

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No.813 of 2015**

Sunil Maheshwari, S/o Shri Devkishan Maheshwari, aged about 43 years,
R/o Village Kamta, Tahsil Simga, District Balodabazar (Chhattisgarh)

---- **Petitioner****Versus**

1. State of Chhattisgarh through the Secretary, Panchayat and Rural Development Department, Mantralaya, New Raipur, P.S. Rakhi, District Raipur (Chhattisgarh)
2. The Chhattisgarh State Election Commission (Panchayat), through the Secretary, Nirvachan Bhawan, Raipur (Chhattisgarh)
3. The Collector, District Balodabazar – Bhatapara (Chhattisgarh)
4. The Janpad Panchayat Simga, through the Chief Executive Officer, District Balodabazar – Bhatapara (Chhattisgarh)
5. The Presiding Officer/Sub-Divisional Officer (R), Bhatapara, District Balodabazar – Bhatapara (Chhattisgarh)
6. The Assistant Presiding Officer/Chief Municipal Officer, Janpad Panchayat Simga, District Balodabazar – Bhatapara (Chhattisgarh)
7. Anand Yadav, S/o Shri Nandulal Yadav, President, Janpad Panchayat Simga, District Balodabazar – Bhatapara (Chhattisgarh)
8. Ramkrishna Sahu, S/o Shri Baburam Sahu, Vice-President, Janpad Panchayat Simga, District Balodabazar – Bhatapara (Chhattisgarh)

---- **Respondents**

For Petitioner	: Shri Prateek Sharma, Advocate
For Respondents No.1 and 3	: Shri U.N.S.Deo, Government Advocate
For Respondents No.2, 5 and 6	: Shri Vaibhav P. Shukla, Advocate

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri Justice P. Sam Koshy****Order on Board****Per Navin Sinha, Chief Justice****30/7/2015**

1. The present writ application has been filed challenging the validity of Section 25(1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as 'the Act') relating to election for the posts of President and Vice-President of a Janpad Panchayat. The challenge is also to Rule 6 and Rule 7 of the Chhattisgarh Panchayat (Up-Sarpanch, President and Vice-President) Nirvachan Niyam, 1995 (hereinafter referred to as 'the Rules') defining the Collector as the appropriate authority to conduct the election empowering him to appoint Presiding Officers and provide other staff for election as being violative of Article 243K of the Constitution of India which provides that the superintendence

direction, control and conduct of all elections to the Panchayat shall vest in the State Election Commission.

2. Learned Counsel for the Petitioner submits that if a constitutional mandate has been violated and the elections have been conducted on the directions of the Collector by appointing the Sub-Divisional Officer as the prescribed authority to conduct the elections, the fact that the Petitioner may have been an unsuccessful candidate for the post of President or that he may not have filed an election petition are not relevant considerations. An election held contrary to the constitutional mandate is a nullity and *void ab initio*. Necessary amendments not having been made in the Act and the Rules they are *ultra vires* to the Constitution. The filing of an election petition is not an efficacious remedy in the circumstances as it will take considerable time for it to be decided.

3. Learned Counsel for Respondents No.1 and 3 and Respondents No.2, 5 and 6 submit that the Petitioner was a member of the Janpad Panchayat and a candidate himself for the post of President. It is difficult to believe that being an aspirant for a public post, having been elected under the Act, he was not aware of the grounds sought to be urged by him now. If he had been successful, he would not have raised this issue at all. The primary grievance is therefore the inability to win the post he contested for. The challenge to the Act and the Rules is but a camouflage to overcome the difficulty of limitation under Rule 122 providing for a limitation of 30 days to file an election petition. It is not that the Petitioner was remedy-less. He allowed that opportunity to deliberately go by without availing it and now seeks to invoke the extraordinary remedy to overcome the bar of limitation as there is no provision for condonation. The present is not a fit case for the Court to interfere without going into the larger question.

4. We have considered the submissions and are satisfied that the writ application calls for no interference.

5. Ignorance of law as sought to be contended on behalf of the Petitioner is no excuse. Additionally, we find it difficult to believe that the Petitioner, who contested an election under the Act and was an aspirant for the post of President under the same, was unaware that the elections were being conducted by the Sub-Divisional Officer nominated by the Collector and not by the State Election Commission. Nothing prevented the Petitioner from raising that issue at the very inception and ensure that corrective steps were taken by the concerned. He participated in the election without demur and seeks to raise issues only after he has been unsuccessful.

6. Even if he was unsuccessful, the grounds sought to be urged on his behalf today with regard to impropriety in conduct of the election could well have been raised by him in an election petition under Rule 122. The Respondents in their counter-affidavit have taken a specific objection to the availability of a remedy under Rule 122. The pleadings in the writ application are completely silent with regard to the reason why the alternative remedy was not resorted to. The Petitioner in his pleadings at paragraph 8.8 states that he represented and made complaints before various authorities including the Election Commission, only whereafter he was made aware that the elections are not being held in accordance with Article 243K. If the Petitioner was aware of his legal rights and contends ventilation of his grievances, it is very difficult to believe that he was not aware of the remedy available under Rule 122. Furthermore, what is purported to be a representation is actually an application submitted under the Right to Information Act. We are afraid that the cause of action accrued to the Petitioner the day the process of election commenced, as alleged, contrary to Article 243K. The cause of action did not accrue on

18-3-2015 when he petitioned the State Election Commission under the Right to Information Act. The information sought for by him may have been material in support of his cause of action and was not a cause of action itself independent from that accrued to him at the very inception of the election process.

7. The Petitioner cannot be permitted to blow hot and cold. Obviously, he was not interested in raising issues with regard to any alleged illegality in the election process as he may have been very sanguine about his victory. Faced with disappointment, he now seeks to turn around virtually challenging the election process in which he participated without demur with full awareness. No explanation has been furnished why he did not file an election petition within the period of limitation. There is no provision for condonation of the period of 30 days in Rule 122 for filing an election petition. The Petitioner now seeks to overcome the difficulty by invoking the extra-ordinary jurisdiction under Article 226 of the Constitution long after limitation has expired. With regard to such situation, it was observed in *Shri Vallabh Glass Works Ltd. v. Union of India*, (1984) 3 SCC 362:

“9. ... Whether relief should be granted to a petitioner under Article 226 of the Constitution where the cause of action had arisen in the remote past is a matter of sound judicial discretion governed by the doctrine of laches. Where a petitioner who could have availed of the alternative remedy by way of suit approaches the High Court under Article 226 of the Constitution, it is appropriate ordinarily to construe any unexplained delay in the filing of the writ petition after the expiry of the period of limitation prescribed for filing a suit as unreasonable ...”

8. An election to a public post is a serious matter and is not to be interfered with for the mere asking and that too under Article 226

bypassing the remedy of an election petition. We are not satisfied in the facts and circumstances of the present case that it is a proper case calling for exercise of the extra-ordinary jurisdiction, both in law and to give the Petitioner an advantage for his own inaction and indolence in not having availed the statutory remedy of an election petition within time.

9. The writ application is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE