

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 490 of 2016

- Cheti Bai Yadav W/o Manharan Yadav, Aged About 54 Years Caste Yadav, R/o Village Saawani, Tehsil Patan, District Durg, (Chhattisgarh)

---- Petitioner

Versus

1. Smt. Bhupeshwari Sahu W/o Satyanarayan Sahu, Caste Teli, Aged About 40 Years R/o Village Aamapendi, Tehsil Patan, District Durg, (Chhattisgarh)
2. Maya Rigari, W/o Chhanulal Rigari, Aged About 30 Years R/o Village Saawani, Tehsil Patan, District Durg, (Chhattisgarh)
3. Laxmi Yadu, W/o Ramanuj Yadu, Caste Yadu, Aged About 35 Years R/o Village Aamapendari, Tehsil Patan, District Durg, (Chhattisgarh)
4. Presiding Officer, Booth No. (Poling Center No. 93) R/o Village Saawani, Tehsil Patan, District Durg, (Chhattisgarh)
5. Presiding Officer, Booth No. (Poling Centre No. 94) R/o Village Saawani, Tehsil Patan, District Durg, (Chhattisgarh)
6. Presiding Officer Booth No. (Poling Centre No. 95) R/o Village Saawani, Tehsil Patan, District Durg, (Chhattisgarh)
7. Sub Divisional Magistrate And Election Tribunal (Revenue), Patan, District Durg, (Chhattisgarh)
8. Collector, Durg, District Durg, (Chhattisgarh)

---- Respondent

For Petitioner : Shri P.P. Sahu, Advocate.
For Respondent No.1 : Shri Avinash Chand Sahu, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

13/07/2016

1. The petitioner is aggrieved by the order passed by the Collector, Durg on 15.2.2016 whereby the said Collector has stayed the effect and operation of the order passed by the SDO (Revenue) Patan allowing the election petition preferred by the petitioner and setting aside the election of returned candidate i.e. respondent No.1 as Sarpanch of Gram Panchayat Sawni, Tehsil Patan, District Durg. The impugned order has been passed by the Collector exercising revisional jurisdiction under Section 91 of the CG Panchayat Raj Adhiniyam, 1993 (for short 'the Adhiniyam') read with Rule 8 of the CG Panchayats (Appeal and Revision) Rules, 1995 (for short 'the Appeal & Revision Rules').
2. The remedy of filing election petition is provided under Section 122 of the Adhiniyam providing that an election petition can be preferred within a period of 30 days from the date when the election in question was notified and that such petition shall be enquired into or disposed of according to such procedures as may be prescribed. The procedure for presentation and trial of election petition has been prescribed under the Rules known as the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (for short 'the Rules, 1995'). Rule 25 of the Rules, 1995 attaches finality to the order passed by the Specified Officer. It uses the term decision of the Specified Officer. Rule 23 deals with the decision which may be taken by the Specified Officer while trying the election petition

and thus includes any final order passed in the election petition. Thus, the law prescribes and attaches finality to the order passed in the election petition. Therefore, remedy of preferring an appeal or revision under Section 91 read with Appeal and Revision Rules is not available to aggrieved party. The only remedy available to such party is to prefer a petition under Article 226/227 of the Constitution of India

3. In view of the above, the impugned order as well as the entire revisional proceeding before the Collector is set aside being without jurisdiction. The Collector shall send back the record of the case to the concerned Specified Officer. The respondent No.1 would be at liberty to take recourse to remedy as may be available to him in law.
4. The Writ Petition is accordingly allowed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve