

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.952 of 2015**

Pawan Chandrol S/o Shankarlal Aged About 32 Years R/o Village
Khairjhitikala, Kawardha, Civil And Revenue District Kabirdham (Chhattisgarh)

---- Petitioner**Versus**

1. Laxman Sahu S/o Faguram Sahu R/o Village Khairjhitikala, Block & Tahsil Kawardha, Distt. Kabirdham Chhattisgarh
2. Kapil Chandrawanshi S/o Jagdish Chandrawanshi R/o Village Khairjhitikala, Block & Tahsil Kawardha, Distt. Kabirdham Chhattisgarh
3. Tahsildar And Returning Officer, (Panchayat) Kawardha, District Kabirdham (Chhattisgarh)
4. Gyaneshwar Gendre Lecturer, Presiding Officer, Govt. Higher Secondary School, Senkona, Polling Booth No. 246, Tahsil Kawardha, District Kabirdham (Chhattisgarh)
5. Jageshwar Singh Presiding Officer, Khairjhitikala, Polling Booth No. 247, Tahsil Kawardha, District Kabirdham (Chhattisgarh)
6. Sub- Divisional Officer, Kawardha, District Kabirdham (Chhattisgarh)
7. State Of Chhattisgarh, Through : The Secretary, Panchayat And Rural Development Department, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh)

---- Respondent

For Petitioner	:	Shri P. P. Sahu, Advocate
For Respondent No.1	:	Dr. Shailesh Ahuja, Advocate
For Respondent No.3, 6 & 7:	:	Shri Manish Nigam, Panel Lawyer
For Respondent No.5	:	Shri Akhilesh Kumar, Advocate

Order On Board**09/09/2015**

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,

as provided in Rule 8 of the Election Petition Rules, 1995 (for short 'the Rules of 1995'), it has to be tried. He submits that the Election Tribunal / SDO 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.1 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.1 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 Appeal and Revision Rules, 1995.

5. The petitioner had filed an election petition challenging election of respondent No.1 under Section 122 of Panchayat Raj Adhiniyam, 1993 (for short 'the Act of 1993') read with Rules of 1995. The election petitioner alleges that the counting in booth No.246 and 247 was vitiated and the prayer for recount was also illegally rejected. A prayer for recount has been made in the Election Petition.

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 return 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. 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