

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.1668 of 2018

Gauri Bai Dhurve, W/o Late Shyam Lal Dhruw, Aged about 34 years, Earlier posted as Sarpanch, Gram Panchayat Mirmitti, R/o Village Mirmitti, Janpad Panchayat Kawardha, District Kabirdham (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Department of School Education, Ministry, Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.)
2. Commissioner, Durg Division, Durg, District Durg (C.G.)
3. Collector, Kabirdham, District Kabirdham (C.G.)
4. District Electoral Officer (Panchayat), District Kabirdham (C.G.)
5. Sub-Divisional Officer, Kawardha, District Kabirdham (C.G.)
6. Chief Executive Officer, Zila Panchayat Kabirdham, District Kabirdham (C.G.)

---- Respondents

ANDWrit Petition (C) No.1679 of 2018

Narendra Rathore, age 45 years, S/o Shri Meghnath Rathore, Sarpanch of Village Panchayat Dharashiv (Kho), Janpad Panchayat Nawagarh, Tahasil Janjgir, District Janjgir-Champa (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Panchayat & Rural Development Department, Government of Chhattisgarh, Mahanadi Bhawan, Raipur, District Raipur (C.G.)
2. The Additional Commissioner, Bilaspur Division, District Bilaspur (C.G.)
3. The District Returning Officer (Panchayat) / District Collector, Janjgir-Champa, District Janjgir-Champa (C.G.)
4. The Sub-Divisional Officer (Revenue), Janjgir-Champa, District Janjgir-Champa (C.G.)
5. The Tahasildar, Nawagarh / Returning Officer (Panchayat) / Tahasil

Nawagarh, District Janjgir-Champa (C.G.)

---- Respondents

For Petitioners: Mr. Jitendra Nath Nande and Mr. Mateen
Siddiqui, Advocates.

For Respondents / State: -
Mr. Ratan Pusty, Govt. Advocate and Mr. Dilman
Rati Minj, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

21/06/2018

1. These writ petitions have been preferred by the petitioners who are elected Sarpanchs of Gram Panchayat Dharashiv,, Tahsil Janjgir and Gram Panchayat Mirmitti, Distt. Kabirdham, calling in question the election programme issued by the District Election Officer (Panchayat), Districts Janjgir-Champa and Kabirdham, respectively, on a singular ground that though the removal of the petitioners in exercise of power under Section 40 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short, 'the Act of 1993') has been confirmed by the Collector in appeal, but their substantive revision petitions preferred before the Commissioner of the Division under the Chhattisgarh Panchayats (Appeal and Revision) Rules, 1995 (for short, 'the Rules of 1995') are pending consideration before the Commissioner of the Revenue Division and even in one case, interim order has been granted in favour of the petitioner (Narendra Rathore) by the Commissioner, therefore, no casual vacancy as provided under Section 38(1) of the Act of 1993 has arisen and consequently, the bye-election on the post of Sarpanch cannot be held till their substantive revision petitions are finally decided by the Commissioner of the Revenue Division.

2. Since the question involved only relates to pure legal question, with the consent of the parties, the matters are heard finally on the question as to whether during the pendency of their substantive revisions under Rule 5 of the Rules of 1995 questioning the removal, casual vacancy has arisen under Section 38(1) of the Act of 1993 so as to hold bye-election in accordance with the provisions of the Act of 1993 and the rules made thereunder.
3. Mr. Jitendra Nath Nande and Mr. Mateen Siddiqui, learned counsel have appeared on behalf of the respective petitioners and they would contend that casual vacancy cannot be said to have arisen unless the proceeding pending and initiated by the petitioners, preferred in accordance with Rule 8 of the Rules of 1995, questioning the removal is finally adjudicated by the revisional authority i.e. the Commissioner of Revenue Division. They would further submit that the word “removal” would mean, removal which has become final after orders of the appellate and revisional authorities and unless the order of removal of Sarpanch is final, it cannot be held that casual vacancy has arisen on the post of Sarpanch of Gram Panchayat for holding bye-election in terms of Section 38(1) of the Act of 1993 and the rules made thereunder. Therefore, no bye-election can be held in accordance with the Act of 1993 and the rules made thereunder till the proceeding questioning the removal is finally adjudicated.
4. Mr. Ratan Pusty, learned Government Advocate appearing on behalf of the State, would submit that once the order of removal of an office bearer is passed removing him from the post of Panchayat, casual vacancy can be said to have arisen in terms of

Section 38(1)(a) of the Act of 1993 read with Rule 89(1) of the Chhattisgarh Panchayat Nirvachan Niyam, 1995 and, therefore, bye-election can straightway be held for the said post holding that casual vacancy has arisen for the post of Sarpanch. The District Election Officer (Panchayat) need not wait the decision of the appellate or revisional authority preferred in accordance with the Rules of 1995, as no panchayat constituency can remain vacant till the validity of order of removal is decided finally by the revisional or appellate authority, as the case may be, as such, no exception can be taken to the order of the District Election Officer (Panchayat) holding election for the post of Sarpanch treating it to be the casual vacancy in terms of Section 38(1)(a) of the Act of 1993 read with Rule 89 of the Chhattisgarh Panchayat Nirvachan Niyam, 1995 (for short, 'the Nirvachan Niyam, 1995') directing bye-election in terms of the said provision, as the rules clearly mandate the holding of election immediately on death, disqualification, resignation etc.. Section 89 of the Nirvachan Niyam, 1995 clearly mandates holding of election on account of casual vacancy by any reason which includes removal also. For due observance of sub-section (1) of Section 38 of the Act of 1993 read with Rule 89 of the Nirvachan Niyam, 1995, the writ petition deserves to be dismissed.

5. I have heard learned counsel appearing for the respective petitioners as well as the learned State Counsel and considered their rival submissions made herein-above and gone through the record with utmost circumspection.
6. It is not in dispute that the petitioners herein were duly elected on the post of Sarpanch in accordance with the Act of 1993 and the

rules made thereunder and they were holding the substantive post of Sarpanch since the date of election, but on a complaint made and on a proceeding initiated, they were removed from their post by the Sub-Divisional Officer (Revenue) by respective orders in exercise of power conferred under Section 40 of the Act of 1993 which they have questioned by filing appeals under Rule 3(a) of the Rules of 1995 and the Collector has affirmed the order of the Sub-Divisional Officer (Revenue), and questioning that order, they have preferred revisions under Rules 5 and 8 of the Rules of 1995 which are pending consideration and in case of Narendra Rathore, the petitioner herein (in W.P.(C)No.1679/2018), interim order has also been granted in his favour. The question now is whether casual vacancy has arisen in terms of Section 38(1)(a) of the Act of 1993.

Section 38(1)(a) of the Act of 1993 provides as under: -

“38. Filling up of vacancies.—(1) (a) In the event of death, resignation, no confidence motion, or removal of an office bearer of a Panchayat or on his becoming a member of State Legislative Assembly or a member of either House of Parliament before the expiry of his term, a casual vacancy shall be deemed to have occurred in his office and such vacancy shall be filled as soon as may be by election in accordance with the provisions of the Act and the rules made thereunder;”

7. Rule 89(1) of the Nirvachan Niyam, 1995 reads as follows: -

“89. Casual vacancies in Panchayats.—(1) When any vacancy occurs due to any reason such as death, disqualification, resignation, absence without leave, setting aside of election etc. of a member of Panchayat, or Sarpanch the Secretary of the Gram Panchayat or the Chief Executive Officer of the Janpad Panchayat or the Zila Panchayat as the case may be, shall inform the District Election Officer about such vacancy within seven days from the date of its occurrence.”

8. On a focused glance of the aforesaid provision, it appears that if before expiry of the term, a casual vacancy in the office of any

office-bearer may occur due to following reasons: -

- (i) When such an office bearer expires;
- (ii) When such an office bearer resigns from his office;
- (iii) When a no-confidence motion is passed against him;
- (iv) When he is removed from his office; and
- (v) When he becomes member of State Legislative Assembly or either House of Parliament.

9. In the case in hand, this Court is only concerned with filling up of casual vacancy in case of removal of a Sarpanch from his office. The Sarpanch is an office-bearer of a Panchayat. Upon his removal, he is entitled and has a statutory remedy of filing an appeal before the Collector under Rule 3(a) of the Rules of 1995 and further right to prefer revision against the order of the Collector under Rule 5 of the said Rules and also may seek stay of the order of the Collector and the Commissioner under Rule 8 of the Rules of 1995. Therefore, the order of removal passed against a Sarpanch of the Gram Panchayat would only be final if the legal remedy available in terms of Rule 5 of the Rules of 1995 availed by the concerned office-bearer or Sarpanch is finally terminated upon adjudication by the revisional authority under the Rules of 1995. If only upon the removal of Sarpanch / office-bearer, though it has been questioned in appellate / revisional proceeding available to him, the casual vacancy is allowed to be declared and is further allowed to hold bye-election, the right of elected office-bearer / Sarpanch to hold the post of Sarpanch, if ultimately the order of removal is set aside in appellate / revisional proceeding initiated /

pending by the concerned Sarpanch / office-bearer would go and in the event of bye-election having been held after declaring the casual vacancy, the concerned office-bearer cannot be restored to his office. The appellate or revisional authority under the Rules of 1995 can only set aside the election, but cannot direct reinstatement of the petitioner (Sarpanch) to that post, as the post of Sarpanch would be occupied by a person elected on the said post by bye-election conducted in accordance with Section 38(1)(a) of the Act of 1993 and the remedy of the petitioners / Sarpanch would be to file election petition in accordance with the provisions contained in the Act of 1993 and the rules made thereunder, as the election held cannot be set aside except by election petition in view of the constitutional bar created under Article 243-O(b) of the Constitution of India.

10. The Supreme Court in the matter of **D. Sanjeevayya v. Election Tribunal, Andhra Pradesh and others**¹ has held that during the pendency of election petition preferred under Section 84 of the Representation of the People Act, 1951, the Election Commission of India is not obliged to conduct bye-election in view of the fact that the election petition is pending seeking declaration of election to be void and election petitioner having claimed that he be declared to have been elected. Their Lordships observed as under: -

“(4) We are unable to accept the argument of the appellant as correct. In our opinion, the provisions of **S. 150** of the Act must be interpreted in the context of **Sections 84 and 98 (c)** and other relevant provisions of Part III of the same Act. If the interpretation contended for by the appellant is accepted as correct the vacancy must be filled by a bye-election as soon as a member resigns his seat notwithstanding the pendency of an

1 AIR 1967 SC 1211

election petition challenging his election. If the candidate who filed the election petition eventually gets a declaration that the election of the member is void and that he himself had been duly elected there will be two candidates representing the same constituency at the same time, one of them declared to be duly elected at the General Election and the other declared to have been elected at the bye-election and an impossible situation would arise. It cannot be supposed that Parliament contemplated such a situation while enacting [Section 150](#) of the Act. Parliament could not have intended that the provisions of Part VI of the Act pertaining to election petitions, should stand abrogated as soon as a member resigns his seat in the Legislature. It is a well-settled rule of construction that the provisions of a statute should be so read as to harmonise with one another and the provisions of one section cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. ...

(5) It is, therefore, not permissible, in the present case, to interpret S. [150](#) of the Act in isolation without reference to Part III of the Act which prescribes the machinery for calling in question the election of a returned candidate. When an election petition has been referred to a Tribunal by the Election Commission and the former is seized of the matter, the petition has to be disposed of according to law. The Tribunal has to adjudge at the conclusion of the proceeding whether the returned candidate has or has not committed any corrupt practice at the election and secondly, it has to decide whether the second respondent should or should not be declared to have been duly elected. A returned candidate cannot get rid of an election petition filed against him by resigning his seat in the Legislature, whatever the reason for his resignation may be. In the present case, the election petition filed by respondent No. 2 has prayed for a composite relief namely, that the election of the appellant should be declared to be void and that respondent No. 2 should be declared to be duly elected. In a case of this description the Election Commission is not bound immediately to call upon the Assembly constituency to elect a person for the purpose of filling the vacancy caused by the resignation of the appellant. It is open to the Election Commission to await the result of the election petition and thereafter decide whether a bye-election should be held or not. If the election petition is ultimately dismissed or if the election is set aside but no further relief is given, a bye-election would follow. If, however, respondent No. 2 who filed the election petition or any other candidate is declared elected the provisions of S. 150 of the Act cannot operate at all because there is no vacancy to be filled. In the present case, therefore, we hold that the Election Commission is not bound under

[S. 150](#) of the Act to hold a bye-election forthwith but may suspend taking action under that section till the result of the election petition filed by respondent No. 2 is known.”

11. The principles of law laid down in **D. Sanjeevayya** (supra) has been followed by the Supreme Court in the matter of **Election Commission of India v. Telangana Rastra Samithi and another**² and it was held as under: -

“46. We are, therefore, of the firm view that the introduction of [Section 151-A](#) in the Constitution did not alter the position as far as the provisions of [Section 84](#) and consequently Sections 98(c) and 101(b) of the 1951 Act are concerned, since although a casual vacancy may have occurred within the meaning of [Section 150](#) of the 1951 Act, those vacancies in which election petitions had been filed and were pending cannot be held to have become available for the purposes of being filled up within the time prescribed under [Section 151-A](#) of the 1951 Act. [Article 190\(3\)\(b\)](#) of the Constitution merely indicates that if a Member of a House of a Legislature of State resigns his seat by writing to the Speaker and such resignation is accepted, his seat shall become vacant. It does not introduce any element of compulsion on the Election Commission to hold a bye-election ignoring the provisions of [Section 84](#) of the Act. In such cases, we have little hesitation in holding that such casual vacancies are not available for being filled up and the Commission will have to wait for holding elections in such constituencies until a decision is rendered in regard to the latter part of [Section 84](#) of the 1951 Act during the life of the House. The view expressed by the High Court that a case has to be decided in accordance with the laws as existing on the date of adjudication, while salutary in principle, are not attracted to the facts of this case in view of the provisions of [Section 84](#) of the 1951 Act.”

12. The principle of law laid down in **Telangana Rastra Samithi's** case (supra) has further been followed very recently by the Supreme Court in the matter of **Pramod Laxman Gudadhe v. Election Commission of India and others**³ in which it was held as under: -

“16. In the case at hand, no election petition was

² (2011) 1 SCC 370

³ Special Leave Petition (Civil) No.9968/2018, decided on 9-5-2018

pending. The elected candidate tendered his resignation on 08.12.2017 and the same was accepted by the Speaker of Lok Sabha on 14.12.2017. The command of Section 151A is to hold the election within a period of six months from the date of occurrence of the vacancy. As the factual score depicts, the vacancy occurred when the resignation was accepted by the Speaker of Lok Sabha on 14.12.2017. It is beyond any dispute that the next General Election to Lok Sabha is in June, 2019. Therefore, the remainder of the term is not less than one year. Whether the election is to be held or not would be governed by clause (b) to the proviso to Section 151A and we are not concerned with the same. The ground raised that the code of conduct would come into play before the elections are held in June, 2019 is absolutely sans substance as the Act does not contemplate so. It is the period alone that should be the governing factor subject to the pendency of election petition because that is not controlled by the non obstante clause. Such an interpretation is in accord with the sanctified principle of democracy and the intention of the Parliament is not to keep a constituency remaining unrepresented. The concern expressed with regard to load on the exchequer cannot be treated as a ground. It is so because the representative democracy has to sustain itself by the elected representatives. We may hasten to add that the matter would be different when an election dispute is pending against the candidate that comes within the ambit and sweep of Section 84 or Section 98(c) or Section 101(b) of the Act. That not being the case, the view expressed by the High Court is absolutely impregnable.”

13. Similarly, in identical fact-situation, in Review Petition No.29/2007 (**Smt. Shanti Bai v. Smt. Neera Manhar and others**), decided on 21-10-2008, this Court had already held that once bye-election is held, new election cannot be quashed and remedy is to file election petition. It was observed as under: -

“9. Be that as it may, since a democratic election has been held in accordance with law on declaration of vacancy, the election cannot be set aside in a writ petition. The Election Commission was under an obligation to fill up the casual vacancy arisen from imposition of disqualification of the then Sarpanch i.e. respondent No.1 (writ petitioner). The election of the review petitioner was not under challenge in the writ petition and as such, there was no challenge to the election even in any election petition as contemplated under part IX of the Constitution of India. Article 243-O

of the Constitution provides a bar for interference by courts in electoral matters except by election petition presented to such authority and in such manner as provided for by or under any Law made by the Legislature of a State.

11. For the reasons stated hereinabove, the review petition is allowed to the extent that the review petitioner is duly elected on the post of Sarpanch, Gram Panchayat, Thoothi, and the same cannot be quashed except in accordance with law, i.e. by filing an election petition under the provisions of Adhiniyam, 1993. So far as disqualification is concerned, the same stands removed by the order dated 07.12.2006 passed in the writ petition i.e. W.P. No.4202/2006.”

14. Reverting to the facts of the present case, it is not in dispute, as noticed herein-above, that the petitioners have questioned their removal firstly before the Collector and after dismissal of their appeal, they have questioned the same before the revisional authority under Rule 5 of the Rules of 1995 and it is pending active consideration after the revisions having been admitted and in one case, interim order has been granted in favour of the petitioner and as such, no casual vacancy has arisen in terms of Section 38(1)(a) of the Act of 1993 to hold bye-election for the said post of Sarpanch. The District Election Officer (Panchayat) ought to have awaited the outcome of the said proceeding by the revisional authority before proceeding to hold the bye-election, otherwise if bye-election is allowed to be held and in the meanwhile, the order of removal is set aside, the revisional authority would be incompetent to restore / reinstate them on the post of Sarpanch of the Gram Panchayat in view of the fact that the post of Sarpanch is already occupied by a person elected on bye-election and the only remedy available to the petitioners / Sarpanch would be to file election petition in accordance with the Act of 1993 and the rules made thereunder in view of the constitutional bar created under

Article 243-O(b) of the Constitution of India and the petitioners would be deprived of their legal / statutory right to hold the post for its full term for no reason, as they are democratically elected representatives of the Panchayat constituency, in case they finally succeed in their revision petitions pending before the revisional authority.

15. For the aforesaid reasons, it is directed that the District Election Officer (Panchayat), Janjgir-Champa will not proceed with the bye-election for the post of Sarpanch, Gram Panchayat Dharashiv, likewise, the District Election Officer (Panchayat), Kabirdham is directed to not proceed with the bye-election of Sarpanch, Gram Panchayat Mirmitti and they would await the final decision / outcome of the revisional authority pending before the Additional Commissioner / Commissioner and upon decision on the respective revision petitions, they would be at liberty to proceed in accordance with law.

16. Mr. Pusty, learned Government Advocate, is requested to inform the order to the District Election Officer, Janjgir-Champa and Kabirdham.

17. The writ petitions are disposed of in the terms outlined herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1668 of 2018

Gauri Bai Dhurve

Versus

State of Chhattisgarh and others

AND

Writ Petition (C) No.1679 of 2018

Narendra Rathore

Versus

State of Chhattisgarh and others

Head Note

Bye-election for the post of Sarpanch cannot be held during pendency of revision of the Sarpanch who has been removed under Section 40(1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993.

छत्तीसगढ़ पंचायती राज अधिनियम, 1993 की धारा 40(1) के अन्तर्गत हटाए गए सरपंच के पुनर्विलोकन के लंबित रहते सरपंच के पद हेतु उपचुनाव आयोजित नहीं किया जा सकता।