

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No.156 of 2020

Devlal Dahariya S/o Shri Madanlal Dahariya Aged About 61 Years Caste - Satnami, R/o Village Amartal, Post - Tilai, Tahsil - Akaltara, District - Janjgir Champa, Chhattisgarh.

---Petitioner(s)

Versus

1. State of Chhattisgarh Through The Secretary, Panchayat and Rural Development Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, New Raipur, Chhattisgarh.
2. The Collector and District Election Officer District - Janjgir Champa, Chhattisgarh.
3. The Sub-Divisional Officer (R) Pamgarh, District - Janjgir Champa, Chhattisgarh.
4. The Chief Executive Officer Janpad Panchayat, Akaltara, District - Janjgir Champa, Chhattisgarh.

---Respondents

For Petitioner	:	Shri Chandrabhushan Kesharwani, Advocate.
For State	:	Shri Jitendra Pali, Deputy Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

15.01.2020

1. The present is a second round of litigation challenging the notification dated 24.12.2019 whereby the Gram Panchayat, Amartal has been reserved for the Scheduled Tribe (Female) category.
2. The previous round of litigation was WPC No.4593 of 2019, which got decided on 16.12.2019, whereby the authorities were directed to take a decision on the objections raised by the petitioner so far as reservation of the said Gram Panchayat for ST(Female) category is concerned.
3. This second round of litigation has been filed on the ground that the authorities have not taken any decision on the claim of the petitioner and secondly, from the available records it clearly establishes that when the previous census was collected in the year, 2011, there was no female in the said Gram Panchayat belonging to the ST category. There was only one person belonging to ST category available in the Gram Panchayat

and who was a male. Therefore, the reservation of Gram Panchayat Amartal for ST (Female) category is bad in law.

4. According to the petitioner, the elections are to be conducted in accordance with census of 2011 and in the said census as there was no female of ST category available, therefore reservation of Gram Panchayat Amartal for female category among the ST is bad.
5. This court, at the outset, is not inclined to entertain the writ petition for two reasons. Firstly, there is a bar of interference by the Courts as envisaged in Article 243 (O) of the Constitution of India. The Division Bench of this High Court in case of Manoj Kansari Vs. State of Chhattisgarh & Ors. decided on 02.12.2019 (WPC No.3540 of 2019) relying upon the judgments of Supreme Court in case Anugrah Narain Singh Vs. State of UP, (1996) 6 SCC 203 and also in Mushe Khan Vs. State of Rajasthan, AIR 2015 Rajasthan 35, have categorically held that the writ petition at this juncture challenging the election proceedings would not be maintainable.
6. Secondly, this court does not find any strong case made out by the petitioner for the reason that true it is that the elections were to be conducted on the basis of census report 2011, and the census report 2011 shows that there was one person of ST category available at Gram Panchayat, Amartal.
7. The reservation of Gram Panchayats are done in accordance with Section 17 of the Chhattisgarh Gram Panchayat Adhiniyam, 1993 (in short, the Adhiniyam, 1993). For ready reference, Section 17 of the Adhiniyam, 1993 is reproduced herein :

“17. Election of Sarpanch and Up-Sarpanch. - (1) In every Gram Panchayat there shall be a Sarpanch and an Up-Sarpanch. A person who,-

(i) is qualified to be elected as panch;

(ii) is not a member of either House of Parliament or member of State Legislative Assembly; and

(iii) is not Chairman or Vice-Chairman of Co-operative Society; shall be elected as a Sarpanch, subject to provisions of sub-sections (2), (3) and (4), by persons whose names are included in the list of voters of the Gram Panchayat area in such manner as may be prescribed.

(2) (i) Such number of seats of Sarpanchas of Gram Panchayats shall be reserved for Scheduled Castes and Scheduled Tribes in the Gram Panchayat within the block which bears the same proportion to the total number of Sarpanchas in the block as the proportion of the Scheduled Castes and Scheduled Tribes in the block bears to the total population of the block :

Provided that for the purpose of computing the number of Sarpanch of Gram Panchayat to be reserved for Scheduled Tribes in the block, other than the Scheduled Areas forming part of that block, the total population of the Scheduled Areas falling within that block and the population of Scheduled Tribes therein shall be excluded.

(ii) Where the total population of Scheduled Castes and Scheduled Tribes in the Block is less than fifty percent, twenty five percent of seats of Sarpanchas of Gram Panchayats within the Block shall be reserved for Other Backward Classes.

(3) Not less than [half] of the total number of seats of Sarpanchas within the block shall be reserved for women.

(4) The seats reserved under this section shall be allotted by the prescribed authority in the Gram Panchayat within the block by rotation in the prescribed manner :

[Provided that the term of consecutive two general elections of Panchayat shall constitute one rotation.]

Provided [further] that the Gram Panchayat, which has no population of Scheduled Castes or Scheduled Tribes or Other Backward Classes, shall be excluded for allotment of seat

reserved for Scheduled Castes, Scheduled Tribes or Other Backward Classes, as the case may be.]

(5) The Prescribed Authority shall, as soon as may be after every election call a meeting of the elected Panchas and Sarpanch for the purpose of election of Up-Sarpanch and subject to the provisions of sub-section (7) the Gram Panchayat shall, in the meeting, so called elect from amongst its elected members an Up-Sarpanch.

(6) If the Sarpanch of the Gram Panchayat does not belong to Scheduled Castes, or Scheduled Tribes or Other Backward Classes the Up-Sarpanch shall be elected from amongst the Panchas belonging to such castes or tribes or backward classes.

(7) If the Sarpanch or the Up-Sarpanch becomes the member of either House of Parliament or a member of the State Legislative Assembly or Chairman or Vice-Chairman of a Co-operative Society he shall be deemed to have vacated his office as Sarpanch or Up-Sarpanch, as the case may be, with effect from the date of becoming such member or Chairman or Vice-Chairman and a casual vacancy shall be deemed to have occurred in such office for the purpose of Section 38.

(8) Notwithstanding anything contained in this section the Sarpanch shall be deemed to be a Panch of Gram Panchayat for the purpose of this Act.”

8. The previous census that was conducted was of the year, 2011 and the documents enclosed along with the writ petition itself would clearly show that in the last census there was a person available of the ST category in the said Gram Panchayat. The question whether a person available was a male or female would be immaterial if we take in to consideration the proviso of Sub-section 4 of Section 17 of the Adhiniyam, 1993. The proviso specifically holds that the Gram Panchayat would be excluded from reservation provided there was no population of reserved category available. The term population would include both male and female.

Moreover, the reservation of the Gram Panchayats firstly is done applying vertical reservation for SC, ST and OBC taking into consideration the proportion of the population available in the respective area and thereafter horizontal reservation for the women category in each of the categories including the unreserved category as per Sub-section 3 of Section 17 of the Adhiniyam, 1993 is made.

9. Taking into consideration the fact that in the census, 2011 admittedly there was one person belonging to ST category which has not been rebutted by the petitioner, permits the said Gram Panchayat to be subjected to reservation and in the process if the said Gram Panchayat gets reserved for ST category and thereafter if further stands reserved for the women category, would not vitiate the election process or the reservation so made in any manner. There is no Rule which prescribes that a candidate who has filed his nomination would require his/her name to be present at the time when the previous census was conducted.
10. In the instant case, from the submissions made by the counsel for the petitioner, it appears that after the election programmes having been notified on 23.12.2019, the nomination papers were filed and one candidate has already filed her nomination for the said post which shows that there is a candidate belonging to the ST category available at Gram Panchayat, Amartal.
11. For all the aforesaid reasons, this court is of the opinion that no strong case is made out by the petitioner calling for an interference with the election process already initiated.
12. The writ petition fails and accordingly stands rejected. Sd/-

(P. Sam Koshy)
Judge