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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK RUSIA**

ON THE 13th OF MARCH, 2024

WRIT PETITION No. 7099 of 2023

BETWEEN:-

**JASRAJ S/O NANURAM BALAI, AGED: 60 YEARS,
RESIDENT OF VILLAGE TELANKHEDI JAGOLI, TEHSIL
AND DISTRICT NEEMUCH (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI NITIN PHADKE - ADVOCATE.)

AND

- 1. THE SPECIFIED OFFICER-CUM-SUB DIVISIONAL
OFFICER (REVENUE), DISTRICT NEEMUCH
(MADHYA PRADESH)**
- 2. RAJA S/O RAMESH KAITHWAS, AGED: 35 YEARS,
RESIDENT OF VILLAGE ARNIA KUMAR, TEHSIL
AND DISTRICT NEEMUCH (MADHYA PRADESH)**
- 3. SONU CHAPRI S/O BADRILAL CHAPRI, AGED: 35
YEARS, RESIDENT OF VILLAGE TELANKEDI
JAGOLI, TEHSIL AND DISTRICT NEEMUCH
(MADHYA PRADESH)**
- 4. RAVI S/O BABULAL KETHWAS, AGED: 35 YEARS,
RESIDENT OF VILLAGE ARANIA KUMAR, TEHSIL
AND DISTRICT NEEMUCH (MADHYA PRADESH)**

.....RESPONDENTS

***(RESPONDENT NO.1 - STATE OF MADHYA PRADESH BY SHRI
RAJWARDHAN GAWDE - ADVOCATE APPEARING ON BEHALF OF
ADVOCATE GENERAL.***

***RESPONDENT NO.2 BY SHRI SIDDHARTH DHARMADHIKARI -
ADVOCATE.***

NONE APPEARS FOR RESPONDENTS NO.3 AND 4.)

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*This petition coming on for admission this day, the court passed the
following:*

ORDER

The petitioner has filed the present petition under Article 226 of Constitution of India challenging order dated 13.03.2023, whereby election petition filed by respondent No.2 has been allowed; and the election of the petitioner to the post of Sarpanch of Gram Panchayat, Jagoli, Tehsil and District Neemuch (M.P.) has been aside.

2. The election of Sarpanch, Gram Panchayat, Jagoli, Tehsil and District Neemuch (M.P.) was held on 25.06.2022 in which the petitioner and respondents No.2 to 4 contested for the post of Sarpanch. Admittedly, the post of Sarpanch was reserved for a candidate of Scheduled Caste (SC) Category. The petitioner submitted a nomination form as a SC Candidate, as he is claiming himself to be a '*Balai*', which is a Scheduled Caste in Madhya Pradesh as well as in State of Rajasthan. In the election, the petitioner secured 362 votes and the election petitioner (respondent No.2 herein) secured 235 votes; and accordingly, the petitioner was declared elected.

3. Respondent No.2 filed an election petition under Section 122 of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (herein after referred to as Panchayat Act, 1993) along with Rules 3.21 and 23 of Madhya Pradesh Panchayat (Election Petition, Corrupt Practices and Disqualification for Membership) Rules, 1995.

4. The Specified Officer-cum-Sub Divisional Officer (Revenue), District Neemuch (Respondent No.1) has held that the petitioner was born in Village Arar, District Chittorgarh (Rajasthan) and migrated to the State of Madhya Pradesh and he is not having a Caste Certificate of Scheduled Caste issued by the Competent Authority in the State of Madhya Pradesh, therefore, he is not entitled to hold the post of Sarpanch; and accordingly, the election of the

petitioner has been set aside. Hence, this petition before this Court.

5. Shri Nitin Phadke, learned counsel appearing for the petitioner submits that the Caste of '*Balai*' comes under the list of SC in the State of Madhya Pradesh also. His all family members are having Caste Certificate. The petitioner also applied for issuance of Caste Certificate, but the same has been rejected, against which, he filed an appeal, which is still pending.

6. It is not in dispute that he belongs to '*Balai*' Community, therefore, he was qualified to contest the election of Sarpanch and as his name is included in the voter list of Gram Panchayat and he is fulfilling all the qualifications for the post of Sarpanch. He is also not incurring any disqualification as prescribed under Section 36 of the Representation of People Act, 1951. Therefore, his election has wrongly been set aside.

7. It is further submitted that he was not given any opportunity to lead evidence, therefore, the impugned order is liable to be set aside; and the matter be remanded back to the Specified Officer (respondent No.1).

8. Shri Nitin Phadke, learned counsel further submits that the learned Specified Officer has placed reliance on a circular dated 06.08.1984 issued by the Government of India, which applies to the migrants, who are aspirant to take the benefits out of their Caste of their original State. For contesting the election, the petitioner is not taking any benefit by virtue of his Caste of '*Balai*' in the State of Rajasthan. He has been elected by the voters, as he secured the highest votes, therefore, the person or a resident, who has received the highest votes, is entitled to continue as Sarpanch, which cannot be terms as a benefit taken by him. Even otherwise, he submits that the circular applies for securing other benefits like scholarship, admission, appointment, promotion in reserved category.

9. In support of his contention, Shri Phadke has placed reliance on a judgment of the Supreme Court in case of **Aruna v. The State of Maharashtra and others**, Civil Appeal No(s).4457-4458 of 2021 (Arising out of SLP (Civil No(s).10675-10676 of 2020) dated **27.07.2021**.

10. Shri Siddharth Dharmadhikari, learned counsel appearing for respondent No.2 submits that the post of Sarpanch is reserved for SC / ST Category, therefore, a candidate belonging to the SC / ST Category is only entitled to contest for the said post; and in order to establish that a candidate belongs to SC / ST Category, the only proof which is required is the Caste Certificate issued by the Competent Authority in the State of Madhya Pradesh i.e. Sub Divisional Officer of the concerned district.

11. Admittedly, the petitioner is not having the Caste Certificate, therefore, he has wrongly contested the election and his election has rightly been set aside by the Specified Officer (respondent No.1).

12. In view of the admitted facts, no evidence was required and even the election can be set aside by issuing a writ of *quo warranto* for the person elected has no authority to continue on the said post.

13. Shri Siddharth Dharmadhikari, learned counsel appearing for respondent No.2 has placed reliance on the following judgments passed by a Single Bench as well as a Division Bench of High Court of Judicature for Rajasthan in case of **Prem Devi D/o Shri Rang Lal W/o Shri Ganga Ram v. State of Rajasthan & others**, Civil Writ Petition No.11093 of 2020 dated **24.09.2020** and in case of **Bhateri Devi Wife of Shri Dinesh Kumar v. State of Rajasthan & others**, Special Appeal Writ No.23 of 2021 dated **25.02.2022**.

14. None appears for other respondents No.3 and 4, who are the formal respondents.

15. Shri Rajwardhan Gawde, learned counsel appearing for respondent No.1 – State of Madhya Pradesh argued in support of the State Government, submits that Article 243-D of the Constitution of India provides reservation in the Panchayat, therefore, an unreserved candidate has no right to contest the election, otherwise, it would be a fraud to the Constitution.

16. I have heard learned counsel for the parties and perused the record.

17. In this case, the facts are admitted that at the time of contesting the election, the petitioner was having a Caste Certificate issued by the Competent Authority from the State of Rajasthan and not the State of Madhya Pradesh. He disclosed himself as a '*Balai*' Community, which is in a SC Category in the nomination form. The nomination form was accepted and he was permitted to contest the election, although won the election by securing 362 votes. Respondent No.2 challenged his election by way of an election petition solely on the ground that he does not belong to a SC Category.

18. Article 243-D of the Constitution of India provides the reservation of seats and according to which the Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the, total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area.

19. Therefore, it is the requirement of the Constitution that there should be a reservation for the Categories SC and ST in every Panchayat. Meaning thereby, for this reserved seat, only a candidate belonging to a Category of SC can

contest to fill that post in the Panchayat.

20. Section 5 (a) of the Representation of Peoples Act, 1951 provides that a person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless in the case of a seat reserved for the Scheduled Castes or for the Scheduled Tribes of that State, he is a member of any of those castes or of those tribes, as the case may be, and is an elector for any Assembly constituency in that State.

Therefore, as per the aforesaid requirement, a candidate should be belonging to the SC Category of that State where he wants to contest the election.

21. Likewise, in Panchayat Act, 1993 also, Sub Section (2) (i) of Section 17 of the Panchayat Act 1993 provides such number of seats of Sarpancha of Gram Panchayat shall be reserved for Scheduled Caste and Scheduled Tribe in the Gram Panchayat within the block, as per their populations. The seat reserved under this Section shall be allotted by the Prescribed Authority in the Gram Panchayat within the Block by the rotation in the prescribed manner, as per Sub Section (4) of Section 17 of the Panchayat Act of 1993.

Therefore, when the seats are reserved for SC and ST Categories, that seats are liable to be filled up by candidates belonging to SC or ST Category, as the case may be.

22. For declaration that any person belongs to SC or ST Category, there has to be a Caste Certificate issued by the concerned SDO of that State in his favour, then only he can be treated as a Member of the SC or ST Category. Without the Caste Certificate, no benefits of SC or ST Category can be given, either in appointment, promotion, admission or as well as in election.

23. So far as the contention of Shri Nitin Phadke, learned counsel appearing for the petitioner that Section 36 of the Panchayat Act, 1993 provides a Disqualification for being an office bearer of Panchayat and the petitioner does not come in any of the category of disqualifications, is unacceptable, because Section 36 (1) (k) of the Panchayat Act, 1993 says that no person shall be eligible to be an office bearer of the Panchayat, who is disqualified or by under any law for the time being in force for the purpose of the election to the State Legislative Assembly. Therefore, by virtue of Section 5 of Representation of People Act, 1951, a person shall be disqualified, if he is not belonging to the SC or ST Category of that State. Therefore, Section 36 (1) (k) of the Panchayat Act, 1993 has to be read along with Section 5 (a) of the Representation of Peoples Act, 1951, under which the petitioner is disqualified to contest the election.

24. A Single Bench of High Court of Judicature for Rajasthan in case of **Prem Devi D/o Rang Lal W/o Shri Ganga Ram v. State of Rajasthan & others** (supra) examined this issue and held in para 7 and 8 of its judgment as, under: -

“7. On careful perusal of the judgments cited by the counsel appearing for both the sides, this well settled legal position emerges out that a person of reserved category is entitled to derive the benefits of reservation only in the State of his origin and not in the state to which he has migrated irrespective of the fact whether his caste is covered in the same reserve category in both the States.

8. Though in the judgments of this court in Poonam Yadav (supra) and Manju Yadav (supra), the State Authorities have been directed to issue caste certificates for the females who

have been migrated from the other state after marriage, but at the same time it has been categorically clarified that only on the basis of such certificates, they shall not be entitled for the benefit of reservation in public employment and such certificates may be relevant for grant of benefits like housing scheme, which may be made available on the basis of domicile or residence.”

25. The aforesaid judgment has been affirmed in Special Writ Appeal by the Division Bench of High Court of Judicature for Rajasthan in case of **Bhateri Devi Wife of Shri Dinesh Kumar v. State of Rajasthan & others** (supra).

26. So far as the judgment passed by the Apex Court in the case of **Aruna v. The State of Maharashtra and others** (supra) is concerned, in this case, the Caste Certificate in possession of the petitioner was issued by the Competent Authority in the State of Maharashtra but same was not examined by the Election Authorities, therefore, the order passed by the High Court was set aside by the Apex Court. सत्यमेव जयते

27. In this case, the Specified Officer-cum-Sub Divisional Officer (Revenue), Neemuch, District Neemuch has not committed any error of law while declaring the election of petitioner for the post of Sarpanch, Gram Panchayat Jagoli, Tehsil & District Neemuch (M.P.) as void.

28. The present petition is accordingly dismissed. No order as to cost.

(VIVEK RUSIA)
JUDGE