CGHC010085152022 2026:CGHC:43106

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HIGH COURT OF CHHATTISGARH AT BILASPUR

SHYNA AJAY
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WPC No. 1246 of 2022

Reserved on 21/08/2026

Pronounced on 06/10/2026

1 - Banarsi Ram S/o Govind Ram Aged About 61 Years Elected Representative Of Prathmik Laghu Vanopaj Sahakari Samiti Maryadit, Raghunathpur, Registration No. 1696, R/o Village Uchdih, District Surguja, Headquarter Ambikapur, Chhattisgarh.

2 - Rajwan S/o Ramjeet Aged About 37 Years Elected Representative Of Prathmik Laghu Vanopaj Sahakari Samiti Maryadit, Rikhi, Registration No. 1707 R/o Village Ghuchapur, District Surguja, Headquarter Ambikapur, Chhattisgarh.

3 - Dwarika Prasad S/o Devnarayan Aged About 45 Years, Elected Representative Of Prathmik Laghu Vanopaj Sahakari Samiti Maryadit, Dadgaon, Registration No. 1708, R/o Village Gumga, District Surguja, Headquarter Ambikapur, Chhattisgarh.

4 - Akhilesh S/o Ramlakhan Aged About 49 Years Elected Representative Of Prathmik Laghu Vanopaj Sahakari Samiti Maryadit, Lakhanpur, Registration No. 1710, R/o Village Korja, District Surguja, Headquarter Ambikapur, Chhattisgarh.

5 - Umashankar S/o Ramanand Aged About 48 Years, Elected Representative Of Prathmik Laghu Vanopaj Sahakari Samiti Maryadit, Kedma, Registration No. 1711, R/o Village Kedma, District Surguja, Headquarter Ambikapur, Chhattisgarh.

6 - Jageshwar Yadav S/o Amar Sai, Aged About 60 Years, Elected Representative of Prathmik Laghu Vanopaj Sahakari Samiti Maryadit, Darima, Registration No. 1697, R/o Village Ramjuri, District Surguja, Headquarter Ambikapur, Chhattisgarh.

--- **Petitioner(s)**

versus

1 - State Of Chhattisgarh, Through Secretary, Department Of Cooperative, Mantralaya, Mahanadi Bhavan, Atal Nagar, Nava Raipur, District Raipur Chhattisgarh.

2 - Joint Registrar, Cooperative Societies, Surguja, Division Surguja District Surguja Chhattisgarh.

3 - State Cooperative Election Commission Through its Commissioner, Raipur, Mahila Thana, Chowk, Chhotapara, District Raipur Chhattisgarh.

4 - Managing Director Zila Laghu Vanojap Sahakari Sangh Maryadit, Surguja, Headquarter Ambikapur, District Surguja, Chhattisgarh.

--- **Respondent(s)**

WPC No. 4932 of 2022

Hinchha Ram Sahu S/o Shri Namdev Sahu, Aged About 43 Years R/o Village Narralguda, P.S. And Tahsil Doundi, District Balod (C.G.)

---**Petitioner(s)**

Versus

1 - State Of Chhattisgarh Through-The Secretary, Department Of Cooperative Affairs, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District Raipur (C.G.)

2 - Chhattisgarh State Cooperative Election Commission, Through: The Commissioner, Chhattisgarh State Cooperative Election Commission, Mahila Thana Chowk, Chhota Para, Raipur District Raipur (C.G.)

3 - Registrar Cooperative Societies, Indrawati Bhawan, Atal Nagar, Nawa Raipur, District Raipur (C.G.)

4 - Sub Registrar, Cooperative Societies, Balod, District Balod (C.G.)

5 - Assistant Registrar/Registration Officer Cooperative Societies Balod, District-Balod (C.G.)

--- **Respondent(s)**

WPC No. 1262 of 2022

Ramesh Khandelwal S/o Late Ramji Lal, Aged About 67 Years R/o Village Bandhabazar, Tahsil Chowki, District Rajnandgaon Chhattisgarh.

---**Petitioner(s)**

Versus

1 - State Of Chhattisgarh Through The Secretary, Department Of Cooperative Affairs, Mantralaya Mahanadi Bhawan, Atal Nagar , Nawa Raipur , District Raipur Chhattisgarh.

2 - Chhattisgarh State Cooperative Election Commission, Through The Commissioner, Chhattisgarh State Cooperative Election Commission, Mahila Thana Chowk, Chhota Para, Raipur District Raipur Chhattisgarh.

3 - Registrar Cooperative Societies , Indrawati Bhawan, Atal Nagar , Nawa Raipur , District Raipur Chhattisgarh.

4 - Chhattisgarh Rajya Minor Forest Produce Cooperative Society Limited, Raipur, Van Dhan Bhawan, Sector 24, Atal Nagar, Nawa Raipur District Raipur Chhattisgarh.

5 - Sub Registrar Cooperative Societies, Rajnandgaon, District Rajnandgaon Chhattisgarh.

6 - Primary Minor Forest Produce Cooperative Society Limited, Bhadsena, District Rajnandgaon Chhattisgarh, Through Its Manager.

--- **Respondent(s)**

WPC No. 1244 of 2022

Hinchha Ram Sahu S/o Shri Namdev Sahu, Aged About 43 Years R/o Village Narralguda, P.S. And Tahsil Doundi, District Balod (C.G.)

---**Petitioner(s)**

Versus

1 - State Of Chhattisgarh, Through the Secretary, Department of Cooperative Affairs, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District Raipur (C.G.)

2 - Chhattisgarh State Cooperative Election Commission, Through the Commissioner, Chhattisgarh State Cooperative Election Commission, Mahila Thana Chowk, Chhota Para, Raipur District Raipur (C.G.)

3 - Registrar, Cooperative Societies, Indrawati Bhawan, Atal Nagar, Nawa Raipur, District Raipur (C.G.)

4 - Chhattisgarh Rajya Minor Forest Produce Cooperative Society Limited, Raipur, Van Dhan Bhawan, Sector-24, Atal Nagar, Nawa Raipur District Raipur (C.G.)

5 - Sub Registrar, Cooperative Societies, Balod, District Balod (C.G.)

6 - Primary Minor Forest Produce Cooperative Society Limited, Kunwagondi, District Balod (C.G.), Through Its Manager

--- **Respondent(s)**

(Cause Title downloaded from CIS Periphery)

For Respective Petitioner(s)	**:**	Ms. Kyati Adil, Advocate on behalf of Mr. Abhishek Thakur, Advocate and Mr. Abhinav Tiwari, Advocate on behalf of Mr. Manish Upadhyay, Advocates
For Respondent/ State	**:**	Dr. Saurabh Kumar Pande, Advocate
For Respondent/ State Cooperative Election Commission	**:**	Mr. Malay Shrivastava, Advocate
For Respondent/ *Laghu Vanojap Sahakari Sangh Maryadit*		Mr. Ashutosh Singh Kachhwaha, Advocate

SB: <u>Hon'ble Mr. Justice Amitendra Kishore Prasad</u>

<u>C A V Order</u>

1. Since all the writ petitions involve a common question of law and are founded on similar facts and circumstances, they have been clubbed together, heard analogously and are being disposed of

by this common order.

2. The petitioners are aggrieved by the order dated 28.2.2022 passed by the State Cooperative Election Commission (hereinafter referred to as “the Election Commission”), whereby the Election Commission declared the election previously held in Prathmik Laghu Vanopaj Sahkari Samiti as invalid. Although the petitioners were duly elected as representatives of the concerned Society, their election has been invalidated by the aforesaid order in violation of the principles of natural justice, without serving any notice upon them or affording them an opportunity of hearing. Under the scheme of the Cooperative Societies Act, 1960 (hereinafter referred to as “the Act of 1960”) the jurisdiction and authority to cancel an election is vested exclusively in the Registrar or Joint Registrar, exercisable solely in accordance with the procedure prescribed by law. In view of the fact that the election of the petitioners was declared invalid without issuing notice or affording of an opportunity of hearing, the petitioners have approached this Court by way of the present petitions.

3. Since the reliefs sought in all these writ petitions are identical, for the sake of convenience, WPC No.1246/2022 is taken as the lead case and and the facts of the said petition are being referred to for the purpose of adjudication of this batch of petitions. The decision rendered herein shall, however, govern the connected writ petitions as well, as the issues raised therein are same in nature. The petitioners have sought the following reliefs in WPC No.1246/2022 :

10.1 That, the Hon'ble court may kindly be pleased to direct the respondent authorities to call the entire records pertaining to its case.

10.2 That, this Hon'ble Court be pleased to issue an appropriate writ by quashing/setting aside the impugned order dated 28-02-2022 (Annexure P-1).

10.3 Any other relief or relief(s) which this Hon'ble Court may think proper in view of the facts and circumstances of the case may also kindly be granted.

4. Succinctly stated, the relevant facts of the case are that the petitioners are the office-bearers of their respective Cooperative Society, having been elected as representatives of the concerned Society. Their elections were duly conducted by the Election Commission (Respondent No.3 herein). Subsequent to the declaration of the election results, the petitioners assumed office as such elected representatives and commenced discharging their duties. However, by the impugned order dated 28.2.2022, the Election Commission declared the election held in respect of *Prathmik Laghu Vanopaj Sahkari Samiti* to be invalid. The petitioners were neither issued prior notice nor afforded an opportunity of hearing. In gross disregard of the principles of natural justice and due process of law, the impugned order was abruptly passed, declaring their elections invalid. In view of the fact that the election process had already concluded and the Board of Directors was duly constituted on 9.12.2021, Respondent No.3 (Election Commission) ceased to have any

jurisdiction in the matter. Therefore, any action pertaining to the removal or disqualification of the elected representatives falls within the jurisdiction of the Registrar or Joint Registrar of Cooperative Societies, in accordance with the provisions of the Act of 1960.

5. Further, no order of removal could have been passed without adhering to due process of law and affording a reasonable opportunity of hearing to the elected representatives concerned. According to Section 49(7-A) of the Act of 1960, the term of the Board of a Society shall be five years from the date on which first meeting of the Board is held. Here, the Board having been constituted on 9.12.2021, its tenure would ordinarily expire only on 8.12.2026. However, the Election Commission, in an arbitrary and illegal manner, set-aside the election and issued a fresh Election Schedule for the very posts to which the petitioners already stand duly elected. The petitioners were neither served with any show cause notice nor afforded an opportunity of being heard. The impugned order invalidating the election was passed in undue haste, in direct contravention of the provisions of the Act of 1960. Hence, these Petitions.

6. Ms. Khyati Adil and Mr. Abhinav Tiwari, learned counsel for the respective petitioners submit that pursuant to Section 49 (7-A) of the Act of 1960, the term of the Board of Directors shall be five years from the date on which first meeting of the Board is held. They further submit that in accordance with the aforesaid provision, the relevant period commenced on 9.12.2021, being

the date on which the elected representatives took the oath of office. Therefore, their tenure ought to endure till 8.12.2026, however, this fact was not taken into consideration by the authority concerned. They further submit that the Election Commission lacks the jurisdiction and authority to issue an order of removal once the Board of Directors has been duly constituted. Under the statutory scheme, the Registrar or Joint Registrar of Cooperative Societies alone constitutes the competent authority to pass such orders against the Board of Directors. Thus, the impugned order passed by the Election Commission is without jurisdiction and is illegal. They also submit that the Election Commission possesses no legal authority or sanction to set-aside the election or remove the petitioners from office prior to the expiry of their tenure except by complying with the due process of law. In the present matter, neither the Board of Directors nor the Registrar or Joint Registrar of Cooperative Societies has passed any order for disqualification or removal of the petitioners. On the contrary, the impugned order has been passed by the Election Commission, an authority entirely devoid of jurisdiction in this regard. Learned counsel also submit that by the virtue of the interim stay order dated 10.3.2022 passed by this Court, the petitioners continue to hold office as representatives and their tenure is scheduled to expire on 8.12.2026. In view of the above, learned counsel submit that appropriate directions be issued to Respondent No.3 to permit the petitioners to complete their remaining tenure, which is due to conclude shortly. Lastly, learned

counsel for the respective petitioners submit that the impugned order passed by the authority is per se illegal and liable to be quashed.

7. On the other hand, Dr. Saurabh Kumar Pande, learned counsel for the State opposes the prayer made on behalf of the petitioners submitting that the Election Commission, in exercise of its quasi-judicial powers under the Act of 1960, has rightly passed the impugned order in accordance with law. He further submits that due process of law was duly observed by affording an adequate opportunity of hearing to all affected parties, thereby rendering the impugned order legally sound and unassailable. He submits that the State-respondents are merely proforma parties and Respondent No.3 is the main contesting party answerable to the dispute in question.

8. Mr. Malay Shrivastava, learned counsel for Respondent No.3 submits that the order was validly passed by the concerned Election Commission in pursuance of Section 48-B(2)(a) read with Section 50-B(10) of the Act of 1960. He submits that although the seats in the subject Society were reserved for members of Scheduled Castes and Scheduled Tribes, who constitute a substantial majority of about 76.49% of the total electorate, candidates belonging to the Other Backward Classes (OBC) were declared elected. He also submits that the election of OBC candidates to the total exclusion of SC & ST members, despite the ample availability of eligible candidates from the prescribed reserved categories, is in violation of the statutory

mandate. Thus, the election was *void ab initio* and the Election Commission rightly set-aside the entire election process vide the impugned order, which cannot be faulted. He further submits that pursuant to Section 48-B(2)(a) of the Act of 1960, candidates belonging to the Scheduled Castes and Scheduled Tribes were required to be elected against the seats specifically reserved for those categories. However, candidates belonging to the OBC were erroneously declared elected against those reserved SC/ST seats, notwithstanding the ample availability of eligible SC & ST candidates. Therefore, the Election Commission, while declaring the election invalid, acted in exercise of its statutory powers under Section 50-B(5)(b) of the Act of 1960 read with Rule 49-D of the Chhattisgarh Cooperative Societies Rules, 1962 (in short “the Rules, 1962”) and rightly directed the conduct of fresh elections. The said order, being in strict conformity with law, suffers from no legal infirmity. He lastly submits that the Writ Petitions bereft of merit are liable to be dismissed.

9. Heard learned counsel for the parties and also perused the documents annexed with the Petitions with utmost circumspection.

10. Manifestly, a perusal of the impugned order dated 28.2.2022 shows that the election was conducted to elect representatives for the subject Cooperative Society, wherein a substantial majority of the voters comprising about 76.49% of the total electorate, belonged to the Scheduled Castes and Scheduled Tribes, and the contested seats were reserved for candidates of the said

categories. Notwithstanding the earmarked reservation and the overwhelming presence of eligible electors from those categories, the petitioners, who belong to the OBC, were declared elected. In view thereof, the Election Commission rightly declared the election of each of the petitioners to be invalid.

11. The pivotal question of law arising for consideration in this batch of writ petitions is whether, when a seat is reserved for a specific category of persons i.e. the Scheduled Castes and Scheduled Tribes, candidates belonging to a distinct category such as the OBC can legally be declared elected to those reserved seats, inasmuch as such an election stands in the teeth of Section 48-B(2)(a) of the Act of 1960.

12. When the very inception of an election process is not in accordance with law, the Election Commission possesses the inherent power and jurisdiction to declare such election null and void, as upholding the same would defeat the paramount objective embodied under Section 48-B(2)(a) of the Act, 1960.

13. Section 48-B(2)(a) of the Act of 1960 is reproduced herein-below for ready reference :

> ***48-B Representatives and delegates***
>
> *(2)(a) In a society where not less than half of the members belong to Scheduled Castes and Scheduled Tribes, the representative shall be only from amongst the members belonging to such castes or tribes; and*
>
> *xxx*

14. Likewise, Section 50-B(5)(b) and 50-B(10) of the Act of 1960 is

reproduced hereinbelow :

50-B. State Co-operative Election Commission

(5)(a) xxx

(5)(b) *The Commission shall appoint a Returning Officer in the manner, as may be prescribed, to conduct election to the Board of a society and its office-bearers and also to fill up casual vacancies as provided in Section 49 of this Act and the Commission, if it thinks necessary, may also appoint zonal or other officers for the purpose of supervision and control of election.*

xxx *xxx* *xxx*

xxx *xxx* *xxx*

*(**10**) The Commission may issue such instructions to the Board or its members, which it may consider reasonable for conducting free and fair election and such instructions issued under this Section shall be binding on Board or its members.*

15. Rule 49-D of the Rules, 1962 is also reproduced hereinbelow :

49-D. Appointment of Returning Officer- *(1) The Returning Officer shall be appointed by the Commission or any Officer authorized by him on his behalf to conduct the election before minimum 30 days of the expiry of the tenure of the Board. Such appointment order shall consist of the final voter list duly signed by the Registration Officer, which will be a marked copy, the order of reservation of seats in the Board as per the provision of Section 48(3) and 48 (8) of the Act and the programme to conduct elections.*

(2) If the Society has an individual members belonging to Scheduled Castes or Scheduled Tribes category one seat shall be reserved for the

member from the category that has more members than the others.

(3) Subject to the provisions of the Act and as specified in these rules, the Returning Officer shall conduct the election under the direction of the Commission and according to bye-laws of the society:

Provided that no member and employee of the society shall be appointed as Returning Officer.

16. A plain reading of the aforesaid statutory provisions and rules makes it abundantly clear that representatives in the Societies are to be elected from among members belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes in such proportion that the seats reserved for each category shall, as far as practicable, bear the same ratio to the total number of seats as the membership of that category bears to the total membership of the Society.

17. In the present matter, members belonging to the Scheduled Castes and Scheduled Tribes constituted about 76.49% of the total membership. However, in total disregard of this proportion, candidates belonging to the OBC were declared elected as representatives against those reserved seats, in direct contravention of the provisions contained under Section 48-B(2)(a) of the Act of 1960. In such circumstances, the Election Commission is fully empowered to declare the subject election invalid, given that an election conducted and finalised in breach of the mandatory statutory provisions, is void and unsustainable in the eyes of law. Under such conditions, prior notice or opportunity

of hearing to the petitioners was uncalled for, as the election was *void ab initio* at its very inception. Where an election suffers from any incurable legal infirmity at the threshold, non-compliance with the principles of natural justice does not vitiate the administrative or quasi-judicial action taken to rectify such inherent illegality.

18. Considering the facts and circumstances of the case, this Court is of the opinion that the Election Commission has committed no error of law in declaring the subject election invalid. Furthermore, merely because the petitioners have continued to function as representatives by virtue of the interim order dated 10.3.2022, despite their election being in the teeth of mandatory statutory provisions, no leniency or indulgence can be claimed by or extended to them. Consequently, the impugned order passed by the Election Commission is just, legal and proper, calling for no interference by this Court in exercise of its extraordinary writ jurisdiction under Article 226 of the Constitution of India.

19. Accordingly, in light of the foregoing discussion, all the Writ Petitions fail and are hereby **Dismissed**. The interim order dated 10.03.2022 stands vacated forthwith. The State Cooperative Election Commission is directed to initiate, process and conduct fresh elections for the subject Society/Societies in accordance with law.

Sd/-

(Amitendra Kishore Prasad)
Judge

Shyna Ajay