

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Judgement Reserved on 17.02.2020****Judgment Delivered on 23/03/2020****WA No. 168 of 2020**

(Arising out of order dated 9.12.2019 passed by learned Single Judge in WPC No.4555/2019)

- Jagdish Bhura, S/o Late Chagan Lal Bhura, aged about 47 years R/o Pratap Dev Ward, Jagdalpur, District- Bastar, Chhattisgarh.

**---- Appellant****Versus**

1. Chhattisgarh State Election Commission Near D.K.S. Bhawan, Old Mantralaya Road, Moti Bagh, Raipur, Chhattisgarh 492001.
2. Returning Officer (Nagarpalika) Jagdalpur, District- Bastar, Chhattisgarh.

**---- Respondents**


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For Appellant	:	Mr. Vishnu Koshta & Mr. Shobhit Kosta, Advocates
For Respondent No.1	:	Mr. K. Rohan, Adv. under the authority of Mr. Abhyuday Singh, Advocate
For Respondent No.2	:	Mr. Chandresh Shrivastava, Deputy Advocate General

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**Hon'ble Shri P. R. Ramachandra Menon, CJ****Hon'ble Shri Parth Prateem Sahu, J****CAV ORDER****Parth Prateem Sahu, J**

1. Validity of the order dated 19.2.2019 passed by the learned Single Judge in WPC No.4555/2019, dismissing writ petition challenging rejection of nomination paper filed by petitioner/ appellant for contesting election from Pratapdev Ward No.11 of Municipal Corporation, Jagdalpur, has been questioned in this

writ appeal.

2. Facts of the case, in nutshell, are that on 25.11.2019 the State Election Commission declared election programme for Municipal Corporation, Jagdalpur, according to which, last date for submission of nomination paper was 6.12.2019. The date for scrutiny of nomination papers was fixed as 7.12.2019 and 9.12.2019 was fixed as last date for withdrawal of nomination paper. On 6.12.2019 petitioner/appellant filed his nomination paper for contesting election on the post of 'Councillor' from Pratapdev Ward No.11, Jagadalpur. On 7.12.2019, which was the date fixed for scrutiny of nomination papers, an objection to the validity of nomination paper of petitioner/appellant was raised by another contesting candidate namely Yashwardhan Rao by stating that appellant has not produced 'no dues certificate' issued in his name by Municipal Corporation, Jagdalpur and thus his nomination paper is liable to be rejected. On raising such an objection, petitioner/appellant submitted his written reply. The Returning Officer, upholding the objection, rejected the nomination paper of petitioner/appellant vide order dated 7.12.2019 by holding that submission of no-dues certificate by a candidate contesting election along with his/her nomination paper is necessary, but the petitioner instead of annexing such a certificate of his own name, has annexed the certificate issued in the name of his mother Smt. Ilawati Bhura and thus, the nomination paper of petitioner/ appellant contains a defect.

3. Rejection of nomination paper by the Returning Officer was challenged by petitioner/appellant in a writ petition before the High Court on the grounds mentioned therein. The learned Single Judge, upon hearing both the sides, dismissed the writ petition and upheld the rejection of nomination paper by the impugned order.
4. Mr. Koshta, learned counsel for appellant submits that defect pointed out in the nomination paper of appellant is not of substantial character, therefore, in view of provision of Rule 28 of the Chhattisgarh Nagar Palika Nirvachan Rules, 1994 (henceforth 'the Rules, 1994'), the Returning Officer ought not to have rejected nomination paper of appellant. Immovable property situated within Municipal Corporation area is in the name of mother and 'no-dues certificate' issued in the name of mother of appellant has been filed, which is substantial compliance. He further submits that the Returning Officer ought to have accepted and considered the certificate of no dues, which appellant had tried to submit on 7.12.2019, but the Returning Officer has arbitrarily refused to accept the same. It is further submitted that the provision under which nomination paper of appellant was rejected i.e. Section 17 (1) (j) of the Municipal Corporation Act, 1956 (for short 'the Act of 1956'), is not applicable to the case of appellant as the appellant was earlier not elected as a Councillor or Mayor of Municipal Corporation. The nomination paper could not have been rejected under Section 17 (1) (j) of the Act of 1956. Lastly, it is

argued that writ petition filed by petitioner/appellant was against improper rejection of his nomination paper to contest election on the post of the Councillor of Municipal Corporation, Jagdalpur and in view of provisions of Section 441 of the Act of 1956, which provides for filing of election petition, the learned Single Judge ought not to have decided writ petition on merits in view of specific provision available under the Act of 1956 of challenging rejection of nomination paper by filing election petition. Appellant has already presented an election petition before the Election Tribunal and the findings recorded by the learned Single Judge in the order impugned would affect merits of his case pending before the Election Tribunal. In the alternative it is submitted, that if this Court is not inclined to interfere with rejection of nomination paper of appellant, in such a situation, atleast the impugned order be modified suitably so that he can pursue election petition on merits. In support of aforementioned contention, learned counsel places his reliance on the decision of Hon'ble Supreme Court in the matter of Harikrishna Lal vs. Babulal Marandi reported in (2003) 8 SCC 613; Shambhu Prasad Sharma v. Charandas Mahant & ors reported in (2012) 11 SCC 390; and Resurgence India vs. Election Commission of India & another reported in (2014) 14 SCC 189.

5. On the other hand, Mr. K. Rohan, learned counsel representing respondent No.1 submits that Section 17 of the Act of 1956 deals with general qualification for becoming a Councillor or

Mayor and sub-section (i) of Section 17 provides that if a person has any tax or dues, payable to the Corporation, standing against his name, he shall be disqualified to become a Councillor or Mayor of the Municipal Corporation. A candidate contesting election on the post of 'Councillor' or 'Mayor' of a Municipal Corporation is compulsorily required to annex a 'certificate of no dues' of Municipal Corporation along with his/her nomination paper. Submission of no-dues certificate is one of pre-requisites to contest election of a Municipal Corporation. He further contended that in the order passed by the Returning Officer it is clearly mentioned that as petitioner/ appellant had not annexed 'certificate of no dues' granted by Municipal Corporation in his name along with his nomination paper, he incurred disqualification as per provision of Section 17 (1) (j) of the Act of 1956. He further submits that Rule 28 (4) of the Rules, 1994 talks about rejection of any nomination paper on the ground of clerical error or printing error. Non-submission of 'no-dues certificate' issued by Municipal Corporation will not come within the language used in Rule 28 (4) of the Rules, 1994. Likewise, sub-rule (5) of Rule 28 of the Rules, 1994 only requires the Returning Officer to allow time to a candidate to rebut objection raised against his/her nomination and not to permit said candidate to make good the defect occurred in his nomination paper. He submits that the learned Single Judge has not committed any error or mistake in dismissing writ petition by the impugned order, which calls for interference of this Court in exercise of its appellate jurisdiction.

6. Mr. Shrivastava, learned Counsel representing the State, while advancing argument in similar line as argued by learned counsel for respondent No.1, submitted that the check-list issued by the Returning Officer, which was placed on record by petitioner/appellant as Annexure P-3 to writ petition, clearly indicates what supporting documents were to be submitted along with nomination paper. This check-list of documents clearly prescribes for filing of a 'certificate of no-dues' of Municipal Corporation along with nomination paper, which petitioner/appellant has not submitted. He points out that as per Rule 28 (6) of the Rules, 1994, the order passed by the Returning Officer rejecting nomination paper of any candidate by recording reasons thereof, shall be final. Therefore, the impugned order passed by the learned Single Judge is perfectly justified in given facts and circumstances of case and cannot be called for any interference under appellate jurisdiction of this Court.
7. We have heard learned counsel for both the sides and perused the record.
8. There is no dispute that a 'certificate of no-dues' granted by Municipal Corporation is to be annexed with nomination paper by a candidate contesting the election of Municipal Corporation. The check-list of documents issued by the Returning Officer also indicates about the supporting documents to be submitted along with nomination paper, which includes 'no-dues certificate' also along with other documents.

9. Section 17 of the Act of 1956 deals with disqualification of candidates contesting election on the post of Councillor or Mayor. Sub-clause (i) of sub-section (1) of Section 17 provides for disqualification on non-payment of tax or dues payable to the Corporation for a period exceeding one year. Sub-clause (j) provides for disqualification if the amount of charge imposed upon a contesting candidate under Section 11 of the Chhattisgarh Sthaniya Nidhi Sampariksha Adhiniyam, 1973 is not paid within the time specified.
10. Last date for submission of nomination paper was 6.12.2019 and after the said date if any candidate has procured any required document, which may be valid, that cannot be allowed after the last date to be substituted or replaced by the document already annexed with nomination paper.
11. We also do not find any force in the submission of learned counsel for appellant that since the immovable property i.e. house, is recorded in the name of his mother, the certificate of no-dues was issued by Municipal Corporation in the name of his mother and the same was accordingly annexed with nomination paper. A candidate contesting an election is required to submit nomination paper in the prescribed Form annexing the documents belonging to him/her and not of his mother, and if at the time of scrutiny of nomination paper, any defect is noticed in the nomination paper, the same would automatically entail rejection of nomination paper.

12. The judgements relied upon by learned counsel for appellant in support of his arguments are distinguishable on facts and consequently are of no help to appellant.

13. The learned Single Judge for dismissing writ petition has recorded following reasons:-

“7...Moreover, another aspect which cannot be lost sight of is that, pursuant to the objection raised by the other candidate, the petitioner thereafter has been able to obtain “No Dues Certificate” by the concerned authority in his name itself. The fact that the petitioner could get no dues certificate in his name subsequently is a sufficient indication that he could have obtained No Dues Certificate issued in his name prior to the submission of the form and should have enclosed it along with the nomination papers. There is no provision in the law which provides for curing of any defects or defaults which has been detected or pointed out during the course of scrutiny of the nomination papers.”

14. Before the learned Single Judge the appellant raised only one ground that the immovable property is in name of mother and no dues certificate of mother is filed, which was proper compliance, which was rejected, and other ground was not decided.

15. In view of above, we do not find any infirmity in the order impugned calling for interference. The appeal being devoid of substance is liable to be dismissed and is hereby dismissed.

16. However, in view of the submission made by learned counsel for appellant that according to the statutory provision, appellant

preferred an election petition under Section 441 of the Act of 1956, which is pending, and the election petition is to be decided after full trial by recording evidence of both sides. The Election Tribunal will be at liberty to decide the election petition considering all the grounds raised in election petition in accordance with law, except the issue which is decided in WPC No.4555/2019.

Sd/-  
(PR Ramachandra Menon)  
Chief Justice

Sd/-  
(Parth Prateem Sahu)  
Judge

roshan/-