

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1689 of 2015

- Sanjay Singh S/o Banshrup, Aged About 32 Years R/o Village - Silfili, Police Station - Jaynagar, Tahsil And District - Surajpur (Chhattisgarh) (Returned Candidate)

---- Petitioner

Versus

1. Shobhnath Agariya S/o Bitan Agariya, Aged About 35 Years Caste-Agariya, Occupation - Cultivator, R/o Village - Silfili, Police Station-Jaynagar, Tahsil & District - Surajpur (Chhattisgarh).....(Election Petitioner)
2. Munni Agariya D/o Dhansai, Aged About 42 Years Caste - Agariya, R/o Village - Silfili, Police Station - Jaynagar, Tahsil And District - Surajpur (Chhattisgarh).....(Election Petitioner)
3. Chandramani S/o Late Jagmohan, Aged About 35 Years R/o Village - Silfili, Police Station - Jaynagar, Tahsil And District - Surajpur (Chhattisgarh)
4. Ambika Prasad Jaiswal, Headmaster, Middle School, Govindpur, Block - Ramanujnagar, District - Surajpur (Chhattisgarh)
5. Chandramani Balak Das, Lecturer (Panchayat), Govt. High School, Patrapali, Block - Ramanujnagar, District - Surajpur (Chhattisgarh)
6. Chandrakant Tiwari, Assistant Teacher (Panchayat), Middle School, Makarbandha, Block - Ramanujnagar, District - Surajpur (Chhattisgarh)
7. Kameshwar Singh, Assistant Teacher (Panchayat), Primary School, Pandopara, Chhindiya, Block-Ramanujnagar, District - Surajpur (Chhattisgarh)
8. Smt. Jyoti Kushwaha, Assistant Teacher (Panchayat), Primary School, Silfili, Police Station -Jaynagar, Block - Surajpur, District - Surajpur (Chhattisgarh)
9. Mahesh Prasad Baghel, Headmaster, Middle School, Kalyanpur, P. S. & Block-Surajpur, District - Surajpur (Chhattisgarh)
10. Muneshwar Ram, Lecturer (Panchayat), High School, Patrapali, P. S. - Ramanujnagar, District - Surajpur (Chhattisgarh)
11. Prakash Sharma Teacher (Panchayat), Middle School, Makarbandha, P. S. - Ramanujnagar, District - Surajpur (Chhattisgarh)
12. Sukhlal Singh Assistant Teacher, (Panchayat), Primary School

Pandopara, Chhindiya, P. S. - Ramanujnagar, District - Surajpur (Chhattisgarh)

13. Smt. Malti Rajwade, Assistant Teacher (Panchayat), Middle School Silfili, Police Station - Jaynagar, District - Surajpur (Chhattisgarh)
14. Balkrishna Sahu, Head Master, Middle School, Chanderpur, P. S. - Ramanujnagar, District - Surajpur (Chhattisgarh)
15. Santosh Kumar Jaiswal, Lecturer (Panchayat), High School, Patrapali, Police Station - Ramanujnagar, District - Surajpur (Chhattisgarh)
16. S. Kumar, Teacher (Panchayat), Middle School, Kalipur, P. S. Premnagar, District - Surajpur (Chhattisgarh)
17. Dudhnath Khandey, Assistant Teacher (Panchayat), Primary School, Tripureshwarpur, P. S. - Ramanujnagar, District - Surajpur (Chhattisgarh)
18. Smt. Savitri Bhaskar, Assistant Teacher (Panchayat), Bangalipara, Silfili, P. S. - Jaynagar, Tahsil-Surajpur, District - Surajpur (Chhattisgarh)
19. A. K. Lakra, Tahsildar, Surajpur, Returning Officer (Panchayat), District - Surajpur (Chhattisgarh)
20. The Sub-Divisional Officer, (Revenue) (Prescribed Authority), Panchayat, Surajpur, District - Surajpur (Chhattisgarh)

---- Respondents

For Petitioner	Shri Santosh Bharat, Advocate
For Respondent/State	Shri Bhaskar Payasi, PL
For Respondent Nos.1 & 2	Shri Rishi Sahu, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board By

23/11/2015

1. With the consent of the learned counsel for the parties, the matter is heard finally.
2. The petitioner is the elected Sarpanch of Gram Panchayat Silfili, District Surajpur. Having been so elected in the election held on 28.01.2015, the petitioner's election was notified on 24.02.2015.

3. Challenging the election of the petitioner, the respondent Nos.1 & 2 preferred an election petition under Section 122 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (henceforth 'Adhiniyam, 1993') on 29.04.2015 i.e. after expiry of period of 30 days from the date of notification.
4. By the impugned order, the Election Tribunal i.e. Sub Divisional Officer (Revenue), Surajpur (for short 'SDO') has allowed the election petitioners' (respondent Nos.1 & 2 herein) application under Section 5 of the Limitation Act to condone the delay in filing the election petition.
5. It is argued on behalf of the petitioner that the election petition being an original proceeding delay in moving the petition is not condonable in view of the express provisions contained under Section 122 (2) of the Adhiniyam, 1993.
6. Per contra, Shi Sahu, learned counsel for the respondent Nos.1 & 2, would submit that there being no express provisions excluding the operation of the provisions of the Limitation Act in respect of condonation of delay, the Election Tribunal is fully justified in invoking the powers under Section 5 of the Limitation Act and the impugned order does not call for any interference.
7. The remedy of moving an election petition is in the nature of original proceeding, for which limitation is provided under Section 122 (2) itself of the Adhiniyam, 1993 itself with further stipulation that if a petition is presented beyond the period of 30 days, the same shall not be cognizable by the Election Tribunal. Thus, there is express bar for taking cognizance of the election petition after expiry of period of 30 days. In view of the express bar, the provisions of the Limitation Act for

condonation of delay stands excluded from its application to an election petition under Section 122 of the Adhiniyam, 1993.

8. In the matter of **Kalka Prasad vs. Ramji Lal and others**¹, the Madhya Pradesh High Court has considered the provisions contained in Section 22 of the Adhiniyam, 1993 and has held in paras 9 & 10 :-

- “9. Section 22 of the M. P. Panchayat Raj Avam Gram Swaraj Adhiniyam 1993 provides for filing election petition calling in question any election conducted under the provisions of the Adhiniyam, sub-section (2) of the aforesaid section provides for filing of a election petition within 30 days from the date of which the election is notified. In this section there is no provision for condoning the delay in filing the petition, on the contrary express provision has been made wherein admittance of a petition presented after a prescribed period of 30 days is prohibited. In the instant case the election petition was filed beyond the period of 30 days. Notification of the election was done on 23.05.1994 and accordingly, the petition should have been filed on 23.06.1994. However the petition was filed on 27.07.1994 therefore, it is beyond the period prescribed in sub-section (2) of section 122. This Court in the case of *Kishan Singh vs. Harveer Singh, 1998 (1) M. P. Weekly Notes 83*, had held that the limitation prescribed for filing of election petition under Section 122 cannot be extended. It has been held in the aforesaid case that the provisions of the Limitation Act including the provisions of Section 5 had no application to such proceedings.
10. In the light of the aforesaid enunciation of law, the present petition was not maintainable as it was filed beyond the period prescribed in sub-section (2) of section 122. The learned Tribunal in the instant case has accepted the petition by condoning the delay. The ground for condoning the delay is, acceptance of nomination papers of Respondent No.6 which according to the Tribunal vitiates the election proceedings and therefore delay has to be condoned. I am of the considered view that the election tribunal has condoned the delay and accepted the petition for decision on merits when there is a statutory bar in admitting a petition filed beyond the period of 30 days, that apart delay has been condoned on extraneous consideration without there being any explanation for the delay. Even otherwise as held by this Court in the case of *Kishan Singh (supra)* the provisions of section 5 of the Limitation Act are not applicable to such proceedings, the order condoning the delay is therefore contrary to the statutory provisions and cannot be sustained.”

1 2002 (3) M.P.L.J. 121

9. For the foregoing, the impugned order deserves to be and is hereby set aside. Consequently, the election petition preferred by the respondent Nos.1 & 2 stands dismissed, as barred by limitation.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

Nirala