

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1059 of 2015

- Jhamman S/o Shri Lalaram Jaiswal Aged About 41 Years R/o Village-Navghata, Tahsil - Kawardha, Distt. Kabirdham, Civil And Revenue Distt. Kabirdham (Chhattisgarh)

---- Petitioner

Versus

1. Khilleshwar S/o Shri Udhoram Sahu Aged About 25 Years
2. Tulas Chandravanshi S/o Shri Tirath Chandravanshi Aged About 28 Years
3. Nand Kumar Kashyap S/o Shri Sita Ram Aged About 35 Years
4. Bhalchand Chandravanshi S/o Shri Toran Chandravanshi Aged About 25 Years
5. Rajendra Chandravanshi S/o Shri Ramfal Chandravanshi Aged About 41 Years
6. Budhram Kewant S/o Shri Suruwa Kewant Aged About 50 Years
7. Sukhiram Nirmalkar S/o Shri Agru Aged About 41 Years

All S. No. 1 to 7 are Resident Of Village- Navghata, Tahsil - Kawardha, Distt. Kabirdham, Civil And Revenue Distt. Kabirdham (Chhattisgarh)

8. Returning Officer, Election Center No. 88, Navghata, Presiding Officer Shri Bihari Lal Nirala, Gramin Krishi Vikas Adhikari, R/o Village- Lohara, Distt. Kabirdham (Chhattisgarh)
9. Returning Officer, Election Center No. 87, Navghata, Presiding Officer Shri Baijnath Sahu, Shikshak Panchayat, Middle School, Prankapa Tahsil- Pandariya, Distt. Kabirdham (Chhattisgarh)
10. Sub Divisional Officer Cum Specified Officer, Kawardha, Distt. Kabirdham (Chhattisgarh)
11. The Collector Cum District Election Officer Kawardha, Distt. Kabirdham (Chhattisgarh)

---- Respondent

For Petitioner
For Respondent No.1
For Respondent/State

Mr. M.K. Sinha, Advocate
Mr. P.P. Sahu, Advocate
Mr. Majid Ali, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

17/11/2015

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

(2) The petitioner is an unsuccessful candidate for election to the office of Sarpanch of Gram Panchayat, Navghata, Tehsil Kawardha District Kabirdham. In the election which took place on 28.01.2015, respondent No.1 Khileshwar was returned as Sarpanch of the said Gram Panchayat.

(3) Challenging the election of respondent No.1, the petitioner preferred Election Petition under Section 122 of the Panchayat Raj Adhiniyam, 1993 read with Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification For Membership) Rules, 1995 (in short "the Rules, 1995"). The Election Petition has been dismissed by the impugned order passed by the SDO (Revenue), Kawardha.

(4) It is argued by learned counsel for the petitioner that the Election Petition was not tried in accordance with the procedure prescribed under Rule 11 of the Rules, 1995, inasmuch as, neither issues were framed nor evidence of the parties were recorded.

(5) Learned counsel for the respondents have not disputed this position that issues were not framed and evidence were not recorded by the Election Tribunal.

(6) In the matter of **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 335**, this Court has held that

unless the Election Petition is dismissed in limine under Rule 8 of the Rules, 1995, the same has to be tried in accordance with the procedure prescribed under Rule 11 of the Rules, 1995.

(7) Since admittedly, in the present case also, the said procedure has not been followed, the impugned order is unsustainable.

(6) Therefore, in the view of the above settled legal position, the impugned order is set-aside and the matter is remitted back to the concerned Election Tribunal i.e. SDO (Revenue), Kawardha for trial of the Election Petition afresh in accordance with Rule 11 of the Rules, 1995.

(7) Needless to say, the Election Tribunal is directed to allow the non-applicants including the returned candidate to file reply to the Election Petition. If any preliminary objection is raised by the returned candidate, the Election Tribunal shall decide the same before proceeding to decide the Election Petition. If the Election Petition is found maintainable, the Election Tribunal shall frame issues and allow the parties to adduce evidence. The Election Petition shall be decided within a period of 06 months from the date of framing of issues.

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

Sd/-

Judge

(Prashant Kumar Mishra)