

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Stay Application IA No.1 of 2022  
In  
Appeal from Order No.458 of 2022**

Amendra Bisht

....Appellant

**Versus**

State of Uttarakhand and others

.... Respondents

**Present:**

Mr. A.S. Rawat, senior counsel assisted by Mr. Vipin Singh, counsel for the appellant.

Mr. Tej Singh Bisht, Deputy Advocate General for the State of Uttarakhand/respondent no.1.

Mr. Sanjay Bhatt, counsel for respondent nos.2 to 4.

Mr. Nagesh Aggarwal, counsel for respondent no.5.

**Dated: 27.09.2023**

**Hon'ble Vivek Bharti Sharma, J. (Oral)**

This is an appeal filed by the appellant against the judgment/order dated 08.12.2022 passed by the District Judge, Tehri Garhwal in Election Petition No.02 of 2020, "*Sri Devendra Singh Panwar vs. State of Uttarakhand and others*" whereby the election petition preferred by respondent no.5 has been allowed and the election of the appellant for Member Zila Panchayat, Block-Jaunpur, District Tehri Garhwal from Ward No.15 Bisthaunsi has been set aside and the said post has been declared vacant and a direction has been issued to conduct election afresh as per law.

2. Brief facts of the case are that the appellant and respondent no.5 had filed their nomination papers to contest the election for the post of Member Zila

Panchayat from Ward No.15 Bisthaunsi Block-Jaunpur, District Tehri Garhwal; that, the appellant filed the objection against the candidature of respondent no.5 on the ground that he had not passed the High School examination; that, the objection of the appellant was considered by the Returning Officer and accordingly the candidature of respondent no.5 was rejected; that, as there were only two candidates in the fray i.e. the present appellant and respondent no.5 and the candidature of respondent no.5 was rejected by the Returning Officer under Section 90(1)(q) of the Uttarakhand Panchayati Raj Act, 2016, therefore, the appellant was declared to have been elected unopposed.

Learned Senior Counsel would further submit that being aggrieved by the cancellation of nomination the respondent no.5 preferred a Writ being Writ Petition (M/S) No.3756 of 2019 before this Court which was disposed of by a Coordinate Bench of this Court, vide judgment dated 19.08.2020, thereby referring the matter to the District Magistrate, Tehri Garhwal; that, thereafter the respondent no.5 preferred an election petition before the District Magistrate, Tehri Garhwal; that, the District Magistrate, vide order dated 02.09.2020 referred the matter to the District Judge, Tehri Garhwal; that, the learned District Judge, Tehri Garhwal, on the dispute

being referred to him, allowed the election petition of respondent no.5 and set-aside the order of Returning Officer rejecting the candidature of respondent no.5. Further, the Court of District Judge, Tehri Garhwal held the post of Member Zila Panchayat from Ward No.15 Bisthaunsi Block-Jaunpur, District Tehri Garhwal vacant and directed re-election of the post of Member of said ward.

3. Heard learned counsel for the respective parties on the Stay Application (IA No.1 of 2022).

4. Learned senior counsel appearing for the appellant would submit that the effect and operation of the impugned judgment and order is needed to be stayed in any case and more particularly in the circumstances when the process of election has already been started by the Administration and election is notified to be held on 05.10.2023 and if the election process is not stopped the appeal would become infructuous.

5. Learned counsel for respondent nos.2, 3 and 4 oppose the stay application and would submit that as per the pronouncement of the Hon'ble Supreme Court in "*N.P. Ponnuswami vs. The Returning Officer vs. other*", (1952) 1 SCC 94 and "*Mohinder Singh Gill Vs. Chief Election Commissioner, New Delhi*" (1978) 1 SCC 405 once

the process of election has started, the same should not be stopped.

6. Learned counsel for respondent no.5 would also reiterate that the election process has started and this Court should not interfere in the same at this stage in view of the judgment of Hon'ble *Supreme Court* in "*Shaji K. Joseph vs. V. Viswanath & Ors.*" (2016) 4 SCC. He would also refer a judgment of Hon'ble High Court of Chhattisgarh in "*Dronacharya Sahu vs. State of Chhattisgarh*" (2020) 0 Supreme (Chh) 57.

7. Per Contra, learned senior counsel for the appellant would submit that he has come in appeal against the judgment of the District Judge under Rule 47 of Uttar Pradesh Zila Panchayat (Settlement of Disputes Relating to Membership) Rules, 1994, as applicable in the State of Uttarakhand, and not in the writ petition; that, he is not pressing to stay the process of any election but he is seeking staying of the impugned judgment passed by the District Judge.

He would further submit that once the appeal is admitted by the Court then the operation of the impugned judgment has to be stayed necessarily otherwise there is no point in filing the appeal, which eventually will be fruitless by the operation of the

impugned judgment and the relief prayed for would render infructuous.

8. The sum and substance of the judgment **N.P. Ponnuswami** (*supra*) is that the elections should be concluded as early as possible according to the time schedule and all controversial matters and the disputes arising out of elections should be postponed till the elections are over.

9. Similar view has been taken in **Shaji K. Joseph** (*supra*) wherein the Hon'ble Supreme Court has held that the all the disputes with regard to election should be dealt with only after completion of the election and the courts should not interfere with the process of election for the simple reason that if the process of election is interfered with by the courts, possibly no election would be completed without the court's orders and for one reason or the other the same would get stalled, delayed or cancelled by the candidate by virtue of interim orders passed by the courts.

10. In view of the well settled proposition of law, what emerges out is that the election procedure once initiated cannot be stalled after commencement of election. In the present case, it is undisputed that the

election process has commenced and the election is notified to be held on 05.10.2023.

As regards the submission made by learned Senior Counsel that he is not challenging the election rather he is challenging the order of the District Judge thereby rejecting the candidature of the applicant/appellant have the same meaning inasmuch as staying the order of the District Judge at this stage would ultimately result into stalling the election process as in the same judgment/order there is a specific direction to the Administration to conduct fresh election. Thus, in the considered view of this Court, staying the operation of the impugned order would tantamount to staying the process of election as notified for the Membership of Zila Panchayat from Ward No.15 Bisthaunsi Block-Jaunpur, District Tehri Garhwal.

11. For the reasons discussed above, Stay Application IA No.1/2022 is dismissed. However, result of the election shall not be declared by the Election Officer and the same shall be filed in a sealed cover before the Court within one week after the preparation of result of the election.

12. List on 22.12.2023.

**(Vivek Bharti Sharma, J.)**  
**27.09.2023**