

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4137 of 2024

Krishna Kumari Yadav

... .. Petitioner/s

Versus

The State Election Commission (Panchayat)

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S.B.K. Mangalam, Advocate Mr. Awnish Kumar, Advocate
For S.E.C.	:	Mr. Ravi Ranjan, Advocate Mr. Girish Pandey, Advocate
For Private Respondent/s:		Mr. Mrigank Mauli, Sr. Advocate Mr. Kumar Ravish, Advocate Ms. Siddhi Aashana, Advocate
For the State	:	Mr. Kumar Alok, SC-7 Mr. Satyeshwar Prasad, AC to SC-7

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 11-03-2024 Heard Mr. S.B.K. Mangalam, learned counsel along with Mr. Awnish Kumar learned counsel appearing on behalf of the petitioner; Mr. Mrigank Mauli, learned senior counsel assisted by Mr. Kumar Ravish, learned counsel appearing on behalf of the private respondent/s; Mr. Ravi Ranjan, learned counsel appearing on behalf of the State Election Commission and Mr. Kumar Alok, learned SC-7 for the State.

2. The question involved in the present writ petition is, as to whether, the petitioner, who has been convicted in Khagaria P.S. Case No. 637 of 2005, N.E.T. No. 10214 of 2013, G.R. No. 1623 of 2005 (State of Bihar vs. Ranvir Yadav), against which, the petitioner has filed appeal against the order of



conviction. During the pendency of the appeal he has made prayer for suspension of conviction under Section 389(1) of the Code of Criminal Procedure. The prayer for suspension of conviction was rejected vide order dated 02.12.2023 by the Appellate Court. The petitioner had challenged the said order by filing application under Section 482 read with Section 389(2) of the Code of Criminal Procedure.

3. This Court, vide order dated 31.01.2024, considering the submission of the petitioner and the opposite party has elaborately taken note of the several judgments passed by the Apex Court in respect of law laid down with respect to the suspension of conviction and had granted stay of the conviction by directing to list the case on 11.03.2024.

4. In these backgrounds, learned counsel submits that in view of the law laid down in ***Hira Lal Sah v. State Election Commission*** reported in ***(2010) 2 PLJR 505*** in which also, the operation of conviction was stayed and the writ petitioner was reinstated to the post of Mukhiya, which he was holding before his conviction. He further submits that the petitioner is similarly situated and the ratio of pronouncement in *Hira Lal Sah (Supra)* will hold relevance to grant similar relief(s) to the petitioner. He further clarifies that the ratio laid down by the co-ordinate



Bench has not been questioned by any co-ordinate Bench of this Court and the direction passed in *Hira Lal Sah (Supra)* was followed by the State Election Commission. In these backgrounds, he submits that tomorrow is the date fixed for election for the post of Chairman of the Khagaria Zila Parishad.

5. *Per contra*, Mr. Kumar Ravish, learned counsel appearing on behalf of the private respondent no. 8 submits that the ratio of *Hira Lal Sah (Supra)* relates to suspension of sentence and does not relate to suspension of conviction. He further submits that the order passed by this Court is interim order and same will not hold any precedence for the reason that there has to be permanent stay of conviction during the pendency of the Criminal Appeal to challenge or test the order of disqualification. In this background, he submits that there are two statutory orders, the first order dated 12.01.2024 passed by the State Election Commission in Case No. 72 of 2023 and after the petitioner was granted stay vide order dated 31.01.2024 passed in Criminal Miscellaneous 406 of 2024, the petitioner had moved before the State Election Commission for restoring the disqualification on which ground, the petitioner was removed by reasoned order dated 21.02.2024 in Case No. 13 of 2024 passed by the State Election Commissioner- respondent



no. 2. Learned counsel admits that the petitioner has challenged the said order in the present writ petition by way of 'Annexure-P/6'.

6. Mr. Ravi Ranjan, learned counsel for the State Election Commission submits that in view of Section 136(2) of the Gram Panchayat Act, the State Election Commission has no power to review the earlier order dated 12.01.2024 on the basis of changed circumstances brought on record to review the order by the petitioner in want of jurisdiction of review provided by the Statute.

7. Considering the rival submissions made on behalf of the parties, it would be appropriate to allow the respective parties to file their respective counter-affidavit within a period of one week considering the fact that vide order dated 31.01.2024 passed in Criminal Miscellaneous No. 406 of 2024, the order of conviction has been stayed and matter is pending for consideration before this Court.

8. Till further order, the election for the post of Chairman, Khagaria Zila Parishad, which is to be held tomorrow i.e. on 12.03.2024, shall lose its operation.

9. Re-notify the present writ petition on 19.03.2024.

10. Since the order has been passed in the open Court,



learned counsel appearing on behalf of the State is directed to
communicate this order to all the respondents for the needful
without waiting for the order to be pronounced.

(Purnendu Singh, J)

Niraj/-

U			
---	--	--	--

