

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgement Reserved on 14.1.2020****Judgment Delivered on 23/1/2020****WA No. 32 of 2020**

(Arising out of order dated 3.1.2020 passed by learned Single Judge in WPC No.17/2020)

- Smt. Priyadarshini Divya, W/o Shri Ramanand Divya, aged about 35 years, R/o Sarsiva, Ward No.18, Tahsil Bilaigarh, PS Sarsiva, District Balodabazar Bhatapara (CG)

---- Appellant**Versus**

1. State of Chhattisgarh Through the Secretary, Department of Panchayat & Rural Development, Mantralaya, Post Office Rakhi, Atal Nagar, District Raipur (CG)
2. Director, Directorate of Panchayat, Indrawati Bhawan, Mantralaya, PO Rakhi, Atal Nagar, District Raipur (CG)
3. The Collector, Office of Collector, District Balodabazar Bhatapara (CG)
4. Additional Collector, Office of Additional Collector, District Balodabazar-Bhatapara (CG)
5. Sammelal Yadav, Authorized Employee, Secretary, Gram Panchayat Sarsiva, Tahsil Bilaigarh, District Balodabazar Bhatapara (CG)
6. Amit Shrivastava Assistant Registration (Panchayat), Janpad Panchayat, Bilaigarh, District Balodabazar Bhatapara (CG)
7. K.L. Sori Registration (Panchayat), Janpad Panchayat Bilaigarh, District Balodabazar Bhatapara (CG)
8. Lata Jatwar D/o Shyam Lal Jatwar R/o Village Kodwa, Tahsil Bilaigarh, District Balodabazar Bhatapara (CG)
9. Mamta Thakur, Naib Tahsildar, Bhatgaon, District Balodabazar Bhatapara (CG)
10. District Election Officer (Panchayat), Office of District Election Officer (Panchayat), District Balodabazar Bhatapara (CG)

---- Respondents

For Appellant	:	Shri Anish Tiwari, Advocate
For Respondent No.1 to 4	:	Shri Chandresh Shrivastava, Deputy Advocate General.

Hon'ble Shri PR Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

CAV Order

Per Parth Prateem Sahu, J:

1. Interference declined by the learned Single Judge to interfere with the order dated 28.12.2019 passed by respondent No.4 Additional Collector, Balodabazar dismissing appeal filed by appellant herein against the order dated 12.12.2019 passed by the Electoral Registration Officer, Bilaigarh thereby refusing to include name of appellant in the voter list of Gram Panchayat Sarsiva, is under challenge in this appeal.
2. Facts giving rise to this petition, in nutshell, are that petitioner/ appellant herein submitted an application before the Electoral Registration Officer, Bilaigarh for inclusion of her name in the voter list of Gram Panchayat Sarsiva, District Balodabazar-Bhatapara. The Registration Officer vide order dated 12.12.2019 rejected the request of appellant for inclusion of her name. Appellant filed an appeal under Section 12 (5) of the Chhattisgarh Panchayat Elections Rules, 1995 (for short 'the Rules of 1995') against the order dated 12.12.2019 before the Appellate Authority/Additional Collector, Balodabazar, which came to be registered as Appeal No.06/B-121/2019-20. The Additional Collector after considering the grounds raised in the memo of appeal and also submissions made by

appellant, objectors etc., dismissed the appeal. Dissatisfied with the order of dismissal dated 28.12.2019 (Annexure P-4), appellant approached the High Court by filing writ petition and sought for following reliefs:-

“10.1.To issue the writ of MANDAMUS or any appropriate writ and set aside the order dated 28.12.2019 (Annexure P-4) passed by the respondent No.4 i.e. Additional Collector, Balodabazar- Bhatapara (CG) in the interest of justice.

10.2. To hold that the action of respondent registration officer of rejecting petitioner's application (Annexure P-1) filed for addition of her name in the voter's list is illegal.

10.3. To direct the concerned respondent authority to add/include petitioner's name in voter's list along with opportunity to contest election in District Balodabazar Bhatapara (C.G.) in General Panchayat Election, 2019.

10.4. To pass any other order as it may deem fit, in the interest of justice.”

3. Learned Single Judge after considering the grounds urged in the writ petition and also the arguments advanced on behalf of the parties, dismissed the petition by holding that as the election programme had already been announced and notified on 23.12.2019 and appellant had not taken any steps for inclusion of her name when the voter list was published, no direction for inclusion of her name in the voter list and amending it can be issued.
4. Mr. Anish Tiwari, learned counsel representing appellant submits that mere declaration of election programme will not debar appellant from getting the relief in a petition filed under

Article 226 of the Constitution of India. Application for inclusion of appellant's name in the voter list of Gram Panchayat Sarsiva was made within time, but the learned Single Judge erroneously held that appellant has not made any effort to get her name included in the voter list within the time prescribed in that regard. He further submits that the bar provided under proviso to Rule 12 of the Rules of 1995 will apply after the last date fixed for submission of nomination form and not from the date of declaration of election programme.

5. Per contra, Shri Chandresh Shrivastava, Deputy Advocate General representing the State submits that this submission of learned counsel for appellant is not correct that bar to amend voter list will operate only after the last date fixed for submission of nomination form. This bar will become operational immediately after declaration of election programme. He submits that appellant is resident of village Ghirwa and presently residing in Raipur along with her husband, who is a government servant and posted in Raipur, as is apparent from the documents annexed along with writ petition. Name of appellant still finds place in the voter list of Gram Panchayat Ghirwa (Jaijaipur), District Janjgir Champa and in this situation, application for inclusion of her name in voter list has rightly been rejected. The learned Single Judge taking note of the legal aspects; decisions of the High Court of Madhya Pradesh on identical issue and also the judgment delivered by a Division Bench of this High Court in WPC

No.3540/2019 & other connected matters, has dismissed writ petition vide impugned order, which does not call for any interference in exercise of appellate jurisdiction.

6. We have heard learned counsel for the parties and perused the record.

7. Admittedly, the programme of Panchayat elections in the Chhattisgarh was notified on 23.11.2019 and application for inclusion of name of appellant in the voter list of Gram Panchayat Sarsiva was submitted on 29.11.2019. It is well settled that as soon as election programme is notified, no modification, amendment, addition or deletion in any entry of the voter list is permissible, until the election process is complete. In the case at hand, the Appellate Authority under the Rules of 1995 has decided the appeal on merits after considering records of the Sub-Divisional Officer/Registration Officer under the Rules of 1995 and dismissed the appeal by a detailed order. The writ petition filed by appellant at such a belated stage, for inclusion of her name in the voter list cannot be entertained and the same has rightly been dismissed by the learned Single Judge.

8. Further, we are not convinced with the submission made by learned counsel for appellant that there is no bar in exercising jurisdiction under Article 226 of the Constitution of India. The proposition of law is well settled that the exclusion or inclusion of the names of voter list cannot be interfered in exercise of

jurisdiction under Article 226 of the Constitution of India.

9. Hon'ble Supreme Court in the matter of Anugrah Narain Singh & anr Vs. State of UP & ors reported in (1996) 6 SCC 303 in following pertinent words;-

“28. Therefore, so far as preparation of the electoral roll is concerned, there are sufficient safeguards in the Act against any abuse or misuse of power. In view of these provisions and particularly, in view of sub-section (6) of Section 39 which provides for appeals in regard to inclusion, deletion or correction of names, there is hardly any scope for a Court to intervene and correct the electoral rolls under Article 226 of the Constitution. In fact, if this is allowed to be done, every election will indefinitely be delayed and it will not be possible to comply with the mandate of the Constitution that every Municipality shall have a life-span of five years, or less, if dissolved earlier, and thereafter fresh elections will have to be held within the time specified in clause (3) of Article 243-U. Having regard to the provisions for filing objections and also the right of appeal against inclusion, deletion and correction of names and also to the constitutional authority of the Election Commission to give directions in all matters pertaining to elections, the Court should not have intervened at all on the basis of allegations as to preparation of electoral rolls.”

Learned Single Judge has also taken note of the judgment of a Division Bench of this High Court in WPC No.3540/2019, parties being Manoj Kansari v. State of CG & ors, while

deciding the writ petition filed by the appellant.

10. In view of above law laid down by Hon'ble Supreme Court, High Court of Madhya Pradesh and also by this Court, we do not find any infirmity in the order impugned. The appeal being devoid of merit is liable to be dismissed and is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-