

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 229 of 2015**

Ushadevi Satnami (Usha Hajarilal Bhardwaj), aged about 24 years, W/o Ranjeet Satnami, R/o Village & Post Piraiya, P.S. Chakarbhatta, Tahsil Bilha, District Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through : the Secretary, Department of Panchayat and Rural Development, Mahanadi Bhawan, Mantralaya, New Rajdhani, P.S. Rakhi, Tahsil & District Raipur (C.G.)
2. The State Election Commissioner, Mahanadi Bhawan, Mantralaya, New Rajdhani, P.S. Rakhi, Tahsil & District Raipur (C.G.)
3. The District Returning Officer and District Election Commissioner, Bilaspur, Collectorate Campus, Bilaspur, P.S. Civil Lines, Tahsil & District – Bilaspur (C.G.)
4. The Returning Officer for the Area No. 5, Bilha, District Panchayat, Bilaspur, P.S. Bilha, District Bilaspur (C.G.)
5. The Tahsildar, Bilha, P.S. Bilha, District Bilaspur (C.G.)
6. Pratima Sourabh Kaushik, aged about 28 years, W/o Sourabh Kaushik, R/o Village Podipart Sarwani, Tahsil Bilha, District Bilaspur, present Address : Vinoba Nagar, Near Gayatri Mandir, Bilaspur, P.S. Tarbahar, Tahsil & District Bilaspur (C.G.)
7. Arjun Sisodiya, The Sub Divisional Officer, Bilha, P.S. & Tahsil Bilha, District Bilaspur (C.G.)
8. Jugal Kishore Urwasha, The Tahsildar, Bilha, P.S. & Tahsil Bilha, District Bilaspur (C.G.)

---- Respondents

For Petitioner	:	Dr. N.K. Shukla, Senior Advocate with Shri S.C. Verma & Shri Shailendra Shukla, Adv.
For State	:	Shri Dilman Rati Minj, Dy. Govt. Advocate.

For Respondent No. 2 : Shri Rahul Kumar, Advocate on behalf of Shri R.S.Marhas, Advocate.

For Respondent No. 6 : Mr. Manoj Paranjpe, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

05/04/2018

(1) The petitioner as well as respondent No. 6 and two other candidates contested the election of Ward No. 5 - Bilha, Zila Panchayat, Bilaspur. After election, the respondent No. 6 was declared elected by the Returning Officer on 1.2.2015 and accordingly certificate was granted to respondent No. 6 under Rule 83 of the Chhattisgarh Nirvachan Niyam, 1995 declaring her as elected member of Zila Panchayat.

(2) Feeling aggrieved and dissatisfied with the declaration of result of respondent No. 6 as member of Zila Panchayat, Bilaspur, the petitioner herein has filed instant writ petition under Article 226 of the Constitution of India calling in question the election of respondent No. 6 and also claiming other reliefs in the instant writ petition.

(3) Return has been filed opposing the averments made in the writ petition stating *inter alia* the writ petition as framed and filed is barred by the provisions of Article 243-O (b) of the Constitution of India. It has also been averred that it is a case where election petition would be maintainable and writ petition as framed and filed is not maintainable and, therefore, it is liable to be dismissed.

(4) Dr. N.K. Shukla, learned Senior Counsel appearing for the petitioner would submit that though the petitioner has secured higher votes than respondent No. 6 but the returning officer illegally declared respondent No. 6 as elected candidate. He drew attention of this Court upon Annexure P-4 by submitting that the petitioner has secured more votes than respondent No. 6. He also drew attention towards the memo dated 6.2.2015 written by the Observer, State Election Commission, District Bilaspur to the Secretary, State Election Commission to demonstrate that the said memo supports the case of the petitioner and, as such, bar under Section 243 – O (b) would not be applicable and the petitioner be declared elected by setting aside the election of respondent No. 6. He would further submit that no election petition can be filed under Rule 21 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (henceforth “Rules, 1995”) read with Section 122 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (henceforth “Adhiniyam, 1993”) on the ground urged in this writ petition.

(5) Per contra, Shri Manoj Paranjpe, learned counsel appearing for respondent No. 6 would submit that there is bar to challenge the election in the writ petition in view of the constitutional provisions contained in Article 243-O (b) of the Constitution of India. He would further submit that Section 122 of the Adhiniyam, 1993 provides that an election under the Adhiniyam, 1993 shall be called in question only by a petition presented in the prescribed manner and, therefore, the writ petition as framed and filed is liable to be set aside and writ petition deserves to be dismissed.

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

(7) Firstly, it would be expedient to consider preliminary objection raised by respondent No. 6 that writ petition as framed and filed is barred by Article 243-O of the Constitution of India.

(8) Chapter IX consisting of Articles 243-243-O, has been inserted by the Constitution (73rd Amendment) Act, 1992 with effect from 24-4-1993 in the Constitution of India.

(9) Article 243K of the Constitution of India provides for election to the Panchayats. Article 243K. (1) & (4) provides as under:-

“Article. 243K. (1) The Superintendence, direction and control of the preparation of electoral rolls, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.”

(11) Thus, the legislature of State by virtue of Article 243K (4) of the Constitution of India makes provision with respect to all matters relating to, or in connection with, elections to the

Panchayats.

(10) Article 243-O of the Constitution of India provides for bar to interference by Courts in electoral matters and provides as under:-

“Article. 243-O. Notwithstanding anything in this Constitution,-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Article 243K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.”

(11) Article 243-O (b) clearly provides that no election to panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

(12) Thus, there is constitutional mandate that election to the Panchayat shall only be called in question by an election petition and in the manner as is provided for by or under any law made by the Legislature of a State.

(13) The Supreme Court in the matters of ***Mohinder Singh Gill v. Chief Election Commissioner¹***, ***Krishna Ballabh Prasad Singh Vs. Sub Divisional Officer Hilsa-cum-Returning Officer and others²*** and the Election Commission of

¹ AIR 1978 SC 851

² AIR 1985 SC 1746

India Vs. Shivaji and others³ while considering the *pari materia* provision contained in Article 329(b) of the Constitution of India has held that in view of the non obstante clause contained in Article 329(b) of the Constitution, the power of the High Court to entertain a petition questioning an election on whatsoever grounds under Article 226 of the Constitution is taken away. It has also been held in the said case that the word “election” has a long usage and the process of selection of a proper representative starts from the notification of election to the declaration of results and accordingly, it has been held that a petition under Article 226 of the Constitution of India is not maintainable for the purpose of challenging an election. Similarly non obstante clause as contained in Article 329 of the Constitution is also present in Article 243(O)(b) of the Constitution and in view of the categorical enunciation of the law in the aforesaid case, a petition under Article 226 is not maintainable.

(14) In a celebrated judgment, the Supreme Court way back in the year 1952 in the matter of **N.P. Ponnuswami v. The Returning Officer, Namakkal Constituency, Namakkal, Salem Dist., and others**⁴, has held that law does not contemplate two attacks on matters connected with election, one during the process of election and the other when it is completed by election petition. It was observed as under:-

“The law of elections in India does not contemplate that there should be two attacks on matters connected with election proceedings, one while the are going on by invoking the extraordinary jurisdiction of the High Court

3 AIR 1988 SC 61

4 AIR 1952 SC 64

under Article 226 of the Constitution (the ordinary jurisdiction of the Courts having been expressly excluded), and another after they have been completed by means of an election petition. Any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special Tribunal and should not be brought up at an intermediate stage before any Court.”

(15) Again in the matter of **Harnek Singh Vs. Charanjit Singh and others**⁵, the Supreme Court has held that writ petition would not be maintainable to challenge the dispute as regards validity or otherwise of an election in view of Article 243-O of the Constitution of India.

(16) Thus, in view of the constitutional bar contained in Article 243-O of the Constitution of India, I am of the considered opinion that the writ petition questioning the election cannot be entertained and, therefore, the writ petition is held to be not maintainable.

(17) The ground raised by learned Senior Counsel appearing for the petitioner that it is not covered by the grounds enumerated in Rule 21 of Rules, 1995 is also not correct. It is the case of petitioner that she has secured more votes than respondent No. 6, which according to her is apparent from Annexure P-4 and R-2(1) which is covered under the grounds enumerated under Rule 21 of the Rule of 1995 and, therefore, it cannot be held that such a ground cannot be raised in the election petition.

5 (2005) 8 SCC 383

(18) As a fallout and consequence of the aforesaid discussion, writ petition as framed and filed is held to be not maintainable in view of the constitutional bar contained in Article 243-O of the Constitution of India and the writ petition as framed and filed is dismissed as not maintainable leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

D/-