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HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 16 of 2017****Judgment Reserved on 06.10.2018****Judgment delivered on 14.11.2018**

Smt. Saroja Devi Gupta, Aged about 46 years, W/o Mr. Ajay Kumar Gupta, R/o Pendra, Tehsil- Pendra, District – Bilaspur (C.G.)
(Petitioner)

----Applicant**Versus**

1. Smt. Aruna Jaiswal, W/o Mr. Ganesh Prasad Jaiswal, Aged about 42 years
2. Smt. Bharti Soni, W/o Mr. Ravi Shankar Soni, Aged about 36 years
3. Smt. Mukta Chandrawanshi, W/o Mr. Sanjay Chandrawanshi, Aged about 38 years
4. Smt. Savita Gupta, W/o Mr. Mahendra Gupta, Aged about 47 years
All R/o – Pendra, Tehsil – Pendra, District – Bilaspur (C.G.)
5. Om Prakash Verma, Then-Chief Election Officer, Nagar Panchayat Pendra, District – Bilaspur (C.G.)
6. Chief Election Officer, District Election Commission, Bilaspur, District – Bilaspur (C.G.)
7. Chief Election Officer, State Election Commission, Raipur, District – Raipur (C.G.)

---- Respondents

For Petitioner	: Shri Achyut Tiwari, Advocate.
For Respondent No.1	: Shri Rakesh Pandey, Advocate.
For Respondents No. 2 to 4	: None, though served.
For respondents No. 5 to 7	: None

Hon'ble Shri Justice Sanjay K. Agrawal

[C.A.V. Judgment]

(1) This revision petition has been preferred under Section 26(2) of the Chhattisgarh Municipalities Act, 1961 (henceforth "Act of 1961") calling in question the legality, validity and correctness of the order dated 24.12.2016 passed by the Additional District Judge, Pendra Road, Bilaspur in Civil M.J.C. No. 15 / 2015 whereby petitioner's election petition filed under Section 20 of the Act of 1961 has been dismissed finding no ground to set aside the election

(2) The election for the post of President, Nagar Panchayat, Pendra, District Bilaspur was held on 31.12.2004, in which respondent No.1 was declared as returned candidate and the petitioner and respondents No. 2, 3 & 4 remained unsuccessful. The petitioner herein filed an election petition under Section 20 of the Act of 1961 calling in question the election of respondent No. 1 herein on the ground enumerated under Sections 22(1)(a) and 22(1)(d)(i) of the Act of 1961 before the Election Tribunal stating inter alia that Tahsildar, Pendra was not competent to issue caste certificate to respondents No. 1 to 4 herein and they were not eligible to contest the election for the post of President, Nagar Panchayat, Pendra and, therefore, election of the President of Nagar Panchayat, Pendra be set aside and the petitioner be declared as elected candidate.

(3) Private respondents filed their written statement opposing the grounds urged in the election petition and supported the election and the result of the election declared by the Returning Officer.

(4) Learned Election Tribunal, by its impugned order dated 24.12.2016, dismissed the election petition by upholding the election of respondent No.1 for the post of President, Nagar Panchayat, Pendra, against which this revision petition under Section 26(2) of the Act of 1961 has been preferred questioning the same.

(5) Shri Achyut Tiwari, learned counsel appearing for the election petitioner would submit that respondent No.1 including respondents No. 2 to 4 were not qualified to be chosen as President of Nagar Panchayat, Pendra as they were Other Backward Class [OBC] belonging to the State of Madhya Pradesh and they were not declared OBC in the State of Chhattisgarh and, therefore, nomination paper of respondent No.1 was improperly accepted by the returning officer and the result of the election, in so far as it concerns to the returned candidate, has been materially affected and, therefore, the Election Tribunal ought to have set aside the election of respondent No.1 for the post of President, Nagar Panchayat, Pendra and ought to have declared the petitioner as a duly elected/returned candidate i.e. President of Nagar Panchayat, Pendra and, therefore, impugned order be set aside and the election petitioner be declared elected as President of Nagar Panchayat, Pendra. He placed reliance upon the judgment of the Supreme Court in the matter of **Bir Singh V. Delhi Jai Board & others**¹ in support of his submissions.

1 JT 2018 (8) SC 463

(6) Mr. Rakesh Pandey, learned counsel appearing for respondent No.1 would submit that the election petitioner neither pleaded nor established that respondent No. 1 is the OBC woman and belonging to the State of Madhya Pradesh, therefore, she was not eligible to contest the election for the post reserved for OBC (Female) in the State of Chhattisgarh. He further submits that the election petitioner only pleaded that the Tahsildar has issued caste certificate in favour of respondent No.1/returned candidate i.e. Ex.P-7 without verifying caste status from her place of birth and that too on the basis of caste of her husband whereas it ought to have enquired and issued caste certificate on the basis of the progeny of her father and that too from the State of which she belonged i.e. State of Madhya Pradesh and the similar objection was taken by the election petitioner while filing objection against her nomination paper, which was rightly rejected by the returning officer.

(7) None for respondents No. 3 & 4, though served.

(8) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(9) The question for consideration is whether learned Election Tribunal was justified in dismissing the election petition filed by the election petitioner ?

(10) It is not in dispute that election for the post of President, Nagar Panchayat Pendra was held on 31st December, 2014, the result of which was declared on

4.1.2015. The post of President, Nagar Panchayat, Pendra was reserved from OBC (Female). The petitioner as well as returned candidate / respondent No.1 including respondents No. 3 & 4 all contested the election in which respondent No.1 was declared elected for the post of President, Nagar Panchayat, Pendra.

(11) The petitioner filed an election petition under Section 20 of the Act of 1961 in which key pleadings are averred in paragraphs 9, 10, 14 and 15, which are extracted below for the sake of convenience.

“9. यह कि, जाति प्रमाण पत्र पिता की जाति व नाम के आधार पर मूलतः जन्म स्थान के न्यायालय श्रीमान् तहसीलदार व श्रीमान् अनुविभागीय अधिकारी द्वारा क्षेत्राधिकार के अंतर्गत जारी किये जाने का प्रावधान है । पति के नाम पर जाति प्रमाण पत्र जारी किये जाने का कोई प्रावधान नहीं है जाति प्रमाण पत्र जारी करने के लिए वंशवृक्ष पाठशाला का दाखिल खारिज पंजी स्थानीय कोटवार का बयान इत्यादि आवश्यक होता है । न्यायालय श्रीमान् तहसीलदार महोदय पेण्ड्रा को उत्तरवादीगण का जाति प्रमाण पत्र जारी करने के पूर्व आवेदन पत्रों की जांच हेतु मूलतः उनके जन्म स्थान के पीठासीन अधिकारी को प्रेषित करना चाहिये था किन्तु उनके द्वारा विधि एवं प्रक्रिया का पालन न कर जाति प्रमाण पत्र अपने अधिकार क्षेत्र से बाहर जाकर जारी किया गया है जो अकृत एवं शून्य है । जिसके आधार पर उत्तरवादी क्रमांक- 1, 2, 3 एवं 4 को चुनाव लड़ने की पात्रता नहीं थी जिससे श्रीमान् मुख्य निर्वाचन अधिकारी को उत्तरवादीगण का नाम निर्देशन पत्र निरस्त कर याचिकाकर्ता को निर्विरोध नगर पंचायत पेण्ड्रा का अध्यक्ष घोषित करना चाहिये था उनके द्वारा विधि एवं प्रक्रिया का पालन नहीं किया गया है जिससे उनके द्वारा की गई कार्यवाही विधि एवं प्रक्रिया व सिद्धांतों के विपरित है ।

10. यह कि याचिकाकर्ती द्वारा दिनांक-19/12/2014 को नाम निर्देशन पत्रों की जांच एवं स्कूटनी के समय माननीय मुख्य

निर्वाचन अधिकारी, नगर पंचायत पेण्ड्रा के समक्ष 11:15 बजे सुबह इस आशय की आपत्ति प्रस्तुत की गई थी कि जाति प्रमाण पत्र मूल वंश के आधार पर ही जारी किया जाता है। पति के नाम के आधार पर जाति प्रमाण जारी नहीं किया जा सकता है जिससे उत्तरवादी क्रमांक-1, 2, 3 एवं 4 चुनाव लड़ने में अपात्र है जिनका नाम निर्देशन पत्र निरस्त किया जावे तथा जिनका जन्म छत्तीसगढ़ राज्य के बाहर का है किन्तु श्रीमान् निर्वाचन अधिकारी द्वारा साक्ष्य का अभाव बताकर आपत्ति समय-सीमा में प्रस्तुत नहीं लिख कर अपास्त कर दिया गया जबकि नाम निर्देशन पत्रों की जांच व स्कूटनी का समय सुबह दस बजे से दोपहर तीन बजे तक का था जिससे भी चुनाव प्रक्रिया विधि एवं नियमानुसार न होने से उत्तरवादीगण को आपत्र घोषित कर याचिकाकर्त्ती को नगर पंचायत, पेण्ड्रा का निर्वाचित अध्यक्ष घोषित किये जाने का पर्याप्त एवं न्यायोचित आधार है।

14. यह कि याचिकाकर्त्ती मूलतः जन्मतः छत्तीसगढ़ महिला पिछड़ा वर्ग की है जो एक मात्र छत्तीसगढ़ महिला पिछड़ा वर्ग से चुनाव लड़ने की पात्र थी। शेष उत्तरवादी क्रमांक-1, 2, 3 एवं 4 मूलतः एवं जन्मतः छत्तीसगढ़ राज्य से बाहर अन्य राज्य मध्यप्रदेश की जिन्हें चुनाव लड़ने की पात्रता नहीं थी जिससे माननीय न्यायालय द्वारा उत्तरवादी क्रमांक-1, 2, 3 एवं 4 को अयोग्य घोषित किया जाकर याचिकाकर्त्ता को नगर पंचायत पेण्ड्रा को अध्यक्ष पद हेतु निर्वाचित घोषित किये जाने के आदेश पारित किये जाने योग्य है।

15. यह कि उत्तरवादिनी 4 श्रीमती सविता गुप्ता का जन्म जबलपुर मध्यप्रदेश का है जो हलवाई जाति के आधार पर चुनाव लड़ी है जबकि मध्यप्रदेश में हलवाई जाति पिछड़े वर्ग के अंतर्गत नहीं आता है जिसकी जानकारी होने के बावजूद न्यायालय श्रीमान् तहसीलदार द्वारा हलवाई जाति का जाति प्रमाण पत्र जारी किया गया है जो स्वयं में अकृत्य एवं शून्य है।"

(12) A careful perusal of the aforesaid pleadings would vividly show that the ground averred in the election petition basically is that the caste certificate issued by Tahsildar, Pendra to respondent No.1 including private respondents was not in

accordance with law as it was issued on the basis of caste of their husband and it was not sent to concerned State which they belonged to for due enquiry, as such, nomination papers were liable to be rejected.

(13) Election petitioner, in paragraph 14 of the election petition, has pleaded that respondents No. 1 to 4 belonged to State of Madhya Pradesh, therefore, they were not qualified to contest the election for the post of President, Nagar Panchayat, Pendra. It has also been pleaded in paragraph 15 of the election petition that respondent No. 4 – Smt. Savita Gupta is the OBC candidate of State of Madhya Pradesh, therefore, she was not eligible to contest the election for the post of President, Nagar Panchayat, Pendra, which was reserved for OBC (Female) in the State of Chhattisgarh.

(14) In sum & substance the ground mentioned in the election petition was that the caste certificate issued to respondent No.1 /returned candidate i.e. Ex.P-7 is not in accordance with law and, therefore, nomination paper filed on the basis of caste certificate showing respondent No. 1 as OBC (female) candidate ought to have been rejected by the learned Returning Officer, though it has clearly been pleaded in paragraph 14 that respondents No. 1 to 4 belong to State of Madhya Pradesh, therefore, they were not qualified to contest the election for the post of President, Nagar Panchayat, Pendra.

(15) The sole question for consideration is, whether the petitioner herein has pleaded and established the material facts in support of the grounds raised in the election petition.

(2) Such petition may be presented on one or more of the grounds specified in Section 22:

- to the District Judge, where such election or nomination is held within the revenue district in which the Court of the District Judge is situate, and in any other case, to the Additional District Judge having the permanent seat of his Court within the revenue district in which such election or nomination is held and if there be more than one such Additional District Judge within the said revenue district, to such one of them as the District Judge may specify for the purpose (hereinafter such District Judge or Additional District Judge referred to as Judge).

(4) xxx xxxx xxx

- (a) contain a concise statement of the material facts on which the petitioner relies;
- (b) set forth with sufficient particulars, the ground or grounds on which the election or nomination called in question;

(18) The aforesaid provisions of the Act of 1961 are *para materia* provisions as contained in the Representation of the People Act, 1951.

(19) The importance of the pleading in the election petition has been considered by the Supreme Court in catena of decisions, few of them may be noticed herein profitably and gainfully, which read thus :-

(20) In the matter of **Santosh Yadav Vs. Narender Singh**², their Lordships of the Supreme Court clearly held that concise and specific pleadings setting out all relevant material facts must be pleaded and held as under :-

“15. A word about the pleadings, Section 83 of the Act mandates an election petition to contain a concise statement of the material facts on which the petitioner relies. The rules of pleadings enable a civil dispute being adjudicated upon by a fair trial and reaching a just decision. A civil trial, more so when it relates to an election dispute, where the fate not only of the parties arrayed before the Court but also of the entire constituency is at a stake, the game has to be played with open cards and not like a game of chess or hide and seek. An election petition must set out all material facts wherefrom inferences vital to the success of the election petitioner and enabling the Court to grant the relief prayed for by the petitioner can be drawn subject to the averments being substantiated by cogent evidence. Concise and specific pleadings setting out all relevant material facts, and then cogent affirmative evidence being adduced in support of such averments, are indispensable

2 (2002) 1 SCC 160

to the success of an election petition. An election petition, if allowed, results in avoiding an election and nullifying the success of a returned candidate. It is a serious remedy. Therefore, an election petition seeking relief on a ground u/s 100(1)(d) of the Act, must precisely allege all material facts on which the petitioner relies in support of the plea that the result of the election has been materially affected. Unfortunately in the present case all such material facts and circumstances are conspicuous by their absence.”

16. The law as regards the result of election having been materially affected in case of improper acceptance of nomination may be summed up as under:-

(1) A case of result of the election, in so far as it concerned the returned candidate, having been materially affected by the improper acceptance of any nomination, within the meaning of Section 100(1)(d)(i) of the Representation of the People Act, 1951 has to be made out by raising specific pleadings setting out all material facts and adducing cogent evidence so as to enable a clear finding being arrived at on the distribution of wasted votes, that is, the manner in which the votes would have been distributed if the candidate, whose nomination paper was improperly accepted, was not in the fray.

(21) Similarly in the matter of **Jaipal Singh Vs. Sumitra Mahajan (Smt.) & another**³, again their Lordships of the Supreme Court have emphasized the importance of specific pleadings and held as under:-

“7. Section 83 deals with contents of petition. It states that an election petition shall contain a concise statement of material facts, on which the petitioner relies and shall state full particulars of any corrupt practices which petitioner alleges and which shall be signed by him and verified in the manner laid down in the Code of Civil Procedure. In the case of *Sopan Sukhdeo Sable and others Vs. Assistant Charity Commissioner and others*, it has been held that the Order VI Rule 2(1) of CPC deals with basic rule of pleadings and declares that the pleading has to state material facts and not the evidence; that there is a distinction between material facts and not the evidence; that there is a distinction between 'material facts' and 'particulars' and the words 'material facts' show that the facts necessary to formulate a complete cause of action must be stated. Omission of single material fact leads to an incomplete cause of action and consequently, the plaint becomes bad.”

(22) In the matter of **Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar**⁴, their Lordships of the Supreme Court while considering the words “material facts and material particulars” held as under:-

“57. It is settled legal position that all “material facts” must

3 (2004) 4 SCC 522

4 (2009) 9 SCC 310

be pleaded by the party in support of the case set up by him within the period of limitation. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact will entail dismissal of the election petition. The election petition must contain a concise statement of “material facts” on which the petitioner relies.”

60. According to the appellant, in the election petition, there was no averment whether the bore wells were dug with the consent and / or active knowledge of the appellant. This averment was absolutely imperative and the failure to mention such an important averment in the petition is fatal for the election-petitioner (respondent herein) and the election petition is liable to be summarily dismissed on that ground.

61. The legal position has been crystallized by a series of the judgments of this Court that all those facts which are essential to clothe the election petitioner with a complete cause of action are “material facts” which must be pleaded, and the failure to plead even a single material facts amounts to disobedience of the mandate of Section 83(1)(a) of the Act.”

(23) Recently, the Supreme Court in the matter of **Rajendra Kumar Meshram**

Vs. Vanshmani Prasad Verma⁵ has held as under :-

“16. The trial of an election petition, as per Section 87 of

5 (2016) 10 SCC 715

1951 Act has to be in accordance with the provisions of the Code of Civil Procedure, 1908. When no pleadings that the election of the returned candidate was void on the grounds mentioned in Section 100(1)(A) were made and no issue on this score was struck and no opportunity to the returned candidate to adduce relevant evidence was afforded, the High Court, in our considered view, could not have found that the election of the returned candidate was void under Section 100(1)(a).

17. In view of the state of the pleadings as noticed above; the issues framed and the evidence led by the parties, we cannot agree with the High Court that the respondent-election petitioner has made out a case for declaration that the result of the election in favour of the returned candidate was void under Section 100(1)(a) of the 1951 Act. Having reached our conclusion on above said basis, it is not necessary to go into the question raised on behalf of the respondent-election petitioner that failure to produce the copy of the electoral roll of the constituency in which a candidate is a voter or a certified copy thereof, by itself, would amount to a proof of lack of / absence of qualification under Section 5 of the 1951 Act. All that would be necessary for us to say in this regard is that any such view would not be consistent with the legislative intent expressed by the enactment of two separate and specific provisions contained in Section 100(1)(a) and 100(1)(d) of the 1951 Act.”

(24) The Supreme Court in the matter of **Sadashiv H. Patil Vs. Vithal D. Teke**⁶ had clearly held that election law has to be construed strictly and observed as under:-

“14. A finding as to disqualification under the Act has the effect of unseating a person from an elected office held by him pursuant to his victory at the polls in accordance with the democratic procedure of constituting a local authority. The consequences befall not only him as an individual but also the constituency represented by him which would cease to be represented on account of his having been disqualified. Looking at the penal consequences flowing from an elected councillor being subjected to disqualification and its repercussion on the functioning of the local body as also the city or township governed by the local body the provisions have to be construed strictly. A rigorous compliance with the provisions of the Act and the Rules must be shown to have taken place while dealing with a reference under Section 7 of the Act.”

(25) Reverting to the facts of the present case in light of the principle of laid down by the Supreme Court in the afore-cited cases and considering the para materia provisions of the Representation of the People Act, 1951, it is quite vivid that the election petitioner herein did not expressly plead that respondent No. 1 was the OBC (Female) in the State of Madhya Pradesh and she was not the OBC (Female) candidate of the State of Chhattisgarh, therefore, she was not qualified, to be chosen as President of Nagar Panchayat, Pendra; the petitioner also failed to establish by improper acceptance of the nomination paper of respondent No.1,

6 (2000) 8 SCC 82

result of the election, in so far as it concerns to the returned candidate, has been materially affected; the petitioner only pleaded that caste certificate (Ex.P-7) issued to respondent No. 1 was on the basis of caste of her husband whereas it ought to have been on the basis of her father, and the caste certificate ought to have been issued after making enquiry from the State of Madhya Pradesh. As per law laid down by the Supreme Court in the afore-cited judgments read with Section 20(5) of the Act of 1961; it ought to have been specifically pleaded by the election petitioner that respondent No.1 did not belong to OBC (Female) candidate of the State of Chhattisgarh and she is only OBC (Female) of State of Madhya Pradesh, therefore, she was not qualified to be chosen as President in the State of Chhattisgarh. Even the petitioner did raise an objection before the Returning Officer but again she has simply pleaded that caste certificate has been issued on the basis of caste of her husband, which is contrary to law. She never pleaded either before the returning officer or before the Election Tribunal that respondent No.1 herein was OBC (female) candidate of the State of Madhya Pradesh and she is not the OBC (female) candidate of State of Chhattisgarh and, therefore, she was not qualified to be chosen as President of Nagar Panchayat, Pendra.

(26) As such, the election petitioner has failed to plead and establish the grounds which she has urged before this Court that respondent No.1 was not the OBC (Female) candidate belonging to the State of Chhattisgarh, therefore, she was not entitled to contest the election for the post of President, Nagar Panchayat, Pendra. She has only pleaded that the caste certificate issued by the competent authority /

State of Chhattisgarh was not in accordance with law, therefore, she was not qualified to contest the election of the President, Nagar Panchayat, Pendra as held by their Lordships of the Supreme Court in the matter of **Sadashiv H. Patil** (supra) that election law has to be construed strictly and strict pleading and the clinching evidence is required to establish the said ground.

(27) Further, the judgment cited by learned counsel appearing for the petitioner in the case of **Bir Singh** (supra) is not applicable in the instant case, as in the instant case there is complete lack of pleading and grounds which she has urged before this Court and the said ground was even not taken specifically either before the Returning Officer or before the Election Tribunal.

(28) In view of the foregoing discussion, learned Election Tribunal is absolutely justified in dismissing the election petition filed by the election petitioner in which I do not find illegality or perversity warranting interference of this court in exercise of revisional jurisdiction.

(29) As a fallout and consequence of the aforesaid discussion, the civil revision being devoid of substance is liable to be and is hereby dismissed leaving the parties to bear their own cost (s).

(30) Copy of this order be sent to the Election Tribunal for compliance and needful.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

__ HIGH COURT OF CHHATTISGARH AT BILASPUR

Civil Revision No. 16 of 2017

Applicant : Smt. Saroja Devi Gupta

Versus

Respondents: Smt. Aruna Jaiswal & others.

Head Note

English

(1) Material facts in the election petition must be pleaded and established in order to question the election of elected candidate of Municipal Council / Nagar Panchayat.

HINDI

(1) नगर पालिका / नगर पंचायत के निर्वाचित प्रत्याशी के निर्वाचन पर प्रश्न उठाने हेतु निर्वाचन याचिका के सारवान् तथ्यों को अभिवाचित तथा स्थापित करना होगा ।