

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No.458 of 2016

Narendra Kumar Prajapati, S/o Shri Kashi Ram, aged about 30 years, R/o Place, Post and Tahsil Jaijaipur, District Janjgir-Champa (C.G.)

---- Appellant

Versus

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

---- Respondents

For Appellant:	Mr. Parag Kotecha, Advocate.
For Respondents No.1 and 2/State: -	Mr. Y.S. Thakur, Deputy Advocate General.
For Respondent No.5:	Mr. R.S. Baghel, Advocate.
For Objector:	Mr. B.P. Sharma and Mr. Hari Agrawal, Advocates.

Hon'ble the Chief Justice and
Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

Per Deepak Gupta, Chief Justice

27/09/2016

1. This appeal is a total abuse of the process of the Court and shows how an unelected person only nominated by the Government can use the judicial process to delay the electoral

process.

2. The undisputed facts are that the elections for President, Nagar Panchayat, Jaijaipur, District Janjgir-Champa were held on 4-1-2015 and in this election one Shri Mahendra Chandra was elected as President. He was convicted for having committed offences punishable under Sections 332, 147, 427 of the IPC and 132 of the Representation of the People Act, 1951 and sentenced to undergo RI for three months for the same. In another case, he has been convicted in S.T.No.11/2012 on 9-1-2015 and sentenced to RI for five years and 6 months. Though the sentence has been suspended, conviction of Shri Mahendra Chandra has not been stayed. Therefore, in view of the law laid down by the Supreme Court, his conviction will remain in force and he cannot hold any elected office.
3. The Government, however, took no action against Shri Mahendra Chandra compelling Shri Balram Chandra to file a writ petition being W.P.(C)No.221/2015 in which he prayed that Shri Mahendra Chandra be restrained from taking oath as President of the Nagar Panchayat. In the mean time, Shri Mahendra Chandra was administered the oath of office and thereafter, a learned Single Judge of this Court restrained Shri Mahendra Chandra from functioning as President of Nagar Panchayat, Jaijaipur till the next date of hearing. Thereafter, Smt. Jhankeshwari Chandra filed another petition praying that she be nominated to work as President because she holds the majority. She was also the elected Vice President. Thereupon,

a learned Single Judge of this Court passed an order that when the President is absent, the meetings should be presided over by the Vice President. He also directed that in terms of sub-section (2) of Section 37 of the Chhattisgarh Municipalities Act, 1961, a person should be nominated to work as President of local body within a period of sixty days. Pursuant to the said direction, the present appellant was nominated by the State Government on 26-10-2015. Thereafter, Smt. Jhankeshwari Chandra filed another petition being W.P.(C)No.2011/2015 in which she claimed that since she held the majority, she should be nominated. It would be pertinent to mention that the present appellant was respondent No.6 in W.P.(C)No.2011/2015 and was duly represented by counsel. This petition was disposed of by a learned Single Judge. After referring to Section 37 of the Chhattisgarh Municipalities Act, 1961, the learned Single Judge held as follows: -

“7. A plain reading of the provision makes it explicit that until the vacancy in the office of the President is filled in under sub-section (1), all the powers and duties of the President shall be performed by such elected Councillor as the State Government may nominate in this behalf. There is no guideline or rider attached to the exercise of powers under sub-section (2) inasmuch as it does not speak of such exercise only in favour of the Councillor who enjoys the majority of the elected Council. The only rider is that when the post of President is reserved under Section 29 (B), the nomination should be from amongst the elected Councillors belonging to such reserved category.

8. Admittedly, the post of office of Nagar Panchayat, Jaijaipur was not reserved for any particular category and as such, the proviso to sub-section (2) has no application in the case. The issue as to when the office of President or a seat of Council would become vacant or is declared vacant could have been agitated by the parties in WPC No.1551/2015 when this Court directed the State Government to exercise powers under Section 37 (2). Once that direction has been issued, it may not be open for this Court in this petition to hold that there is no contingency for exercise of powers under Section 37 (2). It would amount to taking out the very basis of the order passed by this Court in the earlier writ petition.

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 writ 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.”

4. It has been urged before us relying upon the judgment of the Supreme Court in the matter of **D. Sanjeevayya v. Election**

Tribunal, Andhra Pradesh and others¹, that the vacancy in question is a temporary vacancy and therefore no fresh election can be held and only nominated person can continue.

5. We are afraid, we cannot accept this submission. We are not going into the analysis of the Section, because in para 9 of the order passed in W.P.(C)No.2011/2015, the learned Single Judge has held that even if it is considered that the office of the President is vacant, Councillor Mahendra Chandra 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. Therefore, the crux of the reasoning of the learned Single Judge is that Shri Mahendra Chandra is not entitled to hold the post of President regardless of the restraint order passed or not. Shri Mahendra Chandra is dis-entitled to hold office not only because of the restraint order but because he has been convicted and once he has been convicted, he cannot hold the elected office and as such, he is disqualified from holding such office. Therefore, the vacancy has arisen and since the vacancy has arisen that must be filled in by election and not by nomination.

6. We live in a democracy. India is a democratic republic. This is stated in the Preamble of the Constitution which is the heart and soul of our Constitution. Therefore, even if two interpretations are available, the interpretation which is more in line with the principles of democracy will have to be accepted.

We cannot have a situation where the person nominated by the

¹ AIR 1967 SC 1211

Government continues to hold office even if he lacks majority. The President of Nagar Panchayat has to be elected directly. Shri Mahendra Chandra was elected directly. In view of the fact that Shri Mahendra Chandra was elected directly and he has been convicted and cannot continue to hold the office of President of Nagar Panchayat, fresh election must and should be conducted for the Office of the President of Nagar Panchayat, Jaijaipur.

7. In this view of the matter, we do not find any merit in the appeal and the appeal is accordingly dismissed.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge