

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1602 of 2016

Narendra Kumar Prajapati S/o Shri Kashi Ram, Aged About 30 Years
R/o Place, Post And Tahsil Jaijaipur, District Janjgir Champa,
(Chhattisgarh)

---- Petitioner

Versus

1. The State Of Chhattisgarh Through: The Secretary, Urban Administration Department, Mahanadi Bhawan, Naya Raipur, District Raipur, (Chhattisgarh)
2. The Director, Directorate Of Urban Administration Department Indrawati Bhawan, Raipur Panchayat, Indrawati Bhawan, Naya Raipur, (Chhattisgarh)
3. Chhattisgarh State Election Commission, Near D.K.S. Bhawan, (Old Mantralaya), Raipur, District Raipur, (Chhattisgarh)
4. The Collector- Cum- District Election Officer (Local Election), District Janjgir Champa, (Chhattisgarh)
5. Nagar Panchayat, Jaijaipur, Through Its Chief Municipal Officer, Jaijaipur, District Janjgir Champa, (Chhattisgarh)

---- Respondents

Shri Parag Kotecha, counsel for the petitioner/s.
Shri R.K.Gupta, Dy.A.G. for the State / respondents 1 and 2.
Shri B.D.Guru, counsel for respondents 3 and 4.
Shri R.S.Baghel, counsel for respondent No.5.
Shri B.P.Sharma, Shri Y.C.Sharma and Shri Sameer Oraon, counsel for respective intervenors.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order

22/08/2016

Heard on admission.

The petitioner has challenged the legality and validity of action of the respondents whereby they have proceeded to prepare and revise the voter list for the purposes of election to the office of President of Nagar Panchayat, Jaijaipur.

2. Contention of learned counsel for the petitioner is that earlier, a writ petition was filed challenging continuance of Mahendra Chandra as President of Nagar Panchayat on the ground that upon his conviction, he has incurred disqualification to continue in the office wherein, an interim order has been passed on 11/02/2015 restraining Mahendra Chandra from functioning as President of Nagar Panchayat. Later on, on a petition filed by one Smt. Jhankeshwari Chandra, an order was passed for appointment of a working President in terms of Section 37(2) of the Chhattisgarh Municipalities Act, 1961 (for short 'the Act of 1961'). A working President was appointed vide order dated 26/10/2015. It is submitted that though Mahendra Chandra, later on, resigned from the office of the President, his resignation has not been notified till date in terms of provisions contained in Section 41 (B) of the Act of 1961. A judicial order restraining Mahendra Chandra from functioning as President, Nagar Panchayat, by itself, does not amount to there being a vacancy in the office. It is submitted that in such a situation, where resignation has not been notified, in the eye of law, it cannot be said that a vacancy has arisen, so as to proceed to fill-up the vacancy by way of fresh election.

Learned counsel for the petitioner placed heavy reliance on the judgment of the Supreme Court in the case of **D.Sanjeevayya v. Election Tribunal, Andhra Pradesh and others, AIR 1967 SC 1211** and decision of the Karnataka High Court in the case of **Sri Thomas Mates Gudinho v. Election Commission of India, AIR 2002 Karnataka 232** to contend that restraint by judicial order would not result in vacancy.

3. On the other hand, learned counsel for the respondents and intervenors submit that the petitioner was a party to earlier petition i.e. WPC No.2011/2015 filed by Smt. Jhankeshwari Chandra, wherein it has been held that the words 'becomes vacant' or 'declared vacant' would cover within its sweep, temporary vacancy in the office as a result of restraint order issued by the High Court. Therefore, now the petitioner is not correct in contending that the vacancy has not arisen for proceeding to hold fresh election to the office of the President of Nagar Panchayat.

4. Submission of learned counsel for the petitioner that resignation of Mahendra Chandra has not so far been notified, has not been disputed. That means, the vacancy has not arisen on account of resignation of Mahendra Chandra.

However, in view of what has been held by this Court in earlier round of litigation in WPC No.2011/15 vide order dated 13/01/2016, to which, the petitioner was also a party as respondent No.6 therein, it has to be held that vacancy has arisen for the purposes of holding fresh election. It was held -

“9. Even if for the sake of argument, it is considered as to whether in the given fact situation, the office of President is considered to be vacant, it is seen that elected Councillor has incurred disqualification and could not have functioned as President of the Nagar Panchayat till his conviction is stayed or set aside by any superior Court. The word 'becomes vacant' or is 'declared vacant' would cover within its sweep in temporary vacancy in the office either in the form of restrain order issued by the High Court under its jurisdiction. It would fall within the meaning of term or the word 'becomes vacant' because the office is available for nomination under Section 37(2). If the person is rendered incapacitated to function as President, there definitely occurs a temporary vacancy till that incapacitation is wiped out by any superior Court.”

5. In view of the aforesaid order, which has attained finality and to which, the petitioner was also a party, the contention of the petitioner must fail. The petition, therefore, is dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge