

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 2560 of 2020**

Sandeep Tiwari S/o - Shri G.P. Tiwari, Aged About 45 Years, National President Of Sarvjan Hitay Samaj Party, Head Office Situated At Anant Vihar Colony, Daldal Sivani Marg, Mowa, Raipur. Chhattisgarh

---- **Petitioner****Versus**

1. Office Of Chief Electoral Officer Through Its CEO, Shastri Chowk, Old Mantralaya Premises, Raipur, Chhattisgarh
2. Returning Officer Of Marwahi, Office At Collector Of Gaurela Pendra Marwahi, District- Gaurela Pendra Marwahi, Chhattisgarh
3. Election Commission Of India Through Chief Election Comm. Nirwachan Sadan, Ashoka Road, New Delhi

---- **Respondents**

For Petitioner	:	Mr. Pallav Mishra, Advocate
For Respondents	:	Mr. Rajeev Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****27.10.2020**

1. The challenge in the present writ petition is to the non-granting of the choice of symbol to the candidate of the petitioner's party in the bye-election for the State Assembly to be held for Marwahi constituency.
2. At the outset, this Court is of the opinion that the writ petition would not be maintainable for more than one reason. Firstly, the present writ petition has not been filed by the candidate himself who should be the aggrieved person. The candidate in the instant case who is contesting the bye election is one shri Laxman Porte whereas the present writ petition has been filed by one Sandeep Tiwari claiming himself to be

the president of Sarvjan Hitay Samaj Party. It is settled position of law that for invoking a writ jurisdiction under Article 226 of the Constitution of India it can only be the aggrieved person and cannot be any person other than the aggrieved person.

3. Moreover, the petition is also not maintainable for the reason that once when the election programme has already been notified and the election process has already begun, Article 329 (b) read with Section 80 of the Representation of People Act, 1951 envisages a clear bar from any dispute pertaining to an election being raised, other than by way of an election petition. The said proposition has already been settled by a catena of decisions both by the Supreme Court as also by this High Court starting from the landmark judgment rendered in the case of **Mohinder Singh Gill & another Vs. the Chief Election Commissioner, New Delhi and others, (1978) 1 SCC 405** up till the case of **Avtar Singh Hit v. Delhi Sikh Gurdwara Management Committee & Ors. 2006(8) SCC 48**. The Division Bench of this High Court again in the case of **Manoj Kansari v. State of Chhattisgarh & Ors.** decided on 02.12.2019 in WPC No. 3540/2019 have reiterated the same view.
4. In view of the aforesaid legal position as it stands, this Court is of the opinion that the present writ petition would not be maintainable and the same therefore deserves to be and is accordingly rejected.

Sd/-
P. Sam Koshy
Judge