

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1395 of 2015

- Chumman Das Sahu S/o Shri Hansa Das Sahu Aged About 40 Years Occupaton Business, Candidate Of Post Of Sarpanch, R/o Village Achholi P.S. & Tahsil Dongargarh, Civil & Revenue District Rajnandgaon Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary Panchayat And Rural Development Department, Mantralaya Mahandi Bhawan, New Raipur, District Raipur Chhattisgarh
2. Collector Rajnandgaon, District Rajnandgaon Chhattisgarh
3. Sub Divisional Officer And Prescribed Officer Dongargarh, District Rajnandgaon Chhattisgarh
4. Returning Officer Dongargarh, District Rajnandgaon Chhattisgarh
5. Mohanlal Janghel, Teacher (Panchayat) High School, Manpur, District Rajnandgaon (Chhattisgarh) Returning Officer Gram Panchayat Achholi Booth No. 103
6. Puran Singh Thakur Assistant Teacher (Panchayat) Primary School Jhumardih, District Rajnandgaon Chhattisgarh Election Officer, Gram Panchayat Achholi, Booth No. 103
7. Rajesh Kumar Vaishnav Assistant Teacher (Panchayat) Government Higher Secondary School, Thakurtola, District Rajnandgaon, Election Officer Gram Panchayat Achholi Booth No. 103
8. Poonamchand Assistant Teacher, High School, Budhwari Para, Dongargarh, District Rajnandgaon, Chhattisgarh Election Officer Gram Panchayat Achholi Booth No. 103
9. Smt. Usha Jhanghel Assistant Teacher (Panchayat), Primary School, Achholi, District Rajnandgaon, Chhattisgarh, Election Officer Gram Panchayat Achholi Booth No. 103
10. Dayal Ram Banjare, High School Budharubath, District Rajnandgaon Chhattisgarh Returning Officer Gram Panchayat Achholi, Booth No. 104
11. Kanaiyalal Jhanghel Teacher Primary School, Khouda, District Rajnandgaon Chhattisgarh Election Officer Gram Panchayat Achholi, Booth No. 104
12. Doman Duruve Teacher Primary School, Jhilmili, District Rajnandgaon Chhattisgarh Election Officer Gram Panchayat Achholi, Booth No. 104

13. Dashrath Prasad Teacher Primary School Sandidih, District Rajnandgaon Chhattisgarh Election Officer Gram Panchayat Accholi Both No. 104
14. Bharti Dewangan High School Achholi, District Rajnandgaon Chhattisgarh Election Officer Gram Panchayat Accholi Both No. 104
15. Chandrabhan Dewangan Teacher Government Girls Higher Secondary School, Chhuikhadan District Rajnandgaon Chhattisgarh Returning Officer Gram Panchayat Accholi Both No. 102
16. Poonam Verma Teacher Government Primary School Dhandongri, District Rajnandgaon Chhattisgarh Election Officer Gram Panchayat Accholi Both No. 102
17. Shivcharan Verma Teacher Government Primary School Sambhalpur, District Rajnandgaon Chhattisgarh Election Officer Gram Panchayat Accholi Both No. 102
18. Rajkumar Verma Teacher Government Primary School, Parsahi, District Rajnandgaon Chhattisgarh Election Officer Gram Panchayat Accholi Booth No. 102
19. Prakruti Sharma Teacher Government Primary School, Nayapara Achholi, District Rajnandgaon Chhattisgarh Election Officer Gram Panchayat Accholi Both No. 102
20. Kachhru Ram Sahu S/o Darbari By Caste Teli, candidate for Sarpanch, Village Achholi, R/o Village Achholi, Tahsil Dongargarh, District Rajnandgaon, Chhattisgarh
21. Jagpal Das Sahu S/o Jawardas By Caste Teli, Village Achholi, R/o Village Achholi, Tahsil Dongargarh, District Rajnandgaon Chhattisgarh
22. Tahsildar And Returning Officer (Panchayat Election) Dongargarh, District Rajnandgaon Chhattisgarh

---- Respondents

For Petitioner	Shri Awadh Tripathi, Advocate
For Respondent/State	Shri Ashutosh Pandey, PL

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board By

23/11/2015

1. With the consent of the learned counsel for the parties, the matter is heard finally.

2. The petitioner was one of the candidates for election to the post of Sarpanch of Gram Panchayat, Achholi. In the election, which took place on 01.02.2015, the respondent No.20, Kachhru Ram Sahu was declared elected by margin of 8 votes defeating the nearest candidate i. e. the petitioner.
3. The petitioner preferred the election petition under Section 122 of the Chhattigarh Panchayat Raj Adhiniyam, 1993 (henceforth 'Adhiniyam, 1993'). It is this election petition, which has been dismissed by the impugned order dated 18.06.2015.
4. In the present petition, the notice was issued to the respondent No.20, Kachhru Ram Sahu, the elected Sarpanch, and respondent No.21, Jagpal Das Sahu, against whom the election petition was filed, however, both of them have not entered appearance before this Court despite service of notice.
5. It is argued that the election petition was decided by the Election Tribunal without framing issues and without recording evidence of the parties. In support of the said contention, the petitioner has filed the complete order sheets of the proceedings before the Election Tribunal.
6. Per contra, learned State counsel would submit that in the election petition (Annexure-P-3), the petitioner has only prayed for recounting, but has not prayed for cancellation or setting aside of the election of the Returning Officer, therefore, the election petition itself was not maintainable.
7. Be that as it may, it was for the elected sarpanch to have raised that ground and for the Sub Divisional Officer (Revenue) (for short 'SDO') to decide the issue in accordance with law. For the present, this Court

is concerned with the procedure by which the Election Tribunal has decided the election petition.

8. In the matter of **Ajoram v. Shatruhan Sahu and others** (WP No.2583/2011, decided on 28.08.2012) and **Parvatia v. Padmini and others**¹, this Court has held that unless the election petition is dismissed in limine under Rule 8 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification For Membership) Rules, 1995 (for short 'the Rules, 1995'), the same has to be tried in accordance with the procedure prescribed under Rule 11 of the Rules, 1995.
9. In the present case also, the Election Tribunal did not frame any issue or recorded evidence before deciding the election petition finally, therefore, the impugned order deserves to be and is hereby set aside.
10. The Election Tribunal shall restore the election petition to its file and consider the same afresh after framing issues and recording evidence of all the parties. The SDO shall issue fresh notice to all the respondents and proceed thereafter in accordance with law. The elected Sarpanch shall be entitled to raise objection regarding maintainability of the election petition on the ground that prayer for setting aside his election has not been prayed therein.
11. Accordingly, the writ petition stands disposed of.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

Nirala

¹ 2005 (2) CGLJ 335