

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10069 of 2025

Narayan Das Sharma Son of Awadh Bihari Singh, Resident of Village-Gaddopur, P.O. Fakharpur, P.S. Karpi, District- Arwal.

... .. Petitioner/s

Versus

1. The State Election Commission (Panchayat) Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
2. The State Election Commissioner, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
3. The Officer-on-Special Duty, The state Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
4. The State of Bihar, through the District Magistrate-cum-District Election Officer, Arwal, District- Arwal.
5. Archana Kumari, daughter of Chaturbhuj Sharma, Resident of Village-Gaddopur, P.O. Fakharpur, P.S. Karpi, District- Arwal.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S.B.K. Mangalam, Advocate Mr. Awnish Kumar, Advocate Mr. Vikash Kumar Singh, Advocate Mr. Kumar Gaurav, Advocate
For the State	:	Mr. Government Advocate (05)
For the SEC	:	Mr. Ravi Ranjan, Advocate Mr. Girish Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
ORAL JUDGMENT
Date : 27-06-2025

Heard Mr. S.B.K. Mangalam, learned counsel for the petitioner, learned GA-5 for the State and Mr. Ravi Ranjan, learned counsel for the State Election Commission (hereinafter referred to as ‘the Commission’).

2. With the consent of the parties, this writ application is being decided at this stage itself.

3. The petitioner has moved before this Court for



the following reliefs:-

- (i) *For quashing of the order dated 02.06.2025 passed by the respondent no.2, communicated to the petitioner under memo no.2397 dated 02.06.2025, issued under the signature of the respondent no.3, whereby and whereunder the respondent no.2 has been pleased to declare the petitioner disqualified to continue as a member of Arwal Block Panchayat Samiti on the ground that vide judgment and order dated 23.12.2023 passed by the Sub-Divisional Judicial Magistrate, Daudnagar, District-Aurangabad, the petitioner was convicted for an offence under Section 498A of the Indian Penal Code and he was sentenced to undergo simple imprisonment for two years and a fine of Rs.10,000/- and for the offence under Section 4 of the Dowry Prohibition Act, he was further convicted and was sentenced to undergo simple imprisonment for one year notwithstanding the fact that the order of conviction and sentence was already stayed by a competent court of appeal vide its order dated 07.02.2024 passed in Criminal Appeal No.03 of 2024.*
- (ii) *For a declaration that if it is the settled law that in case of suspension of conviction and sentence both by a court of appeal, the*



disqualification is wiped out and this issue has already been decided by this Court as well as the Hon'ble Supreme Court, the impugned order passed by the respondent no.2 is not only misconceived and illegal rather he has committed contempt of the court if he has not shown respect to the judgments of this Court and the Hon'ble Supreme Court in his impugned order.

(iii) For any other relief(s) to which the petitioner is found entitled to in the facts and circumstances of the case.

4. Learned counsel for the petitioner submits that the impugned order dated 02.06.2025, passed by the respondent no.2, which was communicated to the petitioner under memo no.2397 dated 02.06.2025 (Annexure-5 to the writ application) is completely illegal and in teeth of the judgment of this Court delivered in the case of ***Krishna Kumari Yadav vs. State Election Commission (Panchayat) & Ors.*** reported in ***(2025) 1 BLJ 109***. Hence, he prays that the order be set aside and the petitioner be reinstated to the post of member of Arwal Block Panchayat Samiti. In support of his submission, the learned counsel for the petitioner has relied upon the judgment of this Court in case of ***Krishna Kumari Yadav vs. State Election***



Commission (*supra*) and he has particularly highlighted paragraphs-20 to 26 of the said judgment.

5. Paragraphs-20 to 26 of the aforesaid judgment are quoted herein below for the needful:-

20. Mr. Shrivastava, the learned Sr. Counsel for the respondent no.8 has submitted further that the decision of **Hira Lal Sah** (*supra*) is based on the case of **Navjot Singh Sidhu** (*supra*). The case of **Navjot Singh Sidhu** (*supra*) was relating to Section 8 of ‘the Act of 1951’ is in *pari materia* with Section 136(1)(g) of ‘the Act of 2006’. The learned counsel submitted that the decision of **Hira Lal Sah’s Case** (*supra*) is per incuriam on this score because Section 8 of ‘the Act of 1951’ is not in *pari materia* with Section 136(1)(g) of ‘the Act of 2006’. The distinguishable feature between the provisions of these two enactments is that Section 8(4) of the ‘Act of 1951’ makes a special provision, by virtue of which the disqualification on the basis of conviction under Section 8 of ‘the Act of 1951’ does not take effect immediately after conviction. A grace period of three months (under Section 8(4) of ‘the Act of 1951’) has been provided to the convict for preferring the appeal. In these three months, the disqualification shall



not take effect and if the appeal/application or revision is preferred against the conviction, the disqualification shall not take effect until disposal of the appeal on the application. But so far as Section 136(1)(g) of 'the Act of 2006' is concerned, it takes effect immediately after conviction. There is no such grace period in Section 136(1)(g) of 'the Act of 2006', similar to Section 8(4) of 'the Act of 1951'. As such, these two provisions cannot be said to be in *pari materia* with each other.

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



ultra vires, Section 136(1)(g) of 'the Act of 2006' and Section 8 of 'the Act of 1951' are in *pari materia* with each other.

22. Section 8 of 'the Act of 1951' and Section 136(1)(g) of 'the Act of 2006' both relate to disqualification of a candidate on his conviction. So the basis of disqualification in both these enactments are on similar ground i.e. the conviction and sentence for minimum period prescribed in these two enactments are equal. Therefore, in my view, both the provisions in these two enactments are in *pari materia* and the ratio decidendi of a decision in case of Section 8 of 'the Act of 1951' is applicable to the case of Section 136(1)(g) of 'the Act of 2006'.

23. So far as the submissions of the learned Senior Counsel Mr. Amit Shrivastava for the respondent no.8 and Mr. Ravi Ranjan for the Respondent-State Election Commission (Panchayat) that the disqualification of the petitioner can be wiped out only on the reversion of the sentence by the appellate court is concerned, I am not in agreement with their submissions for the reasons that it is true that the condition precedent of obliteration of disqualification is the reversion of conviction and sentence by the appellate court, as provided under Section 136(1)(g) of 'the Act of 2006'. Similarly,



under Section 8 of ‘the Act of 1951’, there is also condition precedent that disqualification under Section 8 of ‘the Act of 1951’ shall continue for a period of six years. The relevant portion of Section 8(1) of ‘the Act of 1951’ is extracted hereinbelow:-

“..... and sentenced to imprisonment for not less than six months, shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release....”

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

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

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



6. *Per contra*, learned counsel appearing for the Respondent-State Election Commission submits that the impugned order passed by the State Election Commission is proper, legal and justified, and since, till date, no reversion of the conviction has taken place and therefore, the petitioner rightly stood disqualified.

7. Learned counsel appearing on behalf of the Respondent-State also supports the contention of the Respondent-State Election Commission.

8. On a careful perusal of the judgment relied upon by the learned counsel for the petitioner, it is absolutely clear that once the conviction is stayed, the disqualification attached to the conviction goes. Subsequently, on that basis alone the petitioner could not have been disqualified from holding his position in exercise of power under Section 136(2) of the Bihar Panchayat Raj Act, 2006. The conviction of the petitioner under Section 498(A) of the Indian Penal Code and for the offence under Section 4 of the Dowry Prohibition Act was stayed by competent court of appeal vide order dated 07.02.2024 passed in Criminal Appeal No.03 of 2024 (Annexure-2 to the writ application) and therefore, on 07.02.2024 itself, the



disqualification attached to the conviction had gone. Consequently, the petitioner could not have been disqualified on this ground by passing the impugned order on 02.06.2025.

9. For the reasons as explained above, the impugned order dated 02.06.2025 passed by the respondent no.2 and communicated to the petitioner under memo no.2397 dated 02.06.2025 issued by the respondent no.3 (Annexure-P/5 to the writ application) is hereby quashed/set aside and the petitioner is reinstated to the position of member of Arwal Block Panchayat Samiti.

10. With the aforesaid observations, findings and direction, the present writ application is allowed.

(Alok Kumar Sinha, J)

shikha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.06.2025
Transmission Date	NA

