

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3009 of 2018**

1. Pawan Awasthi S/o Ram Prasad Awasthi Aged About 38 Years R/o Latelbada, Ramayanchowk Chatidih, District Bilaspur, P.S. Sirgitti, Bilaspur Chhattisgarh.

---- Petitioner**Versus**

1. Dr. Raman Singh S/o Late Shri Vighanaharan Singh, Aged About 65 Years R/o Chief Minister's House, Civil Line, District Raipur Chhattisgarh.
2. The Election Commission Of India Through Chief Election Commissioner, Nirvachan Sadan, Ashoka Road, New Delhi (India) 110001.
3. The Chief Electoral Officer Chhattisgarh State Election Commission, Raipur, Mahanadi Bhawan, Police Station - Rakhi, Post Office Naya Raipur, District Raipur Chhattisgarh. 492002
4. State Of Chhattisgarh Through Its Chief Secretary, Government Of Chhattisgarh, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh. Pin Code - 492002.
5. Department Of Public Relations Through Principal Secretary, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh. Pin Code 492002.
6. Bhartiya Janta Party (BJP) Through Its National President, Shri Amit Shah, R/o B.J.P. Central Office 6-A, Deen Dayal Upadhyaya Marg, New Delhi - 110002.
7. Bhartiya Janta Party (BJP) Through Its General Secretary, Saroj Pandey, D/o Shyamji Pandey, Aged About 48 Years, R/o 1/A Street, 7/B Phase - 1, Maitri Nagar, Risali, Bhilai, District Durg Chhattisgarh.
8. Bhartiya Janta Party (BJP) Through Its State President, Shri Dharam Lal Kaushik, R/o Village And Post - Parsada, Raipur Road, District Bilaspur Chhattisgarh.
9. Shri Amar Agrawal Minister In State Of Chhattisgarh Aged About 55 Years, R/o Rajendra Nagar, Civil Lines, Bilaspur Chhattisgarh.

---- Respondent

For Petitioner	Shri Himanshu Kumar Sharma, Advocate
For Respondent/UOI	Shri B. Gopa Kumar, Asstt. Solicitor General
For Respondent/State	Shri Shashank Thakur, Govt. Advocate
For Respondents No.2&3	Shri Sanjay Patel, Advocate

Order on Board

By

Prashant Kumar Mishra, J.

29/10/2018

1. Petitioner intends to contest in the election of the Chhattisgarh State Legislative Assembly from the Bilaspur Assembly Constituency as an independent candidate. The petitioner has preferred this writ petition claiming the following reliefs :

10.1 That, this Hon'ble Court may kindly be pleased to direct the Election Commission of India and Chief Electoral Officer, Raipur, CG, to cancel the Nomination of Dr. Raman Singh (Chief Minister, State of CG), Saroj Pandey (General Secretary, Bhartiya Janta Party), Shri Amar Agrawal (Minister in State of CG) and all candidates of Bhatiya Janta Party in election 2018.

10.2 That, this Hon'ble Court may kindly be pleased to direct the Election Commission of India and Chief Electoral Officer, Raipur, CG, to take a proper action against Dr. Raman Singh (Chief Minister, State of CG), Shri Amit Shah (National President of Bhatiya Janta Party), Saroj Pandey (General Secretary, Bhartiya Janta Party), Shri Amar Agrawal (Minister in State of CG) and all candidates of Bhatiya Janta Party in election 2018 and in upcoming other elections and this Hon'ble Court also may kindly be pleased to direct the Chief Secretary of C.G. State to take proper action against

Principal Secretary of Department of Public
Relation, State of C.G.

2. The above reliefs have been claimed on submission that the respondent No.1 & 9 are violating the Model Code of Conduct by providing link to the Government Department's Website through the Website of the Bhartiya Janta Party (BJP), therefore, this is misuse of Government machinery to augment their prospect in the ensuing Chhattisgarh State Legislative Assembly elections.
3. Without entering into merits of the allegations levelled in the writ petition, the relief claimed in the writ petition cannot be allowed at this juncture in view of the express bar under Article 329 of the Constitution of India, which reads thus :

329. Bar to interference by courts in electoral matters.-- 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 327 or Article 328, shall not be called in question in any court;

(b) No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

4. The Supreme Court, way back in the year 1952, has held in **N.P. Ponnuswami v The Returning Officer, Namakkal**

Constituency, Namakkal, Salem Dist. And Others reported in AIR (39) 1952 Supreme Court 64 that the term "election" may be taken to embrace the whole procedure which consists of several stages and embraces many steps whereby an "elected member" is returned. The stage of filing of nomination, its scrutiny, withdrawal, the actual poll and the result of election are all parts of the election process.

5. Under Article 329 of the Constitution of India the validity of an election to the house of Parliament or to the either house of the Legislature of a State can be called in question only by an election petition and writ proceedings would not lie to challenge the election, which necessarily includes any part of the election process as mentioned *supra*.
6. In view of the laid down by the Supreme Court in **N.P. Ponnuswami** (*supra*), the instant writ petition seeking rejection of nomination paper of respondents No.1 & 9, is not maintainable and accordingly, it is dismissed at the motion stage itself leaving open the remedy of Election Petition to be exhausted by the person who is eligible and competent in law to entertain such Election Petition. In respect of relief claimed by the petitioner at para 10.2 of the writ petition, it is to be seen that the said part of relief also concerns election of the Legislative Assembly, therefore, the direction sought for would effect the election, which

is not permissible under Article 226 of the Constitution of
India.

Sd/-

Judge
(Prashant Kumar Mishra)

Gowri