

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19006 of 2021

State Bank of India Officers Association, an association registered under The Trade Union Act, 1926, having its registered office at State Bank Building, West Gandhi Maidan, District- Patna, Bihar 800001 through its General Secretary Mr. Ajit Mishra Male aged about 59 years, S/o Shri Saryug Prasad Mishra Resident of Annapurna Bhawan, Nand Lal Mishra Lane, Bari Khnajarapur, Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Addl. Chief Secretary, Cabinet Secretariat Department, Government of Bihar, bailey Road, Veerchand Patel Road Area, Patna, Bihar - 800015.
2. The Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, Bailey Road, Veerchand Patel Road
3. State Election Commission, Bihar through the State Election Commissioner, Sone Bhawan, Daroga Rai Path, R. Block Chauraha, Patna, Bihar - 800001.
4. The Election Commission of India (ECI) through the Chief Election Commissioner, Nirvachan Sadan, Ashoka Road, New Delhi.
5. District Election Officer (Panchayat) cum District Magistrate, Araria.
6. District Election Officer (Panchayat) cum District Magistrate, Arwal.
7. District Election Officer (Panchayat) cum District Magistrate, Aurangabad.
8. District Election Officer (Panchayat) cum District Magistrate, Banka.
9. District Election Officer (Panchayat) cum District Magistrate, Begusarai.
10. District Election Officer (Panchayat) cum District Magistrate, Bhagalpur.
11. District Election Officer (Panchayat) cum District Magistrate, Bhojpur.
12. District Election Officer (Panchayat) cum District Magistrate, Buxar.
13. District Election Officer (Panchayat) cum District Magistrate, Darbhanga.
14. District Election Officer (Panchayat) cum District Magistrate, East Champaran (Motihari)
15. District Election Officer (Panchayat) cum District Magistrate, Gaya.
16. District Election Officer (Panchayat) cum District Magistrate, Gopalganj.
17. District Election Officer (Panchayat) cum District Magistrate, Jamui.
18. District Election Officer (Panchayat) cum District Magistrate, Jehanabad.
19. District Election Officer (Panchayat) cum District Magistrate, Kaimur (Bhabua).
20. District Election Officer (Panchayat) cum District Magistrate, Katihar.
21. District Election Officer (Panchayat) cum District Magistrate, Khagaria.
22. District Election Officer (Panchayat) cum District Magistrate, Kishanganj.
23. District Election Officer (Panchayat) cum District Magistrate, Lakhisarai.



24. District Election Officer (Panchayat) cum District Magistrate, Madhepura.
25. District Election Officer (Panchayat) cum District Magistrate, Madhubani.
26. District Election Officer (Panchayat) cum District Magistrate, Munger (Monghyr).
27. District Election Officer (Panchayat) cum District Magistrate, Muzaffarpur.
28. District Election Officer (Panchayat) cum District Magistrate, Nalanda.
29. District Election Officer (Panchayat) cum District Magistrate, Nawada.
30. District Election Officer (Panchayat) cum District Magistrate, Patna.
31. District Election Officer (Panchayat) cum District Magistrate, Purnia (Purnea)
32. District Election Officer (Panchayat) cum District Magistrate, Rohtas.
33. District Election Officer (Panchayat) cum District Magistrate, Saharsa.
34. District Election Officer (Panchayat) cum District Magistrate, Samastipur.
35. District Election Officer (Panchayat) cum District Magistrate, Saran.
36. District Election Officer (Panchayat) cum District Magistrate, Sheikhpura.
37. District Election Officer (Panchayat) cum District Magistrate, Sheohar.
38. District Election Officer (Panchayat) cum District Magistrate, Sitamarhi.
39. District Election Officer (Panchayat) cum District Magistrate, Siwan.
40. District Election Officer (Panchayat) cum District Magistrate, Supaul.
41. District Election Officer (Panchayat) cum District Magistrate, Vaishali.
42. District Election Officer (Panchayat) cum District Magistrate, West Champaran.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 16086 of 2021

1. Ashok Kumar, son of Sri Deonandan Rai resident of ManasMarg, South Nehru Nagar, P.S.- Patliputra, District- Patna, presently posted as Law Officer, Central Bank of India, Regional Office, Maurya Lok, Patna.
2. Pran Nath Pathak, son of Late Vijay Kumar Pathak resident of Sharan Vihar Apartment, New Patliputra Colony, P.S.- Patliputra, District- Patna, presently posted as Law Officer, Central Bank of India, Zonal Office, Maurya Lok, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. The Bihar State Election Commission through its Secretary, Bihar, Patna.
3. The District Election Officer, Panchayat-cum- District Magistrate, Patna.



4. Union of India through The Secretary, Department of Law and Justice, New Delhi.
5. Election Commission of India through its Secretary, Nirwachan Bhawan, Ashoka Road, New Delhi.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 14316 of 2022

State Bank of India Officers Association an association registered under The Trade Union Act, 1926, having its registered office at State Bank Building, West Gandhi Maidan, District- Patna, Bihar- 800001 through its General Secretary Mr. Amaresh Vikramaditya, Male, aged about 42 years, S/o Dr Prasant Sharan, Resident of Road No. 5 B, Ashok Nagar Kankarbagh, Dawarika College P.O. and P.S. Kankarbagh, Patna Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Cabinet Secretariat Department, Government of Bihar, Bailey Road, Veerchand Patel Road Area, Patna, Bihar- 800015.
2. State Election Commission, Bihar through the State Election Commissioner, Sone Bhawan, Doraga Rai Path, R Block Chauraha, Patna, Bihar- 800001
3. District Election Officer (Municipal) cum District Magistrate, Araria.
4. District Election Officer (Municipal) cum District Magistrate, Arwal.
5. District Election Officer (Municipal) cum District Magistrate, Aurangabad.
6. District Election Officer (Municipal) cum District Magistrate, Banka.
7. District Election Officer (Municipal) cum District Magistrate, Begusarai.
8. District Election Officer (Municipal) cum District Magistrate, Bhagalpur.
9. District Election Officer (Municipal) cum District Magistrate, Bhojpur.
10. District Election Officer (Municipal) cum District Magistrate, Buxar.
11. District Election Officer (Municipal) cum District Magistrate, Darbhanga.
12. District Election Officer (Municipal) cum District Magistrate, East Champaran (Motihari).
13. District Election Officer (Municipal) cum District Magistrate, Gaya.
14. District Election Officer (Municipal) cum District Magistrate, Gopalganj.
15. District Election Officer (Municipal) cum District Magistrate, Jamui.
16. District Election Officer (Municipal) cum District Magistrate, Jehanabad.
17. District Election Officer (Municipal) cum District Magistrate, Kaimur (Bhabua).
18. District Election Officer (Municipal) cum District Magistrate, Katihar.
19. District Election Officer (Municipal) cum District Magistrate, Khagaria.



20. District Election Officer (Municipal) cum District Magistrate, Kishanganj.
21. District Election Officer (Municipal) cum District Magistrate, Lakhisarai.
22. District Election Officer (Municipal) cum District Magistrate, Madhepura.
23. District Election Officer (Municipal) cum District Magistrate, Madhubani.
24. District Election Officer (Municipal) cum District Magistrate, Munger (Monghyr).
25. District Election Officer (Municipal) cum District Magistrate, Muzaffarpur.
26. District Election Officer (Municipal) cum District Magistrate, Nalanda.
27. District Election Officer (Municipal) cum District Magistrate, Nawada.
28. District Election Officer (Municipal) cum District Magistrate, Patna.
29. District Election Officer (Municipal) cum District Magistrate, Purnia (Purnea).
30. District Election Officer (Municipal) cum District Magistrate, Rohtas.
31. District Election Officer (Municipal) cum District Magistrate, Saharsa.
32. District Election Officer (Municipal) cum District Magistrate, Samastipur.
33. District Election Officer (Municipal) cum District Magistrate, Saran.
34. District Election Officer (Municipal) cum District Magistrate, Sheikhpura.
35. District Election Officer (Municipal) cum District Magistrate, Sheohar.
36. District Election Officer (Municipal) cum District Magistrate, Sitamarhi.
37. District Election Officer (Municipal) cum District Magistrate, Siwan.
38. District Election Officer (Municipal) cum District Magistrate, Supaul.
39. District Election Officer (Municipal) cum District Magistrate, Vaishali.
40. District Election Officer (Municipal) cum District Magistrate, West Champaran.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 19006 of 2021)

For the Petitioner/s	:	Mr. S.K. Shrivastava, Adv. Mr. Apurv Harsh, Adv. Mr. Manu Tripurari, Adv. Mr. Pranshu Prakash, Adv. Ms. Jaya Singh, Adv. Mr. Hritik Anand, Adv. Mr. Raghu Raj Pratap, Adv. Mr. Astitva, Adv.
For the State	:	Mr. P.K. Shahi, A.G. Mr. Vikas Kumar, AC to AG Mr. Sanjiv Kumar, Adv.
For the SEC	:	Mr. Ravi Ranjan, Adv. Mr. Girish Pandey, Adv.
For the ECI	:	Mr. Siddhartha Prasad, Adv.
(In Civil Writ Jurisdiction Case No. 16086 of 2021)		
For the Petitioner/s	:	Mr. Siddharth Harsh, Adv.



For the State : Mr. Sanjay Kumar Ghosarvey, AC to AAG-3
For the ECI : Mr. Siddhartha Prasad, Adv.
For the SEC : Mr. Girish Pandey, Adv.
(In Civil Writ Jurisdiction Case No. 14316 of 2022)
For the Petitioner/s : Mr. S.K. Shrivastava, Adv.
Mr. Apurv Harsh, Adv.
Mr. Manu Tripurari, Adv.
Mr. Pranshu Prakash, Adv.
Ms. Jaya Singh, Adv.
Mr. Hritik Anand, Adv.
Mr. Raghu Raj Pratap, Adv.
Mr. Astitva, Adv.
For the State : Mr P.K. Shahi, AG
Mr. Pawan Kumar, AC to AG
For SEC : Mr. Ravi Ranjan, Advocate
Mr. Girish Pandey, adv

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

Date : 27-02-2025

The petitioners in C.W.J.C. Nos. 19006 of 2021 & 14316 of 2022, a registered association of State Bank of India Officers, functioning in the State of Bihar and Jharkhand and petitioners in C.W.J.C. No. 16086 of 2021, who are the Law Officers of the Central Bank of India, have questioned the vires of Section 125(9)(b) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the “Act of 2006”) on the ground that such provision has been incorporated in the Act of 2006 without the legislative competence of the Legislature of



Bihar.

2. It would only be appropriate to cull out Section 125(9) of the Act of 2006 which was inserted in the Act vide Section 12 of the Amendment Act 10 of 2009 :

"125 (9) Staff of certain authorities to be made available for election work.-

(a) The authorities specified in clause (b) shall, when so requested by the District Election Officer, (Panchayat), make available to any returning officer such staff as may be necessary for the performance of any duties in connection with an election. Duties related with polling, counting of votes, maintenance of law and order, patrolling and magistracy etc. shall be deemed to be included under election duty.

(b) The following shall be the authorities for the purposes of clause (a), namely :

(i) Every local authority;

(ii) a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);

(iii) any other institution, concern



or undertaking which is established by or under a Central, Provincial or State Act or which is controlled, or financed wholly or substantially by funds provided, directly or indirectly, by the Central Government or a State Government."

3. The aforementioned provision specifies that staff of the authorities listed under Section 125(9)(b) shall be made available for election work whenever requested by the District Election Officer (Panchayat) for the performance of any duties in connection with an election. Duties related with polling, counting of votes, maintenance of law and order, patrolling and magistracy etc. shall be deemed to be included under the election duty.

4. Amongst the list of authorities are: (i) Every local authority; (ii) A Government Company as defined in Section 617 of the Companies Act, 1956 and; (iii) Any other institution, concern or undertaking which is established by or under a Central, Provincial or State Act or which is controlled, or financed wholly or substantially



by funds provided, directly or indirectly, by the Central Government or a State Government.

5. The State Bank of India comes under the definition of a Government Company as defined in Section 617 of the Companies Act and the petitioners are the association of the officers of the SBI working in the State of Bihar and Jharkhand/Law Officers of the Central Bank of India, as noted above.

6. Section 123 of the Act of 2006 provides that there shall be a State Election Commission for Superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the *Panchayat* bodies in the State under this Act and the Rules made thereunder. Sub-section (3) of Section 123 further states that when the Government shall, when so requested by the State Election Commission, make available to the State Election Commission such officers and staff as may be necessary for the discharge of



functions conferred on the State Election Commission under the Act.

7. It has been urged before us that the Bihar Legislature could not have brought about such amendment with respect to even *Panchayat* election for the reason that there is no entry in List-II of the Seventh Schedule which would provide the power to the State Legislature to enact any law with respect to elections.

8. The List-I of Seventh Schedule (Union List), through Entry-72 gives power to the Parliament to enact any law with respect to elections which deals with elections to Parliament; to the Legislature of States and to the offices of President and Vice-President and the Election Commission.

9. The absence of any entry or a legislative head in the State List (List-II) makes the amendment brought about in the Act of 2006 ultravires the Constitution.



10. It has been urged on behalf of the petitioners that similar provision in Representation of the People Act, 1951, viz., Section 159 is by virtue of the power of the Parliament under Entry 72 of the Union List. No similar power is provided in State List (List-II).

11. The aforementioned argument is absolutely unfounded.

12. Article 243-K of the Constitution reads as follows :-

"243-K. Elections to the Panchayats.- (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine:

Provided that the State Election Commissioner shall not be removed from



his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1).

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.
(emphasis supplied)

13. Sub-section (4) of Article 243-K provides that subject to the provision of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to or in connection with elections to the *Panchayat*.

14. Entry 5 of the State List (List-II) provides the legislative head for local government, that is to say, the Constitution and the powers of Municipal



Corporations, Improvement Trusts, District Board, Mining Settlement Authorities and other local authorities for the purposes of local self government or village administration.

15. The source of power to legislate by the State Legislature thus is clearly provided under Article 243-K read with Entry 5 of the State List.

16. The learned counsel for the petitioners, however, has tried to build up an argument that Section 159 of the Representation of the People Act, 1951 was incorporated by the Parliament on the strength of Entry 72 in List-I, which provides for the legislative heads relating to elections to Parliament; to Legislatures of the State and to the offices of President and Vice-President and Election Commission.

17. No such power can be read in Entry-5 of the State List, especially relating to elections.



18. This argument has been noted only to be rejected.

19. The power to legislate is dealt with under Article 246 of the Constitution. It has to be read in conjunction with the entries in the three lists, which define respective areas of legislative competence of the Union and the State Legislature.

20. For the sake of completeness, we deem it appropriate to extract the provisions contained in Articles 245 and 246 of the Constitution of India :

"245. Extent of laws made by Parliament and by the Legislatures of States.- (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

246. Subject matter of laws made by Parliament and by the



legislatures of States.- (1)

Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included [in a State] notwithstanding that such matter is a matter enumerated in the State List."

21. While interpreting these entries, the issues have to be viewed not in a narrow or myopic manner but by giving the widest scope to the meaning of the entries,



particularly when the vires of a provision of a statute is assailed.

22. In such circumstances, a liberal construction has to be given to the entry by looking at the substance of the legislation and not its mere form. Though there is no apparent conflict, but as the law stands today, every attempt has to be made to harmonize or reconcile in case any conflict arises. In case when there is an apparent overlapping between the two entries, the doctrine of pith and substance is applied to find out the true character of the enactment and the entry within which it would fall.

23. The doctrine of pith and substance, in short means, if an enactment substantially falls within the powers expressly conferred by the Constitution upon the Legislature which enacted it, it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another Legislature. Also, in a situation where there is overlapping, the doctrine has to



be applied to determine to which entry, a piece of legislation could be related. If there is any trenching on the field reserved to another Legislature or there is a void, the same would be of no consequence.

24. In order to examine the true character of an enactment or a provision thereof, due regard must be had to the enactment as a whole and to its scope and objects.

25. The expression used in Article 246 is “with respect to” any of the matters enumerated in the respective lists. The said expression indicates the ambit of the power of the respective Legislature to legislate as regards the subject-matters comprised in the various entries included in the legislative List.

26. Entry-5 in List-II read with Article 243-K leaves no manner of doubt that the amendment carried out in the Act of 2006 in Section 125 by incorporating sub-section (9) is within the legislative competence of the Bihar Legislature.



27. No good ground has been made out by the petitioners to question the validity/ constitutionality of the amendment.

28. There is no merit in these petitions and the same are dismissed.

29. Interlocutory application(s), if any, also stands disposed off accordingly.

(Ashutosh Kumar, ACJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

Rajesh/Saurav

AFR/NAFR	NAFR
CAV DATE	19.02.2025
Uploading Date	27.02.2025
Transmission Date	NA

