

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1036 of 2015

- Smt. Karibai W/o Late Karmaha Lahre Aged About 52 Years R/o Pipra, Tah. Navagarh, Police Station & Post- Navagarh, Civil And Revenue Distt. Janjgir-Champa (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through- Secretary, Panchayat & Gramin Vikas Vibhag, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, Distt. Raipur (Chhattisgarh)
2. Sub-Divisional Officer (Revenue) Janjgir, Civil And Revenue Distt. Janjgir-Champa (Chhattisgarh)
3. Smt. Dujbai Turkane W/o Shri Jawaharlal Turkane Aged About 45 Years R/o Village- Borgaon, Tahsil- Navagarh, Police Station & Post- Navagarh, Civil And Revenue Distt. Janjgir-Champa (Chhattisgarh)
4. Smt. Dujbai Ramprasad Lahre W/o Ram Prasad Lahre Aged About 36 Years R/o Pipra, Tah. Navagarhh, Police Station & Post-Navagarh, Civil And Revenue Distt. Janjgir-Champa (Chhattisgarh)
5. Smt. Sumitra Bai Lahre W/o Devram Lahre Aged About 27 Years R/o Pipra, Tah. Navagarh, Police Station & Post- Navagarh, Civil And Revenue Distt. Janjgir-Champa (Chhattisgarh)
6. Smt. Sukanya Sarthi W/o Ganga Prasad Sarthi Aged About 28 Years R/o Village- Bargaon, Tah. Navagarh, Police Station & Post-Navagarh, Civil & Revenue Distt. Janjgir-Champa (Chhattisgarh)
7. Smt. Kumari Bai Sarthi W/o Shri Kumar Sarthi Aged About 32 Years R/o Village- Bargaon, Tah. Navagarh, Police Station & Post-Navagarh, Civil & Revenue Distt. Janjgir-Champa (Chhattisgarh)
8. The Tahsildar Returning Officer, S.S. Balke (Panchayat), Navagarh, Police Station & Post- Navagarh, Civil & Revenue Distt. Janjgir-Champa (Chhattisgarh)
9. Assistant Returning Officer Chief Executive Officer, R.S. Naik, Janpad Panchayat, Navagarh, Police Station & Post- Navagarh, Civil & Revenue Distt. Janjgir-Champa (Chhattisgarh)
10. Santlal Sarthi (Lecturer) Higher Secondary School, Dhorla, Civil and Revenue District Janjgir-Champa (C.G.)
11. Bhagat Kanwar (Lecturer) Higher Secondary School, Sivni, Civil

and Revenue District Janjgir-Champa (C.G.)

12. Rajendra Kumar Patel (Upper Division Teacher), Middle School, Bachhod, Civil and Revenue District Janjgir-Champa (C.G.)

13. Umashankar Rohidas (Lecturer Panchayat), Higher Secondary School, Dhorla, Civil and Revenue District Janjgir-Champa (C.G.)

14. Laxminarayan Bhardwaj (Principal), Middle School, Bhanthapara, Civil and Revenue District Janjgir-Champa (C.G.)

---- Respondent

For Petitioner
For Respondent/State
For Respondent No.3
For Respondent no.9

Mr. Manoj Paranjpe, Advocate
Mr. Shashank Thakur, Govt. Advocate
Mr. S.C. Verma, Advocate
Ms. Seema Singh, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

10/12/2015

Heard finally with the consent of learned counsel for the parties.

(2) The petitioner is an unsuccessful candidate in the election of Sarpanch of Gram Panchayat Bargaon, for which, the election was held on 28.01.2015 and the certificate of election in favour of respondent No.3 was issued on 31.01.2015.

(3) In view of the legal ground of challenge to the impugned order, this Court would not dwell on the details of the facts, however, suffice it would be to state that in the Election Petition filed by the petitioner challenging the election of respondent No.3, the SDO (Revenue) i.e. the Election Tribunal has passed the impugned order dismissing the Election Petition without framing issues or recording evidence of the parties.

(4) Mr. Paranjpe, learned counsel for the petitioner, would submit

that in view of the decisions rendered by this Court in umpteen number of cases holding that the Election Petition has to be tried in accordance with the procedure prescribed under Rule 11 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification For Membership) Rules, 1995 (in short "the Rules, 1995"), the impugned order is not at all sustainable.

(5) Mr. Verma, learned counsel for the returned candidate ie. Respondent No. 3, would read the impugned order to argue that the Election Petition did not disclose any triable cause of action, therefore, the impugned order is in accordance with law and the Election Tribunal has jurisdiction to pass such an order.

(6) The submission made by Mr. Verma may have found substance in a case where the Election Tribunal has exercised jurisdiction under Order 7 Rule 11 of CPC and there was no triable cause of action for holding a full fledged trial of the Election Petition. However, in the case at hand, the Election Tribunal has not exercised jurisdiction under Rule 8 of the Rules 1995 to dismiss the Election Petition in limine on any permissible grounds mentioned under Rule 8, but has proceeded to discuss the entire issues brought before It for trial. Such procedure is not permissible under the Rules, 1995, inasmuch as, if the Election Petition is not dismissed in limine under Rule 8, it has to be tried in accordance with Rule 11 of the Rules, 1995.

(7) The law in this regard is well settled by this Court in *Ajuram vs. Shatruhan Sahu and others (W.P.(C) No.2583 of 2011 decided on 28.08.2012)* and *Parvatia vs. Padmini and others, 2005 (2) CGLJ*

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(8) For the foregoing, the impugned order is set-aside and the matter is remitted back to the concerned Election Tribunal for holding trial of the Election Petition in accordance with law. Needless to say that the Election Tribunal shall provide opportunity to all the contesting parties to file reply to the Election Petition, if not already filed and thereafter, shall frame issues, afford opportunity to the parties to lead evidence and thereafter, decide the Election Petition on the basis of evidence adduced by the parties. Let the hearing of the Election Petition be concluded within a period of 06 months from the date of submission of certified copy of this order.

(9) It is made clear that the Election Tribunal shall decide the Election Petition on its own merits without being influenced by any observations made in the order by this Court.

(9) The writ petition stands allowed to the extent indicated above.

Sd/-

Judge

(Prashant Kumar Mishra)

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