

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1414 of 2016**

- Neera Bai W/o. Ram Kumar Saunra, Aged About 35 Years R/o. Borsi, Gram Panchayat Borsi, Ward No. 4, P.S. & Tehsil Dabhra, Revenue & Civil District Janjgir Champa (Chhattisgarh)

---- Petitioner**Versus**

1. Samarin Bai W/o. Hemlal, Caste Gond, R/o. Borsi, Gram Panchayat Borsi, Ward No. 2, P.S. & Tehsil Dabhra, Revenue & Civil District Janjgir Champa (Chhattisgarh)
2. Presiding Officer, Polling No. 203 (Shri C.K. Thakur, Lecturer, Higher Secondary School Singhra (Malkharaoda) Revenue & Civil District Janjgir Champa (Chhattisgarh)
3. Presiding Officer, Polling No. 202 (Shri Ramcharan Khute, Head Master, Government Middle School Barbhata, Revenue & Civil District Janjgir Champa (Chhattisgarh)
4. Returning Officer, A.K. Udadhyay And Tehsildar Dabhra, Revenue & Civil District Janjgir Champa (Chhattisgarh)
5. Sub Divisional Officer (Revenue) Dabhra, Revenue & Civil District Janjgir Champa (Chhattisgarh)

---- Respondent

For Petitioner : Shri Surfaraj Khan, Advocate.
 For Respondent No.1 : Shri Ishwar Jaiswal, Advocate.
 For Respondents 2 & 3 : Shri Chandra Bhushan Kesharwani, Advocate.
 For Respondent No.4 : Shri Shantanu Kumar, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****23/08/2016**

1. The petitioner has called in question the order passed by the Sub Divisional Officer (Revenue), Dabhra, District Janjgir-Champa, the Election Tribunal, on 11.5.2016 allowing the election petition preferred by

respondent No.1 Samarin Bai to set aside the petitioner's election as Sarpanch of Gram Panchayat Borsi.

2. Admittedly, the petitioner has moved an application before the Election Tribunal for framing of issues which was rejected at the interim stage and thereafter the Election Tribunal proceeded to record evidence of the parties and decided the election petition, therefore, the impugned order has been rendered without framing issues.
3. It is settled by this Court in **Parvatia Vs. Padmini & Others** {2005 (2) CGLJ 335} and **Ajoram Vs. Shatruhan Sahu and Others** {WPC No.2583 of 2011, decided on 28.8.2012} that unless and until the election petition suffers from any fatal defect, warranting its dismissal *in limine* under Rule 8 of the Rules namely, Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (for short 'the Rules, 1995'), the same has to be tried as per the procedure laid down under Rule 11, as if it is a civil suit.
4. In the case in hand, the petitioner had contested the election as ST (woman) candidate claiming that she belongs to Saura Tribe community. While deciding the election petition, the Election Tribunal has held that Saura is not included in the ST list, therefore, her election from the reserved constituency deserves to be set aside.
5. The impugned order suffers from twin defects; firstly, the Election Tribunal has decided the election petition without framing issues and secondly, it has decided the petitioner's caste status, not as a competent authority but as Election Tribunal.

6. For the foregoing, the impugned order deserves to be set aside. Accordingly, the Writ Petition is allowed and the impugned order is set aside. The matter is remitted back to the Sub Divisional Officer (Revenue) for deciding the election petition afresh after framing issues on the basis of pleadings adduced by the parties and thereafter affording opportunity to the parties to lead evidence on those issues. Let election petition be decided within 6 months from the date of submission of certified copy of this order. The parties shall appear before the Election Tribunal on 5th September, 2016.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve