

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 699 of 2015

Narendra Kumar Kenwat S/o Shri Ram Sewvak Kenwat Aged About 39 Years Caste Kenwat, R/o Village Singhul Tahsil Navagarh, Police Station Shivrinarayan Revenue And Civil District Janjgir Champa Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Panchayat & Rural Development Department Mantralaya, Mahanadi Bhawan, New Raipur Police Station Rakhi, District Raipur Chhattisgarh
2. The Collector Janjgir Chamap, District Janjgir Champa Chhattisgarh
3. Sub Divisional Officer (Revenue) Cum Prescribed Authority Panchayat Nirwachan Petition, Janjgir District Janjgir Champa Chhattisgarh
4. Returning Officer Tahsildar Navagarh, Panchayat Nirwachan, Janpad Panchayat Navagarh, District Janjgir Champa Chhattisgarh
5. Sub Election Officer/ Chief Executive Officer Janpad Panchayat Navagarh, District Janjgir Champa Chhattisgarh
6. Dukhu Ram Kenwat S/o Ganga Ram Kenwat Aged About 46 Years R/o Village Singhul Tahsil Navagarh, Police Station Shivrinarayan Revenue And Civil District Janjgir Champa Chhattisgarh
7. Babu Lal Kenwat S/o Janik Ram Kenwat, Aged About 35 Years R/o Village Singhul Tahsil Navagarh, Police Station Shivrinarayan Revenue And Civil District Janjgir Champa Chhattisgarh
8. Rampyare Kenwat S/o Lachhiram Kenwat Aged About 32 Years R/o Village Singhul Tahsil Navagarh, Police Station Shivrinarayan Revenue And Civil District Janjgir Champa Chhattisgarh
9. Shiv Kumar Shriwash S/o Bauna Shriwash Aged About 30 Years R/o Village Singhul Tahsil Navagarh, Police Station Shivrinarayan Revenue And Civil District Janjgir Champa Chhattisgarh
10. Santosh Kumar Kenwat S/o Shri Joidha Kenwat Aged About 36 Years R/o Village Singhul Tahsil Navagarh, Police Station Shivrinarayan Revenue And Civil District Janjgir Champa Chhattisgarh

---- Respondents

For Petitioner	:	Shri P.K. Patel, Advocate
For Respondent/State	:	Shri D.R. Minj, Dy. Govt. Advocate
For Respondent No.6	:	Shri Vinod Tekam, Advocate

Order On Board

21/09/2015

Heard.

1. A short issue arises for consideration in this petition is as to whether the Election Tribunal was justified in summarily dismissing the election petition.
2. Learned counsel for the petitioner submits that once the election petition has been filed, unless on account of non-compliance of the provisions of Rule 3, 4 and 7, petition deserves dismissed as provided in Rule 8 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (for short '*the Rules of 1995*'), it has to be tried. He submits that the Election Tribunal / SDO Revenue has summarily dismissed the Election Petition without there being any trial whatsoever. The grounds do not pertain to violation of any of the mandatory provisions of Rule 3, 4 or 7 of the Rules of 1995. In support of his submission, learned counsel for the petitioner relies upon number of decisions of this Court -

Parvatia Vs. Padmini and ors, 2005 (2) CGLJ 335, Shyam Ratan Vs. Siyaram and ors. (WP No.4270/05) and Bharat Vs. Tularam and ors. [WP (227)] 2144/10.

3. On the other hand, learned counsel for respondent No.6 submits that there exists an alternative remedy of filing appeal. Therefore, the writ petition is not maintainable. Otherwise also, the Election petition has been dismissed because the Election Tribunal found that there was no specific ground requiring trial to be held.
4. The objection of learned counsel for respondent No.6 regarding existence of alternative remedy is misconceived in law. An order passed by the Tribunal is final under the provisions of the Act. Therefore, no appeal or revision would be maintainable before any of the authorities constituted under the Act or under the Chhattisgarh Panchayats (Appeal and Revision) Rules, 1995.
5. The petitioner had filed an election petition challenging election of respondent No.6 under Section 122 of Panchayat Raj Adhiniyam, 1993 (for short '*the Act of 1993*') read with Rules of 1995. Prayer has been made by the election petitioner for recounting of votes on certain grounds.
6. Curiously enough, the Election Tribunal, without holding any trial as contemplated in the election petition rules, has proceeded to dismiss the election petition in a very perfunctory manner. The election tribunal was completely oblivious of the statutory scheme of the Act of 1993 and Rules made therein which patently requires a trial to be held unless the Election Petition is dismissed summarily under Rule 8 of the Rules of

1995. The grounds on which an election petition could be dismissed without trial, have been exhaustively enumerated in the Rules of 1995. If those grounds, warranting dismissal as stated in Rule 8 of the Rules of 1995, are not available, the Election Tribunal is left with no option but to hold the trial, allow the returned candidate and other candidates who are parties to the Election Petition to file written statement, frame issue, examine the witnesses and then decide the election petition.

7. The Election Tribunal has completely abdicated of its function by summarily dismissing the election petition. It being a jurisdictional illegality, this Court has to step in and set aside the impugned order.
8. Accordingly, the petition is allowed. The impugned order is set aside and the Election Tribunal is directed to hold trial under statutory scheme of the Act of 1993 and Rules of 1995.

Sd/-
(Manindra Mohan Shrivastava)

Judge