



2026:CGHC:15344

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

Writ Petition (C) No.02 of 2020**Balluram Sahu & Another Vs. State of Chhattisgarh & Others**

10.01.2020	Shri Bharat Rajput, Advocate for the petitioner. Shri Jitendra Pali, Deputy Advocate General for the State. Issue notice to the respondents No.3,4 and 6 on payment of PF as per rules. Heard on IA No.1, which is an application for grant of stay of the effect and operation of the notification dated 10.12.2019 (Annexure P/1) on the basis of which the respondents are proceeding to conduct election for the Gram Panchayat, Ghotwani. Perusal of records, which have been produced by the learned Deputy Advocate General on seeking instructions, reveals that for the Gram Panchayat, Ghotwani, initially a notification was published on 24.11.2019 reserving the seats for the entire 16 Wards. However, since the reservation of the wards was not done properly, the Collector, District Bemetara, vide Annexure P/5, dated 07.12.2019 cancelling the previous notification dated 24.11.2019, ordered for go in for a fresh reservation of 16 wards of the Gram Panchayat Ghotwani. The respondents subsequently have published the notification dated 10.12.2019 again reserving the 16 wards. In the subsequent reservation again there was no change so far as reservation of wards are concerned and the reservation stood the same as it reflected in the notification dated 24.11.2019 which stood cancelled by the order of the Collector.



The challenge was on the ground that the subsequent notification was without any publication made nor was any intimation given or general notice pasted at any conspicuous locations, as is required under the Act and Rules governing the Panchayat elections.

This court had directed the State counsel on the previous date of hearing i.e. on 07.01.2020 to seek instructions in this regard.

The State counsel today on seeking instructions submitted that the notification dated 10.12.2019 was pursuant to the order passed by the District Collector who is also the District Election Officer. According to the State counsel, since the Collector found some error in the first round of reservation of wards and therefore the Collector had ordered for a fresh draw of lots for reserving 16 wards. The said second draw of lots was made on 09.12.2019 in the presence of witnesses and the authorities of the State and the notification thereafter was issued on 10.12.2019.

On a query being put to the State counsel as to how the reservation was again same even in the second draw of lots held on 09.12.2019, it was submitted that the possibility of same reservation to happen again cannot be ruled out.

At this juncture, this court had asked the State counsel to find out whether in the draw of lots in the other Gram Panchayats of the same Janpad Panchayat has there been a change found as compared to the previous notification so far as reservation of wards is concerned and the court had directed the State counsel to produce the two notifications so far as other Gram Panchayats which was also subjected to a fresh draw of lots for reserving the wards i.e. Gram Panchayat Bortara.

On the documents/records of the Gram Panchayat Bortara also



being produced before the court, it found that even at Gram Panchayat Bortara in the event of second round of draw of lots, there was no change in the reservations of wards when compared to the previous notification which was cancelled by the Collector.

It is totally unbelievable that when two Gram Panchayats are subjected to fresh draw of lots so far as reservation of wards are concerned, there is no change and prima facie this court finds that infact there has been no fresh draw of lots made for the publication of notification dated 10.12.2019. It appears that the alleged second draw of lots has been only a paper arrangement made by the authorities without infact conducting draw of lots.

The alleged Register produced by the State counsel showing the proceedings held on 09.12.2019 also appears to be doubtful on the face of it.

At this juncture, the State counsel relying upon the judgments of the Supreme Court in case of **Avtar Singh Hit Vs. Delhi Sikh Gurudwara Management Committee, 2006 (8)SCC 487, Malam Singh Vs. The Collector, Sehore, M.P. & Others, AIR 1971 MP 195 and the judgment of Delhi High Court in Sanju Bala Vs. State Election Commission & Anr.** (LPA No.267/2017 & CMs No.13912-14/2017, decided on 21.04.2017) submitted that the writ petition itself is not maintainable as there is a specific bar under Article 243(O) of the Constitution of India.

When this court has asked the State counsel to seek instructions whether the Collector can go in for a fresh draw of lots in a transparent way so far as reservation of wards are concerned, the State counsel



submits that he would like to file reply on merits of the writ petition particularly when the writ petition itself is not maintainable in view of Article 243 (O) of the Constitution of India.

True it is that this court is aware of the provisions of Article 243 (O) of the Constitution which bars the court of law from taking cognizance of any elections to the Panchayats. At the same time, this court is also fully conscious of the power of judicial review which is conferred upon this court under Article 226 of the Constitution.

The petitioner, after the elections are over, may not even have the power to raise an Election Petition as he may not have the locus to file the Election Petition. Moreover, once when it is glaringly reflected that on one hand the District Collector himself found the first round of reservation to have been wrongly done and vide order dated 07.12.2019 orders for a fresh reservation to be done by way of draw of lots and, at the same time, there is this alleged proceedings drawn on 09.12.2019 and where in the alleged second draw of lots there is no change in the reservation of wards from what was reserved in the first round. The result in the second draw of lots does not bring any change as compared to the draw of lots made at the first instance, as such it seems to be a doctored proceeding drawn by the authorities.

This court had given option to the State counsel to ask the Collector to go in for a fresh reservation in a transparent manner which was turned down by the State counsel as he wanted an order on merits after filing a detailed reply. This compels the court for considering the application for interim relief, or else the matter would be only of an academic interest if the elections are held, particularly when prima facie



from the record it appears that reservation of wards has not been done properly.

The power of High Court under Article 226 of the Constitution of India can neither be tinkered with nor eroded as the very provision of Article 226 starts with notwithstanding anything, which by itself means that notwithstanding any law in force, the High Court under Article 226 of the Constitution has the power of judicial review while determining the lawfulness of a decision or action made by an authority or public body. Hence the provisions of Article 243 (O) of the Constitution has to be read as there is bar on the courts of law to take cognizance of election matter pertaining to Panchayat, but that still has not ousted the right of the High Court under Article 226 of the Constitution.

So far as public element is concerned, if we allow the election process to continue and finally if it is found that the elections were not properly conducted, the whole exercise would have to be again re-done which again would be costly or would also affect the public administration and revenue aspect.

Right from the time when the legal system or the justice delivery system came into force, the principle that is governing the field is that justice should not only be done, but should also seem to have been done. Curing of the defects detected at this juncture would be easier than if it is done after the elections are over. Thus, the ingredients for grant of injunction is more in favour of the petitioner at this juncture. The view of this court stands fortified from the two judgments of Punjab & Haryana High Court reported in AIR 1999 P&H-1 and which has further been reiterated again by the same High Court in the matter reported in Prithvi



Raj Vs. State Election Commission & Others, AIR 2007 P&H-178,2007(1)GHC:15344

being Full Bench decisions. One being three Judge Bench and the other being five Judge Bench judgments.

Given the aforesaid facts and circumstances of the case, this court is of the opinion that in the larger interest of justice and also in the larger interest of the public of Gram Panchayat, Ghotwani, under Janapd Panchayat Saza in District Bemetara, to stay the effect and operation of the notification dated 10.12.2019 and the subsequent election process that has been initiated by the respondents for the aforesaid Gram Panchayat till the next date of hearing.

It is ordered accordingly.

As prayed for by the counsel for the State, list this case on 21.01.2020.

It is expected that the respondents would file their reply by that time.

Certified copy as per rules.

Sd/-
(P. Sam Koshy)
Judge