

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (C) No. 447 of 2016**

Yashvardhan Verma, S/o : - Ravindra Kumar Verma,
Aged about 30 years, R/o:- Shitla Mata Ward, Nagar
Panchayat – Pallari, Post & Tahsil – Pallari, Civil &
Revenue – District – Baloda Bazar – Bhatapara (C.G.)

---- Petitioner**Versus**

1. Bhuneshwar Dewangan, S/o:- Udayram Dewangan,
Aged about 34 years, R/o:- Village Pallari, Post & Tahsil
– Pallari, Civil & Revenue District – Baloda Bazar-
Bhatapara (C.G.)
2. State of Chhattisgarh, Through Returning Officer, Nagar
Panchayat- Pallari, District – BalodaBazar, Bhatapara
(C.G.)

---- Respondents

For Petitioner	: Mr. Hemant Gupta, Advocate.
For Respondent No. 1	: Mr. C.R. Sahu, Advocate.
For Respondent No.2/State	: Mr. S. Majid Ali, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****07/07/2017**

(1) The petitioner was declared elected as Councillor of Ward No. 9 of Nagar Panchayat, Pallari, Tahsil & District Baloda Bazar on 31.12.2014. His election on the post of Councillor was notified in the official Gazette on 8th January, 2015. Thereafter, election petition challenging the petitioner's

election was presented by respondent No. 1 before the District Judge, Baloda Bazar on 09.03.2015 under Section 20 (3) of the Chhattisgarh Municipalities Act, 1961 (henceforth 'Act, 1961').

(2) The petitioner raised an objection under Section 20(3) of the Act, 1961 that election petition filed by respondent No. 1 is barred by Section 20(3)(i) of the Act, 1961 as it has been filed after 30 days from the date of notification of his election in the official gazette.

(3) By the impugned order, the petitioner's application has been rejected by the learned District Judge, against which instant writ petition has been filed questioning the same.

(4) Shri Hemant Gupta, learned counsel for the petitioner would submit that the impugned order is liable to be set aside as Section 20(3)(i) clearly bars the admission of the election petition after 30 days from the date on which the result of such election is notified in the official gazette. He submits that the election petition was filed on 9.3.2015 whereas the petitioner's election on the post of Councillor was notified in the official Gazette on 8th January, 2015 and, therefore, the election petition filed by respondent No. 1 is liable to be dismissed by allowing instant writ petition, being hit by Section 20(3)(i) of the

Act, 1961.

(5) On the other hand, counsel for respondent No.1 would submit that firstly the writ petition being No. W.P.(C) No.240 of 2015 was filed by respondent No. 1 before this Court questioning the election; that writ petition was disposed of with liberty in favour of respondent No. 1 to file election petition challenging the election of petitioner and, accordingly the election petition was filed on 09.03.2015 and, therefore, filing of election petition is in accordance with law as liberty was reserved by this Court in favour of election petitioner to file the same and the delay, if any, in filing the said election petition deserves to be condoned and, therefore, learned District Judge has rightly rejected the objection raised by the petitioner.

(6) I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove with utmost circumspection.

(7) The petitioner has been declared elected on the post of Councillor of Ward No. 9 of Nagar Panchayat, Pallari, District Baloda Bazar. His election on the post of Councillor was notified in the official Gazette on 8th January, 2015. Election of a returned candidate can be challenged only in accordance

with Section 20 of the Act, 1961

(8) Sub-section (3) of Section 20 of the Chhattisgrh Municipalities Act, 1961 states as under :-

“20. Election Petitions.- (3) No petition presented under sub-section (2) shall be admitted unless-

(i) *it is presented within thirty days from the date of which the result of such election or nomination was notified in the Gazette;*

(ii) xxx xxx xxx”

(9) That following three conditions are condition precedents for valid presentation of an election petition :-

(i) There must be an election or selection at the election in question; and

(ii) The election or selection in question must have been notified in the Gazette.

(iii) The election petition must have been presented within 30 days from the date of notification of election/selection in the official gazette.

(10) Sub-Section (3) of Section 20 of the Act, 1961 begins with negative clause, it states that no petition shall be presented under sub-Section 2 of Section 20 unless it is presented within thirty days from the date of declaration of result of election is notified in the official gazette.

(11) It is well settled principle of law that the negative words are clearly prohibitory and are ordinarily used as legislative device to make a statute imperative.

(12) Justice K. Subba Rao speaking for the constitution bench of the Supreme Court in the matter of **M. Pentiah and others Vs. Muddala Veeramallappa and others**¹ has clearly laid down the aforesaid proposition, his Lordship pertinently observed as under:-

“15.This section confers on the Committee an express power couched in a negative form. Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative.”

(13) **Earl T. Grawford in construction of statutes, page 523** has held “prohibitive or negative words can rarely, if ever, be directory. And this is so even though the statute provides no penalty for disobedience”.

(14) In **Sutherland's Statutory Construction, 3rd Edition volume 3, at page 107**, it was pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that

1 AIR 1961 SC 1107

which obtains with respect to the public officers.

(15) Similar is the proposition laid down by their Lordships of the Supreme Court in the matter of Haridwar Singh Vs. Bagun Sumbrui and others², which reads thus:-

“13.....Prohibitive or negative words can rarely be directory and are indicative of the intent that the provision is to be mandatory (see Earl T. Grawford, *The construction of Statutes*, pp. 523-4).”

(16) Again in the matter of Lachmi Narain and others Vs. Union of India and others³, their Lordships of the Supreme Court have held in uncertain terms that use of peremptory language in a negative form is *per se* indicative of the intent that the provision is to be mandatory. Paragraph 68 of the report states as under:-

“68. If the provision is couched in prohibitive or negative language, it can rarely be directory, the use of peremptory language in a negative form is *per se* indicative of the intent that the provision is to be mandatory. (Crawford, *The Construction of Statutes*, pp. 523-24). Here the language of sub-section (2) of Section 6 is emphatically prohibitive, it commands the Government in unambiguous negative terms that the period of the requisite notice must not be less

2 (1973) 3 SCC 889

3 (1976) 2 SCC 953

than three months.”

(17) In the matter of Nasiruddin and others Vs. Sita Ram Agarwal⁴, three judges bench of the Supreme Court have held that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character.

(18) In the matter of State Bank of India Vs. B.S. Agriculture Industries (I)⁵, their Lordships of the Supreme Court, while considering Section 24-A of the Consumer Protection Act, 1986 which provides that the District Forum, the State Commission or the National Commission shall not admit the petition unless it is filed within two years from the date on which the cause of action has arisen, have held that provision being peremptory in nature and expression “shall not admit a complaint” is a sort of a legislative command to the consumer and it was held as under:-

“11.....It would be seen from the aforesaid provision that it is peremptory in nature and requires the consumer forum to see before it admits the complaint that it has been filed within two years from the date of accrual of cause of action. The consumer forum, however, for the reasons to be recorded in writing may condone the delay in filing the complaint if sufficient cause is shown. The expression, “shall

4 (2003) 2 SCC 577

5 (2009) 5 SCC 121

not admit a complaint” occurring in Section 24-A is sort of a legislative command to the consumer forum to examine on its own whether the complaint has been filed within the limitation period prescribed thereunder.”

(19) In the matter of Nasiruddin and others (supra), their Lordships of the Supreme Court further held that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory and observe as under:-

“**38.** It is well-settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequence therefor are specified.”

(20) Following the principle of law laid down in the aforesaid decisions of the Supreme Court, it is quite vivid that word no petition presented under sub-section (2) “shall be admitted” is an expression occurring in Section 20(3) of the Act, 1961 is a legislative device making the said provision mandatory and Election Tribunal will not entertain election petition unless it is filed within 30 days from the date of result of election was notified in the official gazette, as such, provisions contained in

sub-section (3) of Section 20 of the Act, 1961 is mandatory in nature. In the instant case, admittedly the election petition was filed beyond the period of 30 days and, therefore, election petition is barred by provisions contained in Section 20(3)(i) of the Act, 1961. So far as objection raised by respondent No. 1 that election petition was filed pursuant to the liberty given by this court in his favour is concerned, the respondent No. 1 cannot be allowed to take advantage of his own wrong and, therefore, the election petition filed by respondent No. 1 is not maintainable as barred by above-stated provisions of law. Since the limitation of filing election petition had already been expired on the date of institution of election petition, the learned District Judge is absolutely unjustified in rejecting the petitioner's objection with regard to maintainability of election petition.

(21) Accordingly, the writ petition is allowed. Consequently, the impugned order dated 04.01.2016 is set aside and the Election Petition filed by respondent No. 1 before the District Judge stands dismissed, leaving the parties to bear their own costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

