

**Rita Devi Vs. the State of Bihar and ors.**

**Rita Devi Vs. the State of Bihar and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/140483](http://sooperkanoon.com/140483)

**Court :** Patna

**Decided On :** Mar-14-2007

**Judge :** Navin Sinha, J.

**Acts :** Bihar Panchayat Raj Act, 2006 - Sections 108, 137, 138, 139 and 141; [Representation of the People Act, 1951](#) - Sections 81, 82, 83, 86 and 117; Code of Civil Procedure (CPC) - Order 6, Rules 1 and 5 - Order 7, Rule 11; Bihar Panchayat Election Rules, 2006 - Rules 106, 107, 108, 109 and 110

**Appeal No. :** Civil Writ Jurisdiction Case No. 15152 of 2006

**Appellant :** Rita Devi

**Respondent :** The State of Bihar and ors.

**Advocate for Def. :** Niraj Kumar, J.C. to G.P. 17 and Dharendra Kumar (Munna), Adv. for Respondent No. 2

**Advocate for Pet/Ap. :** Sidhi Nath Singh and Ashok Kumar, Advs.

**Disposition :** Application dismissed

**Judgement :**

**Navin Sinha, J.**

1. Heard learned Counsel for the petitioner, learned Counsel appearing for the State and the learned Counsel appearing for Respondent No. 2.
2. The Respondent No. 2 filed Misc. Election Petition No. 22 of 2006 before the Munsif, Danapur, challenging the election of the petitioner as Mukhia of the Singhara Copa Gram Panchayat. The petitioner appeared, filed her written statement denying the allegations. A preliminary objection was also taken with regard to the maintainability of the suit. The challenge was that in absence of the details of corrupt practices under Sections 139 or 141 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act') the suit ought to be dismissed at the initial stage.
3. The court below by the impugned order dated 3.11.2006 rejected the objection holding that the issue of maintainability would not be decided as a preliminary issue and that it had necessarily to be decided along with other issues raised in the suit.
4. Learned Counsel for the petitioner has relied upon the judgment reported in A.I.R. 2004 Supreme Court 2036 (Chandrika Prasad Yadav v. State of Bihar and Ors.) in support of the proposition that in absence of the allegations of specified corrupt practices, the suit was not maintainable and was liable to be rejected.
5. The question for determination by the Court is if in absence of pleadings in an election petition of the corrupt practices under Section 139 or 141 of the Act, is the election petition liable to be thrown out at the inception. Moreso when the defendant in the suit has already filed his written statement.
6. Section 137 of the Act provides that no election to a Panchayat or Gram Katchahry shall be called into question except by an election petition. Sub-clause (2) of the same deals with the parties to an election petition. Section 138 of the Act bars challenge to an election of a Panchayat except by an election petition. Rule 106 of the Bihar Panchayat Election Rules, 2006 (hereinafter called as 'the Rules') provides that an election petition must be filed within 30 days of the declaration of results, and the impleadment of necessary parties. Rule 107 prescribes the court fee. Rule 108 stipulates that an election petition must contain the facts on which

the plaintiff relies. The same must be signed and verified by the plaintiff in accordance with the Order VI C.P.C. Rule 109 provides that the Court shall hear the petition in accordance with the procedure prescribed under the C.P.C. Rule 110 provides for withdrawal of an election petition.

7. The Court considers it proper to set out Rule 108 in its entirety.

108. CHUNAO YACHIKA KE TATHYON KA SATYAPAN - CHUNAO YACHIKA MEIN UN TATHYON KA VIVARAN RAHEGA JIS PAR WADI NIRVAR KARTA HO. WADI CHUNAO YACHIKA PAR APNA HASTAKSHAR KAREGA AUR WAYWHAR PARKIRYA SAHANHITA, 1908 KE AADESH 6 MEN WIHIT RITI SE APNE AVHIWACHANON KA SATYAPAN KAREGA.

8. The corresponding provision is to be found in Section 83 of the [Representation of the People Act, 1951](#) (hereinafter called 'the R.P. Act) on which the counsel for the petitioner relied heavily in support of his submissions.

9. This Court considers it appropriate to set out the same in its entirety.

83. Contents of petition. - (1) An election petition -

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

Section 83(a) and 83(c) of the R.P. Act, 1951 are similar to the provisions of Rule 108 of the Act. However, Rule 108 or any other Rule or Section under the Act does not contain provisions similar to Section 83(b) of the Representation of the People Act.

10. If the procedure applicable to an election petition under the Act be that under the Code of Civil Procedure, it will be only under the provisions of Order VII Rule 11 that a suit can be thrown out at the initial stage. Order VI Rule 1 C.P.C. provides that the pleading shall contain a statement in concise form of the material facts relied upon but not the evidence by which they are to be proved. Order VI Rule 5 C.P.C. provides that a further or better statement or particulars may in all cases be ordered subject to costs or otherwise as may be just. Order VII Rule 1 provides what is required to be stated in a plaint. Rule 1(e) provides that the plaint must contain the facts constituting the cause of action.

11. It is, therefore, apparent that the legislature did not think it necessary to incorporate the provisions similar to Section 83(b) of the R.P. Act under the present Act, even while incorporating provisions of Section 83(a) and (c) of the R.P. Act.

12. The law stands settled that even an election petition under the R.P. Act cannot be thrown out at the initial stage for alleged non-compliance of Section 83 of the Representation of the People Act. There is no provision under the Act or the Rules similar to Section 86 of the Representation of the People Act providing for dismissal of election petition for non-compliance of Sections 81, 82 & 117 of the R.P. Act. On the contrary in A.I.R. 1996 Supreme Court 796 (Manohar Joshi v. Nitin Bhaurao Patil and Anr.) it has been held specifically in paragraph 20 that non-compliance of Section 83 is not specified as a ground for dismissal of the election petition under Section 86. Again in A.I.R. 2005 Supreme Court 22 (Sardar Harcharan Singh Barar v. Sukh Darshan Singh) it has been held that if the Court feels that the particulars given in the election petition are deficient in any manner, the petitioner can be directed to supply the particulars and make the deficiency

good. Such deficiency cannot be a ground for dismissing the petition at the threshold. It is only the non-supply of the particulars ordered by the Court which can lead to either striking off the pleadings or refusal to try the related allegations of corrupt practices.

13. The reliance by the petitioner on the case of Chandrika Prasad Yadav (supra) appears to be misconceived. The question for consideration therein was the correctness of the order for recounting passed on the basis of pleadings, documents and evidence leading to the unseating of the candidate. The facts were substantially different from the present controversy.

14. The petitioner has chosen not to place the plaint on record. Only his objection of maintainability is on record. It is not the case of the petitioner that the suit is liable to be thrown out under any provision of Order VII Rule 11 C.P.C. at the initial stage.

15. In absence of any provision in the Act or the Rules framed thereunder providing for the rejection of an election petition at the threshold on the happening of specified conditions, this Court does not uphold the submission of the petitioner. The court below has rightly held that the issue of maintainability shall have to be considered along with other issues in the suit.

16. This Court, therefore, finds no infirmity in the order of the court below calling for interference. The application is dismissed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**