

HIGH COURT OF CHHATTISGARH, BILASPUR**EP No. 2 of 2019****Judgment delivered on : 18.03.2020**

Shambhu Prasad Sharma Advocate, S/o Late Shri Bansh Gopal Sharma Aged About 75 Years R/o Village And Post Seoni, Tahsil Marwahi, District Bilaspur, Chhattisgarh.....BHARAT BHOOMI PARTY CANDIDATE.

---- Petitioner**Versus**

1. Dr. Renu Jogi, W/o Shri Ajit Pramod Kumar Jogi, Aged About 68 Years, R/o Anugrah Sagaun Bangla, Civil Line, Raipur Chhattisgarh,
JANATA CONGRESS CHHATTISGARH (J) CANDIDATE.
2. Kashi Ram Sahu, S/o Late Shri Mukhiram Sahu, Aged About 60 Years, R/o House No. 99, Ward No.04, Firangipara, Tahsil Kota, District Bilaspur, Chhattisgarh
BHARTIYA JANTA PARTY (BJP) CANDIDATE.
3. Vibhor Singh, S/o Dharam Singh, Aged About 42 Years, R/o Village Ghodi (Monhaya), Tahsil Kota, District Bilaspur, Chhattisgarh
INDIAN NATIONAL CONGRESS (INC) CANDIDATE
4. Balaram Armo, S/o Shri Nankuram Armo, Aged About 45 Years, R/o Village Parsada, Post Silly, Tahsil Pali, District Korba, Chhattisgarh
GONDWANA GANTANTRA PARTY (GGP) CANDIDATE.
5. Harish Kumar Chandel, S/o Shri Sushil Chandel, Aged About 37 Years, R/o House No. 178, Post Office Para, Ratanpur, Tahsil Kota, District Bilaspur, Chhattisgarh
AAM ADMI PARTY (AAP) CANDIDATE.
6. Dr. Urmila Singh Marko, W/o Shri Ram Singh Marko, Aged About 53 Years, R/o Bandhwapara, Sarkanda, Bilaspur, District Bilaspur, Chhattisgarh
RASHTRIYA GONDWANA PARTY CANDIDATE.
7. Harish Kumar Mandwa, S/o Shri Nand Kumar Mandwa, Aged About 38 Years, R/o Ward No.10, Ochhinapara, Ratanpur, Tahsil Kota, District Bilaspur, Chhattisgarh
INDEPENDENT CANDIDATE.
8. Virendra Kumar Netam, S/o Shri Rambichas Netam, Aged About 29 Years, R/o House No.27, Godpara No.2, Village Kanchanpur , Tahsil Pathariya, Tahsil And District Mungeli, Chhattisgarh.
AMBEDKARITE PARTY OF INDIA CANDIDATE.
9. Sandeep Singh Porte, S/o Shri Tejraj Porte, Aged About 28 Years, R/o Village Saarbahra, Jogidogri, Tahsil Pendraroad , District Bilaspur, Chhattisgarh
INDEPENDENT CANDIDATE.

10. Mahant Jag Kumar Sharma, S/o Shri Shiv Prasad Sharma, Aged About 44 Years, R/o Village Sipahi, FASTERPUR, Tahsil And District Mungeli, Chhattisgarh
INDEPENDENT CANDIDATE.

----Respondents

None for the petitioner.

For respondent No.1 -Dr. N.K. Shukla, Sr. Advocate with Ms. Rashika Soni, Advocates.

Hon'ble Shri Justice Goutam Bhaduri

CAV Order

1. Heard on application under Order 7 Rule 11 of the CPC filed by the respondent No.1/returned candidate.

2. An application has been preferred on behalf of the respondent No.1/returned candidate that the challenge is made to the election of the constituency No.25 of Kota assembly of the district Bilaspur but the prayer as has been made in the election petition do not give any cause of action for which the challenge can be made under Section 100 of the Representation of the People Act, 1951 (for short 'the Act, 1951'). It is contended that neither any grounds which require on which the election petition can be entertained have been pleaded nor has been projected in the pleadings.

3. Learned counsel would submit that the main contention of the petitioner is that the manifesto of the petitioner's party namely "Bharat Bhoomi Party" of which the petitioner was a candidate, was not published in the nation wide circulating newspaper. It is stated that by such election petition it is pleaded that since the publication of the manifesto was not made in the newspaper which is circulating nationwide, the elections of the other States which were held along with the Chhattisgarh namely Madhya Pradesh, Telangana, Rajasthan and Mijorum were also affected. It is stated that since

the election of the entire Chhattisgarh constituencies has been prayed to be set aside, therefore, the present election petition is not sustainable as it does not give this Court jurisdiction to exercise the power under Section 100 of the Act, 1951. Reading the prayer learned counsel would submit that along with Kota constituency assembly bearing No.25 which was held on 11.12.2018 has been prayed to be canceled along with 72 other seats of entire Chhattisgarh assembly. Referring to section 80 and 81 of the Act of 1951 counsel would submit that the word any election has been defined in section 81 which means that election as a whole cannot be challenged. Reliance was placed in **AIR 1986 SC 103** in between **Indrajit Barua & ors. Vs. Election Commission of India & ors.** and **AIR 1968 Kerala 252** in between **P.R. Francis Vs. A.V. Aryian & Anr.** and would submit that election of 72 seats the election as a whole cannot be challenged and the scheme of the Act is that each election has to be challenged by filing a separate election petition, therefore no cause of action arises for this court to go into trial in this election petition which is liable to be dismissed at the threshold.

4. Despite the repeated pass overs, the petitioner did not appear and on the earlier occasion too when the case was fixed no representation was made on behalf of the petitioner, therefore, in absence of any representation on behalf of the petitioner the arguments were heard on the application filed under Order 7 Rule 11 CPC.

5. By way of the present election the following prayer has been made:-

“(i) To declare the election of Kota Assembly 25 held on 11/12/2018 void alongwith 72 other seats of C.G. Assembly.

(ii) The cost of petition may be allowed to the petitioner alongwith any other suitable declaration which this Hon'ble Court deems fit and proper.

(iii) This Hon'ble Court may further be pleased to pass an interim direction to the respondents Election Commission to publish the MANIFESTO of petitioner's party before Parliamentary Election, 2019 for fair election not only in the State of Chhattisgarh but also in

the entire Country in the nationwide newspapers, in the interest of justice.”

6. At para 2 of the petition it is pleaded that the Election Commission was under responsibility to publish the party manifesto though it was given before the date of election. Consequently, the manifesto which was not published, the public could not read the same because of the polling date and time as it was published on 20.11.2018 little time hence remained and could not select the honest candidates. It is stated because the electors could not read the manifesto it caused an adverse effect on the assembly elections done in the five States i.e. Chhattisgarh, Madhya Pradesh, Telangana, Rajasthan and Mijorum. As per the own pleading, the petitioner secured 10th position out of 12 candidates and it is repeated that non-publication of the election manifesto of Bharat Bhoomi Party, the entire election of five States was badly affected.

7. Section 80 of the of the Act, 1951 when are read in between the line purports that no election shall be called in question except by an election petition presented in accordance with the provisions of this part. Under Section 81 of the Act, 1951 an election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 & 101 to the High Court. Therefore, an election can be challenged only by filing of an election petition in the manner prescribed by the Representation of the People Act, 1951.

8. The Constitution Bench of the Supreme Court in case of **Jagan Nath V. Jaswant Singh {AIR 1954 SC 210}** has held that the General rule is well settled that the statutory requirement of election law must be strictly observed and that an election contest is not an election at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the Court possesses no common law power. Therefore, the reading of the Section 81 would show that the election in this context means not the general election or the entirety of the elections held in the State, but one election held in one

constituency.

9. The Supreme Court in the case of ***Indrajit Barua and others v. Election Commission of India and others*** {AIR 1986 Supreme Court 103}

has laid down the principle that the Act of 1951 does not contemplate a challenge to the election to the Legislature as a whole and the scheme of the Act is clear. It further held that the election of each of the returned candidates has to be challenged by filing of a separate election petition.

10. When such principles are tested against the prayer made, it shows the petitioner has made omnibus prayer to cancel all the elections of the Chhattisgarh constituencies of 72 seats as void. The said election petition, therefore, do not give a cause of action which can be a ground of challenge under Section 100 of the Act, 1951 wherein specific grounds have been enumerated for declaration of the election to be void. The pleadings are completely on the premise that the election manifesto since was not published before the specific time, therefore, it has affected the entire election held in the five States. The said prayer cannot be allowed being not a ground or give a cause of action under Section 100 of the Act, 1951.

11. In view of the aforesaid discussion prima facie on the basis of the pleadings of the petition, no cause of action said to have accrued on the ground enumerated by the petitioner. Therefore, in absence of material facts necessarily to make out a cause of action under Section 100 read with Section 81 of the Act, 1951, the petition sans merit. Accordingly, as a necessary fall out of the aforesaid discussion, the application under Order 7 Rule 11 of C.P.C. is allowed. The election petition is dismissed.

Sd/-

(Goutam Bhaduri)
JUDGE