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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 44 of 2020**

*(Arising out of order dated 10.01.2020 passed in Writ Petition (C) No.02 of 2020
by the learned Single Judge)*

1. State of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Mantralaya, New Raipur, Chhattisgarh.
2. The Sub Divisional Officer (R) Saja, District Bemetara, Chhattisgarh.

---- Appellants**Versus**

1. Balluram Sahu S/o Jeevanlal Sahu Aged About 45 Years R/o Viillage Ghotwani, K-Janpad Panchayat Saja, District Bemetara, Chhattisgarh.
2. Chaituram Sahu S/o Bhulauram Sahu Aged About 59 Years R/o Viillage Ghotwani, K-Janpad Panchayat Saja, District Bemetara, Chhattisgarh.
3. The Chief Election Officer State Election Officer, Raipur, District Raipur, Chhattisgarh.
4. The Collector And District Election Officer District Bemetara, Chhattisgarh.
5. The Chief Executive Officer Janpad Panchayat Saja, District Bemetara, Chhattisgarh.

---- Respondents

For Appellants/State	: Shri Jitendra Pali, Deputy Advocate General
For Respondent No.1	: Shri Bharat Rajput, Advocate
For Respondent/EC	: Shri Ranbir Singh Marhas, Standing Counsel

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****P.R. Ramachandra Menon, Chief Justice****14.01.2020**

1. The appeal is preferred against the order dated 10.01.2020 passed by the learned Single Judge in Writ Petition (C) No.02 of 2020 whereby Annexure P/1 notification dated 10.12.2019 issued under Section 13 of the

Chhattisgarh Panchayat Raj Adhiniyam, 1993 read with Rule 4 of the Chhattisgarh Panchayat Election Rules, 1995 regarding 'reservation of wards' of the Gram Panchayat, Ghotwani, Janpad Panchayat Saja, District Bemetara and the election proceedings in the said Gram Panchayat have been stayed.

2. Heard Shri Jitendra Pali, the learned Deputy Advocate General appearing for the Appellants/State, Shri Bharat Rajput, the learned counsel for the 1st Respondent as well as Shri Ranbir Singh Marhas, the learned standing counsel for the Election Commission.
3. The writ petition was filed on 02.01.2020 (on re-opening of the Court after Winter Holidays) and it came up for consideration on 07.01.2020, 09.01.2020 and 10.01.2020. The prayer sought for was resisted with reference to the election proceedings already set in motion and the mandate of Article 243-O of the Constitution of India, which stipulates that once such process begins, no Court shall interfere and records were produced, as directed by the Court. When the Court asked whether 'drawing of lots' for reservation of wards could be done afresh, it was submitted on the part of the Government that the writ petition itself was not maintainable and this led to the order, whereby the election process came to be stayed by the learned Single Judge.
4. During the course of hearing, it is pointed out by the learned counsel for the State that the writ petition itself is defective as the 'Election Commission' has not been impleaded properly as discernible from the cause-title. It is further pointed out that no copy of writ petition was given

to the standing counsel for the Election Commission. This version is asserted and affirmed by Shri Ranbir Singh Marhas (standing counsel for the Election Commission) who has now been served with the copy of memorandum of appeal. In the said circumstances, the correct factual and legal position could not be brought to the notice of the learned Single Judge, submits the learned standing counsel for the Election Commission. Referring to 'Annexure A/2' Election notification already issued on 23.12.2019, it is asserted that the proceedings are not liable to be interdicted at this stage, in view of the Constitutional mandate under Article 243-O and the various rulings rendered by the Court including in **Boddula Krishnaiah and Another v. State Election Commissioner, A.P. and Others** reported in (1996) 3 SCC 416, as cited by the learned counsel for the Election Commission and **Avtar Singh Hit v. Delhi Sikh Gurudwara Management Committee** reported in (2006) 8 SCC 487, sought to be relied upon from the part of the Appellants/State, besides Annexure A/3 verdict passed by a Division Bench of this Court. It is also pointed out that the order dated 10.01.2020 passed by the learned Single Judge, having stalled the entire election process already begun upto and including publication of the list of contesting candidates on 09.01.2020, it is having the final effect, liable to be challenged in appeal.

5. The learned counsel for the Writ Petitioners submits that the proceedings pursued by the Collector (District Election Officer) are *per se* wrong and illegal in all respects. The sequence of events reveals that objections submitted by the Writ Petitioners were considered and it was accordingly, that the earlier notification dated 24.11.2019 was set aside as per order

dated 07.12.2019. However, the Collector has issued the final notification dated 10.12.2019 virtually repeating the course with regard to the 'drawing of lots' in identifying the seats in the reserved category. Proper procedure was stated as not followed by following the 'Rotation method', instead of drawing lots and hence, it was liable to be interdicted. The prayers raised in the writ petition are relevant and hence, it is extracted below :

“10.1 That, this Hon'ble Court may kindly be pleased to issue an appropriate writ, thereby setting-aside/quashing the impugned notification dated 10.12.2019 (Annexure P/1) and further be pleased to direct the respondent No. 3 to issue fresh notification regarding reservation of panchas of Gram Panchayat, Ghotwani, **by applying rotation method**, as applicable under the law.

10.2 To kindly grant any other relief which may be deem fit in the given facts and circumstances of the instant case.”

6. The interim relief was sought for is in the following terms :

“It is, therefore most respectfully, prayed that this Hon'ble Court may kindly be pleased to stay the effect and operation of the impugned notification dated 10.12.2019 (Annexure P/1), till the final disposal of this petition, in the interest of justice.”

7. Any interim relief can only be to sub-serve the main relief. The Grounds raised in 'paragraph-9' of the writ petition, in support of the main relief are in the following terms :

“9.1 Because, the impugned notification dated 10.12.2019 (Annexure P/1) is bad in law, arbitrary and

illegal and violative of Constitution of India, therefore the same is liable to be quashed.

9.2 Because, the respondent authorities are fixing the reservation for the post of panchas on the basis of lottery system, whereas the reservation should be adopted on the basis of rotation method as applicable under the law.

9.3 Because, even the lottery has not been opened in presence of petitioner and other villagers or in presence of any office bearers of Gram Panchayat, Ghotwani.

9.4 Because, while issuing impugned notification, the respondent No.3 has almost repeated the earlier notification dated 24.11.2019 which was cancelled by the respondent No.3 on the basis of complaint made by the petitioners.

9.5 Because, after issuance of impugned notification, the Petitioners have made objection, but till date no action has been taken on their objection.

9.6 Because, the impugned notification has been issued by the respondent No.3, without application of mind, only on the basis Chart memo provided by the respondent no. 4.

9.7 Because, any other grounds will be raised at the time of hearing with the leave of the Hon'ble Court.”

From the above, it is very much clear that the case projected by the Writ Petitioner and the prayer sought for is that identification of the various wards to be notified in the reserved category shall only be by way of 'Rotation method' and not to be on the basis of 'drawing of lots'.

8. To understand the nature of the grievance further, it will be appropriate to extract 'paragraph-3' of the writ petition as given below :

“3. The instant writ petition is being preferred against the impugned notification dated 10.12.2019 (Annexure P-1) issued by the respondent No.3, whereby the respondent No.3 has reserved the post of Panch of wards of Gram Panchayat, Ghotwani on the basis of lot system, whereas the **reservation ought to have applied on the basis of rotation method.**

It is submitted that earlier by notification dated 20.11.2019, the respondent No.3 has reserved the post of Panchs of Gram Panchayat, Ghotwani, **which was not according to the rotation method**, but while issuing notification dated 24.11.2019 the reservation for the post of Panchas of said Gram Panchayat were changed and reserved the post of Panchas on the basis of memo sent by the respondent No.4.

The petitioners made objection before the respondents No.2 to 4 and **requested for applying the reservation as per rotation method** as provided under the law.

On the basis of objection/complaints of the petitioners, vide order dated 07.12.2019, the respondent No.3 has challenged the earlier notification dated 24.11.2019 and again called the memo from the respondent No.4 for reservation of post of Panchas and again about same memo was sent by the respondent No.4 before the respondent No.3 and on the basis of same, the impugned

notification dated 10.12.2019 has been issued by the respondent No.3, **whereby repeated the earlier notification dated 24.11.2019 on the basis of lottery system.** Hence this petition on the following facts and grounds.”

The Writ Petitioners were deprecating the “lottery system” and were batting for “Rotation method” for identifying the reservation of wards as pleaded in the 'paragraph-3' of the writ petition as well as in “paragraphs- 8.4, 8.6 and 8.8”, narrating the facts of the case.

9. The learned counsel representing the State submits that the reason for cancelling the earlier notification dated 24.10.2019 issued by the Collector was that, adequate extent of reservation to women was not provided in the earlier notification (where it was only 7%, whereas by virtue of legal provisions, it had to be earmarked to an extent of 50%). This made the Collector to issue a fresh notification, of course, deciding to identify the wards for reservation by way of drawing lots. There is no illegality or impropriety of any irregularity in the course pursued by the District Collector (the District Election Officer), submits the learned counsel for both the State and the Election Commission.
10. Coming to the relevant provision with regard to the identification of the Wards, Rule 4 of the Madhya Pradesh/Chhattisgarh Panchayat Nirvachan Niyam, 1995 (hereinafter referred to as the 'Rules, 1995') gives a clear picture, which is reproduced below for ready reference :

“4. Powers of Collector to determine reserved seats for wards. - (1) Subject to the provisions of Section 13, the ward or wards in which seats shall be

reserved for women and the members of the Scheduled Castes or Scheduled Tribes or Other Backward Classes shall be determined by the Collector :

[Provided that in Scheduled areas the seats for Scheduled Castes, Scheduled Tribes and Other Backward Classes shall be reserved in accordance with the provisions of Section 129-E of the Act.]

(2) The total number of seats to be reserved for the members of Scheduled Castes or Scheduled Tribes shall be in proportion to the total population of such caste and tribe with the total population of the Gram Panchayat area. Fraction less than half shall be ignored and half and more than half shall be counted as one.

[(3) Seats reserved either for the Scheduled Castes or the Scheduled Tribes shall as far as practicable, be allotted in the wards in which the percentage of population of the Scheduled Castes or the Scheduled Tribes, as the case may be, worked out by the Collector is found by him to be correspondingly higher in descending number :

Provided that in Scheduled areas, at first instance, reservation of seats for Scheduled Tribes shall be determined in accordance with the provision of sub-rule (3) and if any shortfall remains, remainder seats shall be reserved for Scheduled Tribes by drawing of lots and by rotation.]

(4) In a Gram Panchayat where fifty per cent or less than fifty per cent wards have been reserved both for the Scheduled Castes and for Scheduled Tribes, twenty five per cent of the total number of seats shall

be reserved for Other Backward Classes and such seats shall be allotted by the Collector in the wards excluding the wards reserved for the Scheduled Castes and the Scheduled Tribes by rotation and drawing of lots :

[Provided that in Gram Panchayat in Scheduled areas, such number of seats shall be reserved for persons belonging to Other Backward Classes, which together with the seats, already reserved for Scheduled Castes, and Scheduled Tribes if any, shall not exceed three-fourths of all the seats in that Gram Panchayat, by rotation and drawing of lots]

(5) Out of the wards reserved for women in accordance with sub-section (5) of Section 13 number of wards shall be reserved for women of Scheduled Castes or Scheduled Tribes and/or Other Backward Classes as may bear, as nearly as may be, the same proportion to the total number of seats reserved for women as the total number of wards reserved for Scheduled Castes or Scheduled Tribes and/or Other Backward Classes bear to the total number of wards in the Gram Panchayat area. Seats for women belonging to Scheduled Castes, Scheduled Tribes and/or Other Backward Classes shall be allotted from out of the wards reserved for Scheduled Castes and/or Scheduled Tribes and/or Other Backward Classes under sub-rule (3) and under sub-rule (4). Seats belonging to women of general category be allotted from out of the remaining wards.

(6) (a) The prescribed authority shall, for the purpose of fixing the wards in which seats shall be allotted, under sub-rules [x x x] (4) and (5) draw lots separately

for the wards reserved for [x x x] Other Backward Classes and for women.

(b) For the purpose of allotting wards the prescribed authority shall publish a notice at a conspicuous place at the headquarter of the concerned Gram Panchayat stating that the lots shall be drawn in the office to be named in such notice and on the date and at the time specified therein before the persons who are present to witness the drawal of lots.

(c) For the purposes of allotment of wards for women separate chits shall be prepared for general wards and wards reserved for Scheduled Castes and/or Scheduled Tribes and/or Other Backward Classes giving the individual number of wards on each of such chit. All the chits meant for general wards shall be kept in one pot and those chits for reserved wards shall be kept in separate pot/pots. As many chits as are required for allotment of seats for women of general category shall be drawn out and the number of wards written on the chits, shall be read out before the persons witnessing the draw. Similar procedure shall be adopted for drawing chits from the pots meant for allotment of wards for women belonging to Scheduled Castes, Scheduled Tribes and/or Other Backward Classes.

(d) The proceedings shall be recorded in writing and signed by the prescribed authority. Signatures of at least two non-official persons witnessing the drawal of lots shall also be obtained on proceedings. Their names and addresses shall be written below their signatures.

[(e) For the categories of seats which are to be reserved by drawing lots and by rotation, in subsequent general election of Gram Panchayat, the wards previously reserved shall be excluded from drawing lots, for that category till all such wards are exhausted.]”

11. On going by the above provisions, it is evident that the identification could be made by drawing of lots and by rotation. It is not as if it has to be identified by rotation alone and never by drawing of lots as contended by the Writ Petitioner.
12. Sustainability of the prayer sought for in the writ petition has to be ascertained in the said background. As mentioned already, the prayer was to quash the notification dated 10.12.2019, to be re-issued by 'rotation' i.e. not by drawing of lots. It is in support of the said main relief, that the interim order of stay was sought for, based on the grounds as raised in paragraph-9 of the writ petition (extracted already).
13. Even though, the Writ Petitioner has stated in ground/paragraph-9.3 of the writ petition that, even the lottery has not opened in the presence of the Petitioners and other villagers or in presence of any office bearer of Gram Panchayat, Ghotwani (which is emphatically denied by the Respondents in the writ petition), there is no prayer in the writ petition to cause the lots to be taken as alleged, since the only prayer raised in the writ petition is to direct the 3rd Respondent to identify the ward by way of rotation and not by drawing of lots. This being the position, the interim relief sought for cannot be regarded to sub-serve the main relief. We do not express anything further, more so, since the writ petition is still pending. We referred to the

above factual and legal position only to point out that the 'interim stay' granted by the learned Single Judge in relation to the main relief sought for and the case projected that identification of reservation seats shall only be by way of rotation and not by drawing of lots, is not correct or sustainable.

14. In the above circumstances, the interim order passed by the learned Single Judge on 02.01.2020 stands vacated. The writ appeal is allowed to the said extent. It will be open for the Writ Petitioner as well as the Respondents therein to supplement the pleadings and prayers, if so desired or advised. The Writ Petitioner shall take necessary steps for properly impleading the Election Commission and a copy of the proceedings shall be given to the learned standing counsel in this regard. Question of maintainability of the writ petition is left open.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge