

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17488 of 2024

Pushpa Devi wife of Divakar Kumar Das, Resident of village- Dumariya Tand, P.O. - Khadaich, P.S. Khaira, District- Jamui (Bihar), PIN - 811317.

... .. Petitioner/s

Versus

1. Samri Devi Wife of Ganesh Tati, Resident of Village- Lalpur, P.S. - Khaira, District - Jamui.
2. Smt. Komal, Wife of Vinod Kumar, aged about not known, Resident of village - Sakhipura, P.S.- Khaira, District- Jamui.
3. Pramila Devi, Wife of Basuki Tati, aged not known, Resident of village- Lalpur, P.S. Khaira, District - Jamui.
4. Pramita Devi, Wife of Sitaram Tati, aged not known, Resident of Village- Kairakado , P.S. - Khaira, District- Jamui.
5. Runi Kumar, Wife of Chandan Kumar, aged - not known, Resident of village - Khadaianch, P.S. Khaira, District- Jamui.
6. Rekha Devi, Wife of Shyamsundar Manjhi, aged - not known, Resident of village - Dumri Chatod, P.S. - Khaira, District- Jamui.
7. Supriya Suman, Wife of Sanjay Kumar Suman, age- not known, Resident of village- Khadainch, P.S. - Khaira, District- Jamui.
8. Soni Kumari, Wife of Jitendra Kumar, aged-not known, Resident of village- Khadainch, P.S. - Khaira, District- Jamui.
9. The Secretary, State Election Commission, Bihar, Patna.
10. The District Magistrate-cum-Election Officer, Jamui.
11. The Block Development Officer, Block - Khaira, District - Jamui, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. P.K. Verma, Sr. Advocate
For the Respondent/s	:	Mr. Standing Counsel (13)
For the Pvt. Resp.	:	Mr. D.K.Sinha, Sr. Advocate
For the Election Commission:		Mr. Ravi Ranjan, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date : 26-06-2025

Heard Mr. P. K. Verma, learned senior counsel
appearing on behalf of the petitioner, Mr. D. K. Sinha, learned
senior counsel appearing on behalf of the private respondents,



Mr. Ravi Rajan, learned counsel appearing on behalf of the State Election Commission and learned counsel for the State.

2. The present writ petition has been filed for setting aside the judgment dated 25.10.2024 passed by the Munsif cum Election Tribunal, Civil Court, Jamui in Election Case No. 07 of 2021 whereby the election of the petitioner as Mukhiya from Gram Panchayat Raj, Khadaich in Khaira, Jamui has been set aside and further respondent no. 1 has been declared elected as Mukhiya for the said gram panchayat, by completely ignoring the mandatory provisions contained under Bihar Panchayat Raj Act, 2006, the rules framed thereunder, and also against the law settled by the Hon'ble Apex Court and the High Court. The gram panchayat raj Khadich was reserved constituency for Scheduled Caste (Female) by a general notification of the State Government dated 24.08.2021. The Panchayat Election for Jamui district was held in 8 phase and polling date was 24.11.2021.

3. Learned counsel for the petitioner submits that several candidates submitted their nomination paper for contesting the said election for the post of Mukhiya including the petitioner out of which nomination papers of 9 candidates were accepted and they were notified as contesting candidates.



The Respondent Nos. 1 to 8 apart from the petitioner have contested the election and the petitioner received the highest numbers of votes in the polling held on 24.11.2021 and after the counting held on 26.11.2021, she was declared elected as Mukhiya of the said panchayat. He further submits that after submission of the nomination papers by all the candidates, scrutiny was held by the Returning Officer in his office and all the candidates and their representatives were asked to remain present and after inviting objections on each nomination paper from all the candidates, the same was scrutinised and the decision to accept or reject the same was taken by the Returning Officer.

4. Learned counsel for the petitioner submits that during the scrutiny of the nomination papers of the petitioner, none of the candidates or their representatives have raised any objection nor any objection was raised by the officer scrutinising the nomination and affidavit of the petitioner. He further submits that after being defeated in the election, the Respondent No. 1 has chosen to raise dispute by filing Election Petition under Sections 137 and 139 of the Bihar Panchayat Raj Act, 2006 before the learned Munsif cum Election Tribunal, Jamui Civil Court on 24.12.2021 and the same was registered as



Election Case No. 07 of 2021. He further submits that the ground taken in the election petition was non disclosure of Complaint Case No. 56 (C) of 2018 which was pending before the Judicial Magistrate 1st Class, Jamui in which cognizance had been taken under Sections 448, 427, 379 and 34 of the Indian Penal Code and apart from that also obtained 10 decimal of agricultural land and showing of two rooms instead of 5 rooms in her house and not given the details of two wheelers in the affidavit submitted by the petitioner along with the nomination paper as required under Section 125 (a) (i) of the Bihar Panchayat Raj Act, 2006.

5. Learned counsel for the petitioner submits that the pleading cannot be amended in the plaint (Election Petition) brining new facts and allegations nor new prayer can be added nor necessary parties can be added in an election petition after the expiry of period of limitation prescribed in the Panchayat Raj Act and rules. Section 137 of the Act clearly mandates and sub Section 2(a) that where the claim is made for further declaration that he/she, himself/herself or any other candidate be declared elected, then all the contesting candidates shall be joined as respondents to the election petition. Rule 106(2)(a) of the Election Rules 2006 prescribes similar provisions. Further



Rule 106(1) read with Section 137(1) of Panchayat Raj Act prescribes the limitation of 30 days from the date of declaration of the result for filing the election petition. In the present case, admittedly the result of the election was declared on 26.11.2021 and 30 days limitation expired on 26.12.2021 and the election petition was filed on 24.12.2021 but in the election petition neither all the contesting candidates who were the necessary parties as per the requirements of the Act were added nor there was any prayer for declaring the plaintiff elected. After expiry of period of limitation, an amendment was sought for on 07.01.2022 by the plaintiff for not only adding the said prayer but also for adding 7 contesting candidates who were the necessary parties and for adding new facts and allegation in paragraph no. 11 of the plaint. The same was wrongly allowed by the learned Munsif even after the expiry of the limitation period and the judgment was delivered thereon and the Respondent No. 1 plaintiff was declared elected without framing of issue on the point.

6. Learned counsel for the petitioner relied upon the paragraph nos. 9, 10, 25 & 27 of the judgment in the case of **Neelam Kumari Vs. State of Bihar and Ors.** reported in **2008 (3) PLJR 187** which are quoted hereinbelow:-

“9. The statute provides that



where a person claims a declaration that the election of all the returned candidates or any of the returned candidate is void along with a further declaration that he himself or any other candidate has been duly elected, then in the event that he wants declaration of his own success to the prejudice of another, all the contesting candidates in the election fray have to be made parties to the petition; but where he only seeks a declaration of invalidity of a returned candidate without consequent declaration for himself, then he is required to implead only the returned candidates.

10. In the present case, the relief sought in the plaint is for a declaration of invalidity of the election of the present petitioner along with consequent declaration of winning in favour of Respondent No. 6/plaintiff. On a bare reading of the statutory provisions, the plaintiff-Respondent No. 6 was, therefore, required to implead all the contesting candidates in the election fray as parties in the election petition. That has not been done. If the statute provided the plaint to be instituted in a particular manner, without further more or any intervening circumstances, the very presentation of the plaint had to be done in that manner. The language used in Section 137(2) is 'shall', and does not give an option. In the case reported in AIR 1976 SC 263 (Govind Lal Chaggan Lal Patel v. The Agriculture Produce Market Committee) with regard to the term 'shall' the Apex Court quoted the following passage from page 1077 of the judgment of the Apex Court in the case of Khub Chand v. State of Rajasthan, reported in AIR 1967 SC 1074:

“The term ‘shall’ in its ordinary significance is mandatory and the Court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature, to be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular Act, the setting in



which the expression appears, the object for which the direction is given the consequences that would flow from the infringement of the direction and such other considerations.”

25. The question of non-impleadment of necessary parties when specifically provided by the statute as distinct from necessary parties based on the relief sought in pleadings becomes a question of jurisdiction. If it becomes a question of jurisdiction, non-compliance renders the suit without jurisdiction. The analogy may be drawn from the provisions of the Limitation Act. It is the solemn duty of the Court to throw out the petition which is barred by limitation notwithstanding that the objection could not have been raised as a defence. This is based on the premise that the law bars the suit. Similar would be position here. The suit ought to have been thrown out at the very inception not being in consonance with and fulfilment of statutory requirements.

27. This Court, therefore, holds that the very institution of the Election Petition No. 2 of 2006 before the Court of Sub-Judge IV, Supaul was not in consonance with the statutory requirements of Section 137(2) of the Bihar Panchayat Raj Act and Rule 106(2) of the Bihar Panchayat Election Rules framed thereunder and should have been thrown out at the inception itself. The judgment dated 22-8-2007 in Election Petition No. 2 of 2006 rendered by Sub-Judge IV, Supaul at Annexure-9 to the writ application is, accordingly, set aside. The petitioner stands restored to her position as the winning candidate in whose favour statutory winning declaration was issued. Let the original records called for be returned to the learned counsel for the State Election Commission.”

7. The aforesaid paragraphs suggests that no amendment in the election petition is permissible beyond the



period of limitation and if done, then the same was hit by jurisdiction error. It was also held that any petition filed against mandate prescribed under Section 137 of the Act and Rule 106(2) of the Rules is fit to be thrown out at the inception itself. In view of the aforesaid judgment, any order passed by the learned Court below in contravention of the same is also fit to be set aside. The Court held that the petitioner thereby stand restored to her position as the winning candidate in whose favour the declaration was issued.

8. The aforesaid judgment was also reiterated in the case of **Kameshwar Singh Vs. Surya Narayan Rai and Ors.** reported in **2009 (4) PLJR 722** particularly in paragraph nos. 10, 11, 12 & 14 and also in the case of **Roji Kumari Vs. Julekha Khatoon** reported in **2009 (2) PLJR 614** particularly paragraph nos. 5, 6, 7 & 9.

9. The impugned order/judgment passed by the learned Munsif, Jamui in the present case setting aside the election of the petitioner (returned candidate) and thereafter, declaring the Respondent No. 1 (defeated candidate) as elected is bad on the face of it and therefore, is fit to be set aside. The election of the returned candidate cannot be set aside on the ground of commission of corrupt practices under Section 139



(1)(b) of the Bihar Panchayat Raj Act, 2006 in absence of any pleading of corrupt practices in the entire election petition as has been done in the concluding paragraphs of the impugned judgment passed by the learned Munsif. It is settled law that no petition can be allowed on an allegation of commission of corrupt practices by the learned Court in absence of any such pleading made in the entire election petition.

10. The corrupt practices have been enumerated under Section 141 of the Bihar Panchayat Raj Act, 2006 which includes (i) bribery (ii) undue influence (iii) religious or caste appeal or appeal through national symbol and emblem previously affected the election (iv) attempt to promote enmity and differences, classes and section on the ground of religious and race (v) publication of any false statement (vi) hiring vehicle for convenience of any voter (vii) holding meeting in which intoxicating liquor has been served (viii) issuance of the cricular / playcard, public poster about election without name and address of the printer and publisher (ix) any other practices which the government may be rule specified as corrupt practices.

11. Learned counsel for the petitioner submits that from perusal of the entire election petition which reveals



that there was no pleading whatsoever on a reference to any allegation of corrupt practices as mentioned of aforesaid provision under Section 141. The only allegation is of non-compliance and non-disclosure of the certain information as it required in an affidavit filed along with the nomination paper under Section 125 (a) of the Panchayat Raj Act. Apparently any defect in an affidavit as referred to under Section 125 (a) is not enumerated as a corrupt practice under Section 141 of the Act.

12. Learned counsel for the petitioner relied upon the paragraph nos. 19, 20 & 21 of the judgment in the case of **Karim Uddin BhARBuiya Vs. Animul Haque Laskar** reported in **AIR 2024 SC 2194** and held that any suppression and misrepresentation of fact in an affidavit filed along with the nomination paper would not fall within the definition of corrupt practices and the election petitioner is required to make a consize material facts as to how the appellant has indulged into corrupt practices or undue influence by directly or indirectly interferring or attempt to interfere the free exercise of electoral rights. Mere bold and vague allegation without any basis would not be sufficient compliance of requirement of making a consize pleadings. It is essential that specific pleadings are made to support the allegation but in the present case admittedly there is



no pleading at all indicating commission of corrupt practices. Thus, the impugned judgment passed by the learned Munsif setting aside the election of the petitioner under Section 139(1) (b) of the Act on the ground of commission of corrupt practices is bad in law.

13. Learned counsel for the petitioner submits that in absence of pleading to the effect that the result of the election of the returned candidate has been materially affected due to any defeat or any non-disclosure of any affidavit filed along with the nomination paper as required under Section 125(a) of the Act, 2006 no interference in the election result of the returned candidate would be even otherwise made. He further submits that from perusal of the Section 139(a)(d) of the Act would show that the mandate to plead and to prove as to how the result of the election insofar as it concerned a returned candidate had been materially affected because of any improper acceptance of nomination of the petitioner or on account of a defeat in the affidavit filed along with the nomination paper merely stating certain facts are not disclosed as required under Section 125 of the Act and is not sufficient until and unless a mandate as given in Clause D of the pleading are provided whether the same materially affected the result of the candidate



is not done.

14. Learned counsel for the petitioner submits that it transpire from the election petition which reveals that there was no pleading whatsoever was with respect to the said requirement of law as to how the result of the election of the returned candidate was materially affected. The aforesaid issue has been addressed by the Apex Court in the case of **Mangni Lal Mandal Vs. Bishnu Deo Bhandari** reported in **AIR 2012 SC 1094** particularly paragraph nos. 9, 10 & 11 where the Court has categorically stated that the absence of pleading as to how the result is materially affected as required under Section 100(1) (d)(iv) of the Representation of People Act, the election of the returned candidate cannot be interfered. A similar allegation of non-disclosure of any information in the affidavit filed along with the nomination paper would not disclose a cause of action until specific pleading as to how it affected the election is made. The Munsif Court held that any such election petition deserves to be dismissed at the very threshold without consuming the Court's time and putting the returned candidate to unnecessary trouble and inconvenience. The same ratio has been reiterated and affirmed by the Apex Court in the recent case of **Karikho Kri Vs. Nuney Tayang** reported in **AIR 2014 SC 2121** particularly



in paragraph nos. 46, 47 & 50.

15. Mr. D.K. Sinha, learned senior counsel appearing on behalf of the private respondent submits that the order impugned passed by the learned Munsiff cum Election Tribunal, Civil Court, Jamui in election case no. 7 of 2021 is proper and according with the mandate of the Bihar Panchayat Raj Act, 2006. Apart from that as per Section 125 A (1) furnishing of certain information is essential for candidate and as per rule 39 (F) no nomination paper shall be received by a returning officer unless its accompanied by the certain documents. And as per affidavit filed on behalf of the petitioner dated 20.12.2021 along with nomination paper in which it is shown that business of Pashupalan an annual income shows Rs. 1,20,000/- per year and not shown the income of agriculture concealing the true fact and did not mentioned anywhere regarding the criminal case under Section 379 of the Indian Penal Code. Apart from that the private respondent had filed objection before the returning officer on 30.10.2021 but the same was not taking into consideration by the returning officer. So far as limitation in filing the election petition is concerned, it is not correct and issue no. 3 is with respect to limitation which is clear that there is no limitation as election was held on



24.11.2021, counting of votes was completed on 26.11.2021-27.11.2021 and election petition was filed on 24.12.2021. As per provision under Sections 137, 139 and 140 of the Bihar Panchayat Raj Act, 2006 and rule 106 which provides 30 days time to file election petition. Hence, the present election petition is filed within the time. The issue with respect to inclusion of candidates as party as required under Section 139 of the Act, repetition of inclusion of parties by way of amendment was filed under order 6 Rule 17 of CPC which was placed on 07.01.2022 and the same was accepted by the learned Court below likewise amendment to declare the respondent as elected as per election order dated 07.01.2022.

16. Learned counsel for the private respondent has relied upon the judgment in the case of Reham Sah Vs. Govind Singh passed in Civil Appeal No. 4628 of 2023 arising out of SLP (C) No. 27901 of 2015 which was decided by an order dated 24.09.2024. As per the aforesaid judgment, period from 15.03.2020 to 28.02.2022 has been excluded for the purpose of limitation as may be prescribed under any general and special law vide judgment dated 10.01.2022 passed in Misc. Appeal No. 21 of 2022 and other analogous cases by the Hon'ble Apex Court. In fact, in March, 2020 the Hon'ble Apex



Court took *sou moto* cognizance of the difficulties that might be faced by the litigants in filing petition. In particular, other quasi proceedings within the period of limitation prescribed under the general law or limitation under any special law due to the outbreak of the COVID-19 pandemic. It is pertinent to mention here that despite valid service of notice, the petitioner did not appear in the election petition and after appearance a cost of Rs. 4,000/- was imposed upon the petitioner on 26.04.2022 and she has filed her written statement on 13.05.2022. From perusal of the written statement filed on behalf of the petitioner, no averment has been made regarding joining of necessary party. The writ petitioner in course of hearing before the learned Court below submitted a list of 125 witnesses but examine only 2 witnesses and surprisingly she herself was not examined nor her proposal of nomination was examined and hence, the written statement was not supported nor stated anything contrary to the plaint and for the first time in writ jurisdiction, the writ petitioner has raised the aforesaid objections which she has not placed before the competent Civil Court. That in view of the aforesaid, no case is made for interference of this Court because the writ petitioner for the first time in writ petition has raised all the objections which she may raised before the election in the election petition



and in view of the aforesaid, the writ petition may be dismissed.

17. Mr. Ravi Ranjan, learned counsel for the Election Commission submits that the private respondent has filed the Election case no. 07 of 2021 challenging the election of the petitioner. Later on, vide amendment in the said election petition not only other contrary sitting candidates were added as respondent but also amendment in the prayer was made inasmuch as the election petition sought declaration in her favour for declaring as returning candidate on the post of Mukhiya. As far as stand of the answering commission is concerned, it is stated that the State Election Commission is vested with duty to conduct election for all seats of Panchayat under which direct supervision, control and direction and sooner the result of the election is announced the certificate is handed over to returning candidate. The process of election gets over and so does not prolong the commission as far as the said election is concerned. He further submits that Section 140 of the Bihar Panchayat Raj Act, 2006 lays down conditions under which the candidate other than the returning candidate can be declared elected. From perusal of the said section which clearly manifest that there are only two contingencies wherein, another person can be declared as returned candidate, firstly,



when it is established that such other candidate has actually received the maximum number of valid votes and secondly, when the returned candidate has got maximum votes by way of corrupt practices and it is in fact, other candidate who has received maximum valid votes. Clearly in the present case, the learned Election Tribunal has relied upon the second part of the Section 140 wherein after giving a finding of commission of corrupt practices, straight away in a very casual manner since the election petitioner was runner up candidate and she has been declared as returned candidate. It is required to be stated that declaration of the candidate as returned candidate is based upon the sole factor of that person receiving maximum valid votes and merely because a person's election has been interfered with on the ground of concealment of criminal cases whereby making it the case of improper acceptance of nomination paper will not make the valid votes received by such candidates invalid or to say it otherwise. The valid votes received by a candidate whose election has been set aside cannot be thrown out on this ground. The case would be different if such person is held to be not qualified or disqualified and on this ground alone if election is set aside then the matter would have been different. The declaration of the another candidate as returned candidate



cannot be done casually but it can only be done by the tribunal below as per stipulation of Section 140 of the Bihar Panchayat Raj Act, 2006 wherein the Court has to give a special finding as to how a person other than a returned candidate whose election has been challenged has received maximum number of valid votes and thus, he or she is required to be declared as returned candidate. But in the present case the learned Election Tribunal while setting aside the election of the returned candidate in a very casual manner declared the runner up candidate as returned candidate and the same was subject matter of the present writ petition. The Division Bench of this Hon'ble Court has stayed the declaration in favour of the another candidate on consideration of requirement of Section 140 of the Bihar Panchayat Raj Act, 2006 in LPA No. 966 of 2024 and the same is still pending for adjudication before this Hon'ble Court. The declaration in favour of another candidate required to be strictly adjudicated as per the Section 140 of the Act and it cannot be made in favour of a runner up candidate in routine manner merely because of the election of returned candidate has been set aside. In the present case, without there being an allegation of corrupt practice or without there being any adjudication on the aspect of corrupt practice a finding based on the same has



been given and relief based on the same has been extended to the election petitioner which is illegal and unjust in the eyes of the law. In the present case the finding on corrupt practice has been given when clearly neither it was pleaded in the election petition nor issue was framed on same and merely based upon a judgment of the Hon'ble Supreme Court finding of corrupt practice has been given against the writ petitioner. Apart from that there is another aspect of the matter at hand which clearly states that post of Mukhiya was reserved for Scheduled Caste Female category but the election petitioner belongs to the tati tatva caste which was the scheduled caste by virtue of notification dated 01.07.2015 by the State Government as already been set aside by the Hon'ble Apex Court vide order dated 15.07.2024 passed in SLP (C) No. 18802 of 2017 and in also SLP (C) No. 18294 of 2017 passed by the Hon'ble Apex Court. Thus, the election petitioner who belong to the tati tatva caste is no more a Scheduled Caste category person and thus, she is not qualified to hold the post of the Mukhiya.

18. Having heard learned counsel for the parties, the prepositions laid down by this Court in the case of Neelam Kumari Vs. State of Bihar & Ors. (supra) which was also reiterated in the case of Kameshwar Singh Vs. Surya Narayan



Rai & Ors. (supra) and other judgments as mentioned aforesaid is fully applied to the present case.

19. Section 140 of the Bihar Panchayat Raj Act, 2006 lays down conditions under which the candidate other than the returning candidate can be declared elected. From perusal of the Section 140 of the Bihar Panchayat Raj Act, 2006 which suggest that there are only two contingencies wherein, another person can be declared as returned candidate, firstly when it is established that such other candidate has actually received maximum number of valid votes and secondly, when the returned candidate has got maximum votes by way of corrupt practices.

20. The Election Tribunal has come to the conclusion on the basis of the second part of the Section 140 of the Bihar Panchayat Raj Act, 2006 and interfere the election of the returned candidate on the ground of concealment of criminal cases. The valid votes received by the candidate whose election has been set aside ignoring the mandate of the Section 141 of the Bihar Panchayat Raj Act, 2006 and apart from the aforesaid, the Election Tribunal without being any adjudication on the aspect of corrupt practice, a finding based on the same and relief based on the same has been given to the election petitioner



which is illegal and unjust in the eye of the law.

21. This Court, therefore, holds that the Election Case No. 7 of 2021 before the Court of learned Munsif, Jamui was not in consonance with the statutory requirements of Section 137 (2) of the Bihar Panchayat Raj Act, 2006. The judgment dated 25.10.2024 passed in Election Case No. 7 of 2021 rendered by the learned Munsif, Jamui (Annexure -P/1) is accordingly set aside and the present writ application stands allowed.

22. However, in the facts and circumstances of the case, there shall be no order as to costs.

(Rajesh Kumar Verma, J)

Vanisha/-

AFR/NAFR	NAFR
CAV DATE	03.03.2025
Uploading Date	26.06.2025
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