

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3937 of 2024

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Anita Devi wife of Dilip Prasad Yadav, resident of village Bhetaura, P.O. Bahasa Pipra, P.S. Fatehpur, District - Gaya.

... .. Petitioner/s

Versus

1. The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
2. The Secretary, the State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
3. The District Election Officer-cum-District Magistrate, Gaya, District- Gaya.
4. The Returning Officer, Tankuppa- cum- Block Development Officer, Tankuppa, P.O. and P.S. Tankuppa, District - Gaya.
5. Sri Surendra Yadav, son of Late Sheobarat Yadav, Resident of village- Bhetaura, P.O. Bahasa Pipra, P.S. Fatehpur, District - Gaya.
6. Smt. Ankita Singh, wife of Sri Karu Singh, Resident of village- Bhetaura, P.O. Bahasa Pipra, P.S. Fatehpur, District - Gaya.
7. Smt. Anita Devi, wife of Sri Indrajeet Yadav, Resident of village- Tetariya, Tola- Karmatar, P.O. Dhibar, P.S. Fatehpur, District - Gaya.
8. Sri Gauri Shankar Yadav, son of Sri Kripa Yadav, Resident of village- Babhnima, P.O. Bahasa Pipra, P.S. Fatehpur, District - Gaya.
9. Smt. Champa Devi, wife of Sri Pappu Paswan, Resident of village- Bhetaura, P.O. Bahasa Pipra, P.S. Fatehpur, District - Gaya.
10. Sri Satyendra Yadav, son of Sri Chhatradhari Yadav, Resident of village- Tetariya, P.O. Dhibar, P.S. Fatehpur, District - Gaya.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 3410 of 2024

=====

Surendra Yadav S/o Late Sheobarat Yadav, R/o Village - Bhetaura, P.O.- Bahasapipara, P.S- Fatehpur, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through District Election Officer cum District Magistrate Gaya, District Collectorate, Gaya 823001.
2. The State Election Commissioner, Bihar, Sone Bhawan Beerchand Patel Marg, Patna.
3. The Returning Officer, Tankuppa cum Block Development Officer, Tankuppa P.O. and P.S- Tankuppa, District Gaya 824232.
4. Smt. Anita Devi, W/o- Dillip Prasad Yadav, R/o Village Bhetaura, P.O.- Bahasapipara, P.S.- Fatehpur, District Gaya 824232.



5. Smt. Ankita Singh, W/o- Karu Singh, R/o Village Bhetaura, P.O- Bahasapipara, P.S- Fatehpur, District- Gaya 824232.
6. Smt. Anita Devi, W/o- Indrajeet Yadav, R/o village- Tetariya, Tola- Karmatar, P.O.- Dhibar, P.S.- Fatehpur, District- Gaya, Bihar 824232.
7. Sri Gauri Shankar Yadav, S/o- Shri Kripqa Yadav, R/o Village - Bhetaura, P.O.- Bahasapipara, P.S.- Fatehpur, District- Gaya 824232.
8. Smt. Champa Devi, W/o- Papu Paswan, R/o Village Bhetaura, P.O- Bahasapipara, P.S- Fatehpur, District- Gaya 824232.
9. Sri Satyendra Yadav, S/o- Sri Chatradhari Yadav, R/o village- Tetariya, Tola- Karmatar, P.O.- Dhibar, P.S.- Fatehpur, District- Gaya, Bihar 824232.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 3937 of 2024)

For the Petitioner/s : Mr. S.B.K. Mangalam, Advocate
Mr. Awnish Kumar, Advocate

For the Respondent/s : Mr. Additional Advocate General-12
Mr. Ravi Ranjan, Advocate

(In Civil Writ Jurisdiction Case No. 3410 of 2024)

For the Petitioner/s : Mr. P.K. Verma, Sr. Advocate
Mr. Praveen Kumar, Advocate

For the Respondent/s : Mr. Government Pleader- 27
Mr. Ravi Ranjan, Advocate

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
CAV JUDGMENT

Date : 07-07-2025

CWJC NO.3937 OF 2024

Heard the parties.

2. The petitioner in the present writ application has
prayed for the grant of following reliefs:

“(I) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the judgment and order dated 08.01.2024 passed by the learned Civil Judge (Junior Division)-1, Gaya as Election Tribunal in Election Petition No. 01 of 2023 whereby and where under the learned Civil Judge has been pleased to allow the election petition on contest against the writ petitioner and other Opposite-parties, the election of writ petitioner has been set aside and has also been pleased to set aside the entire process



of election of Mukhiya of Gram Panchayat Raj, Bhetaura under Tankuppa Block of Gaya District with a direction for re-election without any undue delay.

(II) For reinstatement of the petitioner to the post of Mukhiya which he was holding before the impugned judgment and order passed by the learned Civil Judge (Junior Division)-1, Gaya and to pay all consequential benefits for which the petitioner would have been entitled if his election would not have been set aside by the learned Civil Judge (Junior Division)-1, Gaya.

(III) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”

3. Learned counsel for the petitioner submits that Respondent State Election Commission had notified Panchayat Election, 2021 for the post of Mukhiya of Gram Panchayat Raj, Bhetaura under Tankuppa Block of Gaya district. The petitioner and respondent no.5 to 10 had filed their nominations to contest for the post of Mukhiya of the said Gram Panchayat. As per the notification issued by the Respondent Commission, the following was the schedule for holding Gram Panchayat Election in the Gram Panchayat, Bhetaura under Tankuppa Block of Gaya district:

Date of filing of nomination : 09.10.2021 to 25.10.2021.

Date of scrutiny of nomination paper : 28.10.2021.

Last date for withdrawal of candidature : 29.10.2021 to 30.10.2021



Date of Poll : 15.11.2021

Date of Counting : 17.11.2021

4. After the last date of withdrawal of candidature, none of the nominated candidates had withdrawn his/her candidature and all the candidates finally contested the election which was held on 13 booths on 15.11.2021.

5. It is further submitted by learned counsel for the petitioner that after the votes were polled on 15.11.2021, they were counted on 17.11.2021 and after counting of votes the petitioner got the highest number of valid votes polled in her favour i.e. 2224 and the respondent no.5 had secured only 2212 votes, hence the petitioner was declared elected for the post of Mukhiya of the said Gram Panchayat and accordingly the certificate of election was given to her. The result sheet prepared in Form-21 has been brought on record as Annexure-P/1.

6. It is further submitted by the petitioner that after the petitioner was declared elected for the post of Mukhiya, the respondent no.5, Surendra Yadav challenged the election by filing an election petition under Section 137 of the Bihar Panchayat Raj Act, 2006, in the court of learned Munsif, IInd, Gaya, which was numbered as Election Petition No.01 of 2023.

7. In the said election petition prayer was made to set aside the election of the petitioner (returned candidate) as Mukhiya



of the Bhetaura Gram Panchayat under Tankuppa Block, Gaya and upon setting aside of election of the petitioner (returned candidate), prayer was also made to declare the respondent no.5 as Mukhiya on account of the respondent no.5 having received majority of valid votes. The election petition filed by respondent no.5 has been brought on record by way of Annexure-P/2.

8. In the election petition, the case of respondent no.5 in brief was that he was a contestant for the post of Mukhiya of the Bhetaura Gram Panchayat under Tankuppa Block, Gaya (Nirvachan Kshetra No.3) in Bihar Gram Panchayat Election, 2021. The petitioner was also a contestant and so were others. Election was held on 15.11.2021 and on 17.11.2021 counting of votes was done. It was further stated by respondent no.5 in the election petition that to conduct election for Tankuppa Block a total of 155 booths were created, and out of these 155 booths, booth no.31 to 43 were created for polling for Bhetaura Gram Panchayat, and after polling of votes on 15.11.2021, a total of 6047 votes were polled for election of Mukhiya in the aforesaid booths pertaining to Bhetaura Gram Panchayat and the same was also reported by election agent, Ramashish Kumar.

9. It was further stated in the election petition by respondent no.5 that the Returning Officer, (respondent no.4),



Tankuppa -cum- Block Development Officer, Tankuppa, Gaya, rightly and correctly prepared the “Voter Turn Report” (for brevity referred to as ‘VTR’), which was contained in memo no.228 dated 15.11.2021 whereunder it was reported that on booths no.31 to 43 total 6047 votes were polled by the voters and its booth wise details was as under:

BOOTH NO.	TOTAL VOTERS	TOTAL VOTES POLLED
31	524	395
32	735	550
33	448	333
34	470	356
35	755	571
36	452	324
36(Ka)	453	355
37	678	496
38	620	482
39	424	298
40	716	547
41	583	452
42	428	298
43	779	590
TOTAL	8065	6047

10. In the election petition, it was further stated by the respondent no.5 that the Returning Officer was the counting authority and Incharge of counting process. Upon completion of counting, maximum valid votes of 2212 was secured by respondent no.5 and 2200 votes were secured by the petitioner and therefore, as per the respondent no.5, it was incumbent upon the



Returning Officer to declare the respondent no.5 as elected Mukhiya for Bheteura Gram Panchayat, but the Returning Officer in collusion with the petitioner by adopting corrupt practices manipulated the votes and illegally showed that 2224 votes were polled in favour of the petitioner and therefore, on the basis of illegally added 24 votes the petitioner was declared Mukhiya of Gram Panchayat, Bheteura. Thereafter, it was stated by respondent no.5 that he had made a written application to the Returning Officer for recounting of votes but the same was not entertained by the Returning Officer. Respondent no.5 also stated in the election petition that he had also made representation in this regard before the District Election Commission and State Election Commissioner, but it was to no avail. The respondent no.5 further contended in the election petition that the total voters turned out in Bhetaura Gram Panchayat was 6047 and the total votes polled by the voters was 6047 which as per respondent no.5 was evident from VTR prepared by the Returning Officer, but the Returning Officer illegally added 24 votes in favour of the petitioner and thereafter prepared Form-21 illegally showing therein that the petitioner had secured maximum votes of 2224 and in the column of total valid votes, total votes polled was illegally shown to be 6071 and thereby illegally declaring petitioner as the Mukhiya of



Gram Panchayat, Bheteura. As per the respondent no.5, as averred in paragraph-8 of the election petition, the matter which arose for consideration was that how total votes of 6071 were polled as shown in Form-21, when only 6047 voters had turned out to poll their votes in Bheteura Gram Panchayat. Both VTR and Form-21 were prepared by the Returning Officer then the discrepancy of 24 votes between the two documents, as alleged, was only possible because of Returning Officer acting in collusion with the petitioner with the object of declaring the petitioner as a winner and therefore, the Returning Officer illegally added 24 votes in favour of the petitioner and on the basis of illegal votes the Returning Officer declared the petitioner as elected Mukhiya, even though it was respondent no.5 who was legally entitled to be declared as Mukhiya of Gram Panchayat, Bheteura. Therefore, the respondent no.5 had prayed in the election petition, for setting aside the election of the petitioner and declaring the respondent no.5 as elected Mukhiya of Bheteura Gram Panchayat because of having secured maximum valid votes.

11. In the election petition Smt. Anita Devi (petitioner) was arrayed as O.P. No.1, Smt. Ankita Singh (contestant) was arrayed as O.P. No.2, Smt. Anita Devi (contestant) was arrayed as O.P. No.3, Sri Gauri Shankar Yadav (contestant) was arrayed as



O.P. No.4, Smt. Champa Devi (contestant) was arrayed as O.P. No.5, Sri Satyendra Yadav (contestant) was arrayed as O.P. No.6, State Election Commissioner, Bihar, District Election Officer-cum-District Magistrate, Gaya and Returning Officer, Tankuppa were arrayed as O.P. No.7,8 and 9 respectively.

12. During the course of adjudication following issues were framed by the Election Tribunal:

“I. Is the election petition as framed maintainable?

II. Has the petitioner got any valid cause of action for this petition?

III. Is the petition barred by provisions of Bihar Panchayat Raj Act, 2006?

IV. Whether the election of returned candidate, O.P. No.1 Smt. Anita Devi declaring her elected as Mukhiya of Bhetaura Gram Panchayat, is to be set aside?

V. Whether petitioner is to be declared Mukhiya of Bhetaura Gram Panchayat after setting aside the election of Opposite Party No.1?

VI. Whether the petitioner is entitled for any other reliefs?”

13. Following evidences were adduced by the respondent no.5 before the Election Tribunal:



EVIDENCE ADDUCED BY THE ELECTION PETITIONER.

(1) Oral Evidence

- AW 1 - Surendra Yadav (Election Petitioner)
AW 2 - Umesh Kumar

(2) Documentary Evidence

- Exhibit 1 - Letter No.276 dated 14.03.2022 issued
by B.D.O., Tankuppa, Gaya
Exhibit 2 - Prapatra 21 (Form-21)
Exhibit 2/A - Voter Turn Out Report (VTR)
Exhibit 3 - Signature of the B.D.O. over Prapatra 21
Exhibit 4 to 4/M - Recorded Vote in EVM Part-1 (Annexure XII)
Exhibit 5 to 5/L - Voter Register of Booth No.31, 32, 33, 34, 35,
36(क), 37, 38, 39, 41, 42, 43.

Following evidences were adduced by the opposite parties:

EVIDENCE ADDUCED BY THE OPPOSITE PARTIES

(1) Evidence by Opposite Party 1

(Oral Evidence)

- OP1/W1 - Sanjeev Kumar
OP1/W2 - Vijay Singh
OP1/W3 - Umesh Das
OP1/W4 - Vinod Kumar
OP1/W5 - Dharendra Kumar
OP1/W6 - Nagendra Paswan
OP1/W7 - Ajit Kumar
OP1/W8 - Vinod Kumar
OP1/W9 - Rajendra Prasad Yadav
OP1/W10 - Shravan Kumar
OP1/W11 - Sujit Singh
OP1/W12 - Dilip Prasad Yadav
OP1/W13 - Anil Kumar
OP1/W14 - Anita Devi (opposite party No.1, Returned Candidate)

(Documentary Evidence for O.P. No.1)

- Exhibit A - Counting Report Form 20 (Part-1) (fourteen pages)
Exhibit B - Counting Report Form 20 (Part-2) (one page)



(2) Evidence by Opposite Party 3 to 5

(Oral Evidence)

OP3-5/W1 - Indrajit Kumar
OP3-5/W2 - Dilip Kumar
OP3-5/W3 - Gauri Shankar Yadav

(Documentary Evidence for O.P. No.3 to 5)

(None)

(3) Evidence by Opposite Party 6

(Oral Evidence)

OP6/W1 - Satyendra Yadav

(Documentary Evidence for O.P. No.6)

(None)

(4) Evidence by O.P. No.7 to 9 (opposite party 2nd Set)

(Oral Evidence)

OP7-9/W1 - Indrani Kumari (O.P. No.9)

(Documentary Evidence for O.P. No.6)

(None)

14. In addition to the above, the Election Tribunal had of its own called for the following documents which is recorded in paragraph 26 of the impugned judgment and order dated 08.01.2024. Paragraph-26 of the impugned order is quoted herein below for needful:

“26. **Documents called by the Court/Tribunal:** (i) Original of Form 20 (Part 1) for Booth No. 31 to 43 (in fourteen pages), (ii) Original of Form 20 (Part 18/03/20/92) for Booth No. 31 to 43 (in one page) whose Xerox copies, later on, were compared and substituted in place of original vide order dated 19.04.2023, (iii) Hard Copy of Data of Mukhiya Elections for Booth No. 31 to 43 which is Annexure XII (in fourteen pages) (iv) Original Statutory Packet which are Envelopes containing several documents pertaining to Booth No 31 to 43 (in fourteen envelopes) has been sent by Block Development Officer, Tankuppa, Gaya vide letter No. 276 dated 14.03.2021.”



15. After appraising all the oral and documentary evidences and the pleadings of all the parties, the Election Tribunal gave elaborate findings of fact which is recorded in paragraph-28 to 95 of the impugned judgment and order and based on those findings, in paragraph-96, the Election Tribunal has ordered as follows:

“96. In the result it is therefore

ORDERED

That

(1) **The Election petition is allowed** on contest against O.P. No 1. O.P No. 3 to 5, O. P. No. 6. O. P. No. 7 to 9, & ex-parte against O.P. No. 2 to the extent of setting aside the Election of O.P. No.1 Smt. Anita Devi as Mukhiya for Gram Panchayat Bhetaura, Nirvachan Chetra Sankhya -3, under Tankuppa Prakhand of District Gaya.

(2) The entire election process of Mukhiya for Gram Panchayat Bhetaura, Nirvachan Chetra Sankhya-3, under Tankuppa Prakhand, District Gaya held in Bihar Gram Panchayat Elections 2021 is hereby set aside.

(3) Re-election be conducted without undue delay for the post of Mukhiya for Gram Panchayat Bhetaura, Nirvachan Chetra Sankhya-3, under Tankuppa Prakhand, District Gaya, and Authorities concerned are accordingly directed to conduct the re-election of Mukhiya of Gram Panchayat Bhetaura, Nirvachan Chetra Sankhya-3, under Tankuppa Prakhand, District Gaya in the prescribed manner.

(4) One copy of this Final-Order/Judgement be immediately transmitted to District Election Officer cum District Magistrate, Gaya (O.P. No 8) and the State Election Commission, Bihar, Patna (O.P. No. 7) as mandated vide rule 113 of Bihar Panchayat Election Rules 2006.

(5) No Cost



16. Being aggrieved with the findings of fact and the final order given by the Election Tribunal, the petitioner has filed the present writ application challenging the same and while advancing argument the learned counsel appearing for the petitioner confined the challenge to the impugned judgment and order dated 08.01.2024 on the following counts:

(a) As per the learned counsel for the petitioner, Form-20 (Part-I) which was marked as Exhibit-A before the Election Tribunal was not considered in respect of booth no.37 and therefore, the impugned judgment and order was perverse on account of non-consideration of material evidence available on record.

(b) The finding given by the Election Tribunal in paragraph-92 of the impugned judgment and order dated 08.01.2024 to the extent that there was improper reception of 24 votes which has “materially affected” the result of the election in favour of the petitioner, is without any evidence and therefore, the said finding is perverse.

(c) The statement made by the respondent no.5 in paragraph-11 of election petition to the extent that the respondent no.5 had requested for recounting but the Returning Officer did not do recounting, is a false statement and therefore, the respondent



no.5 had not approached the Election Tribunal with clean hands as he had suppressed the relevant facts which was in his knowledge. As per the petitioner, the recounting was done which was in the knowledge of the respondent no.5.

(d) While deciding the dispute the Election Tribunal should have framed the issue “Whether the discrepancy in the total number of votes polled as per the VTR and the total votes counted ‘materially affected’ the outcome of the election, as per the strict requirement of Section 139(1)(d)(iii) of the Bihar Panchayat Raj Act, 2006? By not framing this issue, the Election Tribunal could not have answered this issue in the impugned judgment and order dated 08.01.2024.

(e) The evidence of the Returning Officer was incorrectly appraised which has led to the Election Tribunal recording wrong finding of fact.

Further, based on the pleadings made in the Interlocutory Application No.01 of 2025 and Form-20 (Part-I) annexed with the said interlocutory application, the learned counsel for the petitioner made two additional submissions which were as follows:

(f) Form No.20 (Part-I) as annexed with the Interlocutory Application No.01 of 2025, as per the petitioner,



showed that respondent no.5 had put his signature on the said form and therefore, based on the principle of waiver, the respondent no.5 could not have questioned the correctness of the said Form qua booth no.37 in the election petition. By allowing him to do so, the Tribunal has committed an error and for fortifying this submission, the learned counsel for the petitioner relied upon (1999) 9 SCC 420, paragraph-15 and 2004 (2) PLJR 581, paragraph-29.

(g) The second additional argument advanced by learned counsel for the petitioner was that since VTR was prepared on the basis of Presiding Officers ballot paper account (Statutory Form No.17), the same can have discrepancy and therefore, it is Form-20 (Part-I) which is to be taken as correct and not the VTR. For fortifying this submission, learned counsel for the petitioner has relied upon para-30 of decision of this Court reported in 2004 (2) PLJR 581.

17. Learned counsel appearing for respondent no.5 submits that none of the above grounds on which the petitioner has challenged the judgment and order dated 08.01.2024 is sustainable in law and in fact the said impugned judgment is perfectly legal and justified to the extent that it has set aside the election of the petitioner from the post of Mukhiya of Bheteura Gram Panchayat.



18. The learned counsel appearing for respondent commission in his argument has explained in detail as to how the process of election is carried out and what are the documents which are prepared as per these statutory rules.

19. Before I get down to examining each of the grounds on which the learned counsel for the petitioner has questioned/challenged the impugned judgment and order dated 08.01.2024 passed by the Election Tribunal, I deem it appropriate to recall some of the judicial pronouncements which have dealt with the scope of judicial review against decision of Election Tribunal in writ jurisdiction. Some of these judgments are as follows:

(i) *Hari Vishnu Kamath v. Syed Ahmad Ishaque*, reported in (1954) 2 SCC 881.

“**24.** Then the question is whether there are proper grounds for the issue of certiorari in the present case. There was considerable argument before us as to the character and scope of the writ of certiorari and the conditions under which it could be issued. The question has been considered by this Court in *Parry & Co. Ltd. v. Commercial Employees Assn.* [*Parry & Co. Ltd. v. Commercial Employees Assn.*, (1952) 1 SCC 449 : 1952 SCR 519] , *G. Veerappa Pillai v. Raman & Raman Ltd.* [*G. Veerappa Pillai v. Raman & Raman Ltd.*, (1952) 1 SCC 334 : 1952 SCR 583] , *Ebrahim Aboobakar v. Custodian General* [*Ebrahim Aboobakar v. Custodian General*, (1952) 1 SCC 798 : 1952 SCR 696] and quite recently in *T.C. Basappa v. T. Nagappa* [*T.C. Basappa v. T. Nagappa*, (1954) 1 SCC 905 : AIR 1954 SC 440] . On these authorities, the following propositions may be taken as established:



24.1. Certiorari will be issued for correcting errors of jurisdiction, as when an inferior court or tribunal acts without jurisdiction or in excess of it, or fails to exercise it.

24.2. Certiorari will also be issued when the court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.

24.3. The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous. This is on the principle that a court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior court were to rehear the case on the evidence, and substitute its own findings in certiorari. These propositions are well settled and are not in dispute.

25. The further question on which there has been some controversy is whether a writ can be issued, when the decision of the inferior court or tribunal is erroneous in law. This question came up for consideration in *R. v. Northumberland Compensation Appeal Tribunal, ex p Shaw* [*R. v. Northumberland Compensation Appeal Tribunal, ex p Shaw*, (1951) 1 KB 711], and it was held that when a tribunal made a “speaking order” and the reasons given in that order in support of the decision were bad in law, certiorari could be granted. It was pointed out by Lord Goddard, C.J. that that had always been understood to be the true scope of the power. *Walsall Overseers v. London & North Western Railway Co.* [*Walsall Overseers v. London & North Western Railway Co.*, (1878) LR 4 AC 30 at p. 39 (HL)] and *R. v. Nat Bell Liquors Ltd.* [*R. v. Nat Bell Liquors Ltd.*, (1922) 2 AC 128] were quoted in support of this view. In *Walsall Overseers v. London & North Western Railway Co.* [*Walsall Overseers v. London & North Western Railway Co.*, (1878) LR 4 AC 30 at p. 39 (HL)], Lord Cairns, L.C. observed as follows : (AC p. 39)

“... if there was upon the face of the order of the court of quarter sessions anything which showed that that order was erroneous, the Court of Queen's Bench might be asked to have the order brought into it, and to look at the order, and view it



upon the face of it, and if the court found error upon the face of it, to put an end to its existence by quashing it....”

In *R. v. Nat Bell Liquors Ltd.* [*R. v. Nat Bell Liquors Ltd.*, (1922) 2 AC 128] Lord Sumner said : (AC p. 156)

“... That supervision goes to two points : one is the area of the inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of the law in the course of its exercise.”

26. The decision in *R. v. Northumberland Compensation Appeal Tribunal, ex p Shaw* [*R. v. Northumberland Compensation Appeal Tribunal, ex p Shaw*, (1951) 1 KB 711] was taken in appeal, and was affirmed by the Court of Appeal in *R. v. Northumberland Compensation Appeal Tribunal, ex p Shaw* [*R. v. Northumberland Compensation Appeal Tribunal, ex p Shaw*, (1952) 1 KB 338] . In laying down that an error of law was a ground for granting certiorari, the learned Judges emphasised that it must be apparent on the face of the record. Denning, L.J. who stated the power in broad and general terms observed : (KB p. 351)

“It will have been seen that throughout all the cases there is one governing rule : Certiorari is only available to quash a decision for error of law *if the error appears on the face of the record.*”

(emphasis supplied)

The position was thus summed up by Morris, L.J. : (*Northumberland Compensation Appeal Tribunal case* [*R. v. Northumberland Compensation Appeal Tribunal, ex p Shaw*, (1952) 1 KB 338] , KB p. 357)

“It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for rehearing of the issue raised in the proceedings. It exists to correct error of law *where revealed on the face of an order or decision*, or irregularity, or absence of, or excess of, jurisdiction where shown.”

(emphasis supplied)

27. In *G. Veerappa Pillai v. Raman & Raman Ltd.* [*G. Veerappa Pillai v. Raman & Raman Ltd.*, (1952) 1 SCC 334 :



1952 SCR 583] , it was observed by this Court that under Article 226 the writ should be issued : (SCC p. 341, para 26)

“26. ... in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is *an error apparent on the face of the record*,...” (AIR pp. 195-96, para 20)

(emphasis supplied)

In *T.C. Basappa v. T. Nagappa* [*T.C. Basappa v. T. Nagappa*, (1954) 1 SCC 905 : AIR 1954 SC 440] the law was thus stated : (SCC p. 914, para 11)

“11. ... An error in the decision or determination itself may also be amenable to a writ of “certiorari” but it must be a *manifest error apparent on the face of the proceedings* e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by “certiorari” but not a mere wrong decision.”

(emphasis supplied)

28. It may therefore be taken as settled that a writ of certiorari could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? The learned counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated. Mr Pathak for the first respondent contended on the strength of certain observations of Chagla, C.J. in *Batuk K. Vyas v. Surat Borough Municipality* [*Batuk K. Vyas v. Surat Borough Municipality*, 1952 SCC OnLine Bom 46 : AIR 1953 Bom 133] that no error could be said to be apparent on the face of the record if it was not self-evident, and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might



be considered by one Judge as self-evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.”

(ii) *Syed Yakoob vs K. S. Radhakrishnan and others*,

reported in *AIR 1964 (SC) 477*.

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material



evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Ahmad Ishaque, 1955-1 SCR 1104: ((S) AIR 1955 SC 233): Nagendra Nath v. Commr. of Hills Division, 1958 SCR 1240: (AIR 1958 SC 398) and Kaushalya Devi v. Bachittar Singh, AIR 1960 SC 1168.”

(iii) ***Sugarbai M. Siddiq and Others v. Ramesh S. Hankare***

(Dead) by LRS reported in (2001) 8 SCC 477

“6. There can be little doubt that in an application under Article 227 of the Constitution, the High Court has to see whether the lower court/tribunal has jurisdiction to deal with the matter and if so, whether the impugned order is vitiated by procedural irregularity; in other words, the Court is concerned not with the decision but with the decision-making process. On this ground alone the order of the High Court is liable to be set aside.”

(iv) ***Central Council for Research in Ayurvedic***

***Sciences & Anr. vs Bikartan Das*, reported in 2023 LAB IC 3697.**

“50. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.”



(v) **Lily Thomos vs. Union of India**, reported in (2000) 6 SCC 224.

In this case the, Hon'ble Supreme Court has held that High Court jurisdiction in election matters is supervisory and does not extent to reviewing or reassessing factual findings of the election tribunal unless there is a legal or procedural error.

(vi) **R. Ramaswami vs. V. Ramaswami**, reported in (1995) 6 SCC 8.

It has been held that the High Court's jurisdiction under Article 226 or 227 is to supervise the legality of the election tribunal's decision and not to review factual findings or evidence. The Court can interfere only if tribunals order is contrary to law or principle of natural justice. This case further outlines that factual errors or incorrect appreciation of evidence by the election tribunal do not constitute grounds for interference by the High Court under judicial review.

(vii) **Pratap Singh vs. State of Punjab**, reported in AIR 1954 SC 631.

This case reinforces the idea that a High Court cannot exercise powers of appellate review over factual matters or reevaluate the merits of the case.



(viii) *Dr. Suresh Chandra Sharma vs. Union of India*
reported in *(2011) 10 SCC 382*.

In this case, the Hon'ble Supreme Court observed that review powers of the High Court are available when there is a manifest error of law or justice in the decision of the election tribunal. However, the High Court cannot substitute its judgment for that all the election tribunal on factual aspects. This case underscores the restricted nature of High Court's review jurisdiction in election matters, with emphasis on legal errors rather than factual mistakes.

20. Based on some of the aforesaid judicial pronouncements on the scope of judicial review in election matters, it can be safely summarized that in writ jurisdiction, the High Court should only interfere against the actions of Election Tribunal:

- (i) when there is violation of natural justice;
- (ii) when there is error of law apparent on the face of the record;
- (iii) when the tribunal has acted without jurisdiction;
- (iv) when the tribunal has acted in a arbitrary or perverse manner by giving finding which is unsupported by evidence and;
- (v) when there is violation of constitutional or statutory provisions;



21. In light of the limited scope of judicial review available to this Court against a judgment and order of the Election Tribunal, I propose to examine each of the grounds which has been advanced by the learned counsel for the petitioner for challenging the decision of the Election Tribunal in the present case.

GROUND NO.A

Form-20 (Part-I) which was marked as Exhibit-A before the Election Tribunal was not considered in respect of Booth No.37 and therefore, the impugned judgment and order is perverse on account of non-consideration of material evidence available on record.

(i) This ground has not been taken in the writ petition. In absence of any pleading to this effect, learned counsel for the petitioner should not have raised this as a ground for challenging the impugned order during the course of his argument.

(ii) The ground taken is also misconceived for the reason that in paragraph-38 to 44 of the impugned order dated 08.01.2024, the Election Tribunal has discussed in detail about Form-20 (Part-I) as a vital piece of evidence in respect of Booth No.37, therefore, the contention on part of learned counsel for the petitioner that Form-20 (Part-I) has not been considered is not correct. The impugned order, therefore, cannot be held to be bad or



perverse on account of alleged non-consideration of material evidence available on record.

(iii) At the most, the learned counsel for the petitioner could have contended that upon consideration of Form-20(Part-I), the finding of fact recorded by the Election Tribunal was not correct but even if such an argument had been advanced, the same being a finding of fact would not have been amenable to judicial review under Article 226 and 227 of the Constitution of India.

GROUND NO.B

The finding given by the Election Tribunal in paragraph-92 of the impugned judgment and order dated 08.01.2024 to the extent that there was improper reception of 24 votes which ‘materially affected’ the result of the election in favour of the petitioner, is without any evidence and therefore the said finding is not only perverse but also amounts to an error of law.

(i) In paragraph-38 to 44, 73, 75 and 76 of impugned judgment, oral and documentary evidences adduced by the parties before the Election Tribunal have been discussed in detail on the issue of improper reception of 24 votes. Finally on the appraisal of oral and documentary evidences, finding of fact has been recorded in paragraph-87 and 92 about the election having been ‘materially



affected' due to improper reception of 24 votes. In this regard, it is pertinent to quote paragraph nos.38 to 44, 73, 75, 76, 87 and 92 of the impugned judgment and order dated 08.01.2024, which are as follows:

“38. The relevant documents brought on record by the Opposite Party in this regard are also to be considered. First being, fourteen pages of Counting Report of votes (One page for each booth) bearing the title "निर्वाचन के मतों की गणना का परिणाम-पत्र" which is basically Form 20 (Part-1) (**Exhibit A**). In other words, Exhibit A comprises of fourteen sheets of Form 20 (Part -1) ie one Form 20 (part-1) for each Polling Booth and this form also bears the signature of the Returning Officer (O.P. No. 9).

Of these fourteen pages, one of them pertains to Booth No. 37 for the Election of Mukhiya for Bhetaura Gram Panchayat. This Form 20 (Part -1) for Booth No. 37 contains in tabular form votes polled in favour of each of the seven candidates contesting the Election for the Post of Mukhiya of Bhetaura Gram Panchayat. The summation of all these votes come out to be 520.

Furthermore, following entries are distinctly contained in the said Form 20 (Part-1) for Booth No. 37 which are as follows:

(क) विधिमान्य मतों की कुल संख्या - 520

(ख) प्रतिक्षेपित मतों की कुल संख्या- NIL

(ग) डाले गये मतों की कुल संख्या- 520

And, even from perusal of these entries it is apparent that the total number of votes polled for the Election of Mukhiya of Bhetaura Gram Panchayat under Tankuppa Prakhanda of Gaya at Booth Number 37 is 520.

39. The second document exhibited by the O.P. No. 1 is Counting Report Form 20 (Part-2) (**Exhibit -B**) which is



a one page document bearing the booth-wise votes polled at each of the fourteen polling booths in favour of each of the seven contesting candidates. Form 20 (Part-2) has also been prepared on the date of counting of votes ie. 17.11.2021. It also contains the total number of votes polled in favour of each of the candidates and also the total votes polled on all the fourteen booths for the election of Mukhiya for Bhetaura Gram Panchayat. On perusal of the **Exhibit-B**, it is apparent that the total number of votes polled at Booth No. 37 is 520, and also, the total number of votes polled in favour of O.P. No. 1 (ie. the Returned candidate) is 2224 and in favour Election Petitioner is 2212 and the total number of votes polled for Election of Mukhiya of Bhetaura Gram Panchayat is 6071. This figure of 6071 is 24 more than the total Number of Votes polled as per VTR (**Exhibit 2/A**) which is 6047 votes.

40. Another relevant document in this regard is **Exhibit 2** that is Form-21 which has also been issued by the Returning Officer/BDO, Tankuppa (who is also O.P. No. 9 in this case). In this regards reference maybe had of Rule 81 of Bihar Panchayat Election Rules 2006 which reads as follows:

- 81. Declaration of results:** (1) After recording the particulars of the election result in Form-21, the Returning Officer or the Officer authorised shall declare that candidate elected as Member of Gram Panchayat/ Panch of Gram Katchahry /Mukhiya /Sarpanch/Member of Panchayat Samiti/Member of Zila Parishad, as the case may be, who has secured the largest number of valid votes and shall certify it in the same Form
- (2) One copy each duly signed of Form 21 shall be sent to the District Election Officer and through



him/her to the Commission and the Director of Panchayat Raj.

On perusal of the afore-stated Rule 81, it becomes clear that Form 21 includes the particular of Election Result. As per Form-21 Total number of votes polled in favour of Returned Candidate is 2224 and total number of votes polled in favour of Election Petitioner is 2212

41 For the purposes of description, it may also be pertinent to mention about the total no. of votes polled in light of a 'plausible' recounting. Although the Election Petitioner in his petition has stated that he made application for recounting but the same was not entertained by the Returning Officer. However, both O.P. No. 1 and O.P. No. 9 have nevertheless admitted to recounting being done at the application of Election Petitioner on the date of Counting. And O.P. No. 9 in her Objection has stated that it was only after recounting being done according to EVM that O.P.1 was declared as the Mukhiya of Bhetaura Gram Panchayat. Therefore, as per O.P. No. 1 and O.P. No. 9 the final outcome of the election has also stood the test of recounting.

42. Furthermore, on conjoint reading of Exhibit 4/G, 5/G, 2/A and Exhibit A, B, and Exhibit-2 as discussed above, it is quite apparent that there is discrepancy of 24 votes in the total number of votes polled on Booth No. 37 for Election of Mukhiya for Bhetaura Gram Panchayat. While Exhibit 4/G and Exhibit 5/G clearly indicate that only 496 votes were cast on Booth No. 37 on the date of polling (15.11.2021). However, as per Exhibit A and B the total number of votes polled at Booth No. 37 is 520 as on the date of counting (17.11.2021).



43. As per the Voter Turnout Report (Exhibit 2/A) which was prepared by Returning Officer cum B.D.O., Tankuppa on 15.11.2021 (the date of polling). on Booth No 37 a total of 496 votes were cast. It also shows that total votes polled on all fourteen polling booths for Bhetaura Gram Panchayat Election was 6047. However, Form - 21 which was also prepared by Returning Officer cum B.D.O.. Tankuppa on the date of counting (17.11.2021) shows that summation of all votes received by each of the seven contesting candidates turn out to be 6071. Hence it will not be wrong to state that total votes polled as per Form-21 on the all fourteen Polling Booths for Bhetaura Gram Panchayat Election was 6071. Moreover, the Exhibit A and Exhibit B (which have also been issued at the instance of Returning Officer and both the documents also bear the signature of Returning Officer) suggest that total number of votes polled on Booth No. 37 was 520.

44. Hence the documentary evidence, as discussed above, invariably suggests that there has been improper reception of 24 votes.

73. Moreover, from bare perusal of the oral evidence adduced by all the parties, it is apparent that most of the witnesses produced by O.P. No. 1, except OP1/W12 have nothing to say on the Exhibited Documents which have highlighted the discrepancy of 24 votes as has been discussed earlier. Where as OP1/W12 has disputed the genuineness of VTR.

75. Reverting to the issue of improperly received 24 votes, on the basis of discussions held in the preceding paragraphs above, it is clear that the documentary evidence in this case invariably suggests that that there



has been improper reception of 24 votes in the Election of Mukhiya of Bhetaura Gram Panchayat, Tankuppa, Gaya.

76. Furthermore, O.P. No. 1 and O.P. No. 6 in their objection have also suggested that the discrepancy of 24 votes must have happened due to possible human error on the part of Presiding Officer of Polling Booth No. 37 in preparing the **Exhibit 4/G** which contained details of votes polled as on the date of polling on Booth No 37. This proposition is not tenable because the details of votes for polling booth no. 37 have also been accepted by the Returning Officer (O.P. No. 9) in the VTR **Exhibit-2/A** which was also prepared on the date of polling. Moreover, none of the witnesses discussed above have stated of any irregularity on polling Booth No. 37 on the date of polling. Further AW2 has also categorically stated about preparation of **Exhibit 4/G** by the presiding officer at polling booth no. 37 on the date of polling. Moreover, the total number of votes as per **Exhibit 4/G** matches completely with the another vital document of the election process ie. Voters' Register for polling Booth No. 37 (**Exhibit 5/G**) which contains entries of 496 voters only. All these factors suggest that Presiding Officer of polling Booth No. 37 has not erred. In such a scenario, the Presiding Officer cannot be held liable for discrepancy of 24 votes.

87. The documentary evidence invariably suggests that there has been improper reception of 24 votes. It must also be noted here that the exhibited documents which have been referred in this case are not the private documents of parties but these are document of Election Authorities and were duly brought on record.

The most incredible aspect of the matter here is that number of votes recorded in the EVM at the time of



counting is found to be 24 more than the total number of votes polled as on the date of polling. Also, these extra unaccounted 24 votes find no corroboration with the Voter's Register (**Exhibit 5/G**) or with Annexure XII which pertains to Votes Recorded in EVM (Part -1) (**Exhibit 4/G**). This increment of 24 votes by no means appears to be an outcome of an inadvertent human error, and, the possibility of error on the part of Presiding Officer of Polling Booth No. 37 has already been ruled out in the discussions held above (in para 76). Rather it is manifestly a fault on the part of Authorities responsible for conducting of free and fair election and counting of votes which has resulted in a possible undue advantage in favour of the O.P. No. 1. and a possible undue disadvantage for the Election Petitioner as these 24 votes had the potential of swinging the final outcome of the election either in favour of Election Petitioner or in favour of O.P. No. 1. In view of aforesaid discussion, it cannot be said the elections for the post Mukhiya of Bhetaura Gram Panchayat, Tankuppa Prakhand, Gaya were conducted in free and fair manner and therefore the whole process of election of Mukhiya for Bhetaura Gram Panchayat stands vitiated. And it goes without saying that the faults and serious lapses on the part of Returning Officer should not result in benefitting any of the contesting candidates. And therefore, it unerringly suggests that the Returning Officer did not act fairly and that there has been serious faults and error on part of Returning Officer in conducting the elections in a fair manner and its counting process. Also, the faults on the part of authorities responsible for conduction of free and fair elections which has had the effect of benefitting the Returned Candidate would fly in the face of fairness of election process from the standpoint of Election Petitioner who is standing at the margin of only 12 votes



when the total number of improperly received votes are 24.

92. One of the grounds under Section 139 which is relevant to this case is Section 139 (1) (d) (iii) which pertains to improper reception of any vote which has the possibility of materially affecting the result of election as far as it concerns a returned candidate. As discussed above in the previous paragraphs, the faults and serious lapses on the part of Returning Officer has certainly resulted in improper reception of votes by the different candidates including the Returned Candidate. In such a scenario, one of the grounds specified in Section 137 is attracted and also the whole process of election comes under question. Furthermore, since there has been improper reception of 24 votes where as the margin between total no. of votes secured by O.P. No. 1 and returned candidate is of 12 votes only. So it can definitely be said that improper reception of these 24 votes has the possibility of materially affecting the result of election as far as it concerns a returned candidate. Furthermore, the discussions held in previous paragraphs sufficiently suggests that there were faults on the part of Returning Officer in fair conduction of election process beyond a shadow of reasonable doubt and that the Returned Candidate was necessarily in collusion with the Returning Officer in getting the desired result.”

Therefore, it is not correct on part of learned counsel for the petitioner to contend that the finding of fact recorded by the Election Tribunal about improper reception of 24 votes having ‘materially affected’ the election in favour of the petitioner is not based on any evidence. The impugned judgment and order dated



08.01.2024 therefore cannot be said to be perverse or suffering from any error of law on this account.

GROUND NO.C

The statement made by respondent no.5 in paragraph-11 of the election petition to the extent that the respondent no.5 had requested for recounting but the Returning Officer did not do the recounting, is a false statement and therefore the respondent no.5 had not approached the Election Tribunal with clean hands as he had suppressed the relevant facts which was in his knowledge. As per the petitioner, the recounting was done which was in the knowledge of the respondent no.5.

(i) During the course of argument, the petitioner completely failed to show any material which could establish that recounting was carried out by the Returning Officer on the request of the respondent no.5. The learned counsel for the petitioner simply referred to paragraph-41 of the impugned order which only depicts/records the stand of the parties taken before the Election Tribunal. Having failed to show any material to support the contention that recounting was done by the Returning Officer, the allegation levelled by the learned counsel for the petitioner that the



respondent no.5 had made a false statement is not proper and correct.

(ii) It is also pertinent to point out that this ground has also not been pleaded in the writ application.

GROUND NO.D

While deciding the dispute the Election Tribunal should have framed the issue “whether the discrepancy in the total number of votes polled as the VTR and the total votes counted ‘materially affected’ the outcome of the election as per the strict requirement of Section 139(1)(d)(iii) of the Bihar Panchayat Raj Act, 2006? By not framing this issue, the Election Tribunal could not have answered this issue in the impugned judgment and order dated 08.01.2024.

(i) Even this ground on which the learned counsel for the petitioner is wanting to assail the impugned order and judgment dated 08.01.2024 has not been pleaded in the writ application.

(ii) Further, there was no need to separately frame this issue because this issue has been substantially and elaborately answered in paragraph nos.38 to 44, 73, 75, 76, 87 and 92 of the impugned judgment and order dated 08.01.2024, while deciding issue no.(iv) framed by the Election Tribunal. These relevant



paragraph have already been quoted above, which clearly demonstrate that the Election Tribunal has given a plausible finding of fact as to how the total number of votes polled as per the VTR and the total votes finally counted 'materially affected' the outcome of the election.

GROUND NO.E

The evidence of the Returning Officer was not properly apprised which has led the Election Tribunal to record wrong findings of fact.

(i) It is not correct at all on part of learned counsel for the petitioner to contend that the evidence of the Returning Officer has not been properly apprised. A detailed appraisal of the evidence of the Returning Officer as well as of all other witnesses has been done by the Election Tribunal which has led to Tribunal giving findings of fact. All the findings of fact given by the Election Tribunal are based on appraisal of oral and documentary evidence.

(ii) Even assuming, that the findings of fact recorded by the Election Tribunal are not correct, as per the petitioner, the fact that they are findings of fact based on appraisal of oral and documentary evidence, that itself would not make the impugned judgment and order dated 08.01.2024 amenable to judicial



scrutiny, given the limited scope available under Article 226 and 227 of the Constitution of India.

GROUND NO.F

Form-20 (Part-I) annexed with the Interlocutory Application No.01 of 2025 shows that the respondent no.5 had put his signature on the said form and therefore based on the principle of waiver, the respondent no.5 could not have questioned the correctness of the said form qua Booth No.37 in the election petition.

(i) It is important to observe that this objections was neither taken before the Election Tribunal nor has been taken/pleaded in the writ application. Without any foundational pleading, the petitioner cannot be permitted to raise this ground at the stage of argument.

(ii) Further, this ground has been taken based on the pleadings made in the Interlocutory Application No.01 of 2025. However, during the course of argument it was discovered that Interlocutory Application No.01 of 2025 had already been withdrawn by the petitioner on 16.06.2025 which is recorded in the order sheet. Having withdrawn the Interlocutory Application No.01 of 2025, the petitioner ought not to have raised this contentions at the time of argument.



GROUND NO.G

Since VTR was prepared on the basis of Presiding Officer's ballot paper account (Statutory Form No.17), the same can have discrepancy and therefore, the Election Tribunal should have considered Form No.20 (Part-I) to be correct instead of the VTR.

(i) Even this ground was taken at the time of argument based on the pleadings made in the Interlocutory Application No.01 of 2025, which was already withdrawn by the petitioner on 16.06.2025. Having withdrawn the Interlocutory Application No.01 of 2025, the learned counsel for the petitioner should not have raised this contention at the time of final argument.

(ii) Further, this ground taken by learned counsel for the petitioner is also devoid of merit in light of the finding of fact already recorded by the Election Tribunal in paragraph-76 and 87 of the impugned judgment and order dated 08.01.2024. Paragraph 76 and 87 are quoted herein below for needful.

“76. Furthermore, O.P. No. 1 and O.P. No. 6 in their objection their objection have also suggested that the discrepancy of 24 votes must have happened due to possible human error on the part of Presiding Officer of Polling Booth No. 37 in preparing the **Exhibit 4/G** which contained details of votes polled as on the date of polling on Booth No 37. This proposition is not tenable because the details of votes for



polling booth no. 37 have also been accepted by the Returning Officer (O.P. No. 9) in the VTR **Exhibit-2/A** which was also prepared on the date of polling. Moreover, none of the witnesses discussed above have stated of any irregularity on polling Booth No. 37 on the date of polling. Further AW2 has also categorically stated about preparation of **Exhibit 4/G** by the presiding officer at polling booth no. 37 on the date of polling. Moreover, the total number of votes as per **Exhibit 4/G** matches completely with the another vital document of the election process ie. Voters' Register for polling Booth No. 37 (**Exhibit 5/G**) which contains entries of 496 voters only. All these factors suggest that Presiding Officer of polling Booth No. 37 has not erred. In such a scenario, the Presiding Officer cannot be held liable for discrepancy of 24 votes.

87. The documentary evidence invariably suggests that there has been improper reception of 24 votes. It must also be noted here that the exhibited documents which have been referred in this case are not the private documents of parties but these are document of Election Authorities and were duly brought on record.

The most incredible aspect of the matter here is that number of votes recorded in the EVM at the time of counting is found to be 24 more than the total number of votes polled as on the date of polling. Also, these extra unaccounted 24 votes find no corroboration with the Voter's Register (**Exhibit 5/G**) or with Annexure XII which pertains to Votes Recorded in EVM (Part -1) (**Exhibit 4/G**). This increment of 24 votes by no means appears to be an outcome of an inadvertent human error, and, the possibility of error on the part of Presiding Officer of Polling Booth No. 37 has already been ruled out in the discussions held above (in para 76). Rather it is manifestly a fault on the part of Authorities responsible for conducting of free and fair election and counting of votes which has resulted in a possible undue



advantage in favour of the O.P. No. 1. and a possible undue disadvantage for the Election Petitioner as these 24 votes had the potential of swinging the final outcome of the election either in favour of Election Petitioner or in favour of O.P. No. 1. In view of aforesaid discussion, it cannot be said the elections for the post Mukhiya of Bhetaura Gram Panchayat, Tankuppa Prakhand, Gaya were conducted in free and fair manner and therefore the whole process of election of Mukhiya for Bhetaura Gram Panchayat stands vitiated. And it goes without saying that the faults and serious lapses on the part of Returning Officer should not result in benefitting any of the contesting candidates. And therefore, it unerringly suggests that the Returning Officer did not act fairly and that there has been serious faults and error on part of Returning Officer in conducting the elections in a fair manner and its counting process. Also, the faults on the part of authorities responsible for conduction of free and fair elections which has had the effect of benefitting the Returned Candidate would fly in the face of fairness of election process from the standpoint of Election Petitioner who is standing at the margin of only 12 votes when the total number of improperly received votes are 24.”

22. Under the aforesaid facts and circumstances and for the reasons given above, this Court is not inclined to interfere with the judgment and order dated 08.01.2024 passed by the learned Civil Judge (Junior Division-I, Gaya) in Election Petition No.01 of 2023. Consequently the prayer made in the writ application is rejected and the writ application is dismissed.

23. All pending I.A.s, if any shall be deemed to have been disposed of.



CWJC NO.3410 OF 2024

Heard the parties.

2. In the present writ application the petitioner has prayed for the following reliefs:

“I. For issuance of writ in the nature of certiorari or any other appropriate writ or direction to set aside part of the order dated 08/01/2024 passed in election petition No.05/2021/11/2021/1/2023 by Civil Judge Junior Division I, Gaya filed U/s 137 and 140 of Bihar panchayat Raj Act whereby and where under it has been ordered to set aside, the entire election process of Mukhiya, for Gram Panchayat Bhetaura, Nirvachan Chetra Sankhaya-3 under Tankuppa Prakhand of Gaya district and further set aside the direction to conduct re-election for the post of Mukhiya for Gram Panchayat Bhetaura, Nirvachan Chetra Sankhaya-3 under Tankuppa Prakhand of Gaya, though election petition of petitioner has been allowed thus the order is non-consequential and also against the mandate of section 140 of the Bihar Panchayat Raj Act 2006.

II. For issuance of writ in the nature mandamus or any other appropriate writ to declare the petitioner being the successful for the post of Mukhiya having received majority of the valid 2212 votes.

III. For issuance of writ in the nature of mandamus or any other appropriate writ/order/direction to the respondent No.2 not to proceed in this matter for re-election in election process of Mukhiya, for Gram Panchayat Bhetaura, Nirvachan Chetra Sankhaya-3 Tankuppa Prakhand of Gaya.

IV. For issuance of any other appropriate writ or direction for which the petitioner is otherwise entitled in the eye of law.”

3. Learned Senior Counsel appearing for the petitioner submits that after setting aside the election of Smt. Anita Devi (respondent no.4) from the post of Mukhiya of Gram Panchayat,



Bhetaura, the Election Tribunal ought to have declared the petitioner as successful for the post of Mukhiya of Gram Panchayat, Bhetaura, having received majority of the valid 2212 votes and therefore the direction of the Election Tribunal to conduct reelection is improper and to that extent it should be set aside.

4. Learned counsel appearing for respondent no.4, Smt. Anita Devi and learned counsel appearing for respondent Commission have strongly opposed the prayer made in this writ application.

5. Section 140 of Bihar Panchayat Raj Act, 2006 lays down the ground on which a candidate other than returned candidate may be declared to have been elected. For ready reference Section 140 of Bihar Panchayat Raj Act, 2006 is quoted herein below for needful.

“140. 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.”

6. From a careful reading of the judgment and order dated 08.01.2024 passed in Election Petition No.01 of 2023, it is manifest that the Election Tribunal has given a finding that there was improper reception of 24 votes which ‘materially affected’ the election of the respondent no.4 to the post of Mukhiya of Gram Panchayat, Bhetaura. In fact in paragraph nos.89 and 92 of the judgment and order dated 08.01.2024, the Election Tribunal has given elaborate reasons as to why no candidate can be declared winner and that reelection is only outcome. Paragraph-89 and 92 of the judgment is quoted herein below for needful.

“89. Furthermore, enough/sufficient material is not available on record to show candidate-wise reception of these unaccounted 24 votes which nevertheless have been improperly received by the candidates. Therefore, when the Election Petitioner is at the margin of 12 votes from the Returned Candidate and there is a discrepancy of 24 votes as discussed above, then it goes without saying that these 24 votes would be decisively vital for determining the real winner of the election for the post of Mukhiya. Entire elections process has to be based on the principle of sanctity of votes, however, in this case the sanctity 24 votes has been compromised. And due to this, none of candidates can be effectively declared as the winner in the Election and therefore whole process of election stands vitiated.

Also, in these circumstances, the conduction of re-election remains the only way out to elect a winning candidate in fair manner to the post of Mukhiya of



Bhetaura Gram Panchayat which has also been contemplated under Rule 112 of Bihar Panchayat Election Rules 2006.

92. One of the grounds under Section 139 which is relevant to this case is Section 139 (1) (d) (iii) which pertains to improper reception of any vote which has the possibility of materially affecting the result of election as far as it concerns a returned candidate. As discussed above in the previous paragraphs, the faults and serious lapses on the part of Returning Officer has certainly resulted in improper reception of votes by the different candidates including the Returned Candidate. In such a scenario, one of the grounds specified in Section 137 is attracted and also the whole process of election comes under question. Furthermore, since there has been improper reception of 24 votes where as the margin between total no. of votes secured by O.P. No. 1 and returned candidate is of 12 votes only. So it can definitely be said that improper reception of these 24 votes has the possibility of materially affecting the result of election as far as it concerns a returned candidate. Furthermore, the discussions held in previous paragraphs sufficiently suggests that there were faults on the part of Returning Officer in fair conduction of election process beyond a shadow of reasonable doubt and that the Returned Candidate was necessarily in collusion with the Returning Officer in getting the desired result.”

7. Learned Senior Counsel appearing for the petitioner is unable to find fault with the reasoning given in paragraph-89 and 92 of the judgment and order dated 08.01.2024 as quoted above. Consequently, the petitioner has failed to make out a case of either clause (a) or (b) of sub-section (1) of Section 140 of the Bihar Panchayat Raj Act, 2006.



8. In the aforesaid facts and circumstances, finding no reason to interfere with the judgment and order dated 08.01.2024 passed by the learned Civil Judge (Junior Division-I, Gaya) in Election Petition No.01 of 2023, the same is upheld and even this writ application is dismissed.

9. All pending I.As, if any, shall be deemed to have been disposed of.

(Alok Kumar Sinha, J)

Prakash Narayan

AFR/NAFR	AFR
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