

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 290 of 2016

Chandrapal Sahu S/o Milau Sahu, Aged About 35 Years R/o Village Samesar, Tahsil Nawagarh, District Bemetara, (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, Mahanadi Bhawan, Mantralaya, New Raipur, (Chhattisgarh)
2. Manohar Das, S/o Late Narendra Das Vaishnav, R/o Village Samesar, Tahsil Nawagarh, District Bemetara, (Chhattisgarh)
3. Presiding Officer, Gram Panchayat, Samesar (Pooling Booth Centre, Samesar), Tahsil Nawagarh, District Bemetara, Through Chief Executive Officer, Janpad Panchayat Nawagarh, District Bemetara, (Chhattisgarh)
4. Returning Officer Panchayat, Janpad Panchayat, Nawagarh, District Bemetara, (Chhattisgarh)
5. Kunwaru Ram Nishad, S/o Late Bhuklu Nishad, R/o Village Samesar, Tahsil Nawagarh, District Bemetara, (Chhattisgarh)
6. Rakesh Patil, S/o Ram Singh, R/o Village Samesar, Tahsil Nawagarh, District Bemetara (Chhattisgarh)
7. Gopal Das Manikpuri, S/o Manohar Das, R/o Village Chhitapar, Tahsil Nawagarh, District Bemetara, (Chhattisgarh)
8. The Sub Divisional Officer, (Revenue)/ Prescribed Authority (Panchayat), Nawagarh, District Bemetara, (Chhattisgarh)

---- Respondents

Shri Avinash Chand Sahu, counsel for the petitioner/s.
Shri Satish Gupta, Govt. Advocate for the State / respondent No.1.
Shri R.S. Patel, counsel for respondent no.2 / election petitioner.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

16/02/2016

With the consent of the parties, the matter is heard finally.

This petition arises out of order dated 25/01/2016 passed by the Sub-

Divisional Officer, Nawagarh by which, the election petition has been allowed and recount ordered.

2. Learned counsel for the petitioner argued that the Election Tribunal has exceeded its jurisdiction in allowing the election petition and directing recount without any trial whatsoever. Reliance has been placed by learned counsel for the petitioner 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.

Learned counsel for the petitioner further argued that unless the election petition is liable to be dismissed under Rule 3, 4 and 7 of the Chhattisgarh Election Petitions (Corrupt Practices and Disqualification for Membership) Rules, 1995 (for short 'the Rules of 1995'), it is required to be tried by framing issues and allowing the parties to lead oral and documentary evidence. It is further contended that recount cannot be ordered as a matter of course unless there is a case made out on the basis of pleadings and evidence led by the election petitioner. It is submitted that without any full fledged trial, order of recount has been ordered.

3. On the other hand, learned counsel for the respondents opposes prayer of the petitioner and submits that even though detailed trial has not taken place, material has been taken into consideration by the Sub-Divisional Officer and finding recorded that it is a case of recount.

4. The election petition has been allowed without framing any issue and without allowing the parties to lead oral and documentary evidence. This Court in the case referred to above held that unless a trial allowing the parties to lead oral and documentary evidence, order could not be passed in such a manner. Thus, the impugned order suffers from serious impropriety and contrary to the procedure prescribed in Rule 8 of the Rules of 1995.

5. In view of the above consideration, the petition is allowed. The impugned order cannot be sustained in law and is set aside. The matter is remanded back to the Election Tribunal to hold proper trial by framing issues and recording evidence.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge