

(2004) 10 PAT CK 0021

In the Patna High Court

Case No : CWJC Nos. 8145, 9013, 9361, 9364, 9471, 10101, 10697, 10831, 10975, 11154, 11536, 11919, 12580, 12696, 13141, 13205, 13576, 13388 and 13589 of 2002, CWJC Nos. 246, 2377, 3205, 4647, 9509, 9853, 10646, 12390 and 12954 of 2003 and CWJC No. 9230 of 2004

Bhagwan Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 04-10-2004

Acts Referred:

Citation : (2004) 10 PAT CK 0021

Judgement

This Judgment has been overruled by : Arun Singh @ Arun Kumar Singh Vs. State of Bihar and Others, AIR 2006 SC 1413 : (2006) 3 JT 389 : (2006) 3 SCALE 130 : (2006) 9 SCC 375 : (2006) AIRSCW 3653 : (2006) AIRSCW 1306 : (2006) 2 Supreme 550 : (2006) 4 Supreme 169

Nagendra Rai, A.C.J.

1. In these writ applications, the vires of Rule 122, as amended by notification dated 28.2.2002, has been challenged primarily on the ground that the same is ultra vires Article 243O of the Constitution of India and Sections 140 and 143 of the Bihar Panchayat Raj Act, 1993 (hereinafter referred to as "the Act"). They have also challenged the orders passed by the State Election Commission in exercise of the said power disqualifying the office bearers of the Panchayat as well as the orders by which the State Election Commission has rejected the prayer in some cases to disqualify the candidates on merit. In some cases, the elected members have incurred disqualification after election and the State Election Commission has also passed orders declaring them disqualified under the aforesaid Rule, read with Section 139(2) of the Act.

2. To appreciate the point, it is first necessary to refer to the relevant provisions of the Constitution and the Act, at the very beginning. Para IX dealing with the Panchayats was inserted in the Constitution of India by the Constitution (Seventy third Amendment) Act, 1992. Part IX is a complete chapter dealing with the

Panchayats starting from its definitions, constitution, compositions, reservation of seats, duration, disqualification, finance and other ancillary provisions. Article 243B of the Constitution defines panchayat, according to which there shall be constituted in every State, Panchayats at the village intermediate and district levels in accordance with the provisions of this Part. Article 243K of the Constitution contains a provision with regard to election of the Panchayats, which runs as follows :

"243-K. Election of 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 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 panchayat."

It vests power of superintendence, direction and control of the preparation of the electoral rolls for the conduct of, all elections to the panchayats in the State Election Commission to be appointed by the Governor. It is akin to Article 324 of the Constitution of India, which provides for constitution of Election Commission for the purpose of election to the Parliament and Legislature of every State.

3. Article 243O provides that no election to any panchayat shall be called in question except by an election petition. This is similar to Article 329(b) of the Constitution. The relevant portion of Article 243O(b) is as follows :

"243-O(b). No election to any panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State."

4. Article 243F deals with the disqualifications for membership of gram-panchayat, which is akin to Article 191 of the Constitution of India, which

contains a provision for disqualification of the Member of Legislative Assembly or Legislative Council.

5. Consequent upon all the changes brought by the aforesaid amendment in the Constitution and in conformity with the aforesaid provisions of the Constitution, the Bihar Legislative Assembly enacted Bihar Panchayat Raj Act, 1993, which was published on 23.8.1993. Section 139 of the Act, which has been enacted in conformity with the constitutional provision under Article 243F, contains provisions regarding disqualification of a person, who is disqualified for election or after election for holding the post of the member and office bearers of the Panchayat. The said Section 139 runs as follows :

"Disqualification.--(1) Notwithstanding anything contained in this Act, a person shall be disqualified for election or after election for holding the post as mukhiya, member of the gram-panchayat, sarpanch, panch of the Gram Katchari member of the panchayat samiti and member of Zila Parishad, if such person :

- (a) Is not citizen of India;
- (b) Is so disqualified by or under any law of the time being in force for the purposes of elections to the Legislature of the State.

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty one years.

- (c) Is in the service of Central or State Government or any local authority;
- (d) Is in service of any such institution receiving aids from Central or State Government or any local authority ;
- (e) Has been adjudged by a competent Court to be of unsound mind;
- (f) Has been dismissed from the service of Central or State Government or any local authority for misconduct and has been declared to be disqualified for employment in the public service;
- (g) Has been sentenced by a criminal Court whether within or out of India to imprisonment for an offence, other than a political offence, for a term exceeding six months or has been ordered to furnish security for good behaviour u/s 109, or Section 110 of the Code of Criminal Procedure, 1973 (Act 2, 1974) and such sentence or order not having subsequently been reversed;
- (h) Has under any law for the time being in force become ineligible to be a member of any local authority;
- (i) Holds any salaried office or office of profit under the Panchayat;
- (j) Has been found guilty of corrupt practices;

Provided that on being found guilty of corrupt practices, the disqualification shall cease after six years of general election.

(2) If any question arises as to whether a member of a panchayat at any level has become subject to any of the disqualifications mentioned in subsection (1), the question shall be referred for the decision of such authority and in such manner as the Government may by law provide.

(3) If a person, who is chosen as a member of panchayat, a mukhiya, a sarpanch, is or becomes a member of the Lok Sabha, Rajya Sabha, Legislative Assembly, Legislative Council, or is or becomes a municipal councillor or a councillor of a Municipal Corporation or a member of Sanitary Board or a member of a Notified Area Committee or a member of any other panchayat, mukhia, sarpanch, then within fifteen days from the date of commencement of the term of office of a member of Lok Sabha, Rajya Sabha, Legislative Assembly, Legislative Council or of a Councillor of municipality or municipal corporation or a member of Sanitary Board or notified area committee or a member of other panchayat, or mukhiya or sarpanch, his seat in the panchayat shall become vacant unless he has previously resigned his seat in the Lok Sabha, Rajya Sabha, Legislative Assembly, Legislative Council, Municipality or the Municipal Corporation, Sanitary Board or the Notified Area Committee or of any such panchayat as the case may be."

6. Section 136 deals with the constitution of the Election Commission for Panchayat in terms of Article 243K and Sections 140 and 143 deal with the election petition and bar to interference by the Courts with electoral matter, which are as follows

"140. Election petition.--The election to any office of a panchayat or a gram katchahry shall not be called in question except by an election petition as prescribed :

Provided that if an election to an office of a gram panchayat or gram katchahry is under dispute the election petition shall lie before such Munsif within whose jurisdiction such gram panchayat or gram katchahry, as the case may be, is situated and if the election to any office of panchayat samiti or to a zila parishad is under dispute, the election petition shall lie before such Sub-Judge within whose jurisdiction such panchayat samiti or zila parishad, as the case may be, is situated.

143. Bar to interference by Courts in electoral matters.--Notwithstanding anything contained in this Act :

(a) the validity of any law relating to the delimitation of constituencies of the allotment of seats to such constituencies, made or purporting to be made under Article 243K of the Constitution of India shall not be called in question in any Court.

(b) No election to any panchayat shall be called in question except by an election petition presented to the prescribed authority under this Act."

7. On 28.2.2002, Rule 122 of the Bihar Panchayat Election Rules, 1995, was

amended empowering the State Election Commission to decide as to whether a member of the panchayat at any level has become subject to any of the disqualifications mentioned in Section 139(1) of the Act. The State Election Commission was given power to decide such matters suo motu or on being brought to its notice. The said Rule runs as follows :

"Rule 122.--Under provisions of Section 139(2) of the Bihar Panchayat Raj Act, 1993, the State Election Commission shall be the competent authority to decide whether a member of a panchayat at any level has become subject to any of the disqualifications mentioned in Section 139(1) of the Act. The matter of disqualification may be brought to the notice of the State Election Commission in the form of a complaint, application or information by any person or authority. The State Election Commission may also take suo motu recognizance of such matters and decide such matters expeditiously after allowing sufficient opportunity to the affected parties of being heard."

8. The State Election Commission, in exercise of the said power, has passed the orders as indicated above. Individual cases will be considered after the legal points raised in the cases are decided.

9. Sir Winston-Churchill in matchless words stated about the importance of the voter in these words : "At the bottom of all tributes paid to democracy is the little man walking into a little booth, with a little pencil, making a little cross on a little bit of paper no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point." While quoting these words in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, a Constitution Bench of the Apex Court held as follows :

"If we may add, the little, large Indian shall not be hijacked from the course of free and fair elections by mob muscle methods, or subtle preversion of discretion by men "dressed in little, brief authority." For be you ever so high, the law is above you."

10. In a democracy the voters are of paramount importance. They have right to know their candidate before casting their votes. They have also right to know antecedent, qualification and performance of the candidate before casting vote in the election. Purity of an election in a democratic set up is equally of paramount importance. To maintain the purity in the election in the panchayats. Part IX has been inserted in the Constitution and it provides that the persons incurring disqualification should not enter into the election arena. Even if they have not incurred disqualification at the time of election, but have incurred disqualification after election, they should not continue to hold the office. The matter is to be decided by the authority as provided by the Legislature and for that an elaborate provision has been made by the Legislature u/s 139(2) with regard to post-election disqualification.

11. According to the Constitutional mandate as well as the Legislative mandate, the disqualifications have been incorporated in Section 139 and if a candidate,

who is disqualified, is not entitled to enter into election arena, his nomination is to be rejected. A disqualified candidate is not entitled to contest the election. Similarly, if the disqualification is incurred later on as stated above, a provision has been made to decide the said question and to disqualify a candidate if the disqualification is proved. Question for consideration in this case is as to whether if a candidate, though disqualified, files a nomination paper, but his nomination is not rejected on the ground of disqualification and he is elected then who will decide the question as to whether he was disqualified or not at the time of filing of nomination paper. The other question is regarding disqualification incurred after election.

12. So far as the word "election" is concerned, it is clear that the election begins from the issuance of the notification and ends with the declaration of the result.

13. According to the learned counsel for the petitioners, once election is over and result is declared, then election can be called in question only by election petition and no authority, however high may be, including the State Election Commission, can decide the question of disqualification, whether incurred before or after election and as such the Election Commissioner has no such power to disqualify the candidates.

14. Learned counsel for the State as well as the Commission submitted that the State Election Commission is vested with the powers of superintendence, direction and control, which have a wide connotation and even if such powers are not specially provided, the Commission can exercise those powers for accomplishing the task for which it has been constituted. Rule 122, also vests power in the Commission to decide the question, for which no specific provision has been made in the Constitution and the Act, if the same is necessary for the purity of the election.

15. As stated above, the question falls into two categories; one is with regard to disqualification prior to the election and the other disqualification post election. So far as the disqualification prior to election is concerned, Section 140 of the Act, clearly says that election to any office of a panchayat or gram panchayat shall not be called in question except by an election petition as prescribed and Section 143 of the Act, says that no election of any panchayat shall be called in question except by election petition presented to the prescribed authority under this Act, and the authority has been prescribed. Section 144 contains grounds for declaring Election to be void. Thus, after the election is over, challenge to the election on any of the grounds, including the grounds of disqualification, has to be made by an election petition presented in terms of the aforesaid provisions, which have been enacted in the light of the provisions contained in Article 243O of the Constitution.

16. So far as the post election disqualification is concerned, Rule 139(2) provides that such question shall be referred for decision to such authority and in such manner the Government may by law provide under Rule 122 for dealing with

such matters. Similar question came up for consideration before a Constitution Bench of the Apex Court in the case of Election Commission, India Vs. Saka Venkata Subba Rao and, There, prior to election the elected candidate was convicted and sentenced to a term of seven years rigorous imprisonment. He was released on the occasion of celebration of the Independence Day and five years had not elapsed from his release and as such according to the provisions of the Representation of the People Act, he was not eligible to contest the election. However, he contested the election and was elected. The matter was brought to the notice of the Speaker and the Speaker referred the matter to the Governor in terms of the provision contained in Article 192 of the Constitution, which is similar to the provision contained in Section 139(2) of the Act. The Apex Court held that Articles 190(3) and 203(1) are applicable only to disqualifications to which a member becomes subject after he is elected as such, and neither the Governor nor the Commission has jurisdiction to enquire into a member's disqualification which arose long before his election.

17. The said view has also been taken in a Single Judge Judgment of the Allahabad High Court in the case of Hoti Lal Vs. State of U.P. and Others, where a similar provision like Rule 122 was held to be invalid in so far as it authorised the authority to determine the pre-election disqualification on the ground that this is contrary to the provisions contained in Article 243O.

18. Thus, it is clear that those candidates, who have incurred disqualification prior to election, their cases cannot be considered in terms of Section 139(2) and only mode of challenging their election is by filing an election petition. The provision as contained in Rule 122, which authorises the State Election Commission to decide even the matter of disqualification prior to the election, is, thus, ultra-vires the provisions contained in Article 243O of the Constitution and Sections 140 and 143 of the Act, to the extent, it is declared ultra vires.

19. So far as the provision of Rule 122, which authorises the State Election Commission to decide the question of disqualification, which was incurred by a member of the panchayat after election, is concerned, it is valid one and consistent with the provision of Section 139(2) of the Act, and this view is fully supported by the aforesaid Constitution Bench judgment where similar provision under Article 192(1) was under consideration.

20. Thus, Rule 122" is held to be invalid to the extent indicated above. However, that does not end the matter. The question remains that even if the State Election Commission has no power, whether this Court should interfere in such matters or not when the election is over, on the ground of availability of remedy of election petition in terms of Sections 140 and 143 of the Act. According to the provisions, a disqualified person cannot contest the election and as such he cannot be representative of the people. Such person cannot become a member of a panchayat. If a disqualified person is holding the post, then his election is void. Section 144(a) clearly mentions that if a disqualified person is chosen as a member, his election is to be declared as void.

21. Thus, if a candidate, who is disqualified but has been elected by suppressing the fact of his disqualification, specially disqualification with regard to conviction and sentence in criminal case, then his election is void. If a candidate suppresses the fact of his disqualification and gets himself elected and the factum of his disqualification is not known to other candidate, he may not file an election petition within a period of 30 days, in such a situation the disqualified person will occupy the office despite under the law he is prohibited from occupying the office.

22. The question arises as to whether in such a case the office-bearer of a panchayat should be allowed to hold the office on the sole ground that the same has not been challenged by filing an election petition or this Court under Article 226, should interfere and prevent the public injury. My answer is that the Court is not debarred from considering the question of disqualification, specially after the election on the ground of availability of an effective remedy of election petition. In this connection, I am tempted to refer to the judgment of the Apex Court in the case of Election Commission of India Through Secretary Vs. Ashok Kumar and Others, where the Apex Court has dealt with these questions with reference to Article 329 of the Constitution of India, which is similar to Article 243O and Sections 141 and 143 of the Act. Dealing with the aforesaid matter, the Apex Court in paragraph 15 held that the High Courts in India are superior Courts of record. They have original and appellate jurisdiction. They have inherent and supplementary powers. Unless expressly or impliedly barred from exercising jurisdiction, they have unlimited jurisdiction including the jurisdiction to determine their own powers. However, their power is subject to the appellate or discretionary jurisdiction of the Supreme Court. The Apex Court further held that in view of the provisions contained in Article 329(b), the Court under Article 226 should not interfere at the intermediate stage but cannot shut the doors of the Courts when the election proceeding is over. In paragraph 30 of the said judgment, it was held as follows :

"To what extent Article 329(b) has an overriding effect on Article 226 of the Constitution? The two Constitution Benches have held that Representation of the People Act, 1951 provides for only one remedy; that remedy being by an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. The non obstante clause with which Article 329 opens, pushes out Article 226, where the dispute takes the form of calling in question an election (see para 25 of Mohinder Singh Gill case). The provisions of the Constitution and the Act, read together do not totally exclude the right of a citizen to approach the Court so as to have the wrong done remedied by invoking the judicial forum; nevertheless the lesson is that the election rights and remedies are statutory, ignore the trifles even if there are irregularities or illegalities, and knock the doors of the Courts when the election proceedings in question are over. Two pronged attack on anything done during the election proceedings is to be avoided-one during the course of the proceedings and the other at its termination, for such two-pronged attack, if allowed, would unduly protract or obstruct the functioning of democracy."

23. In paragraph 32 of the said judgment, it was further held that the judicial review of the elections is possible provided it does not retard, interrupt, protract or stall the election proceedings and the conclusions arrived at by the Apex Court are as follows :

"32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove :

(1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

(2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide of arbitrary exercise of power being made out or the statutory body being shown to have acted in reach of law.

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available as assistance if the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

(5) The Court must be very circumspect and act, with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the Court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Need less to say that in the very nature of the things the Court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.

24. Thus, once this Court comes to know on being moved by any of the parties that a person holding the office is disqualified then this Court cannot sleep over the matter and allow the office bearer of a panchayat to hold the office though he is not eligible and his election is void one. This matter requires attention by this Court, In cases where the candidates, having been convicted and sentenced for more than six months, are elected by suppressing the fact of their conviction and sentence and the disqualified persons holding the office of the Panchayat or as a matter of fact usurper of the office, though they have no right to hold the office and because of their disqualification, by suppression, fraud and misrepresentation, they have managed to get elected, in such a case this Court will be failing in duty in preventing the public injury in case of refusal to interfere in such case. In such cases, this Court will issue a writ of quo warranto restraining the office bearers to function as members of the panchayat.

25. A Constitution Bench of the Apex Court in the case of B.R. Kapur v. State of Tamil Nadu, reported in held that if a disqualified person is appointed as Chief Minister by the Governor, the same can be challenged in a writ of quo warranto. Thus, if a disqualified person is holding an office, his matter can be challenged by a writ of quo warranto for maintaining purity and perfection in the democratic process.

26. Coming to the present cases, it appears that in regard to the cases where the State Election Commission has disqualified the candidates on the ground that they have been convicted and sentenced for more than a period of six months, which is disqualification in terms of Section 139(1)(g) of the Act, even though I have held that the State Election Commission has no power to decide disqualification with regard to pre-election matters, the fact is that these candidates have suppressed the factum of their conviction and sentence and by playing a fraud, they got their nomination papers accepted as valid and were elected to the election. The fraud vitiates everything even the solemn proceedings of the Court. The fraud is sworn enemy of justice and equity. In exercise of equitable jurisdiction, this Court will not interfere with the order of the State Election Commission as that will amount to perpetuating an illegality and allowing a person not authorised to continue to hold the office.

27. In the following cases, the petitioners had incurred disqualification prior to election and have already been disqualified by the State Election Commission as admittedly they were convicted under Sections 302, 395, 307 and 396 of the Indian Penal Code and sentenced to undergo imprisonment exceeding six months.

C.W.J.C. No. 10697 of 2002

The petitioner-Bhagwan Singh was elected as mukhiya of Gram Panchayat Pokharahan in the district of Buxar. Prior to the election he was convicted u/s 302/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life. His appeal against the conviction was admitted and is pending in this Court and he has been released on bail.

C.W.J.C. No. 11536 of 2002

Petitioner Harhar Singh was elected mukhiya of Gram Panchayat Bijhaura within Itarhi Block in the district of Buxar. Prior to election he was convicted u/s 302/34 of the Indian Penal Code, and sentenced to undergo life imprisonment in the year 1996. He has preferred an appeal in this Court. The appeal has been admitted and he has been released on bail.

C.W.J.C. No. 10975 of 2002

The petitioner Bimal Kumar Yadav was elected mukhiya of Gram Panchayat Kaithi within Brahampur Block in the district of Buxar. Prior to election, he was convicted u/s 302/34 of the Indian Penal Code, and sentenced to undergo life imprisonment in the year 1990 and against that he has preferred an appeal. The appeal has been admitted and he has been released on bail.

C.W.J.C. No. 9361 of 2002

The petitioner Rama Nand Mandal was elected as mukhiya of Gram Panchayat Raj Dhanchhiha within Laukahi Block in the district of Madhubani, Prior to election, he was convicted u/s 302 of the Indian Penal Code in the year 1988 and sentenced to undergo life imprisonment. He preferred an appeal in this Court, which has been admitted and he has been released on bail.

CWJC No. 9364 of 2002

Petitioner Krishna Murari Rai was elected as mukhiya of Gram Panchayat No. 13, Kalyanpur. Prior to election, he was convicted under Sections 307/114 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years in the year 1995 and he filed an appeal before this Court, which has been admitted and he has been released on bail.

C.W.J.C No. 9471 of 2002

Petitioner Amrendra Prasad Singh was elected as mukhiya of Kalyanpur Gram Panchayat. Prior to this election, he was convicted u/s 307/149 of the Indian Penal Code, and sentenced to undergo rigorous imprisonment for five years in the year 1997. He has preferred an appeal before this Court, which has been admitted and he has been released on bail.

C.W.J.C. No. 11154 of 2002

The petitioner Nawal Kishore Singh alias Nawal Mandal was elected as mukhiya of Gram Panchayat Manjosh, Block Sikandara in the district of Jamui. Prior to his election, he was convicted u/s 302 of the Indian Penal Code, and 27 of the Arms Act and sentenced to undergo rigorous imprisonment for life in the year 1993. He preferred an appeal, which has been admitted and he has been released on bail.

C.W.J.C. No. 10831 of 2002

The petitioner Rama Nandan Yadav was elected as mukhiya of Gram Panchayat

Baniya under Madanpur Block, in the district of Aurangabad. Prior to his election, he was convicted u/s 304/34 of the Indian Penal Code and sentenced to undergo imprisonment for 8 years in the year 1997. He has preferred an appeal, which has been admitted and he has been released on bail.

C.W.J.C. No. 13205 of 2002

The petitioner Sushil Singh alias Sushil Kumar Singh was elected as mukhiya of Gram Panchayat Gajipur Farhada within Badahara Block in the district of Bhojpur. Prior to his election, he was convicted under Sections 302 and 394 of the Indian Penal Code and 27 of the Arms Act, and sentenced to undergo imprisonment for 8 years in the year 1989. His conviction has been upheld by the High Court and an SLP pending before the Supreme Court.

C.W.J.C. No. 11919 of 2002

The petitioner Narendra Kumar alias Narendra Kumar Yadav was elected as mukhiya of Gram Panchayat Bichhaw, Sikandara, Block Sikandara in the district of Jamui. Prior to his election, he was convicted u/s 395 of the Indian Penal Code sentenced to undergo imprisonment for 7 years in the year 1992.

C.W.J.C. No. 12580 of 2002

Petitioner Indrajeet Prasad was elected as a Member of Nalanda Zila Parishad from Ward No. 25. Prior to his election, he was convicted u/s 302/34 of the Indian Penal Code and sentenced to undergo life imprisonment in 1988. He has preferred an appeal before this Court and has been released on bail.

C.W.J.C. No. 12696 of 2002

Petitioner Shailendra Kumar alias Shailendra Mahto was elected as Mukhiya of Gram Panchayat Brandi-Rahui within Rahui Block in the district of Nalanda. Prior to his election, he was convicted u/s 302/34 of the Indian Penal Code and sentenced to life imprisonment in 1988. He has preferred an appeal before this Court and has been released on bail.

C.W.J.C. No. 13141 of 2002

Petitioner Ranjit Yadav was elected as Mukhiya of Gram Panchayat Chhanaun under Block Ron, District Nalanda, Prior to his election, he was convicted u/s 302 of the Indian Penal Code, and 27 of the Arms Act, and sentenced to undergo life imprisonment in 1994. He has preferred an appeal before this Court, which has been admitted and he is on bail.

C.W.J.C. No. 13388 of 2002

Petitioner Mahesh Mandal was elected as mukhiya of Gram Panchayat Ismailpur Purvi Bhatta in the district of Bhagalpur. Prior to his election, he was convicted u/s 396 of the Indian Penal Code and sentenced to undergo life imprisonment in 1993. He has preferred an appeal before this Court, which has been admitted and he is on bail.

C.W.J.C. No. 13576 of 2002

Petitioner Shree Kant Singh was elected as a Member from Ward No. 21 of Nautan Panchayat Samiti in the district of West Champaran. Prior to his election, he was convicted under Sections 394/397 of the Indian Penal Code and 27 of the Arms Act, and sentenced to undergo imprisonment for seven years in the year 1997. He has preferred an appeal before this Court, which has been admitted and he is on bail.

C.W.J.C. No. 2377 of 2003

Petitioner Sheo Shankar Singh was elected mukhiya of Gram Panchayat Raj Manik Chawk, Runnisaidpur within Runnisaidpur Block in the district of Sitamarhi. Prior to his election, he was convicted under Sections 302, 147 and 149 of the Indian Penal Code, and sentenced to undergo imprisonment for life in the year 1990. He has preferred an appeal before this Court, which has been admitted and he is on bail.

C.W.J.C. No. 9230 of 2004

Petitioner Rajendra Yadav was elected as mukhiya of Roshanpur Gram Panchayat in the district of Bhagalpur. Prior to his election, he was convicted u/s 302/149 of the Indian Penal Code, and sentenced to undergo imprisonment for life in the year 1993.

C.W.J.C. No. 9853 of 2003

Petitioner Sunil Kumar Singh was elected as mukhiya of Gram Panchayat, Muradpur Block Dumra in the district of Sitamarhi. Prior to his election, he was convicted under Sections 399 and 402 of the Indian Penal Code, and sentenced to undergo rigorous imprisonment for a term of four years in the year 1989. He preferred an appeal and his conviction was maintained but sentence was reduced to the period already undergone. He remained in judicial custody for about 14 months and as such the Election Commission disqualified him. His case, thus, falls in the aforesaid category.

28. Thus, in all the said cases, though the Election Commission has no power as they related to pre-election conviction and sentence, but this Court is not inclined to interfere as that will amount to allowing them to take benefit of their own fraud and misrepresentation. Even if the Election Commission has no power to disqualify them, the matter has been brought to the notice of this Court then this Court would issue a writ of quo warranto against them. Accordingly, a declaration be made that the election of the petitioners of the said cases on the posts concerned was void and not legal and valid and they cannot continue to function as such and, accordingly, they are restrained from functioning on the posts held by them. Let steps be taken for filling up the posts by holding election to the said offices.

C.W.J.C Nos. 10101/2002 & 10646/2003

29. So far as CWJC No. 10101 of 2002 is concerned, the same has been filed by petitioner Santosh Kumar Choudhary for disqualifying respondent No. 5, Naresh Mohan Mishra (petitioner of C.W.J.C. No. 10646/2003) on the ground that prior to election he was convicted and sentenced u/s 395 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years. His appeal before this Court was dismissed and he preferred an appeal before the Supreme Court and his sentence was reduced to the period already undergone. He has remained in jail from 23.7.1974 to 4.6.1975 before conviction and from 20.5.1978 to 20.6.1978 after conviction. Thus, the total period under gone by him in custody is eleven months and twelve days. The Election Commission has rejected the prayer of the petitioner by order dated 9.7.2000 to disqualify respondent No. 5.

Admittedly, said Naresh Mohan Mishra has remained in jail for a period exceeding six months and as such his case is also a case of disqualification prior to election and he is not competent to hold the post of Mukhiya of the said Gram Panchayat. Accordingly, a declaration be made that the appointment of Naresh Mohan Mishra as Mukhiya of Gram Panchayat Singhupur West, District Bhagalpur was not legal and valid and he cannot continue to function as such. Let steps be taken for filling up the post by holding an election to the said office.

30. Thus, CWJC No. 10101 of 2002 is allowed and C.W.J.C. No. 10646 of 2003 filed by petitioner Naresh Mohan Mishra (respondent No. 5 in C.W.J.C. No. 10101 of 2002) challenging the vires of the Rule is decided in the manner as stated above that the Election Commission has no power to decide the pre-election disqualification in terms of Section 139(1)(g) of the Act, but the result is that his election has been held to be void as indicated above.

C.W.J.C. No. 12954 of 2003

31. In this writ petition, the petitioner Manoj Kumar alias Manoj Kumar Singh had originally challenged the notice issued by the State Election Commission to disqualify him u/s 139(1)(g) of the Act. Subsequently, he admitted that he has been convicted and sentenced for more than six months. Accordingly, his election is held to be void and he is restrained from continuing to on the post held by him. Let steps be taken for filling up the post by holding fresh election to the said office.

C.W.J.C. No. 4647 of 2003

32. In this writ petition, petitioner Suchit Sharma has challenged the order dated 16.7.2002 passed by the State Election Commission, by which respondent No. 4 Jagannath Sharma, Mukhiya of Gram Panchayat Bhori in the district of Gaya has not been disqualified on the ground of his conviction u/s 420 of the Indian Penal Code, as the appellate Court released him on execution of bond only. There is no merit in this writ petition as, admittedly, once the person has been released on bond disqualification u/s 139(1)(g) of the Act, is not attracted.

C.W.J.C. Nos. 9509/03 & 246/03

33. In these two writ petitions, the disqualification incurred after election. Petitioner Pankaj Yadav (C.W.J.C. No. 9509/03) and Petitioner Satya Narayan Dubey (C.W.J.C. No. 246/03) were elected as upmukhia of Gram Panchayat Chikni under Gamharia Block in the district of Madhepura and a Member of the Simari Panchayat Samiti, in the district of Buxar, respectively. They have been convicted under Sections 395 and 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years and life, respectively, by the trial Court. In both the cases, the State Election Commission has disqualified them on the ground that they have incurred disqualification u/s 139(1)(g) after election. The Election Commission has power to decide the disqualification in terms of the amended Rule 122 of the Rules and Section 139(1)(g), read with 22 Sub-section (2) of the Act, as indicated above.

C.W.J.C. No. 9013 of 2002

34. In this case, the State Election Commission has rejected the prayer made by petitioner Ram Sagar Mahto to disqualify respondent No. 5 Dilip Kumar Yadav u/s 139(1)(g) of the Act, on the ground of his conviction as, admittedly, he (respondent No. 5), who was elected as mukhiya of Gram Panchayat Mauzi Hari Singh, District Begusarai, has been subsequently acquitted by the appellate Court by order dated 18.10.2001.

Once an order of acquittal has been passed, it will be treated as if no conviction and sentence were passed. Thus, there is no reason to interfere with the aforesaid order of the Election Commission.

C.W.J.C No. 8145 of 2002

35. In this case, petitioner Jay Narayan Sahi has challenged the show-cause notice issued by the State Election Commission to disqualify him for having been convicted under Sections 302/149 and 147 of the Indian Penal Code, and sentenced to undergo life imprisonment, against which he has filed an appeal before this Court being Cr. Appeal No. 553/97. His appeal has been admitted and sentence has been suspended.

The Election Commission has no such power to pre-election disqualification and, accordingly, the show-cause notice issued to the petitioner is quashed. However, admittedly, the petitioner has incurred disqualification u/s 138(1)(g) of the Act. Let a writ of quo warranto be issued and a declaration be made that the appointment of petitioner Jay Narayan Sahi on the post of mukhiya of Majhora Gram-panchayat in the district of West Champaran. Bettiah, was not legal and valid and he cannot continue to function as such. Let steps be taken for filling up the post by holding an election to the said office.

C.W.J.C. No. 3205 of 2003

36. In this case, the Election Commission has rejected the prayer of the petitioner for pre-election disqualification of respondent No. 6 Arun Singh @ Arun Kumar Singh, who has been elected as a Member of the Nawahatta Panchayat

Samiti from Ward No. 17 District Saharsa through according to the petitioner he was disqualified u/s 139(1)(f) of the Act, as he has been dismissed from service on the ground of misconduct.

The Election Commission has taken an erroneous view of the matter. Though the word "misconduct" has not been defined but when an employee, who has to do public work, has absented himself from duty and that allegation has been proved and he has been dismissed, then his such dismissal is on the ground of misconduct and, accordingly, the election of respondent No. 6 is held to be void. Let a writ of quo warranto be issued and a declaration be made that the appointment of respondent No. 6 Arun Singh alias Arun Kumar Singh as a Member of the Nawhatta Panchayat Samiti from Ward No. 17 District Saharsa was not legal and valid and he cannot continue to function as such. Let steps be taken for filling up the post by holding an election to the said office.

C.W.J.C. No. 13589 of 2002

37. In this case, the petitioner Nazir Ahmad alias Md. Nazir Alam was elected as mukhiya of Gram Panchayat Jhirwan in the district of Gopalganj. He has been disqualified u/s 139(1)(d) of the Act, by the State Election Commission. Admittedly, he is a Reader in a College receiving hundred per cent financial aids from the State Government and as such his case is fully covered under the said section and there is no ground to interfere with the order of the Election Commission. Accordingly, though he has incurred pre-election disqualification and the Election Commission has no power, but he cannot hold the office and, accordingly, his election as a mukhiya of the said Gram Panchayat is held to be void. Accordingly, let a writ of quo warranto be issued and a declaration be made that the appointment of the petitioner on the said post was not legal and valid and he cannot continue to function as such. Let steps be taken for filling up the post by holding an election to the said office.

C.W.J.C. No. 12390 of 2003

38. In this case, the petitioner Smt. Chandra Devi was elected as a Member and Chairman of Zila Parishad, Lakhisarai. Admittedly, she has been debarred by the Election Commission of India from contesting any election to the State Legislature for three years with effect from the date of order i.e. 8.3.1999. The election of the Zila Parishad was held within the aforesaid period of three years. The Election Commission disqualified her u/s 139(1)(b) of the Act, according to which if a candidate is disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State, he/she is debarred from contesting the election.

In that view of the matter, the petitioner was disqualified to be a candidate. As the matter relates to pre-election disqualification and though the Election Commission has no such power, but her election is also held void. Let a writ of quo warranto be issued and a declaration be made that the appointment of the petitioner on the said post was not legal and valid and she cannot continue to

function as such. Let steps to be taken for filling up the post by holding an election to the said office.

39. In the result, CWJC Nos. 10697, 11536, 10975, 9361, 9364, 9471, 11154, 10831, 13205, 11919, 12580, 12696, 13141, 13388, 13576 all of 2002, 2377 of 2003, 9853 of 2003, 9230 of 2004, 12954 of 2003, 9013 of 2002, 8145 of 2002, 13589 of 2002, 12390 of 2003 are dismissed. CWJC Nos. 10101 of 2002 and 3205 of 2003 are allowed. CWJC No. 10646 of 2003 stands disposed of.

S.N. Hussain, J.

40. I agree.