

HIGH COURT OF CHHATTISGARH, BILASPUR

WPPIL No. 37 of 2021

Ali Hussain Siddiqui S/o Late Noor Hussain Siddiqui Aged About 38 Years R/o Gautam Nagar, Supela Bhilai, District Durg Chhattisgarh Pin 490023

---- Petitioner

Versus

1. State of Chhattisgarh Through Secretary, Department Of Urban Administration And Development , Mahanadi Bhawan, Mantralaya , Atal Nagar Raipur Chhattisgarh.
2. Director Urban Administration And Development , Indrawati Bhawan, Block D , Fourth Floor, Atal Nagar, Raipur Chhattisgarh.
3. Chhattisgarh State Election Commission Through Its Chief Election Commissioner , Election Building , Sector 19, North Block Atal Nagar , Raipur District Raipur Chhattisgarh 492002.
4. Collector And District Election Officer Durg Chhattisgarh.
5. Municipal Corporation Bhilai Through its Commissioner Akash Ganga, Supela, Bhilai, District Durg Chhattisgarh.

---- Respondents

WPPIL No. 36 of 2021

1. Omprakash Kurre S/o Late Parasram Kurre Aged About 43 Years Advocate Enroll No. CG/502/2009, R/o Block No. 3J, Risali Sector, Bhilai, District Durg, Chhattisgarh.
2. Ali Hussain Siddiqui S/o Late Noor Hussain Siddiqui Aged About 38 Years R/o Gautam Nagar, Supela Bhilai, District Durg, Chhattisgarh, Pin 490023.

---- Petitioners

Versus

1. State of Chhattisgarh Through Secretary, Department of Urban Administration And Development, Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur, Chhattisgarh.
2. Director Urban Administration and Development, Indrawati Bhawan, Block - D, Fourth Floor, Atal Nagar, Raipur, District Raipur, Chhattisgarh
3. Chhattisgarh State Election Commission Through Its Chief Election Commissioner, Election Building, Sector - 19, North Block, Atal Nagar, Raipur, District Raipur, Chhattisgarh. 492002
4. Collector And District Election Officer Durg, Chhattisgarh.
5. Municipal Corporation Risali Through its Commissioner, Shyam Nagar, Krishna Talkies Road, Risali, District Durg, Chhattisgarh.

---- Respondents

(Cause Titles have been taken from Case Information System)

For Petitioners	:	Mr. Varun Sharma, Advocate
For Respondents No. 1, 2 and 4/State	:	Mr. Satish Chandra Verma, Advocate General
For Respondent No.3/Election Commission	:	Mr. R.S. Marhas, Advocate
For Respondent No.5 in WPIL 37/2021	:	Mr. Apurv Goyal, Advocate
For Respondent No.5 in WPIL No.36/2021	:	Mr. Chandresh Shrivastava, Advocate

Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri Goutam Bhaduri, Judge

Order on Board

Per Arup Kumar Goswami, Chief Justice

24.11.2021

Heard Mr. Varun Sharma, learned counsel for the petitioners in WPIL No. 37/2021 and WPIL No.36/2021. Also heard Mr. Satish Chandra Verma, learned Advocate General appearing for the respondents No.1, 2 & 4, Mr. Ranbir Singh Marhas, learned counsel appearing for the respondent No.3 / Election Commission, in the aforesaid petitions. We have also heard Mr. Apurv Goyal, learned counsel appearing for respondent No.5 / Municipal Corporation, Bhilai in WPIL No. 37/2021 and Mr. Chandresh Shrivastava, learned counsel appearing for respondent No.5 / Municipal Corporation, Risali in WPIL No.36/2021.

2. In WPIL No. 37 of 2021, challenge is made to the Chhattisgarh Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women) Rules, 1994 on the ground that the same is ultra vires to the provisions of Articles 243T, 334 of the Constitution of India and Section 11-A of the Municipal Corporation Act, 1956 to the extent the aforesaid Rules do not provide for the mode of rotation for reservation to the

office of Mayor of the Municipal Corporation, Bhilai and also to a Notification dated 22.03.2021, whereby, reservation for the wards of Municipal Corporation, Bhilai was notified. In WPIL No. 36 of 2021, challenge is made to the Chhattisgarh Municipalities (Reservation of Office of Mayor and President) Rules, 1999 on the ground that the same is ultra vires to the provisions of Article 243T, 334 of the Consitution of India and Section 11-A of the Municipal Corporation Act, 1956 to the extent the aforesaid Rules do not provide for the mode of rotation for reservation to the office of Mayor of the Municipal Corporation, Risali and to a notification dated 16.03.2021, whereby, a notification was issued providing for reservation of the office of Mayor of Municipal Corporation, Risali.

3. It is submitted by Mr. Verma and Mr. Marhas that election notification has been issued today based on the notifications, which are challenged in the present two writ petitions, as also in respect of other municipalities and therefore, challenge to the notifications, as impugned in these two writ petitions, will not survive for consideration because of the bar under Article 243-ZG of the Consitution of India.

4. Mr. Sharma submits that although notifications impugned cannot be adjudicated by this Court at this juncture because of issuance of the election notification, challenge to the vires can still be maintained.

5. In *State of Goa and Another vs. Fouziya Imtiaz Shaikh and Another*, reported in *(2021) 8 SCC 401*, the Hon'ble Supreme Court at paragraph 68.1 observed as follows :

“68.1. Under Article 243-ZG(b), no election to any municipality can be called in question except by an election petition presented to a Tribunal as is provided by or under any law made by the legislature of a State.

This would mean that from the date of notification of the election till the date of the declaration of result a judicial hands-off is mandated by the non obstante clause contained in Article 243-ZG debarring the writ court under Articles 226 and 227 from interfering once the election process has begun until it is over. The constitutional bar operates only during this period. It is therefore a matter of discretion exercisable by a writ court as to whether an interference is called for when the electoral process is “imminent” i.e. the notification for elections is yet to be announced.”

6. Having regard to the above, we dispose of these two Public Interest Litigations, providing that the validity of the Chhattisgarh Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women) Rules, 1994 and the Chhattisgarh Municipalities (Reservation of Office of Mayor and President) Rules, 1999 may be challenged by the petitioners, is so advised, by filing appropriate petition(s).

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(Goutam Bhaduri)
Judge