

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4018 of 2007

Reserved on 09/01/2019.

Delivered on 14/01/2019.

Ramdular Sahu, S/o. Shri Tulsiram Sahu, Aged about 26 years, R/o. Village Teka (Hardi) Gram Panchayat Kanhardabri, Tahsil Dongargaon, District Rajnandgaon, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Panchayat & Social Welfare, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh.
2. Sarpanch, Gram Panchayat, Kanhardabri, Tahsil Dongargaon, District Rajnandgaon, Chhattisgarh
3. Duleshwar Singh Rajput, S/o. Shri Kamlesh Singh Rajput, Aged about 23 years, R/o. Village Teka Hardi, Gram Panchayat, Kanhardabri, Tahsil Dongargaon, District Rajnandgaon Chhattisgarh
4. The Director Panchayat, Chhattisgarh, Raipur, Chhattisgarh

---Respondents

For Petitioner	:	Mr. Parag Kotecha, Advocate
For State	:	Ms. Sunita Jain, G.A.
For Respondent No.3	:	Mr. Sanjeev Kumar Sahu, Advocate

Hon'ble Shri Justice P. Sam Koshy

CAV Order

1. The present writ petition is filed assailing the order passed by the Director (Panchayat) setting aside the order of the Additional Collector, as also the order of the Sub-Divisional Officer dated 30.12.2006 & 25.05.2006 respectively. Shorn of unnecessary details, the relevant facts for the adjudication of the present writ petition is as under:-

“The petitioner was initially appointed as a Panchayat Karmi vide order dated 06.05.2005 of Gram Panchayat, Kanhardabri under Tahsil Dongargarh, District Rajnandgaon. Later on the petitioner was also selected and notified on the post of

Panchayat Secretary vide notification dated 08.06.2006. The appointment of the petitioner was approved by the resolution passed by the Gram Sabha vide resolution dated 21.04.2005. The appointment of the petitioner was initially challenged by the respondent No.3 before the Sub-Divisional Officer. However the Sub-Divisional Officer vide his order dated 25.05.2006 rejected the objection on the ground that the respondent No.3 was not the resident of village Teka, but was a resident of 18 Acres Rajnandgaon.

The order of the Sub-Divisional Officer dated 25.05.2006 was subjected to challenge before the Additional Collector, Rajnandgaon. The Additional Collector, in turn, affirmed the order of the Sub-Divisional Officer confirming the appointment of the petitioner, rejected the appeal preferred by the respondent No.3 vide order dated 30.12.2006 (Annexure P/6). The respondent No.3/private respondent, thereafter preferred a revision petition before the Director (Panchayat). The Director (Panchayat) vide the impugned order dated 26.06.2007 allowed the revision petition and the orders passed by the Additional Collector as well as the Sub-Divisional Officer stood set-aside/quashed. It was ordered by the Revisional Authority that the Gram Panchayat, Kanhardabri shall call a fresh Gram Sabha meeting and a fresh resolution be passed towards appointment of the Panchayat Karmi (Secretary) at the earliest after a fresh scrutiny of the records.

The present writ petition was immediately preferred by the petitioner and there is also an interim order in favour of the petitioner, by which the petitioner still continuing in service.”

2. The contention of the petitioner challenging the impugned order of the Director (Panchayat) is that the Director, first of all failed to appreciate the fact that the order of appointment issued in favour of the petitioner has not been challenged, rather it was only a case where the resolution of the Gram Sabha was challenged, as such without challenging the order of appointment, the objection, appeal and revision of the respondent No.3 itself was not maintainable. It is the contention of the petitioner that the resolution alone cannot be questioned, when there are specific order of appointment issued and this aspect has not been considered by any of the authorities concerned.
3. So far as the merits of the case is concerned, the contention of the petitioner is that from the application, which the respondent No.3 had submitted, at the first instance before the Gram Sabha itself, clearly reflected that he was not the resident of the said place i.e. village Teka, but he had shown his address to be that of 18 Acres Rajnandgaon, which is an entirely different village and location.
4. According to the petitioner, since the petitioner himself had shown his address to be that of 18 Acres Rajnandgaon, the Gram Sabha had rightly resolved not to grant appointment to the respondent No.3 and the petitioner was unanimously resolved to be appointed as a Panchayat Karmi (Secretary). It was also the submission of the petitioner that the Director (Panchayat) while passing the impugned order dated 26.06.2007 has relied upon certain documents and annexures, which were produced subsequently for the first time before the Director and as such the decision

of the Director (Panchayat) was based upon extraneous considerations, which were not available before the Gram Sabha at the appropriate stage and therefore, the decision of the Gram Sabha as also the order of the Sub-Divisional Officer and the Additional Collector cannot be said to be faulty or in any manner erroneous and the order of the Director, therefore is liable to be set-aside/quashed.

5. Per contra, the counsel appearing for the respondents opposing the petition submits that the resolution of the Gram Sabha itself was erroneous, as they have wrongly reached to the conclusion that the respondent No.3 was not the resident of village Teka. It was the contention of the respondents that there are sufficient material produced before the Director, as also before this Court, which could establish that in fact the respondent No.3 was the resident of village Teka and his ancestors were also staying in the same village, yet the Gram Sabha did not accept the same, therefore the finding of the Gram Sabha, so also the Sub-Divisional Officer and the Additional Collector were bad in law and this aspect has been properly appreciated by the Director (Panchayat) vide his impugned order and the writ petition, thus is devoid of merits and the same deserves to be dismissed.
6. Having heard the contentions put forth on either side and on perusal of record, when we look into the impugned order of the Director (Panchayat) dated 26/06/2007 it would clearly reflect that, so far as the respondent No.3 is concerned as regard the merits, he was more meritorious as compared to the petitioner so far as the educational front is concerned. The finding of the Director (Panchayat) is that, in the marksheet which the petitioner had produced for verification it revealed that, he has done his schooling up-till class-X at village Teka which by itself would establish that he was a resident of village Teka, though, subsequently, the petitioner seems to have

moved out of the village Teka. In the voter list of village Teka itself is the name of the petitioner reflected. In addition, the domicile certificate which the petitioner has provided also reflected him to be the resident of village Teka.

7. Now, if we read the findings of the Additional Collector it also reveals that, the petitioner has got his ancestral property at village Teka. Except for the address that he had mentioned while applying for the post, all other evidences appear to be in favour of the respondent No.3 and all these materials give strength to the claim of the respondent No.3 of his being the resident of village Teka.
8. If we look into the scheme pertaining to the Panchayat Karmis, clause 3 deals with the eligibility criteria. 3.5 of the said scheme reflect that the candidate applying should as far as possible be a local which enables the person to work smoothly and in a better manner. The term “as far as possible” mentioned in the said clause would show that it was not a mandatory clause that the candidate under no circumstances can be a person from the outside place. From the proceedings drawn, there does not seem to be any dispute so far as the petitioner having not done his school education from village Teka. There also does not seem to be any dispute of the respondent No.3 having ancestral property at village Teka.
9. From the resolution of the Gram Sabha it clearly reflect that, the respondent No.3 had scored more marks both in class-10th and 12th examination much more than the petitioner.
10. At this juncture it would be relevant to refer to the order of this Court dated 09/11/2017 wherein this Court in order to resolve the dispute had ordered the Tahsildar or Sub-Divisional Officer, Dongargaon, District Rajnandgaon

to submit a report whether the respondent No.3 was a permanent resident of village Teka or he resides elsewhere.

11. The State Government subsequently is said to have submitted a report on an affidavit filed by the Naib Tahsildar Dongargaon and vide the said report they have enclosed the Aadhar Card of the respondent No.3, certain statements which were recorded of the Sarpanch and other persons of village. In addition, the authorities had collected the domicile certificate of the petitioner, the educational certificates and also the identity card issued by the Election Commission. All these documents clearly show the address of the respondent No.3 to be that of village Teka.

12. Given the aforesaid facts and circumstances and the materials that have been collected, this Court is of the view that, the findings of the Director (Panchayat) seems to be a balanced order whereby he has directed the Gram Sabha to convene a fresh meeting and to pass a fresh resolution after taking into consideration the rules and regulations and the guidelines in respect of the appointment of Panchayat Karmis (Secretary) is concerned.

13. So far as the judgments which has been cited by the petitioner is concerned, those judgments would not be applicable in the given facts of the case as those have been decided each under separate factual situation which do not match with the facts of the present case and all those judgments are thus distinguishable on facts alone and would not come to the aid of the petitioner.

14. The impugned order thus in the opinion of this Court does not warrant any interference.

15. The instant Writ Petition being devoid of merits deserve to be and is accordingly dismissed.

16. However, it is necessary to add that the Gram Sabha which shall be convened shall not be permitted to take any fresh additional materials for determining the merits of a candidate except for those materials which have already been produced before the three authorities below.

17. The Writ Petition accordingly stands dismissed with the aforesaid observations.

Sd/-
(P. Sam Koshy)
Judge

Ved/Sumit