

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 140 of 2020***(Arising out of Order dated 28.01.2020 passed in Writ Petition (C) No. 347 of 2020 by the learned Single Judge)*

Radhabai, W/o Gaurishankar Malakar, Aged about 36 years, R/o Kodasia PS Lailunga, Tahsil Lailunga, District Raigarh (C.G.).

---- Appellant**Versus**

1. State of Chhattisgarh through the Secretary, Panchayat Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur (C.G.).
2. Collector, Raigarh (C.G.).
3. Returning Officer/Tahsildar Lailunga, District Raigarh (C.G.).
4. Smt. Alka Devi Behra W/o Thandaram Behra, At Post Lailunga, District Raigarh (C.G.).
5. The Chhattisgarh State Election Commission through the Secretary, Near Dau Kalyan Singh Bhawan, Old Mantralaya Road, Motibagh, Raipur, District Raipur (C.G.).

---- Respondents

For Appellant	: Mr. Varun Sharma, Advocate
For Respondent/State	: Mr. Chandresh Shrivastava, Dy. Advocate General
For Respondent No.5	: Mr. Aman Tamboli Advocate on behalf of Mr. R.S. Marhas, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**Per P.R. Ramachandra Menon, Chief Justice****03.02.2020**

1. Grievance is against the interference declined by the learned Single Judge with regard to the challenge raised as to the cancellation of the nomination preferred by the Appellant herein.
2. The sequence of events reveals that the election was notified by the Competent Authority on 23.12.2019, to the Lailunga Janpad Panchayat

namely Kodashia. The Appellant as well as the 4th Respondent submitted their nominations. The Appellant gave the details of the caste status as a member of 'Other Backward Class', but pursuant to the objection raised by the 4th Respondent, the Appellant was given an opportunity to have the same corrected by the Returning Officer. It is the case of the Appellant that the necessary corrections were got effected by getting a proper corrected certificate and the same was already submitted. The nomination of the Appellant however came to be rejected by the Returning Officer and in the said circumstance, only one candidate remained in the field i.e. the 4th Respondent, who was to be declared as elected and the report was submitted by the Returning Officer to the District Collector, who is the Revisional Authority in terms of Rule 36(2) of the Chhattisgarh Panchayat Nirvachan Niyam, 1995 (hereinafter referred to as 'Rules of 1995').

3. The Appellant contends that no opportunity of hearing was given to the Appellant and a finding was rendered by the Authority virtually sustaining the course of action pursued by the Returning Officer which is prejudicial to the rights and liberties of the Appellant and hence the writ petition.
4. When the matter came up for consideration before the learned Single Judge, it was pointed out from the part of the State that there was an alternate remedy to the writ Petitioner by way of 'Election Petition'. In the said circumstance, interference was declined and the writ petition was dismissed, reserving the rights and liberties to the writ Petitioner to avail other appropriate remedy under the relevant provisions of law.
5. The learned counsel for the Appellant submits that the 'Election Petition' has to be filed before the 2nd Respondent herein under Section 122 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as 'Act of 1993'), but it is the same Respondent who has already passed an order

in the revision. In the said circumstances, the 'Election Petition' is not an effective alternative remedy and hence the appeal.

6. The learned counsel for the State submits that the scope of jurisdiction invoked by the 2nd Respondent while acting as a Revisional Authority in terms of Rule 36(2) of the Rules of 1995 is entirely different from the power which is to be exercised by the said Authority while dealing with an 'Election Petition' in terms of Section 122 of the Act of 1993. If a proper petition is filed in this regard, all the relevant facts and figures would be looked into, in the light of the evidence to be adduced and applying the relevant provisions of law; submits the learned counsel.
7. After hearing both the sides, we do not find any reason to interfere with the verdict passed by the learned Single Judge, relegating the Appellant to pursue the statutory remedy. However, we make it clear that, once such petition is filed by the Appellant, it shall be dealt with and finalized in accordance with law, untrammelled by the observations made by the 2nd Respondent while dealing with the revision petition in terms of Rule 36(2) of the Rules of 1995.
8. With the above observation, interference is declined and the writ appeal is dismissed.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE