

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 181 of 2017**

- Yogita Singh Tanwar W/o Suryabhan Singh Tanwar, Aged About 29 Years R/o Village Billiband, Tahsil Kota, District Bilaspur (Chhattisgarh)

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

1. State Of Chhattisgarh Through Secretary, Department Of Panchayat And Rural Welfare, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur (Chhattisgarh)
2. Chhattisgarh State Election Commission, Near D. K. S. Bhawan (Old Mantralaya), Raipur, District Raipur (Chhattisgarh)
3. Collector, Bilaspur (Chhattisgarh)
4. Sub Divisional Officer, Kota, District Bilaspur (Chhattisgarh)
5. Tahsildar, Kota, District Bilaspur (Chhattisgarh)

---- **Respondent**

For Petitioner	Mr. Malay Shrivastava, Advocate
For Respondent/State	Mr. A.S. Kachhwaha, Dy. AG

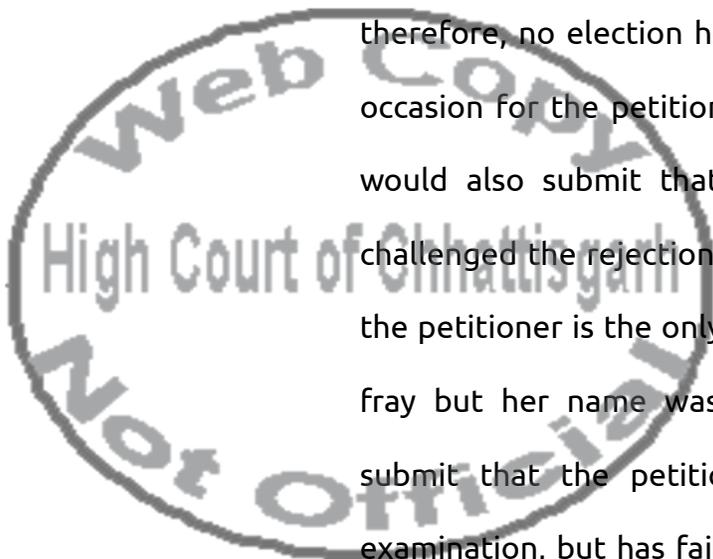
Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board

25/1/2017

1. Heard.
2. The petitioner has called in question the decision taken by the Returning Officer rejecting her nomination paper, which she had submitted for election to the office of Sarpanch of Gram Panchayat, Billiband, Tehsil Kota, District Bilaspur.
3. At the outset, Mr. A.S. Kachhwaha, learned Additional Advocate General for the State, would raise preliminary objection to the maintainability of the writ petition on submission that the

petitioner has an alternative remedy of preferring an election petition under the C.G. Panchayats (Election Petitions, Corrupt Practices and Disqualification For Membership) Rules, 1995 (in short "the Rules, 1995") read with Article 243-O of the Constitution of India. He would also submit that the petition deserves to be dismissed on merits.

4. It is contended by learned counsel for the petitioner that in the subject election, the petitioner and two other candidates had submitted nomination papers, but all of them were rejected, therefore, no election has taken place and as such, there is no occasion for the petitioner to call in question any election. He would also submit that the two other candidates have not challenged the rejection of their nomination papers, therefore, the petitioner is the only eligible candidate who survived in the fray but her name was wrongly rejected. He would further submit that the petitioner had appeared in the Class VIII examination, but has failed therein, however, CG Panchayat Raj (Sanshodhan) Adhinyam, 2016 (in short "the Adhinyam, 2016") incorporating amendment in clause (n) of sub-section (1) of Section 36 would not apply to her case, because the said amendment nowhere states that a candidate intending to contest election for the office above Panch is required to pass Class VIII examination. He would draw attention of this Court to the Hindi version of the amendment.
5. Learned counsel for the petitioner is right in his submission that the remedy of election petition is not available to the petitioner. For this, Rule 6 of the Rules, 1995 needs reference,



which provides that an election petitioner may claim (a) a declaration that the election of all or any of the returned candidates is void; and (b) in addition thereto, a further declaration that he himself or any other candidate has been duly elected. There being no election to the post of Sarpanch of the concerned Gram Panchayat, the petitioner cannot seek a declaration that the election of any of the Returned Candidate is void. The second relief which may be claimed by an election petitioner would occasion in addition to the first relief and not independent of it. Therefore, the petitioner cannot maintain an election petition to claim any relief as provided under Rule 6. Even otherwise, when no election has taken place, the petitioner cannot file an election petition, because, there is no occasion to challenge any election.

6. The Legislature has enacted the Adhiniyam, 2016 for amending Section 36 in the following manner :

Amendment of Section 36- For clause (n) and (o) of sub-section (1) of Section 36 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993, the following shall be substituted, namely :-

“(n) has not passed-

- (i) 5th Standard Examination for the post of Panch; and
- (ii) 8th Standard or equivalent Examination for office bearer above Panch,

from any recognized Institution or Board:

Provided that this provision shall not be applicable in the matter of office bearers elected before enforcement of this amendment;

7. A plain reading of the above provision would manifest that no person shall be eligible to be an office bearer of Panchayat who has not passed V standard examination for the post of Panch; and VIII standard or equivalent examination for office bearer above Panch. The language employed in the amendment is not capable of being interpreted as has been sought to be made by the petitioner. It admits of only one interpretation, the language being clear and unambiguous. The Hindi version of the provision also provides that :

“कोई व्यक्ति किसी पंचायत का पदधारी होने का पात्र नहीं होगा जो किसी मान्यता प्राप्त संस्था या मंडल से, पंच से उपर पदधारी के लिए 8 वी या समकक्ष परीक्षा उत्तीर्ण न हो । ”

The above referred Hindi version is also clear in its meaning and is the correct translation of the English version of the amendment.

8. In view of the above, since the petitioner has admittedly failed in Class VII examination and thus, not cleared that examination, she was not entitled to contest the election, therefore, rejection of her nomination paper does not suffer from any infirmity.
9. The writ petition sans substance, is accordingly dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)