

HIGH COURT of CHHATTISGARH, BILASPUR
WA No. 206 of 2020

Judgment reserved on 29.01.2021

Judgment delivered on 23.02.2021

{Arising out of Order dated 28/01/2020 passed in Writ Petition(C) No. 240 of 2020 by the learned Single Judge}

- Dashmi Bai Belsariya W/o late Pilu Ram Belsariya, aged about 71 years, R/o-Sadak Para, Palli, Kumharavand, PS-Parpa, Jagdalpur, District-Bastar Chhattisgarh.

-----Appellant/Petitioner

VERSUS

1. State of Chhattisgarh, through the Secretary, Panchayat & Rural Development, Department, Mahanadi Bhawan, Atal Nagar, Nava Raipur, C.G.
2. The District Election Officer-cum-Collector, District Bastar, Chhattisgarh
3. Returning Officer-cum Election-in-Charge, Janpad Panchayat-Jagdalpur, District Bastar, Chhattisgarh
4. S.D.O. (Revenue) cum Revisionary Authority, Janpad Panchayat, Jagdalpur, District Bastar, Chhattisgarh
5. Shri Sunderlal Dhritlahare (then in-charge Returning Officer), Tahsildar, Janpad Panchayat-Jagdalpur, District Bastar, Chhattisgarh
6. Shri Pooran Bhardwaj S/o late Ramdhar Bhardwaj, aged 49 years, R/o Village and Post-Kumharavand, Jagdalpur, District Bastar, Chhattisgarh
7. Shri Uday Kumar Nag, S/o Sonsingh Nag, aged 38 years, R/o House No. 38, Uparpara, Gram Panchayat-Kumharavand, Post Kumharavand, Jagdalpur, District Bastar Chhattisgarh
8. Chhattisgarh State Election Commission, through-The Secretary, Near D.K.S. Bhawan, Old Mantralaya Road, Moti Bagh, Raipur, District Raipur Chhattisgarh.

-----Respondents

For Appellant	: Mr. Rohit Sharma, Advocate
For Respondent 1 to 4/State	: Mr. Chandresh Shrivastava, Dy. Govt. Advocate
For Respondent 5	: Mr. Vivek Sharma, Advocate
For Respondent 6 & 7	: None.
For Respondent 8	: Mr. R.S. Marhas, Advocate

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

C.A.V. Order

Per Parth Prateem Sahu, J.

1. Appellant/ Petitioner has challenged the impugned order dated 28.01.2020 passed by learned Single Judge, whereby, learned Single Judge declined to interfere with the order passed by Respondent 4/ S.D.O. (Revenue)/

Revisional Authority, whereby, the Revisional Authority has allowed the Revision and set aside the Election Certificate issued in favour of appellant on the post of Sarpanch of village Panchayat Kumharavand, Janpad Panchayat, Jagdalpur, District Bastar, Chhattisgarh.

2. Facts of the case in nutshell are that Respondent 8/ Chhattisgarh State Election Commission has notified the election program for holding the election of Panchayat in the State of Chhattisgarh vide notification dated 23.12.2019. As per the election program schedule, appellant along with other private respondents who are Respondents 6 and 7 herein submitted their Nomination Forms within the prescribed time. Nomination Forms of two candidates for the post of Sarpanch have been rejected on 07.01.2020, considering their disqualification under Section 36(1)(q) of Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short "Adhiniyam 1993"). After rejection of Nomination Forms of two other contesting candidates for the post of Sarpanch of Village Panchayat, Kumharavand, appellant only remained as a candidate for the said post. Respondent 3/ Returning Officer applying Rule 47 of Chhattisgarh Panchayat Nirvachan Niyam 1995 (for short "Nirvachan Niyam 1995) has declared the appellant to be elected and has issued the Election Certificate under Form-24 as prescribed under Panchayat Nirvachan Niyam 1995. Respondent 6 had filed a Revision on 09.01.2020 before the S.D.O. (Rev.)/ Revisional Authority under Rule 36 of Nirvachan Niyam, 1995, who while exercising the power of revision has set aside the Election Certificate issued in favour of appellant with immediate effect and further directed to include the name of revisional petitioner/ Respondent 6 in the list of contesting candidates, and for awarding election symbol. Order of Revisional Authority was put to challenge by appellant by way of filing a writ petition mentioning therein that on the objection raised by appellant, two other contesting candidates who have submitted their nomination forms, have been found to be disqualified under Section 36(1)(q) of Adhiniyam, 1993. Revisional

Authority could not have exercised its revisionary jurisdiction when once the appellant has been declared as unopposed elected candidate on the post of Sarpanch of village panchayat and issuance of Election Certificate in Form-24 to her by Returning Officer. Election of appellant/ petitioner could have been challenged only by way of filing an Election Petition under the provisions of Adhiniyam, 1993. Revisional Authority invoking its power under Rule 36 of Nirvachan Niyam, 1995, passed orders in midnight after issuance of Election Certificate which is contrary to the provisions of Adhiniyam, 1993. Action on the part of Revisional Authority to be per se illegal. Appellant/ petitioner filed writ petition with following reliefs.

“10. RELIEFS SOUGHT

In view of the facts mentioned above, the petitioner prays that, This Hon'ble Court may kindly be pleased to-

10.1 Hold that the act on part of the respondent is arbitrary, illegal, unconstitutional and malicious.

10.2 To call for the records of the case.

10.3 To quash the impugned revision vide (Annexure-P/7).

10.4 Be pleased to declare that the election result pronounced as winning of the petitioner (Annexure P/6) to hold good and valid.

10.5 Cost to the petitioner for having suffered on account of unconstitutional and malafied act of the respondent.

10.6 Any other relief, which this Court thinks fit and proper, in the instant case, in the interest of justice, may kindly be granted.

10.7 Cost of the Petition.”

3. Learned Single Judge, upon hearing respective parties to the writ petition has dismissed the same taking into consideration the bar under Article 243(O) of Constitution of India and observing that the writ petition would not be maintainable and if the petitioner/ appellant is aggrieved then she may prefer an Election Petition before the concerned authority.

4. Mr. Rohit Sharma, learned counsel for appellant submits that appellant in the writ petition has not challenged the election of any of the candidates but she has challenged the illegal and arbitrary order passed by the Revisional Authority while exercising the powers under Rule 36 of Nirvachan Niyam, 1995. He submits that very reason and ground on which learned Single Judge has dismissed the writ petition was raised by appellant that where once the Election Certificate has been issued by the Returning Officer electing appellant/ petitioner on the post of Sarpanch, Revisional Authority could not have exercised the powers under Rule 36 of Nirvachan Niyam, 1995. He contended that once the result of election has been declared, Election Certificate has been issued then for the aggrieved candidate for any action of Returning Officer, only remedy available under the provisions of Adhiniyam, 1993 is to file Election Petition as envisaged under Section 122 of Adhiniyam 1993. Revisional Authority has entertained the Revision filed by Respondent 6, after the prescribed time. The Returning Officer issued Election Certificate prior to exercise of revisional jurisdiction, therefore, the said revision, at the threshold, ought to have been dismissed on the ground of jurisdiction itself, relegating the revisional petitioner to the appropriate forum and competent authority provided under Adhiniyam, 1993 and rules framed thereunder. He submits that learned Single Judge in one another case WPC No. 201/2020, while considering the identical issue of Panchayat Election, has dismissed the writ petition on the ground that the Election Certificate has been issued, therefore, the only recourse available to the petitioner now would be to raise an Election Petition but in the instant case, the said principle of law has not been applied. He places his reliance on **Boddula Krishanaiah and others v. State Election Commissioner, A.P. and others** reported in **(1996) 3 SCC 416**, in support of his contention.
5. Mr. Chandresh Shrivastava, Deputy Advocate General representing Respondents 1 to 4 submits that from perusal of record, it is apparent that

the Respondent 3/ Returning Officer has not rejected nomination paper of Respondent 6 within time but has intimated, as per the averments made by Respondent 6 that, it is pending consideration. He further pointed out that under the provisions of Nirvachan Niyam, 1995, after rejection of nomination paper, Returning Officer is duty bound to sent the records on the very next date to the Revisional Authority for its consideration fixing the date and time for appearance of parties. Returning Officer had not sent the records to the Revisional Authority for considering rejected nomination paper, as per Rule 36, hence, Respondent 6, after coming into his knowledge about the procedure adopted by Returning Officer of declaration of appellant to be a returned candidate and issuance of Election Certificate, in a Revision filed under Rule 36 of Nirvachan Niyam, 1995 by Respondent 6, Revisional Authority after taking into consideration the illegality committed by Returning Officer and the procedure adopted by him had allowed the revision, directed the Returning Officer to include Revisional petitioner/ Respondent 6 in the list of contesting candidates. After passing of order by the Revisional Authority, election has already taken place and Respondent 6 has been declared as winning candidate, elected as Sarpanch, hence, writ petition could not have been maintainable and the same was rightly dismissed by the learned Single Judge.

6. Mr. Vivek Sharma, learned counsel for Respondent 5 supports the order passed by learned Single Judge.
7. Mr. R.S. Marhas, learned counsel appearing for Respondent 8 submits that now the election has already been taken place in pursuance of order passed by Revisional Authority on 09.01.2020, hence, the writ petition has rightly been dismissed to be not maintainable. Remedy before the appellant/ petitioner is only to file an Election Petition under Section 122 of Adhiniyam, 1993.

8. We have heard learned counsel for the respective parties and also perused the records with utmost circumspection.
9. From the pleadings, documents and the case projected before this Court, it is apparent that the order passed by Revisional Authority ie. S.D.O. (Rev.) was under challenge in the writ petition. Revisional Authority while exercising the power under Rule 36 of Nirvachan Niyam, 1995, has set aside the Election Certificate issued in favour of appellant/ petitioner, was under challenge before the learned Single Judge. Appellant/ Petitioner has raised very specific ground that whether after declaration of appellant to be elected and issuance of Election Certificate to the appellant/ elected candidate, Revisional Authority still could have exercised its revisional jurisdiction under Rule 36 of Nirvachan Niyam, 1995. Order dated 09.01.2020 passed by Revisional Authority was put to challenge by filing writ petition on 13.01.2020, whereas as per election program issued by Respondent 8, the date of polling has been fixed on 28.01.2020 for the first and second phase and 03.02.2020 for the third phase.
10. From perusal of contents of order of Revisional Authority, it is apparent that till 03:00 p.m. on 09.01.2020, Revisional petitioner/ Respondent 6 has not filed any Revision Petition neither Revisional Authority has exercised its revisional jurisdiction under Rule 36 of Nirvachan Niyam, 1995. Challenge in the revision is with regard to improper rejection of nomination paper and prayer to declare the nomination paper of revisional petitioner to be valid and to set aside the Election Certificate. From perusal of Annexure P-7 which is the order of Revisional Authority and the contents therein would show that the order Annexure P-7 while exercising the provision under Rule 36 of Nirvachan Niyam, 1995 has been passed only after 03:00 p.m. as evident from contents of Revisional order. Till that time appellant has been declared to be a returned candidate and also Election Certificate has been issued in her favour. It is not a case that the

Revisional Authority was not aware of the fact of issuance of Election Certificate in favour of appellant.

11. Upon considering the facts and circumstances as also the submission made by respective parties, the questions arise for consideration of this Court are whether the Revisional Authority could have exercised its jurisdiction under Rule 36 of Nirvachan Niyam, 1995 after declaring elected candidate by the Returning Officer and issuance of Election Certificate in favour of appellant and secondly whether the Revisional Authority is having any jurisdiction to set aside the election certificate issued in favour of returned candidate?

Under the scheme of Adhiniyam, 1993 and Rules framed thereunder, Rule 32 envisages for presentation of Nomination Paper; Rule 34 for notice of nomination, time and place for scrutiny; Rule 35 for scrutiny of nomination papers. Scrutiny of Nomination Papers is to be done by the Returning Officer on the date fixed and after recording his decision may accept or reject the Nomination Papers. Order of Returning Officer under Rule 35 of Nirvachan Niyam, 1995 shall be subject to result of revision, if any, under Rule 36 of Nirvachan Niyam, 1995. Upon perusal of rejection of Nomination Paper in Form-5A, placed on record at page 86 as Annexure P-5, there is specific mention that the revision of order of Returning Officer is to be done in the office of S.D.O. (Rev.) on 09.01.2020 at 11:00 a.m. Rule 36 of Nirvachan Niyam, 1995 is extracted below:

“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, herein after referred to as Revisional Authority, namely:-

- (i) in case of election of a panch or a sarpach of a gram panchayat, to the Sub-Divisional Officer (Revenue).

(ii) x x x x x

(iii) x x x x x

(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) x x x x x

(4) x x x x x

(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) x x x x x

(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 validity 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.”

12. The ground raised in the revision filed before the S.D.O. (Rev.)/ Revisional Authority under Rule 36 is with regard to improper rejection of Nomination Paper with a prayer for declaring the Nomination Paper of Respondent 6 to be valid and for setting aside the Election certificate of appellant. Section 122 of Adhiniyam, 1993 provides for filing of an Election Petition. The procedure to be adopted by the Election Tribunal is prescribed under Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rule, 1995. Rule 21 of which provides ground for declaring the election to be void. Under Rule 21(1)(c) and 21(1) (d), the grounds for declaring the election to be void amongst others are, improperly rejection of any Nomination Paper and improperly acceptance of Nomination Paper. Article 243(O)(b) envisaged as under:

“243O. Bar to interference by courts in electoral matters.

Notwithstanding anything in this Constitution-

(a) x x x x x

(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.”

13. In the aforementioned provisions, there is specific bar of challenge of election of any Panchayat except by Election Petition. Challenge in the writ petition was not to the election but the order of Revisional Authority questioning jurisdiction exercised by him under Rule 36 of Nirvachan Niyam, 1995, when the election certificate to the returned candidate has already been issued by Returning Officer. Under Rule 36, Revisional Authority can only pass an order declaring the nomination of a candidate to be valid and not to set aside the Election Certificate on any ground.
14. In view of the aforementioned provisions, Respondent 4/ S.D.O.(Rev.) was not having any jurisdiction to entertain the revision petition considering the relief sought for therein. The ruling of Hon'ble Supreme Court relied upon by the learned counsel for the appellant in case of **Boddula Krishnaiah (supra)**, Supreme Court while considering Article 243(O) has held thus:

“7. Article 243(O) of the Constitution envisages bar on interference by courts in election matters. Notwithstanding anything contained in the Constitution, under Sub-clause (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 in provided for by or under any law made by the Legislature of a State”. Thus there is a constitutional bar on interference with the election process except by an election petition, presented to an Election Tribunal as may be made by or under law by the competent legislature and in the manner provided thereunder. Power of the court granting stay of the election process is not longer res integra.”

15. In view of aforementioned discussed peculiar facts and circumstances of

the case, provisions of law applicable to it ie. Adhiniyam, 1993, Nirvachan Niyam, 1995 and Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rule, 1995, we are of the considered view that in view of prayer made by Respondent 6 to declare his Nomination Paper to be valid and set aside the Election Certificate of appellant, Revisional Authority could not have entertained the application for revision exercising its power and jurisdiction as envisaged under Rule 36 of Nirvachan Niyam, 1995 and the Revisional Authority could have only dismissed the revision, if any, filed with the prayer of setting aside of Election Certificate and relegated the revisional petitioner to approach appropriate forum by filing appropriate proceedings under the Adhiniyam, 1993 ie. the Election Petition under Section 122 of Adhiniyam, 1993. The Revisional Authority has passed the order beyond its jurisdiction provided under Rule 36 of Nirvachan Niyam, 1995.

16. Sofar as, the other submission made by learned counsel for Respondents that as after passing of order by Respondent 4/ S.D.O. (Rev.) dated 09.01.2020, election has already taken place in which Respondent 6 has been declared to be winning candidate and Election Certificate is also issued, hence, the petitioner/ appellant would not be entitled for any relief in this appeal which is arising out of writ petition under Article 226 of the Constitution of India.
17. To appreciate the submission made by learned counsel for Respondents, we find it appropriate to have a glance on Rule 21 of Rules, 1995, which is the provision under which grounds have been specified for challenging any election. Rule 21 of Election Petitions, Corrupt Practices and Disqualification for Membership Rules, 1995 is extracted below for ready reference.

“21. Grounds for declaring election to be void.”-(1) Subject to the provisions of sub-rule (2) if the specified Officer is of opinion-

(a) that on the date of his election the returned candidate who was not qualified or was disqualified to be chosen to fill the seat under the Act; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination paper has been improperly rejected; or

(d) that the result of the election in so far as it concerns returned candidate has been materially affected-

(i) by the improper acceptance of any nomination; or

(ii) by a corrupt practice having been committed in the interest of the returned candidate by a person acting with the consent of the candidate or his agent; or

(iii) by the improper acceptance, refusal or rejection of any vote or the reception of any vote which is void; or

(iv) by any non-compliance with the provisions of the Act or of any rules or orders made thereunder;

the specified Officer shall declare the election of the returned candidate to be void.

(2) If in the opinion of the prescribed authority a returned candidate has been guilty by an agent of any corrupt practice, but the prescribed authority is satisfied-

(a) that no such corrupt practice was committed at the election by the candidate and every such corrupt practice was committed contrary to the instructions and without the consent of the candidate;

(b) that the candidate took all reasonable means for preventing the commission of corrupt practice at the election; and

(c) that in all other respect the election was free from any corrupt practice on the part of the candidate or any of his agent;

then the prescribed authority may decide that the election of the returned candidate is not void.

18. From bare perusal of aforementioned provisions, it is apparent that the Election Petition can be maintained only if it is filed on those grounds. As

we have already considered in preceding paragraphs that the appellant herein is aggrieved with the order passed by Respondent 4/ S.D.O. (Rev.)/ Revisional Authority to be beyond jurisdiction, election in which Respondent 6 has been declared to be elected candidate is consequential to the impugned order passed by Respondent 4/ S.D.O.(Rev.), when once the order of Revisional Authority itself is held to be illegal, all subsequent proceedings will become void.

19. In the peculiar facts of the case, we are of the considered view that the submissions made by the learned counsel for Respondents, that the appellant is not entitled for any relief in this proceeding, are not sustainable and it is hereby repelled.

20. For the foregoing reasons, writ appeal is allowed. Order Annexure P-7 dated 09.01.2020 passed by S.D.O. (Rev.) -cum- Revisional Authority, Janpad Panchayat, Jagdalpur is set aside. Consequently, all the subsequent actions taken under the direction of Revisional Authority are also set aside. Election Certificate issued in favour of appellant by the Returning Officer under Form-24 (under Rule 47 of Nirvachan Niyam, 1995) is restored and shall remain in force until any other order is passed by competent authority in accordance with law.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge