

**IN THE HIGH COURT OF PATNA  
FULL BENCH**

Civil Writ Jurn. Case No. 1528 of 1989

Decided On: 17.04.1989

Appellants:**Umadhar Prasad Singh**

**Vs.**

Respondent:**State of Bihar and Ors.**

Constitution of India—Article 178, 179, 212, 226-- proceedings of the Bihar Legislative Assembly---petitioner alleged that respondent. No. 2 in fact had not resigned his office as the Speaker of the Bihar Legislative Assembly and that a certain resignation had been manipulated, on which basis respondent No. 3, the then Deputy Speaker got a notification declaring that the office of the Speaker had fallen vacant-- objection to the maintainability of the instant application on the ground, inter alia that Art. 212 of the Constitution of India bars the jurisdiction of this Court to enter into the proceedings of the Bihar Legislative Assembly-- the Assembly had during the pendency of this application assembled and elected a new Speaker— held: the controversy alleged in the writ application will automatically affect the action taken in the Assembly for electing the new Speaker and shall thus attract the bar of Article 212 of the Constitution of India-- it is only after examining the facts and coming to the conclusion that a writ issued may in effect be an interference in the proceedings of the Assembly that the Courts have refrained from issuing a writ—application dismissed. (para 2, 3, 4, 6)

**IN THE HIGH COURT OF PATNA  
FULL BENCH**

Civil Writ Journ. Case No. 1528 of 1989

Decided On: 17.04.1989

Appellants: **Umadhar Prasad Singh**  
**Vs.**  
Respondent: **State of Bihar and Ors.**

**Hon'ble Judges/Coram:**

*P.S. Mishra , U.P. Singh and B.K. Roy , JJ.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: Ramachandra Jha and Subodh Kumar Jha, Adv.*

*For Respondents/Defendant: J.N. Pandey, Addl. A.G., B.N. Mishra, J.C. to Addl. A.G. and M.K. Singh and Mihir Kumar Jha, Advs.*

*For Intervener: Ashok Kumar Keshri, Rakesh Ranjan Prasad and Jai Shaker Bar, Adv.*

**ORDER**

1. Heard learned counsel for the petitioner, learned Additional Advocate General for Bihar, learned counsel for the interveners. Both the petitioner and the interveners are members of the Legislative Assembly.

2. In his application, as filed before us, the petitioner has alleged that respondent No. 2 in fact had not resigned his office as the Speaker of the Bihar Legislative Assembly and that a certain resignation had been manipulated, on which respondent No. 3, the then Deputy Speaker got a notification issued by the Government declaring that on account of acceptance of the resignation of respondent No. 2 by respondent No. 3, the office of the Speaker had fallen vacant. The petitioner's application has referred to certain facts either 'within the exclusive knowledge of respondent No. 2 or in the knowledge of the petitions suggesting that there had been good reasons to hold that the notification of the acceptance of resignation of respondent No. 2 is void being mala fide both in law and in fact.

3. The interveners, however, has mainly objected to the maintainability of the petitioner's application on the ground, inter alia that Art. 212 of the Constitution of India bars the jurisdiction of this Court to enter into the proceedings of the Bihar Legislative Assembly and unless there is an examination of the issues pertaining to the proceedings of the House, nothing could be said on the application of the petitioner as to whether respondent No. 2 has resigned his office or not.

4. Learned Addl. Advocate General has precisely supported the interveners' contention in this behalf and has brought to our notice a subsequent election of a Speaker of the Bihar Legislative Assembly had during the pendency of this application assembled and elected a Speaker. Thus, today our entering into the controversy alleged in the writ application is not warranted.

will automatically affect the action taken in the Assembly for electing the Speaker and shall thus attract the bar of Article 212 of the Constitution of India. We are in agreement with the contention of the learned Addl. Advocate General on behalf, as today it cannot be said that without examining the validity or otherwise of the proceeding of the House a writ in the nature of certiorari or quo warranto or consequential mandamus can be issued which shall result in bringing respondent 2 back in his office as the Speaker. The application, for the said reason has become infructuous and if not actually infructuous, barred under Article 212 of the Constitution of India.

**5.** We do not say one way or the other as to the contention of the petitioner with respect to the maintainability of the writ application as it was originally framed. The objection of the intervenor that as framed originally the application was not maintainable and the bar under Article 212 of the Constitution of India is attracted. Any conclusion about it without examining the provisions under Articles 178, 180, 212 of the Constitution of India along with the Rules framed under Article 208 of the Rules will not be possible.

**6 .** Courts in India have many times been confronted with the ticklish question of deciding the limitations of the Court's power under Article 226 of the Constitution of India with respect to acts touching the affairs of the Legislative Assembly. The extent of the bar under Article 212 thereof. It is only after examining the facts and coming to the conclusion that a writ issued may in effect be an interference in the proceedings of the Assembly that the Courts have refrained from issuing a writ. However, an issue which cannot be summarily answered in the instant case, particularly when serious allegations of mala fide has been made by the petitioner. However, since we come to the conclusion, as on today, this application has become infructuous, we dismiss the application.

**7.** We have not examined the allegation of mala fide do not say that they are correct.