



21/5/09

18

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WRIT PETITION (C). No. 2638 of 2009**

**PETITIONER**

Smt. Hemlata Sahu, aged about 38 years, wife of Pramod Kumar Sahu, Incharge Sarpanch, Gram Panchayat Nagarda, Tah. Bilaigarh. Distt. Raigarh (C.G).

*Versus*

**RESPONDENTS**

1. State of Chhattisgarh, through Collector, Distt. Raipur (C.G).
2. Secretary, Gram Panchayat, Nagar, Vill. Nagarda, Tah. Bilaigarh, Distt. Raipur (C.G)
3. Chief Executive Officer, Janpad Panchayat, Bilaigarh, Distt. Raipur (C.G)

**WRIT PETITION UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA**

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**Appearance :**

Shri Dilman Rati Minj, Counsel for the petitioner.

Shri Ajay Dwivedi, Dy. Government Advocate for the State/ respondent no.1 on advance copy.

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**ORAL ORDER**  
**(20.05.2009)**

**SUNIL KUMAR SINHA, J,**

Petitioner Smt. Hemlata Sahu has filed this writ petition for the following relief(s) :

- 10.1 That the Hon'ble Court be pleased to call the entire records from the respondents relating to present issue;
- 10.2 A writ of certiorari quashing the notice, which is Annexure P-3, calling the meeting of Gram Panchayat on 18.5.2009 be issued. In alternate, in case a meeting is held the

consequences flowing for such meeting be quashed.

- 10.3 Any other relief, which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case be awarded.

The petitioner is thus praying for quashment of the memo dated 10.05.2009 (Annexure P-3) by which a meeting of the Gram Panchayat has been fixed on 18.05.2009 at 11.00 a.m. for election of Sarpanch to hold the office temporarily in the event of falling of vacancy on account of death of elected Sarpanch Loknath Sahu.

Shri Minj learned counsel for the petitioner submits that the meeting has been fixed beyond the period of 15 days and the same is not in accordance with law.

I have heard learned counsel for the parties at length and have also perused the record of the writ petition.

Clause (a) of sub-section (1) of Section 38 of the Panchayat Raj Adhiniyam provides for filling up vacancies on certain events. It provides that in the event of death, resignation, no confidence motion or removal of an office bearer of Panchayat or on his becoming a member of State Legislative Assembly or a member of either House of Parliament before the expiry of his term, a casual vacancy shall be deemed to have occurred in his office and such vacancy shall be filled as soon as may be by election in accordance with the provisions of the Act and the rules made thereunder. Sub-clause (b) of sub-section (1) of section 38 further provides that in the event of occurrence of casual vacancy in the office of Sarpanch of a Gram Panchayat, the Secretary of the Gram Panchayat, as the

case may be, shall cause to be called a special meeting of the Panchayat immediately, but not later than 15 days from the date of receipt of information from the prescribed authority regarding the vacancy and the members shall elect from amongst themselves a person to hold the office temporarily till a new Sarpanch, as the case may be, is elected in accordance with the provisions of this Act and the rules made thereunder and such officiating Sarpanch, as the case may be, shall perform all the duties and exercise all the powers of Sarpanch during the pendency of election. There are provisos to sub-section which provide for reservations and certain relaxations in relation to reservations regarding caste etc.

Unless it is shown that calling/convening of the meeting beyond the period of 15 days has caused any prejudice to the petitioner, in general manner the meeting called beyond the said period would not be vitiated because it simply casts a duty on the concerned authority to fix the meeting within 15 days. Since it is a duty cast on the concerned authority, that would only operate in performance of the public duty of that authority and nothing more and if on this count only, the meeting so held shall be treated as a nullity that shall frustrate the very purpose of section 38, particularly sub-clause (b) of section 38 because in all such cases where the meeting would not take place within a period of 15 days, the vacancies in the event of death etc., as mentioned in sub-section (1) of section 38 would never be filled in. Therefore, there is no force in the argument advanced by learned counsel for the petitioner.

**Writ Petition (C).No.2638/2009**

The petition has no merit; the same is liable to be dismissed and is accordingly dismissed at the motion stage itself.

Sd/-  
**Sunil Kumar Sinha**  
Judge

Rao