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**(2009) 02 PAT CK 0152**

**Patna High Court**

**Case No:** CWJC No. 14322 of 2008

Roji Kumari

APPELLANT

Vs

Julekha Khatoon and Others

RESPONDENT

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**Date of Decision:** Feb. 11, 2009

**Acts Referred:**

- Bihar Panchayat Raj Act, 2006 - Section 137(2), 137(C)

**Citation:** (2009) 2 PLJR 614

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

**Bench:** Single Bench

**Advocate:** Sanjeev Nikesh, Uday Kumar, Vinod Kumar, for the Appellant; Sanjeet Kumar, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

Ramesh Kr. Datta, J.

Heard learned counsel for the petitioner, learned counsel for respondent No. 1 and learned counsels for the State and the State Election Commission. The petitioner has come to this Court for quashing the order dated 16.8.2008 passed by the learned Sub-Judge, 1st, Sitamarhi in Election Case No. 42 of 2006, by which he has refused to allow the petition of the opposite party-petitioner seeking dismissal of the election petition on the ground of non-joinder of necessary party in terms of provision of Section 137(2) of the Bihar Panchayat Raj Act, 2006.

2. The short facts germane to the present matter are that in the election held for the post of Member of Kharka Panchayat Samiti, District-Sitamarhi, the petitioner was declared elected. Respondent No. 1, Julekha Khatoon, thereafter filed Election Petition No. 42 of 2006 in which she had impleaded only the petitioner among the contesting candidates as opposite party, apart from certain officials. The election had been contested by as many as six candidates, but the four other candidates

were not impleaded, although the prayer made in the election petition was not only to set aside the election of the petitioner but also declare the petitioner as duly elected Member of the Panchayat Samiti from the said Constituency.

3. Learned counsel for the petitioner submits that in terms of Section 137(2) of the Bihar Panchayat Raj Act, 2006 and in view of the reliefs sought in the election petition, all the contesting candidates were necessary parties to the election petition and on failure to implead them, the election petition ought to have been dismissed at the outset. It is contended that the provisions of Section 137(C) of the Act read with Rule 106(1) of the Election Rules, 2006, which provides for filing an election petition within 30 days of the declaration of the result of the election, mandate that the necessary parties ought to be impleaded within the statutory period of 30 days from the declaration of the result and no application for amendment of parties after the mandatory period of 30 days can be entertained by the Election Tribunal.

4. In support of the said propositions, learned counsel for the petitioner relies upon a decision of this Court dated 3.12.2008 in C.W.J.C. No. 9955 of 2007: Kameshwar Singh vs. Surya Narayan Rai and Others in which this Court, relying upon a decision of the Supreme Court in the case of [Rupadhar Pujari Vs. Gangadhar Bhatra](#), and also an earlier decision of this Court in the case of Neelam Kumari alias Neelam Devi vs. The State of Bihar & Others: 2008(3) PLJR 187, has held as follows:-

"In the aforesaid view of the matter, this Court is clearly of the view that the provisions of Section 137(2) and Rule 106(2) of the Act and Rules respectively are mandatory and the election petitioner ought to have impleaded the necessary parties within a period of 30 days from the declaration of the result of the election and in any case no application for amendment of parties after the mandatory period of 30 days can be entertained by the election tribunal."

5. Learned counsel for the petitioner also relies upon a decision of a learned Single Judge Bench of this Court in the case of Md. Zakir Hussain vs. Hareshwar Prasad Singh: 2001(4) PLJR 713, in paragraph No. 14 of which it has been laid down as follows:-

"14. Once the plea of the election petitioner, that results of the election were adversely affected because of wrong counting or wrong rejection of the votes, is accepted and the court proposes to infringe the secrecy of the franchise, then, not only the votes cast in favour of the election petitioner are to be recounted but the votes cast in favour of the other candidates will also have to be seen. Today nobody knows about the final result of the election petition. In a case like present where the election petitioner has made allegation of corrupt practices and has also asked for recounting of the votes, in the opinion of this Court every person who contested the election would be necessary party."

6. The proposition laid down by this Court in the aforesaid decision fully applies to the present matter.

7. The reference in the impugned order to a decision of this Court on the case of Babita Devi vs. State Bihar and Others: 2006(3) PLJR 382 is wholly misconceived since in the said decision the issue related not to the impleadment of a necessary party as provided u/s 137 of the Act or Rule 106 of the Rules, rather the contention therein was that the matter in issue cannot be decided without impleading the Commission and its authorities. In the said circumstances, this Court held that the impleadment of the parties mentioned u/s 137(2) of the Act has to be made but so far as the impleadment of any other necessary parties, including the Commission and its authorities is concerned, there is no bar under the said provisions and if there is any unavoidable necessity of adding any other party to the election petition, it could very well be allowed in the facts and circumstances of the case so that full and final picture may come out before the authorities deciding such petition. Thus, the said decision does not at all lead to the conclusion that the necessary parties mentioned in Section 137(2) of the Act. namely, all the contesting candidates can also be impleaded after the expiry of the period of limitation of 30 days. In the aforesaid circumstances, the writ application is allowed, the order dated 16.8.2008 passed by the Subordinate Judge, 1st, Sitamarhi in Election Case No. 42/2006 is set aside and the petition dated 3.7.2007 of the opposite second party (petitioner herein) is allowed and Election Petition No. 42 of 2006 is consequently dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.