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**(2011) 09 PAT CK 0145**  
**In the Patna High Court**  
**Case No : CWJC No. 9392 of 2011**

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|------------------------------------------|----|------------|
| Neeraj Singh @ Chhotu Singh              | Vs | APPELLANT  |
| The State Election Commission and Others |    | RESPONDENT |

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**Date of Decision :** 06-09-2011

**Acts Referred:**

Bihar Municipal Act, 2007 — Section 3  
Bihar Panchayat Raj Act, 2006 — Section 135

**Citation :** (2012) 1 PLJR 516

**Hon'ble Judges :** Samarendra Pratap Singh, J

**Bench :** Single Bench

**Advocate :** Y.V. Giri, J.P. Sana and Ranjeet Choubey, for the Appellant; Sanjeev Nikesh, for the Respondent

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## Judgement

Samarendra Pratap Singh, J.—Heard learned counsel for the parties. In the instant writ application, the petitioner prays for direction to the respondent authorities to declare the result of Purnea Zila Parishad territorial constituency no. 23, for which election was held on 3.5.2011 and counting was made on 23.5.2011. The petitioner also prays for quashing the letter no. 6593 dated 26th May, 2011 issued by the State Election Commission whereby and whereunder the State Election Commission has directed the District Election Officer, Purnea not to declare the result of aforesaid Zila Parishad, Purnea till the final disposal of L.P.A. No. 815 of 2010, L.P.A. No. 1173 of 2010, L.P.A. No. 1370 of 2010 and L.P.A. No. 1429 of 2010.

2. Before I consider the points raised by the petitioner, it would be necessary to notice the facts of the case in short:-

The petitioner is one of the candidates for the post of Member of Purnea Zila Parishad constituency no. 23 and was its Vice-Chairman since 2001. On 26.5.2009, the State Government by its notification constituted the Purnea Municipal Corporation. The area of Gram Panchayat of which the petitioner is a voter was merged to constitute Purnea Municipal Corporation. One Manoj Rai and

others filed C.W.J.C. No. 677 of 2010 to quash the constitution of Purnea Municipal Corporation vide notification dated 26.5.2009. During the pendency of the writ application, election of Purnea Municipal Corporation or Nagar Nigam was held. However, the result of Purnea Nagar Nigam was not declared, as on 26.3.2010, the learned Single Judge quashed the notification of constitution of Purnea Municipal Corporation. The effect was that status prior to 26.5.2009 were restored and the Gram Panchayats which had merged in constituting Purnea Municipal Corporation regained its earlier entity. Against the order of learned Single Judge, several L.P.As., i.e. L.P.A. No. 815 of 2010, L.P.A. No. 1173 of 2010, L.P.A. No. 1370 of 2010 and L.P.A. No. 1429 of 2010, were filed before Division Bench. In the meantime during the pendency of L.P.As., the elections for three tier Panchayat system were held. On 15.3.2011, the petitioner filed his nomination paper for contesting the election of Purnea Zila Parishad, territorial constituency no. 23, being a voter from one of the Gram Panchayats. The election was held on 3.5.2011 and counting was done on 23.5.2011, in which the petitioner secured highest votes.

3. On 2.5.2011 itself, a L.P.A. Bench of which I was also one of the member, stayed the operation of order dated 26.3.2010 passed in C.W.J.C. No. 677 of 2010 and other analogous cases. The effect of the stay is that the Municipal Corporation once again revived and the Gram Panchayat of which petitioner was a voter no longer remained a Gram Panchayat but formed part of area of Purnea Municipal Corporation.

4. On 16.5.2011, the State Election Commission directed the District Election Officer, Purnea to count the votes of panchayat constituencies, which did not form part of Purnea Municipal Corporation. The State Election Commission further directed that if any voter of erstwhile Gram Panchayat which now formed part of Municipal Corporation contested Panchayat election and stands to be a winning candidate in Panchayat (Zila Parishad) election, then result of such constituency would not be announced without instructions from the Commission.

5. As stated above, on 23.5.2011 counting of the petitioner's Zila Parishad territorial constituency no. 23 was done and petitioner was found to have got highest votes. However, the result was not announced in light of directive of Election Commission, as on the date of polling and counting, the petitioner had ceased to be a voter of a Panchayat constituency. The Gram Panchayat of which petitioner was a voter, now stood merged and formed part of territory of Purnea Municipal Corporation consequent to order of L.P.A. Bench, staying order of learned Single Judge quashing the constitution of Purnea Municipal Corporation.

6. Learned counsel for the petitioner submits that on the date of filing of nomination on 15.3.2011, the Gram Panchayat of which he was a voter did not become part of the Purnea Municipal Corporation. He further submits that territorial constituency no. 23 is uninfluenced by the notification of Purnea Municipal Corporation, as no portion of territorial constituency no. 23 formed part of Purnea Municipal Corporation. Learned counsel for the petitioner states that

the date of filing of nomination paper would be the relevant date for considering the eligibility and qualification in view of Section 135 of Bihar Panchayat Raj Act, 2006 as well as general instructions of State Election Commission, particularly instructions no. XVI, bearing letter no. 30-01/2011-635 dated 10.2.2011, contained in Annexure-9 to the supplementary affidavit.

7. On the other hand counsel for the respondents submits that on the date of election i.e. 3.5.2011, the Gram Panchayat of which petitioner was a voter had become part of Municipal Corporation in view of stay order granted by L.P.A Bench on 2.5.2011. Thus petitioner, who no longer remained a voter of a Panchayat constituency was not qualified to contest the election of Purnea Zila Parishad. In support of his submissions, learned counsel has relied upon Section 135 of the Bihar Panchayati Raj Act, 2006.

8. The State Government on 26.5.2009 constituted Purnea Municipal Corporation u/s 3 of Bihar Municipal Act, 2007, which was quashed on 26.3.2009 by a learned Single Judge in C.W.J.C. No. 677 of 2010 with the result that the original status of Panchayat was restored in respect of area, which constituted Purnea Municipal Corporation. However, the order of the learned Single Judge was stayed by a Division Bench in L.P.A on 2.5.2011 prior to the date of polling of Purnea Zila Parishad constituency no, 23, with the result that Purnea Municipal Corporation as notified by the State Government on 26.5.2009 revived. The petitioner admittedly became a voter of Purnea Municipal Corporation and on account of disqualification provision in Section 135 of Bihar Panchayat Raj Act, stood disqualified to contest the election of a Panchayat, may be Gram Panchayat or Zila Parishad.

9. The issue involved in this case is whether a contestant can be declared as elected to a Zila Parishad constituency if on the date of polling or election, the Gram Panchayat from which he belonged had already formed part of Municipal Corporation.

10. By 73rd and 74th Constitutional Amendment Act, 1992, Part-IX and IXA to the Constitution was introduced. Part-IX deals with Panchayat and Part-IXA deals with Municipality. Both Panchayat and Municipality form part of local self-Government. The Panchayats can be at village, intermediary and district level, as per the law made by the State Government. The Panchayats relate to a group of villages. The Panchayat has three tier systems namely the Gram Panchayat, Panchayat Samiti and then the Zila Parishad. The three tier system are founded on the basis of population and pre-dominance of agricultural activities.

11. On the other hand Part-IXA of the Constitution deals with Municipality or Urban body which too has three tier systems, based on population and predominance of non-agricultural activities. Nagar Panchayat is the smallest form of unit followed by Municipal Council and then the Corporation. A smaller Urban population of 12000 to 14000 would form Nagar Panchayat. A Medium Urban population of 40,000 to 2,00,000/- would constitute Municipal Council. A larger

Urban area with a population of more than 2,00,000/- would constitute a Corporation.

12. By notification dated 26.5.2009, the State Government constituted Purnea Municipal Corporation by merging Gram Panchayats with Municipal Council. The petitioner is admittedly a voter from a Gram Panchayat merged with Purnea Municipal Corporation. A learned Single Judge on 26.3.2010 quashed the notification of constitution of Purnea Municipal Corporation, which was stayed by a L.P.A Bench on 2.5.2011. Thus Purnea Municipal Corporation, which came into existence on 26.5.2009 lost its identity on 26.3.2010, on which date the notification constituting Municipal Corporation was quashed. The result was that Gram Panchayat of which petitioner was a voter ceased to be a part Municipal Corporation or any other Urban bodies. The situation again changed on 2.5.2011 as the L.P.A. Bench stayed the order of the learned Single Judge and the petitioner's Gram Panchayat again formed part of territory of Municipal Corporation.

13. The Election was held on 3.5.2011 and prior to the aforesaid date, the Corporation had revived in view of stay order dated 2.5.2011 of a L.P.A. Bench. The petitioner's Gram Panchayat admittedly formed part of territorial area of the Corporation. The election took place on 3.5.2011 and the counting commenced on 23.5.2011, in which petitioner was found to have got highest votes. The result was not declared in view of direction of the State Election Commission as well as in view of Section 135 of the Panchayat Raj Act, 2006. According to respondents, the petitioner was not eligible to contest election on 3.5.2011 as on that date, the Gram Panchayat of which the petitioner was a voter formed part of Municipal Corporation. Section 135 of the Panchayat Raj Act, 2006 is quoted herein below:-

135. Qualification of Membership--Every person whose name is in the list of voters of any Panchayat constituency shall, unless disqualified under this Act or under any other law for the time being in force, be qualified to be elected as a member or office bearer of the Panchayat:

Provided that in the case of seats reserved for Scheduled Castes or Scheduled Tribes or Backward Classes or Women, no person who is not a member of any of the Scheduled Castes or Scheduled Tribes or Backward Classes or is not a woman, as the case may be, shall be qualified to be elected to such seat.

14. Section 135 states that a person, whose name is in the list of voter of Panchayat constituency only, would be qualified to be elected as an office bearer to a Panchayat constituency. The Section states that one cannot be qualified to be elected as a member of Panchayat constituency if he is not a voter of Panchayat constituency. Though on the date of filing of nomination, the petitioner was a voter of Panchayat constituency but on the date on which election took place on 3.5.2011 or on the subsequent date i.e. 23.5.2011 on which counting took place, the petitioner had ceased to be a voter of Panchayat constituency. In view of Section 135 of the Act, a person cannot be qualified to

be elected for a Panchayat constituency even if on the date the counting is made, he ceases to be a voter of a Panchayat by operation of law. The petitioner would have to endure with his fate that by the time the election of Zila Parishad took place, he had ceased to be a voter of a Panchayat. The petitioner has relied upon letter dated 10.2.2011 particularly clause (xvi)(k) and instruction of State Election Commission. Clause (xvi)(k) of instruction dated 10.2.2011 of the State Election Commission, contained in Annexure-9, re-emphasized what has been stated in Section 135 of the Municipal Act. The petitioner states that as per clause (xvi)(k), a voter of one territorial Zila Parishad constituency can contest election from another Zila Parishad constituency of the same district. There cannot be any dispute and the respondents also do not dispute the aforesaid proposition of law. What Section 135 of the Act states is that a person can be elected to any Panchayat constituency, if he remains a voter of a Panchayat. The Panchayat from which the petitioner was a voter ceased to remain a panchayat in view of Government notification dated 26.5.2009 and on account of order dated 2.5.2011 passed by L.P.A. Bench staying the order dated 26.3.2010 passed by learned Single Judge quashing the Government notification dated 26.5.2009, whereby Municipal Corporation was constituted.

15. Thus, the petitioner has no substance in his submission that if on the date of nomination, he is a member of Panchayat then even if that panchayat is merged to form Corporation or an Urban body, still he would be qualified to be elected to a Zila Parishad. As stated above in view of Section 135 of the Act, only a voter of a Panchayat is qualified to be elected as representative under the three tiers Panchayat system. The petitioner having ceased to be a voter of a Panchayat cannot be qualified to be elected as representative to a Panchayat including being elected to office of Zila Parishad. However, if the petitioner, who is respondent in one of the Letters Patent Appeals, in which stay was granted, eventually succeeds therein, he would be entitled for being declared and elected to Purnea Zila Parishad constituency no. 23 having secured highest number of votes. With the aforesaid observation, this application is disposed of.