2026:HHC:47550

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 7359 of 2026

Reserved on:-27.10.2026

Decided on: 30.10.2026

Khursheeda .....Petitioner

Versus

State of Himachal Pradesh and others ... Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Hon'ble Mr. Justice Yogesh Jaswal, Judge

Whether approved for reporting?[1] ***Yes***

For the petitioner : Mr.Ashwani Kumar Sharma, Advocate.

For the respondents : Mr. Anup Rattan,Advocate General with Mr. Ramakant Sharma, Additional Advocate General and Mr. Rajat Chauhan, Assistant AG for respondents No. 1 to 5.

: Mr. Surinder K. Sharma, Senior Advocate with Neeraj Sharma, Advocate for respondent No. 6.

Ajay Mohan Goel, Judge

By way of this writ petition, the petitioner has *inter alia* prayed for the following reliefs:-

> *"(i) That the impugned ordinance dated 6.5.2026 (Annexure P-3) may very kindly be held unconstitutional, arbitrary and illegal and be quashed and set aside accordingly.*
>
> *(ii) That, the respondent authorities be directed to conduct elections to Panchayati Raj Institutions in the State of*

[1] *Whether reporters of the local papers may be allowed to see the judgment?*

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Himachal Pradesh as per unamended Section 122 of Panchayati Raj Act.

(iii) That during the pendency of writ petition if the candidature of the petitioner is rejected by the scrutiny committee under the amended provisions of the section 122 Sub Section 1(e), amendment carried out on the basis of impugned ordinance dated 06.05.2026 (Annexure P-3) then implementation of said ordinance be made subject to the final outcome of the writ petition."

2. The case of the petitioner is that vide notification dated 29.04.2026, the State Election Commission notified election program for the conduct of general elections to the Panchayati Raj Institutions in the State of Himachal Pradesh. Vide notification dated 04.05.2026, the respondents amended the Panchayati Raj Act vide Panchayati Raj Amendment Act No.12/2026, inserting new provisions therein. In terms of the amendment incorporated in Section 122 of the Panchayati Raj Act, for the existing Section 122, the same was substituted and the substituted clause (e) of sub-Section 1 of Section 122 thereof provided as under:-

"(e) if he or any of his family member (s) has encroached upon any land belonging to. or taken on lease or requisitioned by or on behalf of the State Government. a

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Municipality, a Panchayat or a Co-operative Society unless a period of six years has elapsed since the date on which he or any of his family member, as the case may be, is ejected therefrom or ceases to be the encroacher.

Explanation- For the purpose of this clause the expression "family member" shall mean grand-father, grand-mother, father, mother, spouse, son and unmarried daughter;"

3. Thereafter, the respondents issued the Himachal Pradesh Panchayati Raj Amendment Ordinance, 2026 (Annexure P-3) and in terms of this Ordinance, Section 122 of the Panchayati Raj Act was further amended as under:-

"1. Short title. This Ordinance may be called the Himachal Pradesh Panchayati Raj (Amendment) Ordinance, 2026.

Amendment of section 122. In section 122 of the Himachal Pradesh Panchayati Raj 2. Act, 1994,-

"(a) in sub-section (1), in the Explanation to clause (e), after the word "son", the signs and words", daughter-in-law" shall be inserted.

(b) in sub-section(2), in the Explanation to clause (d), after the word "son", the signs and words", daughter-in-law" shall be inserted."

4. According to the petitioner, in terms of the impugned

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Ordinance issued in exercise of the power conferred upon the Governor under clause (1) of Article 213 of the Constitution of India, words "daughter-in-law" have been added to the definition of "family" and this renders a daughter-in-law ineligible to contest the elections if the father-in-law or the mother-in-law, besides the husband, are found encroachers upon Government land. According to the petitioner, in the impugned Ordinance, it has been mentioned that the Governor, Himachal Pradesh is satisfied that circumstances exist which render it necessary for him to take immediate action qua the promulgation of the Ordinance, whereas the requirements of Article 213 of the Constitution have not been met in the course of the issuance of the Ordinance and the Ordinance was issued in hot haste without any valid justification.

5. Learned Counsel argued that the petitioner was preparing herself for the forthcoming Panchayati Raj elections for the last five years. She was engaging herself in social activities in order to retain the faith of the people and had also filed her nomination for the office of Pradhan, from Gram Panchayat Sanwal, Tehsil Tissa, District Chamba on 08.05.2026. By referring to para-13 of the petition, learned Counsel submitted that pursuant to the issuance of a retention policy by the respondent State, the father-in-law of the

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petitioner, namely, Gani Mohammad, who was in unauthorized occupation of Government land, comprised in Khasra No. 469/461/6, situated at village Lagain, Post Office Sanwal, Tehsil Churah, District Chamba since the year 1980, applied for regularisation of said encroachment, though, no action stood taken on the said application of the father-in-law of the petitioner for the last more than 24 years. He submitted that the family of the petitioner along with her husband and children were residing separately from her in-laws and ignoring all these facts, in the light of the invocation of the power under Article 213 of the Constitution of India, by incorporating the words "daughter-in-law" in explanation to Section 122(1)(e), the petitioner stands rendered ineligible to contest the election. Learned Counsel argued that the Ordinance was bad in law for the reason that it was issued as an act of colourable and malafide exercise of power under Article 213(1) of the Constitution of India, as there were no circumstances warranting the promulgation of the Ordinance when the same was issued. He argued that the provisions of Article 213 of the Constitution are not intended to bypass the legislature and secure political mileage as also collateral advantages and partisan advantages, which was the purpose of the promulgation of the impugned Ordinance. Learned

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Counsel argued that the promulgation of the Ordinance after the issuance of the election schedule was arbitrary and unconstitutional, as once the election process had already commenced with the issuance of the election program, the same could not have been altered in between. He submitted that the timing, manner and surrounding circumstances of the amendment demonstrate that the same was not a bonafide exercise, but a colourable exercise of power. Learned counsel further argued that the inclusion of "daughter-in-law" in the definition of "family" was arbitrary and irrational, as it was having no reasonable nexus with the object to be achieved by the Statute, as the daughter-in-law is neither a recognised Class-I legal heir nor ordinarily included within the definition of 'family' for the purposes of appointment on compassionate appointment etc. Learned counsel also argued that the inclusion of "daughter-in-law" by way of the Ordinance, was devoid of any constitutional or statutory rationale and therefore, as the entire exercise undertaken by the respondents was bad, the same was liable to be declared as such. He argued that as the 'daughter' was otherwise included in the definition of family, as far as disqualification was concerned under Section 122 of the Act, the inclusion of the 'daughter-in-law' also therein amounted to double

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jeopardy, as a lady was now rendered ineligible both on account of her being as a 'daughter' as well as 'daughter-in-law'. No other point was urged.

6. On the other hand, learned Advocate General argued that the promulgation of the Ordinance by the Governor in exercise of the powers conferred under Article 213(1) of the Constitution of India was neither a colourable exercise of power nor an act done with malafide intent. He argued that allegations made in the petition were vague and bald, as same were not substantiated by any material on record to demonstrate that the Ordinance was issued to favour someone or to oust someone from the process of the contest of elections. Learned Advocate General argued that the amendment was introduced with the object of ensuring accountability and purity in local self-governance institutions, and therefore, the promulgation of the Ordinance could not be termed as unreasonable or unconstitutional. Learned Advocate General further argued that the necessity to promulgate the Ordinance was on account of the fact that at the relevant time, the State Assembly was not in Session and in fact, after the State Assembly met, the amendment was passed at the floor of the House and now it is part of the Act itself, which incidentally is not under challenge. Learned Advocate General also

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argued that comparison of the provisions of the Panchayati Raj Act with Urban Local Bodies Act does not make the amendment in the Act bad in law for the reason that the Legislature is fully competent to prescribe distinct qualifications and conditions of disqualifications for different classes of Institutions, and in fact, the Government was seriously mulling to do the needful even as far as the H.P. Municipal Corporation Act, 1994 and H.P. Municipal Act, 1994 were concerned. Learned Advocate General also argued that as the candidature of the petitioner was rejected on the ground that provisions of Section 122 of the Panchayati Raj Act rendered her ineligible to contest the elections, rejection of her candidature cannot be assailed by the petitioner by way of the present proceedings and for this, the petitioner had to file an election petition, which she did not file. Learned Advocate General also argued that the reason why the definition of family was extended by including 'daughter-in-law' in the said definition was to ensure that none from the family, who had encroached upon Government land, are rendered eligible to contest the elections, so as to dissuade the people from encroaching upon Government land. Learned Advocate General also argued that as the Ordinance was promulgated in larger public interest and further as the amendment incorporated in the Act, is to discourage people from

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encroaching upon Government land, the present petition deserves to be dismissed. Learned Advocate General also argued that in the present case, it is the admitted case of the petitioner that her father-in-law had indeed encroached upon the Government land. He further submitted that the contention of the petitioner that by including 'daughter-in-law' in the definition of family under Section 122 of the Panchayati Raj Act, a girl/lady was being subjected to double jeopardy was totally incorrect, because only an 'unmarried daughter' was disqualified from contesting the elections if the father /mother had encroached upon the Government land and after the girl was married, then her qualification or disqualification was not to be adjudged from the perspective of the status of her parents. Accordingly, he submitted that as there was no merit in the present petition, the same be dismissed.

7. The moot issue before us to be decided in this case is as to whether the issuance/promulgation of the Ordinance, in exercise of power conferred under clause (1) of Article 213 of the Constitution of India, was indeed an act of colourable exercise of power and a malafide act of the respondents, as alleged and whether the Ordinance was promulgated in violation of the provisions of Clause

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(1) of Article 213 of the Constitution of India or not?

8. Chapter IV of the Constitution of India provides for Legislative power of the Governor. Article 213 thereof reads as under:-

> *"**213. Power of Governor to promulgate Ordinances during recess of Legislature**.—(1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require:*
>
> *Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if—*
>
> *(a) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature; or*
>
> *(b) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President; or*
>
> *(c) an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid*

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unless, having been reserved for the consideration of the President, it had received the assent of the President.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor, but every such Ordinance —

(a) shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council; and

(b) may be withdrawn at any time by the Governor.

Explanation.—Where the Houses of the Legislature of a State having a Legislative Council are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor, it shall

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be void:

Provided that, for the purposes of the provisions of this Constitution relating to the effect of an Act of the Legislature of a State which is repugnant to an Act of Parliament or an existing law with respect to a matter enumerated in the Concurrent List, an Ordinance promulgated under this article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him."

9. In terms of clause (1) of Article 213 of the Constitution of India, if at any time, except when the Legislative Assembly of a State is in Session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in Session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinance as the circumstances appear to him to require, subject to the proviso mentioned therein. Clause (2) of Article 213 thereof further provides that the Ordinance promulgated under Clause (1) shall have the same force and effect as an Act of Legislature of the State assented to by the Governor, but every such Ordinance shall be laid before the Legislative Assembly of the State etc. and shall

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cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Assembly etc., and it may be withdrawn at any time by the Governor.

10. The Ordinance in the present case, copy whereof is appended with the petition as Annexure P-3, was promulgated by the Governor of Himachal Pradesh on 6th of May 2026, when the State Legislative Assembly was not in session. It is not the case of the petitioner that the Ordinance promulgated by the Governor was hit by the proviso to clause (1) of Article 213 of the Constitution.

11. A perusal of Annexure P-3 demonstrates that it was mentioned in the Ordinance itself that as the Legislative Assembly of Himachal Pradesh was not in session and as the Governor was satisfied that circumstances existed which rendered it necessary for him to take immediate action, therefore, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution of India, the Governor of Himachal Pradesh was pleased to promulgate the Ordinance.

12. It is settled law that the "satisfaction" of the President or Governor is not amenable to judicial review. However, the reasons which have led to the said satisfaction are open to judicial review.

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(See: State of Rajasthan vs. Union of India, AIR 1977 SC 1361).

13. In the present case, as is the pleaded case of the petitioner also, the State Election Commission notified the election program for the conduct of general elections to the Panchayati Raj Institutions vide notification dated 29.04.2026. The date of presentation of nomination papers was 07.05.2026, 08.05.2026 and 11.05.2026. The date of scrutiny of the nomination papers was 12.05.2026 onwards and the date of withdrawal of candidature was 14.05.2026 and 15.05.2026 between 10:00 AM to 3:00 PM. The list of contesting candidates was to be prepared and affixed on 15.05.2026 after the time of withdrawal was over. We have taken the said dates from the averments made in paragraph-3 of the writ petition. Obviously, as it appeared to the respondents, that a 'daughter-in-law' was also liable to be included in the definition of family as far as disqualifications entailed under Section 122 of the H.P. Panchayati Raj Act was concerned, and as the election program already stood notified and the list of the contesting candidates, which means the list of eligible contesting candidates, was to be published on 15.05.2026, the Ordinance was issued on 6th of May, 2026, in the light of the fact that the Legislative Assembly of Himachal Pradesh was not in session and the necessary amendment

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in the Act could have been carried out only by way of the promulgation of the Ordinance. This is exactly what has been done by the promulgation of Ordinance (Annexure P-3) carrying out necessary amendments in Section 122 of the Himachal Pradesh Panchayati Raj Act, 1994.

14. Therefore, in the light of the above, it cannot be said that the Ordinance was promulgated by the Governor of Himachal Pradesh in violation of the provisions of clause (1) of Article 213 of the Constitution of India, or the same was hit by non-compliance of clause (1) of Article 213 of the Constitution of India. The requirements of clause (1) of Article 213 of the Constitution of India, according to us, were met with in letter and spirit in the course of the promulgation of the Ordinance.

15. A seven-Judge Bench of the Hon'ble Supreme Court of India in **Krishna Kumar Singh and Another** vs. **State of Bihar and Others** *(2017) 3 Supreme Court Cases 1*, by majority, has been pleased to hold that the satisfaction of the President under Article 123(1) or the Governor under Article 213(1) of the Constitution, is not immune from judicial review, and the power of promulgating Ordinance is not an absolute entrustment but conditional upon a satisfaction that circumstances exist rendering it necessary to take

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immediate action. Hon'ble Supreme Court has also held that since the duty to arrive at the satisfaction rests in the President and the Governors, though it is exercisable on the aid and advice of the Council of Ministers, the Court must act with circumspection when the satisfaction under Article 123 or Article 213 of the Constitution is challenged. The Court will not enquire into the adequacy, or sufficiency of the material before the President or the Governor. The Court will not interfere if there is some material which is relevant to his satisfaction. The interference of the Court can arise in a case involving a fraud on power or an abuse of power, and this essentially involves a situation where the power has been exercised to secure an oblique purpose. Hon'ble Supreme Court has also held that in exercising the power of judicial review, the Court must be mindful both of its inherent limitations as well as of the entrustment of the power to the Head of the executive, who acts on the aid and advice of the Council of Ministers owing collective responsibility to the elected legislature. Hon'ble Supreme Court has held that, in other words, it is only where the Court finds that the exercise of power is based on extraneous grounds and amounts to no satisfaction at all, that the interference of the Court may be warranted in a rare case.

16. In the present case, the petitioner has not substantiated

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that the Ordinance was promulgated to secure any oblique purpose, or that the exercise of power was based on extraneous grounds, or that there was a fraud on power or an abuse of power. Had it been a case where earlier a 'daughter-in-law' was included in the definition of "disqualified persons", who, by way of an Ordinance, was deleted, then, of course, some eyebrows could have been raised. However, in the present case, the case is converse. By way of the Ordinance, the scope of the definition of "family" under Section 122 of the H.P. Panchayati Raj Act, which deals with disqualification of the candidates, was expanded by including a 'daughter-in-law' also in the definition of family, meaning thereby that even a daughter-in-law was now ineligible to contest the election if either her father-in-law or her mother-in-law besides her husband, was found to be an encroacher upon Government land.

17. According to us, this amendment carried out in the Act by way of the promulgation of the Ordinance (Annexure P-3) is neither arbitrary nor discriminatory and the contention of the learned Counsel for the petitioner that the same amounted to double jeopardy as far as a girl is concerned also is incorrect. We have perused the provisions of Section 122 of the Act, as it existed before the impugned Ordinance was promulgated and perusal thereof

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demonstrates that the expression "family", though included a daughter but provided such daughter was an "unmarried daughter". In other words, a married daughter was not included in the expression "family member", as was tried to be projected by the learned Counsel for the petitioner.

18. It is now, by virtue of the amendment which has been carried out in the Act, that a girl/lady who is married stands disqualified from contesting the election to the office(s) of Panchayati Raj if her father-in-law or mother-in-law besides husband, are encroachers upon the Government land.

19. The argument of the learned Counsel that the impugned Ordinance was promulgated in hot haste deserves rejection for the reason that as obviously, a notification stood issued by the State Election Commission for the holding of the elections to the Panchayati Raj Institutions and the last date of the publication of the name of the eligible candidates was 15.05.2026 and as the respondents felt it necessary to expand the definition of "family" so as to include therein even a daughter-in-law in the definition of family for the purpose of disqualification if father-in-law or mother-in-law besides the husband, were encroachers upon the Government land, this objective could not have been achieved otherwise but

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except by way of the promulgation of the Ordinance before 15.05.2026, as the State Legislative Assembly of the State was not in session.

20. As far as the rejection of the nomination of the petitioner is concerned, obviously, as the ordinance came into effect on 06.05.2026 and the same rendered a 'daughter-in-law' ineligible if her father-in-law or mother-in-law besides husband, were encroachers upon the Government land, because as on the date of scrutiny or the last date of publishing the name of the eligible candidates, i.e. , 15.05.2026, the petitioner was rendered ineligible to contest the election because it is not in dispute that her father-in-law had encroached upon the Government land, as has been mentioned by the petitioner herself in para-3 of the writ petition, we do not find any illegality with the act of the Authorities of rejecting the candidature of the petitioner.

21. Otherwise also, if the petitioner was aggrieved by the rejection of her candidature, then obviously, the course open for her was to file an election petition.

22. Besides, it could not be demonstrated before this Court that the Ordinance in issue was promulgated to politically serve the Government of the day. It could not be demonstrated before the

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Court that the Ordinance was person centric and the same was promulgated just to ensure that the petitioner could not contest the election.

23. The arguments of the learned Counsel that the respondents erred in not appreciating that the 'daughter-in-law' was not a Class-I heir or that a 'daughter-in-law' is not eligible for appointment under the compassionate policy, etc., also do not have any force because the provisions of Section 122 of the H.P. Panchayati Raj Act have to be conceived and perceived in a religion-neutral manner, because it is the citizen of India who contests an election under the Panchayati Raj Act and not a person belonging to a particular religion. It could also not be disputed before us during the course of hearing of this case that thereafter when the Himachal Pradesh State Legislative Assembly was in session, the Ordinance has been passed by the State Assembly in accordance with law.

24. In fact, according to us, there was a loophole in the existing Statutory Scheme, which has been taken care of by way of promulgation of the Ordinance, which is the subject matter of the present writ petition.

25. In order to give due representation to women in the Polity of India, certain seats are specifically reserved for them. As far

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as a State is concerned, seats are reserved for ladies in the State Legislative Assembly, Municipal Corporation, Municipal Council and Panchayat etc. On account of a 'daughter-in-law' earlier not been included in the definition of family, as it was under Section 122 of the Himachal Pradesh Panchayati Raj Act, in case there was a ward reserved for a lady and the father-in-law was an encroacher upon the Government land or for that matter, the mother-in-law, was an encroacher upon the Government land, rendering her ineligible to contest the election, which also rendered the 'un-married daughter' of such a couple ineligible to contest the election, such a family could have easily hoodwinked the system by having the 'daughter-in-law' to contest the election. Now, this loophole, according to us, has been plugged by including the 'daughter-in-law' in the definition of family, as a result whereof, for any seat including seats which are specifically reserved for ladies, even a 'daughter-in-law' is ineligible to contest the election, if her father-in-law or mother-in-law have encroached upon the Government land. This amendment, by no stretch of imagination, can be said to be arbitrary, discriminatory or unconstitutional, but is a very positive step towards ensuring that those, who intend to be a part of the Polity of India, should, lead by example and a step towards the same is by ensuring that they are

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not encroachers upon Government land.

Accordingly, in the light of the above observations and discussions, as we do not find any merit in the present petition, the same is dismissed. Pending miscellaneous application(s), if any, also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

(Yogesh Jaswal)
Judge

October 30, 2026
(*narender*)

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