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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2011 of 2015**

- Smt. Jhankeshwari Chandra W/o Shri Balram Chandra, Aged About 38 Years Vice President, Nagar Panchayat Jaijaipur, District Janjgir Champa, R/o Jaijaipur, Police Station & Tahsil Jaijaipur, District Janjgir Champa, (Chhattisgarh), Civil & Revenue District Janjgir Champa, (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Ministry Of Urban Administration & Development, Mahanadi Bhawan, Mantralaya, Naya Raipur, (Chhattisgarh)
2. The Director, Directorate Of Urban Administration & Development, Naya Raipur, (Chhattisgarh)
3. The Collector, District Janjgir Champa, (Chhattisgarh)
4. The Nagar Panchayat, Jaijaipur, Through Chief Municipal Officer, Nagar Panchayat, Jaijaipur, District Janjgir Champa, (Chhattisgarh)
5. Shri S.K. Sahu, Chief Municipal Officer, Nagar Panchayat Jaijaipur, District Janjgir Champa, (Chhattisgarh)
6. Shri Narendra Prajapati, Acting President And Councilor Of Ward No. 9, Nagar Panchayat, Jaijaipur, District Janjgir Champa, (Chhattisgarh)

---- Respondent

For Petitioner : Shri B.P. Sharma, Advocate.
For Respondents 1 to 3 : Shri Adhiraj Surana, Deputy GA.
For Respondents 4 & 5 : Shri RS Baghel, Advocate.
For Respondent No.6 : Shri Pradeep Saxena, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board**

13/01/2016

1. The petitioner is the Vice President of the Nagar Panchayat, Jaijaipur, District Janjgir-Champa. In general elections, one Mahendra Chandra was elected as President of the said Nagar Panchayat. One Balram Chandra preferred WPC No.221/2015 challenging the continuation of Mahendra Chandra as President of the said Nagar Panchayat despite the fact that he has been convicted by the 2nd ASJ, Sakti on 9.1.2015 for committing offences under Sections 332, 147 and 427 of the IPC and sentenced to undergo RI for 2 years, 6 months and 6 months respectively. He has also been convicted under Section 132 of the Representation of the People Act, 1951 and sentenced to undergo RI for 3 months. In yet another Sessions Trial, the said President has been convicted and sentenced to undergo RI for 5 years and 6 months. By interim order dated 11.2.2015 in WPC No.221/2015, this Court restrained the said President from functioning as the President of the Nagar Panchayat.
2. The petitioner thereafter preferred WPC No.635/2015 which was disposed of by this Court on 15.4.2015 directing the Collector to decide the pending representation of the petitioner for her nomination as Executive/working President of the Nagar Panchayat. When no steps were taken by the respondents, the petitioner preferred WPC No.1551/2015 which was disposed of on 1.9.2015. In this writ petition, this Court made the following observations in paras- 3 to 7:-

“(3) The provisions of sub-section 2 of Section 36 of the Act of 1961 required State Government to nominate one of the elected councillors to exercise power and duties of the President, until the vacancy in the office of President is filled in as provided in subsection (1) of Section 37 of the Act.

(4) It appears that the State Authorities have not acted to discharge their duties to take expeditious steps to make proper arrangement of a working President in terms of aforesaid provisions despite laps of more than six months. The legislative scheme does not contemplate such a situation and the spirit of the provisions required the State to nominate as early as possible, one of the elected councilor to work as President, which has not been done till date despite judicial intervention earlier.

(5) In these circumstances, a direction is required to be issued to the State Authorities to pass necessary orders in terms of sub-section 2 of Section 37 of the Act of 1961 to nominate a working President of the local body within a period of sixty days from today. Till the appropriate nomination by the State Government, in order to ensure proper functioning of the local body it would be proper to make a interim arrangement by judicial order. Petitioner is said to be Vice President of the local body and his name was also recommended by 8 out of 15 councillors for being nominated as working President.

(6) Considering the present situation and also taking into consideration that under Section 52, in the exigency where the President is absent, the meetings are presided over by the Vice President of the Council, the petitioner shall be allowed to preside over the meetings of the council till the appropriate arrangement of nomination under Section sub Section 2 of Section 37 of the CG Municipal Act, 1961 as directed by this Court is completed by respondent/State.

(7) The State Counsel is directed to communicate this order to the State Government for taking necessary steps.”

3. In the above backdrop, the State Government has passed the impugned order dated 26.10.2015 by exercising powers under Section 37 (2) of

the CG Municipalities Act, 1961 (henceforth 'the Act, 1961') nominating respondent No.6 Shri Narendra Prajapati as the person who shall perform the duties of the President of the Nagar Panchayat, Jaijaipur.

4. Learned counsel for the petitioner would argue that the elected President having not been unseated from the office as he has never been restrained from functioning, there is no vacancy in the office of the President, therefore, the State Government should not have exercised the powers under Section 37 (2) of the Act, 1961. In the alternative, he would submit that since 8 out of 15 Councillors have recommended for the petitioner's appointment as working President, the State Government should have nominated the petitioner as working President rather than nominating someone else who does not enjoy the support of majority of the Councillors.
5. Per contra, Shri Surana learned State Counsel, Shri Baghel, learned counsel for respondents No.4 & 5 and Shri Saxena, learned counsel appearing for respondent No.6 would contend that the State Government has only ensured compliance of the order passed by this Court, therefore, till the order passed by this Court in WPC No.1551/2015 stands, it cannot be said that there is no vacancy in the office of the President. They would submit that the remedy for the petitioner lies in challenging the order passed in WPC No.1551/2015 or to seek modification of the same. In this independent petition the order

contrary to the earlier order of this Court cannot be passed.

6. Section 37 of the Act, 1961 with which this Court is concerned in this writ petition reads thus:-

“37. Filling up of casual vacancies. - (1) As soon as the office of a President, or a seat of Councillor elected from ward, becomes vacant, or is declared vacant, or the election of President or the Councillor, as the case may be, is declared void, the State Government shall forthwith inform the State Election Commission for filling up the vacancy and the person so elected shall hold office of President or Councillor, as the case may be, only for the remaining period of the Council:

Provided that if the remaining period of the Council is less than six months, such vacancy shall not be filled in.

(2) Until the vacancy in the office of 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:

Provided that if the office of President is reserved under Section 29-B the President shall be nominated from the elected Councillors belonging to such reserved category.”

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.

10. Thus in the considered opinion of this Court, at-least a temporary vacancy has occurred in the office of the Nagar Panchayat, Jaipur and the power exercised by the State Government under Section 37 (2) cannot be faulted with.

11. For the foregoing, the writ petition being devoid of any substance deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

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