

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Order Reserved on 20.01.2020****Order Delivered on 29.01.2020****Writ Appeal No.71 of 2020***(Arising out of order dated 15.01.2020 passed in Writ Petition (C) No.201 of 2020 by the learned Single Judge)*

Smt. Yogeshwari Sahu W/o Thakur Ram Sahu Aged About 40 Years R/o Village Madeli, Tahsil Kurud, District Dhamtari, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh Through The Secretary, Panchayat Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh.
2. The Chhattisgarh State Election Commission Through The Secretary, Near Dau Kalyan Singh Bhawan, Raipur, District Raipur, Chhattisgarh.
3. The Commissioner Raipur, Chhattisgarh.
4. The District Election Officer (Panchayat) / Collector Dhamtari, Chhattisgarh.
5. Returning Officer/ Tahsildar Kurud, Panchayat Election, District Dhamtari, Chhattisgarh.
6. Sharda Sahu W/o Loknath Sahu Aged About 54 Years R/o Village Madeli, Tahsil Kurud, District Dhamtari, Chhattisgarh.
7. Vandana Sahu W/o Tarun Sahu Aged About 29 Years R/o Village Kachna, Tahsil Kurud, District Dhamtari, Chhattisgarh.

---- Respondents

For Appellant	: Shri Prateek Sharma, Advocate
For Respondent/State	: Shri Chandresh Shrivastava, Deputy Advocate General
For Respondents No.2,4,5	: Shri Ranbir Singh Marhas, Standing Counsel
For Respondent No.6	: Shri Kishore Narayan, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****C A V Judgment****P.R. Ramachandra Menon, Chief Justice**

1. Rejection of the nomination for election to Janpad Panchayat which was put to challenge in the writ petition, was declined to be interfered relegating the writ Petitioner to pursue the remedy in terms of Section 122 of the Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as 'Act, 1993'), which has made the writ Petitioner to file this appeal.

2. The sequence of events is as follows : The Election Commission declared general elections of the Panchayats in the State of Chhattisgarh, including in the Constituency No. No.25 in respect of Janpad Panchayat, Kurud, known as Madeli Constituency, which falls in the District Dhamtari as per Annexure P/4 notification dated 23.12.2019. As per the said notification, the different dates were mentioned in connection with the different process of election to be completed. The last date for submitting the nomination was scheduled to be on 06.01.2020 and the scrutiny of the nomination was to be held on 07.01.2020. In fact, pursuant to the said notification, altogether three candidates including the Appellant/Petitioner and the Respondents No.6 and 7 submitted their nominations well within time. It is the case of the Appellant that, along with the nomination, she had submitted all the relevant records/documents as specified, including those to prove the fact that she was not indebted in any manner, as given in the prescribed form. That apart, the Petitioner/Appellant had also submitted a 'no dues certificate' issued by the Gram Panchayat, Madeli along with nomination form.

3. However, in the course of scrutiny held on 07.01.2020, the nomination submitted by the Petitioner came to be rejected by the 5th Respondent-Returning Officer, for the reason that the 'no dues certificate' produced by the Appellant/Petitioner was not from the Janpad Panchayat, but for a Gram Panchayat. According to the Returning Officer, since the election was to the Janpad Panchayat, the 'no dues certificate' also should have been obtained from Janpad Panchayat and not the Gram Panchayat. The Appellant/Petitioner tried to substantiate the position by contending that the relevant provision does not mention that the certificate from the Janpad Panchayat had to be produced, but for simply mentioning that such certificate has to be obtained from the "Panchayat", which requirement has been satisfied. That apart, it is contended, the Petitioner had also filed an affidavit regarding the factual position and hence, there was no rationale on

the part of the Returning Officer to have the nomination rejected.

4. In the above circumstance, Appellant/Petitioner moved the District Election Officer/District Collector/Respondent No.4 by filing a revision petition in terms of the Rule 36 of the Madhya Pradesh/Chhattisgarh Panchayat Nirvachan Niyam, 1995 (hereinafter referred to as 'Rules, 1995'). After considering the review petition, the District Election Officer/District Collector got convinced of the position and accordingly, a direction was issued on 08.01.2020 itself to the Returning Officer to accept the nomination of the Appellant/Petitioner. Pursuant to the said order, it is stated that the nomination was accepted and further proceedings were being pursued accordingly.

5. While so, on a very next day, the 6th Respondent herein who was one among the three contesting candidates approached the 3rd Respondent i.e. the Commissioner, Raipur and filed a petition challenging the order dated 08.01.2020 passed by the District Election Officer, whereby the nomination of the Appellant came to be accepted by the Returning Officer. On that day itself, the Commissioner passed an order (on 09.01.2020), whereby the order dated 08.01.2020 passed by the District Election Officer/District Collector was set aside and the order passed by the Returning Officer rejecting the nomination was virtually caused to be restored. The very next moment, based on the said order passed by the 5th Respondent-Returning Officer gave effect to the order passed by the Commissioner and the nomination of the Appellant, which was accepted pursuant to the order passed by the District Election Officer/District Collector on the previous day, came to be rejected. Immediately thereafter, the other candidate i.e. 7th Respondent herein withdrew her nomination on 09.01.2020 itself (the last day for withdrawal of nomination). Since the nomination of the Appellant was rejected and since the 7th Respondent had withdrawn her candidature, the 6th Respondent alone remained to be a sole surviving candidate. In the said

circumstance, the 5th Respondent declared the 6th Respondent as elected unopposed and accordingly, Annexure-P/9 certificate was issued in this regard. This made the Appellant to challenge the course and proceedings by filing the writ petition on various grounds.

6. When the matter came up for consideration before the learned Single Judge, the prayers were opposed from the part of the Respondent-State and also the contesting Respondent, contending that the writ petition was not maintainable and that the remedy, as clearly provided in the statute, was by way of 'election petition'. Accepting the said contention and also placing reliance on a recent verdict passed by this Court on **02.12.2019** in **Writ Petition (C) No.3540 of 2019 (Manoj Kanseri v. State of Chhattisgarh & Ors.)** as well as **Writ Appeal No.40 of 2020 (State of Chhattisgarh & Anr. v. Balluram Sahu & Ors.)** decided on **14.01.2020**, interference was declined and the writ petition was dismissed, reserving the right of the Petitioner to avail the alternative remedy by way of election petition. Correctness of the said judgment is put to challenge in this appeal.

7. Shri Prateek Sharma, the learned counsel appearing for the Appellant points that the course pursued by the Authorities, particularly, the 3rd Respondent-Commissioner and the 5th Respondent-Returning Officer are *per se* wrong and illegal in all respects. It is pointed out that the relevant provision i.e., Rule 31-A of the Rules, 1995 only stipulates a 'no dues certificate' from the Panchayat. The said provision reads as follows :

“31A. Self-declaration/Affidavit to be submitted by the candidates. - (1) Under sub rule (1) of Rule 32, self-declaration signed by the candidate for the post of Sarpanch and affidavit signed by the candidate to be the Member of Janpad Panchayat and Zila Panchayat shall be submitted to the Returning officer, alongwith nomination form.

But the candidates for the post of "Panch" of any Gram Panchayat shall not be required to submit self- declaration or affidavit.

(2) Every self- declaration or affidavit under sub rule (1) shall be -

(i) in the Form 4-B-1, in case of election of Sarpanch;

(ii) in the Form 4-C-1, in case of election of Member of Janpad panchayat;

(iii) in the Form 4-D-1, in the case of election of Member of Zila panchayat.

(3) Every candidate for the post of Member of any Janpad Panchayat or any Zila Panchayat shall submit in the prescribed form, on oath before any Public Notary or Oath Commissioner or any First Class Magistrate, duly complete in all respects in connection with all matters, as mentioned in the affidavit, alongwith nomination forms.

(4) In case, the self-declaration or the affidavit, as the case may be, is not submitted by any candidate; at the time of scrutiny of the nomination form of the candidate, it shall be liable for rejection.”

8. The submission of the learned counsel for the Appellant is that, there is absolutely no rhyme or reason for holding that, since election is to the Janpad Panchayat, the certificate has to be obtained from the Janpad Panchayat itself. This is for the reason that the purpose of certificate is to substantiate the financial position and as to the dues, if any. There is no direct inter-action for anybody with the Janpad Panchayat, except the Sarpanch of the Gram Panchayat and as such, there may be any relevant material with the Janpad Panchayat to issue the 'no dues certificate'. The entire transactions of the persons like the Appellant/Petitioner are only with

the Gram Panchayat and the Gram Panchayat alone is the Competent Authority to issue the certificate. Since the terminology used in the provision is only 'Panchayat', it has to be understood as the 'Gram Panchayat', insofar as it is not specifically mentioned that such certificate has to be obtained from the Janpad Panchayat. The learned counsel further submits that the certificates issued by the Gram Panchayats are being accepted by the Competent Authority in connection with the election all over the State of Chhattisgarh.

9. Shri Prateek Sharma, the learned counsel for the Appellant submits that, absolutely no power is vested with the 3rd Respondent-Commissioner to have passed any order or for considering the correctness, propriety, legality or otherwise of an order passed by the District Election Officer i.e. the District Collector. This being the position, the 3rd Respondent has virtually grabbed the jurisdiction, merely on the basis of a petition filed by the 6th Respondent and as such, the said order ought to have been held as null and void. When the order is null and void, the 5th Respondent ought not to have given effect to the order passed by the Commissioner, who is not at all the Competent Authority so as to have the nomination preferred by the Appellant to be rejected. This being the position, the situation as prevailed on 08.01.2020, whereby the District Collector had set aside the order by the Returning Officer rejecting the nomination of the Appellant and directing the nomination of the Appellant to be accepted prevails over the situation and the matter should have been pursued accordingly. If at all, there was any dispute for the 6th Respondent in connection with the above proceedings of the District Election Officer or the consequential order passed by the Returning Officer on 08.01.2020, giving effect to the same and accepting the nomination of the Appellant, it ought to have been challenged only by way of an 'election petition' instead of approaching the 3rd Respondent-Commissioner; more so, when the Commissioner is having no power or

jurisdiction in this regard.

10. Shri Kishore Narayan, the learned counsel appearing for the 6th Respondent concedes that the 3rd Respondent Commissioner does not have any power to deal with the situation in respect of an order passed by the District Election Officer/District Collector. But the learned counsel submits that the order passed by the District Election Officer/District Collector directing the 5th Respondent to accept the nomination, after setting aside the rejection, is also not correct. The said submission is made with reference to Rule 36 of the Rules, 1995, which reads as follows :

“36. Revision of rejected nomination papers in certain cases. - (1) If for any seat, after the scrutiny of nomination papers under rule 35, there remains only one candidate in the field as a result of rejection of nomination papers of all other candidates, the Returning Officer shall forthwith report the fact to the following authority, hereinafter referred to as Revisional Authority, namely:-

(i) in case of election of a Panch or a Sarpanch of a Gram Panchayat, to the Sub-Divisional Officer (Revenue);

(ii) in case of election of a member of Janpad Panchayat, to the Collector; and

(iii) in case of election of a member of Zila Panchayat, to the Divisional Commissioner, and shall-

(a) affix a notice in Form 5-A on the notice board of his' office, for information of all candidates for the seat in question, that his order rejecting a nomination paper is subject to the order passed by the Revisional Authority and any candidate aggrieved by his order is free to appear before such Authority, on the date, time and

place mentioned, in the notice, and;

(b) submit, all papers relating to nominations, received for the seat in question to the Revisional Authority so as to reach him latest by 11.00 A. M. on the next day.

(2) The day for consideration of the cases under sub-rule (1) by the Revisional Authority shall be the day next following the date for scrutiny of nominations, which shall include a public holiday.

(3) It shall be the duty of every candidate to take cognizance of the notice published under sub-rule (1) and no separate notice shall be issued by the Revisional Authority to any candidate before considering a case.

(4) Every candidate or his proposer for the seat in question, shall be entitled to be present and heard by the Revisional Authority.

(5) On the date and at the place specified in the notice in Form 5-A under sub-rule (1), the Revisional Authority shall take-up examination of the nomination papers rejected by the Returning Officer one by one and if it finds that any nomination paper has been rejected wrongly, it shall revise the order of the Returning Officer for reasons to be recorded in writing and declare such nomination paper as valid.

(6) The Revisional Authority shall dispose of every case received by it under sub-rule (1) expeditiously and return the case-file along with an authenticated copy of its order to the Returning Officer in the quickest possible manner, so as to reach him before 2.00 P. M. on the last date fixed for withdrawal of candidature:

Provided that if the Revisional Authority fails to dispose of the case within the aforesaid time

limit, the Returning Officer shall stay the election for the seat in question and report the matter to the Commission, through the District Election Officer.

(7) On receipt of an order of the Revisional Authority declaring the nomination of a candidate to be valid, the Returning Officer shall include the name of such candidate in the list of validly nominated candidates in Form-5 prepared under rule 35 and affix a copy of the revised list in Form-5 on the notice board in his office, duly recording the date and time of such affixture below his signature.”

11. Learned counsel points out that as per Rule 36, the revision petition can be entertained by the District Election Officer/District Collector only on the basis of the 'report' submitted by the Returning Officer, referring to a situation whereby because of the rejection of the nomination, only one candidate is let to remain. In the instant case, first of all, it is not on the basis of any such 'report' filed by the Returning Officer, but on the basis of a petition filed directly by the Appellant-candidate, whose nomination was rejected. Secondly, even after rejection of the candidature of the Appellant, two candidates remained in the field i.e. the 6th Respondent and the 7th Respondent and as such, it was not a case where Rule 36 was attracted and hence, no power could have been exercised by the District Election Officer/District Collector. Since the order passed by the District Election Officer/District Collector is not correct or sustainable, no relief can be claimed by the Appellant/Petitioner.

12. With regard to the contentions raised by the both the sides as to the alleged nullity of the orders passed by the District Election Officer/District Collector and the 3rd Respondent-Commissioner, it is an admitted fact that there is no authority conferred upon the 3rd Respondent-Commissioner to

deal with an order passed by the election authorities. This means, it is an order passed without any jurisdiction and hence, null and void. But with regard to the order passed by the District Election Officer/District Collector, it cannot be said as 'null and void' insofar as the District Election Officer/District Collector is of course having the power to pass an order in revision petition, in terms of Rule 36 as quoted above. Whether such an order passed in favour of the Appellant is correct and proper one, alone is the question. If such order could not have been passed with reference to the mandate of Rule 36 of the Rules, 1995 for want of satisfying the requirements therein, it can be only be a 'wrong order' and cannot be called null and void order. Whether any interference is to be made with reference to such distinction, is a matter to be considered by this Court.

13. Shri Ranbir Singh Marhas, the learned Standing counsel for the Election Commission submits that, the writ petition filed by the Appellant is not maintainable in law and it has been rightly dismissed by the learned Single Judge. Reference is made to Article 243-O of the Constitution of India, pointing out that, it can be challenged only by raising an 'election dispute' and not otherwise. Reference is sought to be placed on the law declared by the Apex Court reported in **Avtar Singh Hit v. Delhi Sikh Gurdwara Management Committee and Others** reported in **(2006) 8 SCC 487** (paragraph-21). In fact, the said decision has been rendered by placing reliance of the Constitution Bench verdict of the Apex court in **Mohinder Singh Gill and Another v. The Chief Election Commissioner, New Delhi and Others** reported in **(1978) 1 SCC 405**, to the effect that 'election petition' alone is the remedy. In the instant case, the 6th Respondent has been declared as elected by the Returning Officer, after rejection of the nomination of the Appellant and as such, correctness of the proceedings can be tested only in an 'election petition' and not in a writ petition.

14. Almost similar contention is raised from the part of the State as well.

The learned counsel representing the State submits that, the writ petition is not maintainable by virtue of Article 243-O of the Constitution of India and that the remedy is only by way of 'election petition' The learned counsel makes a reference to Section 122 of the Act, 1993, which stipulates the remedy by way of 'election petition'.

15. In reply to the submissions, Shri Prateek Sharma, the learned counsel for the Appellant submits that Rule 35(4) of the Rules, 1995 clearly shows that the Returning Officer shall not reject the nomination on the ground of any defect which is not of substantial character. In the instant case, the Appellant/Petitioner had satisfied the requirement for establishing the factum of 'no dues' by producing a certificate issued by the Gram Panchayat, the declaration in the form of an affidavit and such other materials. Reliance is sought to be placed on paragraph-34 of the decision rendered by the Apex Court in **Mohinder Singh Gill** (supra), simultaneously adding that, the order passed by the Returning Officer is final subject to revision and as such, the order passed by the District Election Officer/District Collector was correct and sustainable.

16. The learned counsel further submits that since the nomination, which was once rejected by the Returning Officer was subsequently accepted by him on 08.01.2020, pursuant to the order passed by the District Election Officer, since no more interruption was possible, this Court is having power to intervene with regard to the subsequent proceedings leading to frustration of the 'election process'. All throughout, the attempt was to see that 'no contest' was there, which is contrary to very domestic concept and set up. It was with malafide intent, that the Appellant was sought to be ousted and after ensuring that the nomination was rejected, the 7th Respondent chose to withdraw her candidature, in turn, leading to declaration of the 6th Respondent as the unopposed candidate, which is not correct or proper and hence, the challenge.

17. Article 243-O of the Constitution of India reads as follows :

“243O. Bar to interference by courts in electoral matters.- Notwithstanding anything in this Constitution-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under article 243K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any Law made by the Legislature of a State.”

18. The legal position stands clear as declared by the Apex Court in **Mohinder Singh Gill** (supra) and **Avtar Singh Hit** (supra) to the effect that, once the election process starts, there cannot be any interference by any Court of law and the remedy if at any to the aggrieved party is to have the same challenged by way of an 'election petition'. It is in the said context, that Section 122 of the Act, 1993 is incorporated in Act No.8 of 2003, whereby challenge can be raised by way of an election dispute. This has been declared as the proper course as per the judgment rendered by this Court in **Writ Petition (C) No.3540 of 2019 (Manoj Kanseri v. State of Chhattisgarh & Ors.)** decided on **02.12.2019** as well as **Writ Appeal No.40 of 2020 (State of Chhattisgarh & Anr. v. Balluram Sahu & Ors.)** decided on **14.01.2020**, which have been relied on by the learned Single Judge to decline interference.

19. In the above circumstances, we are of the firm view that this is not a matter for interference invoking the extraordinary jurisdiction of the Court under Article 226 of the Constitution of India. It is always open for the Appellant/Petitioner to move the Competent Authority by raising an election

dispute in terms of Section 122 of the Act, 1993. However, if any such election dispute is raised by the Appellant, the same shall be considered by the Competent Authority and it shall be finalized after hearing the interested parties in accordance with law, as expeditiously as possible, at any rate, within a period of 'six weeks' from the date of receipt of the election petition as aforesaid.

20. With the above observation/direction, the writ appeal stands disposed off.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Anu