

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Election Petition No. 4 of 2019**

(Judgment delivered on 10.01.2020)

Goutam Buddha Agrawal, S/o. Late Shri Ram Krishna Agrawal, Aged About 70 Years, Occupation - Civil Court Stamp Vendor, Raipur, R/o. Purani Basti, Baniya Para, Raipur, Tahsil And District Raipur Chhattisgarh.

---- Petitioner**Versus**

1. Satyanarayan Sharma, S/o. Late Shri Jagdish Prasad Sharma, Aged About 75 Years, R/o. Anand Niketan, Avanti Vihar, Raipur, District Raipur Chhattisgarh. (Indian Nationalcongress Candidate)
2. Nand Kumar Sahu @ Nande Bhaiyya, S/o. Late Shri Manglu Sahu, Aged About 59 Years, R/o. Village Boriyakala, Post Sejbahar, District Raipur Chhattisgarh. (Bhartiya Janta Party Candidate)
3. Dr. Omprakash Dewangan, R/o. In Front Of Adwani School, Birgaon, Raipur, District Raipur Chhattisgarh Pin 49221. (Janata Congress Chhattisgarh (J) Candidate)
4. Narendra Kumar Baghel, S/o. Shri Chaitram Baghel, Aged About 37 Years, R/o. House No. 99, Village Bhatgaon, Post Mana Basti, Raipur Chhattisgarh. (Independent Candidate)
5. Pitamber Jangde, S/o. Shri Khorbahra, Aged About 42 Years, R/o. Etwari Bazar Chowk, Birgaon, District Raipur Chhattisgarh. (Independent Candidate)
6. Dr. Sanket Thakur, S/o. Late Shri Vishvendra Thakur, Aged About 54 Years, R/o. House No. B-32, Shriram Vihar, Purena, District Raipur Chhattisgarh. (Aam Admi Party (Aap) Candidate)
7. Gendlal Dadsena, Aged About 50 Years, R/o. House No. 1061/28, Sector - 1, In Front Of Extension P-27, Avanti Vihar, Raipur Chhattisgarh. (Independent Candidate)
8. Chandrakant Bhai Solanki, S/o. Late Shri Rarna Bhai Solanki, Aged About 51 Years, R/o. K-21, Steel City, Avanti Vihar, Raipur Chhattisgarh. Pin 492006. (Independent)
9. Sandeep Yadu, R/o. Village And Police Station Mujgahan, Raipur, District Raipur Chhattisgarh. (Independent Candidate)
10. Baldev Prakash Dwiwedi, S/o. Shri Tara Prasad Dwivedi, Aged About 36 Years, R/o. Bharkapara, Tatibandh, Raipur, Tahsil And District Raipur Chhattisgarh. (Independent Candidate)
11. Budharu Ram Banjare @ B.R. Banjare, S/o. Shri Dhanauram Banjare, Aged About 66 Years, R/o. T-56, Sector - 5, Extension, Avanti Vihar, Telibandha, Raipur, Tahsil And District Raipur Chhattisgarh. (Independent Candidate)
12. Motiram Verma, S/o. Shri Bhishma Lal, Aged About 54 Years, R/o. Ward No. 10, Banjari Nagar, Birgaon, District Raipur Chhattisgarh. (Independent Candidate)

13. Banmali Chhura, S/o. Shri Chitaru Chhura, Aged About 36 Years, R/o. House No. 668, Village Purena, Tahsil And District Raipur Chhattisgarh. (Bhartiya Bahujan Party Candidate)
14. Fulraj Verma, S/o. Shri Bhadu Verma, Aged About 42 Years, R/o. House No.183/K, Ward No.5, Village Kalkasa, Tahsil Dongargarh, District Rajnandgaon Chhattisgarh. (Bhartiya Bahujan Congress Candidate)
15. Krishna Murari Yadav, S/o. Shri Horilal Yadav, Aged About 44 Years, R/o. Tillu Chowk, Purani Basti, Near Sub Post Office Raipur Chhattisgarh. (Independent Candidate)
16. Satyanarayan Sonwani, S/o. Shri Aghar Das, Aged About 72 Years, Harinbhata, Post Bansa, Police Station And Tahsil Simga, District Balaudabazar - Bhatapara Chhattisgarh. (Independent Candidate)
17. Lakhmuram Tandan, S/o. Shri Panchram Tandan, Aged About 43 Years, R/o. Dr. Ambedkar Ward, Kondagaon, District Kondagaon, (Rashtriya Jansabha Party Candidate)
18. Rajendra Kumar Sahu, S/o. Late Shri Kuleshwar Sahu, Aged About 50 Years, R/o. Vaman Rao Lakhe, Ward No. 64, Near Malasay Talab, Piyush Nagar, Kushalpur, Tahsil And District Raipur Chhattisgarh. (Independent Candidate)
19. Mohd. Usman Sheikh, S/o. Mohd. Israeel, Aged About 55 Years, R/o. Jogi Nagar, Tarun Bazar Behind Dr. Narada Sahu, (Mathpuraina), Raipur, District Raipur Chhattisgarh. (Independent Candidate)
20. Mohd. Aurangzeb, S/o. Haider Ali, Aged About 31 Years, R/o. Gazinagar, Near Toran Kirana Store, Birrgaon, Raipur, District Raipur Chhattisgarh. (Independent Candidate)
21. Mangalchand Ghritlahre, S/o. Shri Thukuram Ghritlahre, Aged About 55 Years, R/o. Mana Camp, Raipur, District Raipur Chhattisgarh. (Republic Party Of India (A) Candidate)
22. Smt. Shamim Khan, W/o. Abdul Riyaz Khan, Aged About 42 Years, R/o. Ward No. 04, Bazar Chowk, Bhanpuri, Raipur Chhattisgarh. 492008. (Bhartiya Lokmat Rashtrawadi Party Candidate)
23. (Deleted) As Per Court Order Dated- 25-02-2019 & 07-03-2019.
24. (Deleted) As Per Court Order Dated- 25-02-2019 & 07-03-2019.
25. (Deleted) As Per Court Order Dated- 25-02-2019 & 07-03-2019.

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For Petitioner	: Mr. Lavkush Kumar Sahu, Advocate
For Respondent No.1	: Dr. N.K.Shukla, Sr. Advocate with Mr. Manish Sharma & Mr. Priyankesh Chandrakar, Advocates

Hon'ble Shri Justice Goutam Bhaduri

C.A.V. Judgment

10.01.2020

1. This order will govern the disposal of the application filed under Order 7 Rule 11 CPC seeking dismissal of the election petition filed by the respondent/returned candidate.
2. As per the pleading made, on 02.11.2018, the petitioner submitted nomination form before the Returning Officer for the Legislative Assembly Constituency No.48 Raipur Rural. The pleading further is that after perusal of the documents submitted by the petitioner the returning officer intimated the petitioner that one of the proposer of the petitioner is not the voter of the assembly constituency and directed the petitioner to remove the defect within a stipulated time. The petitioner could not remove the said deficiency, in a result, the returning officer rejected the nomination form for want of proper number of proposer. It is pleaded that the return candidate/respondent No.1 Satya Narayan Sharma was a candidate of Indian National Congress submitted his nomination form on 31.10.2018. On 03.11.2018 the scrutiny of the nomination form was made and certain objections were raised by the petitioner about wrong discloser of certain averments in the nomination form by the return candidate however those objections were eventually rejected. It is contended by the petitioner that while rejecting the nomination form of the petitioner, the returning officer was hand in gloves with respondent No.1/ the return candidate. Therefore, undue favour was made to the return candidate by accepting his nomination form. It is admitted fact that the respondent No.1 was declared as returned candidate of Raipur Rural. The petitioner contended that the election of the returned candidate cannot be said to be a valid and legal election for the reason that his nomination papers were wrongly accepted, therefore, the same is sought to be canceled. The prayer is made

that the acceptance of the nomination paper filed by respondent No.1 was improper and illegal, therefore, consequently, the election would be void.

3. After notice an application has been filed by returned candidate under Order 7 Rule 11 CPC. The primary objection is made that the petitioner is not the voter of constituency number 48 of Raipur Rural. It is further contended that the nomination paper of petitioner was rejected during the scrutiny, therefore, he cannot be deemed to be the candidate in the election in a result he has no locus standi to file the election petition. It is further stated in application under Order 7 Rule 11 of CPC that the nomination papers were filed by the petitioner knowing full well that one of his proposer is not the voter of constituency and when the returning officer had asked to rectify the same, the same was deliberately not done and therefore, the nomination papers were rejected for the reason that very filing of nomination paper by the petitioner was erroneous at its inception. It is further stated by the respondent since the petitioner himself did not remove the defect despite time given to him, the petitioner cannot maintain the election petition for want of locus standi. It is further submitted that the objection raised by the petitioner as against the nomination papers of the respondent/returned candidate, no substantial grounds were raised which requires any adjudication and predominantly election petition is not tenable for want of locus standi of the petitioner.
4. Learned counsel for the respondent No.1 would submit that Section 81 of the Representation of Peoples Act, 1951 (for short 'the Act, 1951') the election petition is maintainable by a candidate

or an elector, the petitioner is neither was a candidate as his nomination papers were rejected at the threshold and despite being asked to cure this defect the petitioner did not do it. Referring to Section 33 of the Act, 1951, it is stated that the petitioner was not set up by a recognized political party, therefore, the nomination papers were required to be subscribed by 10 proposers being the electors of the said constituency. Since one of the electors of the proposer was not of the constituency and the nomination having been rejected on the same ground, the petitioner cannot said to have the locus standi to maintain the election petition. Referring to Section 36 of the Act, 1951, counsel would submit that during the scrutiny of the nomination the defect of subscribe by 10 electors to the nomination papers of the petitioner was found and one elector since was not an elector, therefore, the returning officer in exercise of Section 36 (2) (b) of the Act, 1951 has rejected the nomination papers. It is submitted that the petitioner has challenged the acceptance of nomination papers of returned candidate but has not challenged the rejection of his nomination papers, therefore, he has no locus standi. Further reliance is placed to the case of **AIR 2007 SC 2924 & AIR 2011 SC 2634** and it is submitted that no pleading has been made that the returning officer has wrongly rejected the nomination paper of the petitioner, therefore, the petitioner has no cause of action to maintain the petition.

5. Per contra, learned counsel for the petitioner would place his reliance in the case of **2018 (14) SCC 1** and would submit that the acceptance of the nomination paper is wrong and it would be deemed to have materially affected the election results and the

election petition has to be read as a whole. Consequently, the application under Order 7 Rule 11 CPC is liable to be dismissed.

6. Heard learned counsel for the parties, perused the pleadings made in the petition.
7. The averments of the petition are that the petitioner filed his nomination papers as an independent candidate. Section 33 of the Act, 1951 governs the presentation of nomination paper and requirements for a valid nomination. The initial three proviso; which are relevant to the case along with Section 33 are reproduced herein :

“[33. Presentation of nomination paper and requirements for a valid nomination.-

(1) On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer :

[Provided that a candidate not set up by a recognised political party, shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency:

Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday:

Provided also that in the case of a local authorities constituency, graduates constituency or teachers constituency, the reference to “an elector of the constituency as proposer” shall be construed as a

reference to ten percent of the electors of the constituency or ten such electors, whichever is less, as proposers.]”

8. Since, the petitioner pleaded that he was an independent candidate, therefore, as per the requirement of first proviso to Section 33 of the Act, 1951, the nomination paper was required to be subscribed by ten proposers being electors of the constituency. The word 'elector' has been defined under sub-section (e) of Section 2 of the Act, 1951, which reads as under :

“2(e) “elector” in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualification mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950)”

9. It is the case of the petitioner that his nomination paper was rejected on the ground that one of the proposer was not elector/ voter of the Assembly Constituency No. 48. Since the petitioner could not remove the said defect within the time prescribed, his nomination paper was canceled. Clause (b) of Sub Section 2 of Section 36 of the Act, 1951 which is relevant to deal this issue in hand reads as under :

“36. Scrutiny of nomination – (1).....xxx.....xxx....

(2) (a).....xxx.....xxx.....

(b) that there has been a failure to comply with any of the provisions of section 33 or section 34;
or

(c).....xxx.....xxx.....”

10. Reading of clause (b) of sub section 2 of Section 36 of the Act, 1951 allows the rejection of the nomination paper in case there is

a failure to comply with any of the provisions of section 33 or section 34. In the instant case, the petitioner's nomination was canceled for the reason that he could not cure the defect to bring one elector who subscribed the nomination papers of petitioner. Out of ten proposers one was not a voter/ elector of the same constituency. Consequently, the nomination papers were rejected. Therefore, the question arise whether the petitioner has a locus standi to maintain this petition, as he was not a duly nominated candidate under the provisions of the Act, 1951 and the Constitution of India. As per the pleading of the petitioner, the petitioner though was given time to cure the defect to bring one proposer who was not a voter out of ten proposers the defect could not be cured within time given. Therefore, it would show there has been a willful defiance to cure the defect on the part of petitioner to come within the ambit of candidate.

11. Section 33 of the Act, 1951 provides for presentation of nomination paper and requirements of a valid nomination. Section 33 (1) provides for the date and time of submitting the nomination paper. The proviso to Section 33 (1) requires the nomination paper to be subscribed by ten proposers, if the candidate is not set up by a recognized political party. Consequently, primarily the presentation of the petition apparently does not qualify to be either a candidate in the election or the elector as required under Section 81 of the Act, 1951. Admittedly, the petitioner was not an elector of the same constituency, which has been admitted in reply to the application under Order 7 Rule 11 of the CPC wherein the petitioner categorically admits that he is not the voter of the Constituency No. 48 of Raipur Rural of Legislative Assembly of Chhattisgarh. Only on bare reading of the pleading of the petition

without requirement of any evidence, the basic defect as to the qualification clause as required under Section 81 of the Act, 1951 holds the sway in favour of return candidate.

12. As per the law laid down in ***Pathula Rama Rao v. Pendyala Venkata Krishna Rao & Ors.*** reported in ***AIR 2007 SC 2924*** wherein the proviso clause of sub-section (1) of Section 33 has been interpreted by their Lordship, it has been held that a candidate who is not set up by a recognized political party shall not be deemed to be duly nominated unless his nomination paper is subscribed by ten proposers who are electors of the same constituency. It has been further held the use of words 'set up' by a recognized party in the said proviso shows that a positive act was required with reference to the candidate. The Supreme Court further held if the nomination of candidate had been rejected for non-compliance with the first proviso to sub-section (1) of Section 33, that is, the candidate's nomination not being subscribed by ten voters as proposers, then the election petitioner who set out a plea that the nomination was improperly rejected then the election petition should contain averments to the effect that the nomination was subscribed by ten proposers who were electors of the same constituency and therefore, the nomination was valid. In absence of such averments, it cannot be said that the election petition contains a material facts to make out a cause of action.
13. In the instant election petition though the petitioner has alleged that the nomination of the return candidate was improperly accepted, the same could be gone into only when the petitioner himself qualifies to maintain the election petition under Section 81

of the Act of 1951. For sake of brevity Section 81 of the Act of 1951 is reproduced hereunder:-

“81. Presentation of petitions. - (1) 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 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

Explanation – In this sub-section, “elector” means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

14. In the case relied on by the petitioner i.e. ***Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy & Others*** reported in ***(2018) 14 SCC 1***, wherein their Lordship has held there is difference between improper acceptance of nomination of a returned candidate and improper acceptance of any other candidate, but in order to alleged those facts the person who challenges the election petition should qualify all the requirements of Section 81 of the Act, 1951.
15. The petitioner has not contended in this petition that his nomination was improperly rejected and has pleaded that the

nomination was improperly accepted that of the return candidate. In order to prove those facts the election petitioner at first should have the locus standi. The petitioner has to himself qualify the requirement of Section 81 of the Act, 1951 to maintain the petition. Therefore, the ratio laid down in **(2018) 14 SCC 1** cannot be applied in favour of the petitioner.

16. In view of the aforesaid discussion, prima facie, on the basis of the pleading of the petition, it is found that the petitioner has no locus standi to maintain this petition. The petitioner is neither the elector or duly nominated candidate in terms of first proviso of sub-section 1 of Section 33 read with clause (b) of sub-section 2 of Section 36 of the Act, 1951. 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, in 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