

**(2009) 04 PAT CK 0018**  
**In the Patna High Court**  
**Case No : CWJC No. 4877 of 2009**

Satyanarayan Singh

APPELLANT

Vs

The Election Commission of India and Others

RESPONDENT

**Date of Decision :** 17-04-2009

**Acts Referred:**

Constitution of India, 1950 — Article 226, 329(b)  
Representation of the People Act, 1951 — Section 33, 33A, 34, 36

**Citation :** (2009) 2 PLJR 639

**Hon'ble Judges :** Ramesh Kr. Datta, J

**Bench :** Single Bench

**Advocate :** Indu Shekhar Prasad Sinha, Laxmi Kant Tiwary, Ujjwal Kumar Sinha and Brajesh Kumar, Lalan Kumar, for the Appellant; J.P. Karn, for the Respondent

**Final Decision :** Dismissed

## Judgement

Ramesh Kr. Datta, J.—Heard learned counsel for the parties. The petitioner being aggrieved by the rejection of his nomination paper on account of non-filing of an affidavit sworn before a Magistrate or Notary in Form-26 has approached this Court in its writ jurisdiction.

2. At the outset, learned counsel for the respondent-Election Commission and the State of Bihar raise a preliminary objection that the writ application is not maintainable in view of the bar under Article 329(b) of the Constitution of India.

3. Learned counsel for the petitioner sought to contend that the present matter is not covered by such a bar since u/s 36 of the Representation of People Act, it is provided that the nomination paper can be rejected only for non-compliance of the requirement of Sections 33 and 34 of the said Act and no such rejection of nomination paper is permitted for non-compliance of Section 33A of the Act under which Rule 4A and Form-26 have been prescribed. It is submitted that the same amounts to illegal rejection of nomination and not improper rejection of nomination and thus, there is a scope for interference by this Court under its writ jurisdiction.

4. This Court is inclined to agree with the submissions of learned counsel for the Election Commission that the Representation of the People Act does not make any distinction between illegal rejection or improper rejection of nomination paper. In any case, this Court would not like to enter into such issue at this juncture, since it is clearly of the view that on account of the bar of Article 329(b) of the Constitution, the writ petition is not maintainable and the remedy of the petitioner would be filing of an election petition on the conclusion of the election.

5. Reliance placed by learned counsel for the petitioner on the case of N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, and on the case of Mohinder Singh Gill and Another vs. the Chief Election Commissioner, New Delhi and Others, (1978)1 SCC. 405 is also misconceived, as in Ponnuswami's case no guidelines are to be found in the matter of exercise of writ jurisdiction in an exceptional case, whereas in Mohinder Singh Gill's case (supra) the interference has been permitted only in a very exceptional matter which, in fact, impedes the conduct of the election. In the present case there is no such exceptional situation, which calls for the exercise of the extraordinary powers under Article 226 of the Constitution of India. The writ application is, therefore, dismissed as not maintainable.