Bar Council of Madhya Pradesh moved the High Court under Article 226 of the Constitution challenging the validity of the election. The High Court was conscious that equally efficacious remedy was available to the petitioner under the rules but even thereafter the High Court interfered on the ground that since the entire election was challenged an election petition could not be an appropriate remedy and the same could not be considered as an equally efficacious remedy. This Court set aside the High Court's order. Krishna Iyer, J. speaking for the Court observed: "It is well settled law that while Art. 226 of the Constitution confers a wide power on the High Court there are equally well settled limitations which this Court has repeatedly pointed out on the exercise of such power. One of them which is relevant for the present case is that where there is an appropriate or equally efficacious remedy the Court should keep its hands off. This is more particularly so where the dispute relates to an election. Still more so where there is a statutorily prescribed remedy which almost reads in mandatory terms. While we need not in this case go to the extent of stating that if there are exceptional or extraordinary circumstances the Court should still refuse to entertain a writ petition it is perfectly clear that merely because the challenge is to a plurality of returns of elections, therefore a writ petition will lie, is a fallacious argument."

42. In **Maheswar Tripathy v. State of Orissa & Ors., 1992 (II) OLR-90** the Division Bench of the Orissa High Court has recorded the conclusions in seriatim which I reproduce hereinbelow:

"17. (1) The right to stand for election is a creature of a statute, and so, must be subject to limitations imposed by it. (2) If the statute provides only one remedy, that remedy being an election petition to be presented after the election is over, remedy at any intermediate stage would not be available. (3) The word 'election' has to be



understood as including the stage of rejection or acceptance of nomination paper. (4) If the alternative remedy fully covers the challenge to election, that remedy alone must be resorted to, even though in the case challenge is to the election of all the successful candidates. (5) There may exist exceptional or extraordinary circumstances under which a High Court can be approached to challenge an election like the one at hand; but improper acceptance or rejection of nomination papers in individual cases would not normally be such a circumstance. (6) There would be hardly any room to entertain applications under Art. 226 of the Constitution in matters relating to elections. An exception can be when there is real and genuine challenge to the vires of a provision having intimate connection with the holding of election. This too would be permissible after the election is over.”

43. The act of the Chairman of the State Branch as I perceive, is not based on any acceptable intelligible principle. I find no difficulty in holding that the same will frustrate “Rule of Law” by which the democracy is governed. The right of a person should not be curtailed or clipped by such an exercise of law. I am disposed to think that in want of approved list of life members of the Red Cross Society, Motihari Branch, if the election of the Chairman, Vice Chairman and Treasure of New State Managing Committee to be held on 21.07.2025 will create an impediment in completion of the election process. In the exceptional circumstances, when the question of validity of election held on 12.06.2022 has been challenged on the sole ground that some of the list of members have not been approved by the Central Committee of Indian Red Cross Society and the



review petitioners have challenged the order dated 11.12.2023, this Court, in such circumstances, find that from the Rules providing the procedure of election of members of State Committee which finds reference in Section 5(1)(j) to provide procedure generally of the society and the managing body. The managing body of the Indian Red Cross Society can be said to be vested with the power to frame Rules for conduct of election. The supervisory role of the National Headquarters of Indian Red Cross Society is evident from Rule 1(f) of the Uniform Rule for State/UT Red Cross Branches of Indian Red Cross Society which provides that the National Headquarters, shall in consultation with the State Branches, develop policies and strategies for better functioning of branches keeping in mind the Principle of Unity. Chapter 6, Rule 11 (9) provides that District Branch are abide by the rules and regulation issued by the National Headquarter of IRCS. Rule 11 provides that if District Branch in the opinion of the State Committee has not acted properly after taking approval of the National Headquarter, the State Branch can take over the fund and property of the District Branch in the general fund of the State Branch.

44. At this stage, today Mr. Dhananjay Kumar,



learned counsel appearing on behalf of the Indian Red Cross Society, State Branch informs that at the relevant time, the Chairman of the State Branch was one Dr. B. B. Sinha. In the writ petition, it has not been denied that Dr. Ajay Kumar is not a member of the Motihari Branch. In paragraph no.14 it has been informed that his membership number is 361/2017-18. Information is also to the extent that Motihari Branch has total 3562 members and he won by 866 votes. Challenge was on the ground that total 1320 persons were made member of Motihar Branch to influence the election without any intimation/consent of State Branch of Indian Red Cross Society. The question relating to genuineness of total 1320 persons who were made members remained the subject matter calling for the interference with the election which was held in the year 2022 having three years tenure.

45. This Court while adjudicating the writ petition had also taken note provisions of Chapter VI, which relates to registration of new members on the basis of the election held on 12.06.2022, duly attested by Public Relation Officer was produced in Court in support upto 12.06.2022, 2322 members were to be registered and from 06.07.2022 as per the revised list, 1351 members were to be added after notification of the



election which goes to show that no approval of National Committee was obtained by the Chairman of the State Chapter of Red Cross Society, Bihar.

46. In the writ petition also, Mr. Dhananjay Kumar, learned counsel had represented the Chairman but no information has been given till date, as to whether, the Chairman has verified the new members and the revised list which has duly been attested by the Public Relation Officer and was produced during the course of hearing while the order dated 11.12.2023 was passed in the writ.

47. Today Mr. Dhananjay Kumar on behalf of the Chairman State Branch alleges that around two crores rupees amount has been defaulcated by the District Branch. However, learned counsel has not been able to bring any report or any complaint made by any of the members or by the Chairman of the State branch, who was required to be more vigilant, holding the administrative post. The State Chairman can be said to have allowed the alleged malpractice at the same time he has not complied with the order dated 11.12.2023 under review. The additional voter lists were directed to be sent for the approval of the Secretary General, National Headquarter, which act only suggests that his act is vested with mala fide, having adopted



malpractice in election.

48 This Court can only observe that the Chairman who is/ was required under Rules to send the names of all the additional members for their approval in accordance with the Rules from Central Committee has not only stalled the functioning of the society in respect of District Motihari branch with the sole intention to prevent the members of the Motihari Branch from present election.

49. At this stage, Mr. Lalit Kishore, learned Senior Counsel informs that the necessary party, namely, Secretary General, Indian Red Cross Society, New Delhi has not been impleaded in the writ petition and as such, this is also one of the grounds of review for non-joinder of party.

50. The fact which has emerged that the Motihari Branch of Indian Red Cross Society is not functional due to the fact that the voter list has not been prepared and it has been resolved by the Managing committee of Indian Red Cross Society Bihar State Branch for conducting the election of Chairman, Vice Chairman and Treasure of new State Managing Committee on 21.07.2025 at 11:00 a.m. at Darbar Hall, Raj Bhawan, Patna and petitioners don't find name resulting into the name of the representative of the District Branch Head of



Motihari, Dr. Ajay Kumar also don't figure in the voter list. The question that emanates in the present situation whether it can be treated to be one founded on the face of exceptional circumstances to interfere with the election process when it has already commenced?

51. From the aforesaid pronouncement of law, two principles, namely to contest an election is simple and purely statutory right and, if a statute provides one remedy, the same has to be taken recourse to after the election is over and there can be no intervention by the High Court in exceptional extra circumstances.

52. It can be said that the doctrine of abuse of process of law comes into play in the facts of the present case. The system should be governed by the "Rule of Law". I find that if the names of the members of the Motihari Branch of Indian Red Cross Society including Dr. Ajay Kumar are added in the voter list, then such step will facilitate the process of election instead of impeding it. In the prevalent factual matrix, otherwise also, the action of the present Chairman can only creates an atmosphere of anarchy and corrode the basic objective of Indian Red Cross Society.

53. In view of the development which has taken



place, as well as, the voter list being not complete insofar as District Motihari unit is concerned, the review petitioners along with all the members whose name have not been deliberately scrutinized by the State Chairman are directed to approach the Secretary General, National Headquarter, Indian Red Cross Society, New Delhi within one week, so that the proposed election on 21.07.2025 may not be impeded in any manner. This Court leaves upto the Secretary General, National Headquarter, Indian Red Cross Society, New Delhi to exercise his jurisdiction to include the names of left over members. The date of election is in the knowledge of the Hon'ble Governor. In case, Secretary General is not in a position to approve the members of District Motihari, the left out members or the Secretary General may make a request to the Hon'ble Governor for notifying the election on some other date.

54. All the parties who are aggrieved, they may approach to the Secretary General, National Headquarter, Indian Red Cross Society, New Delhi.

55. The present Chairman of the Indian Red Cross Society, State Branch is restrained from administrative work as the election process has started.

56. Let this order be communicated to the Hon'ble



Governor, Bihar and Secretary General, National Headquarter,
Indian Red Cross Society, New Delhi.

57. The present review petitions stands disposed of
with aforesaid observation(s) and direction(s).

(Purnendu Singh, J)

Sanjay/-
Mantreshwar

AFR/NAFR	A.F.R.
CAV DATE	NA
Uploading Date	14.07.2025
Transmission Date	NA

