

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1881 of 2015**

Taradevi Ratre W/o Ramprasad Ratre, Aged About 30 Years Caste Suryawanshi, Resident Of Village Bhainso, Tahsil Pamgarh, District Janjgir Champa (Chhattisgarh)

---- Petitioner

Versus

1. Smt. Dhaneshwari Ratre W/o Murarilal, By Caste Suryawanshi, Resident Of Village Bhainso, Tahsil Pamgarh, District Janjgir Champa (Chhattisgarh)
2. Smt. Urmila Lahre W/o Satish Lahre, By Caste Suryawanshi, Resident Of Village Bhainso, Tahsil Pamgarh, District Janjgir Champa (Chhattisgarh)
3. Smt. Kalpana Banjare W/o Kumar Banjare, By Caste Suryawanshi, Resident Of Village Bhainso, Tahsil Pamgarh, District Janjgir Champa (Chhattisgarh)
4. Smt. Kanti Lahre W/o Veer Singh Lahre, By Caste Suryawanshi, Resident Of Village Bhainso, Tahsil Pamgarh, District Janjgir Champa (Chhattisgarh)
5. Chandrakumari D/o Ramnarayan Banjare, By Caste Suryawanshi, Resident Of Village Bhainso, Tahsil Pamgarh, District Janjgir Champa (Chhattisgarh)
6. Ku. Pooja Gouraha S/o Ratanlal Gouraha, By Caste Suryawanshi, Resident Of Village Bhainso, Tahsil Pamgarh, District Janjgir Champa (Chhattisgarh)
7. Smt. Dingeshwari Surya W/o Rajesh Surya, By Caste Suryawanshi, Resident Of Village Bhainso, Tahsil Pamgarh, District Janjgir Champa (Chhattisgarh)
8. Smt. Anardevi Ratre W/o Vedprakash Ratre, By Caste Suryawanshi, Resident Of Village Bhainso, Tahsil Pamgarh, District Janjgir Champa (Chhattisgarh)
9. Smt. Shyambai Sinha W/o Shriram Sinha, By Caste Suryawanshi, Resident Of Village Bhainso, Tahsil Pamgarh, District Janjgir Champa (Chhattisgarh)
10. Smt. Shanti Rohidas W/o Gopi Rohidas, By Caste Suryawanshi, Resident Of Village Bhainso, Tahsil Pamgarh, District Janjgir Champa (Chhattisgarh)

11. Smt. Surila Maheshwari W/o Shri Ramkumar Suryawanshi, By Caste Suryawanshi, Resident Of Village Bhainso, Tahsil Pamgarh, District Janjgir Champa (Chhattisgarh)
12. R. P. Bandhde, Returning Officer, Pamgarh, District Janjgir Champa (Chhattisgarh)
13. Hafij Mohammad Qureshi, Presiding Officer, Booth No. 34, Posted As Head Master, Middle School, Rogda, District Janjgir Champa (Chhattisgarh)
14. Pyarelal Bareth, Presiding Officer, Booth No. 35, Head Master, Middle School, Banahil, District Janjgir (Chhattisgarh)
15. Heeralal Kashyap, Presiding Officer, Booth No. 36, Head Master, Middle School, Dhanpur, District Janjgir Champa (Chhattisgarh)
16. Khuburam Tande, Presiding Officer, Booth No. 37, Head Master, Middle School, Kirari, District Janjgir Champa (Chhattisgarh)
17. Ramkumar Kurre, Presiding Officer, Booth No. 38, Head Master, Middle School, Taraud, District Janjgir Champa (Chhattisgarh)
18. Shriram Netam, Presiding Officer, Booth No. 39, Head Master, Middle School, Piparda, District Janjgir Champa (Chhattisgarh)
19. Sah Singh Kanwar, Presiding Officer, Booth No. 40, Head Master, Middle School, Sonadih, District Janjgir Champa (Chhattisgarh)
20. The Sub Divisional Officer (R), Pamgarh, District Janjgir Champa (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri K.K. Singh, Advocate
For Respondent No.1	:	Shri J.K. Shastri, Advocate
For Respondents No. 4, 6, 8 & 11	:	Shri Manoj Mishra, Advocate
For State	:	Shri Satish Gupta, Govt. Advocate

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

28/04/2016

Heard.

1. The petition has been filed by the petitioner aggrieved by order dated 11.09.2015 passed by the Sub Divisional Officer, dismissing the election petition.
2. The sole submission of learned counsel for the petitioner is that the Election Tribunal has completely abdicated its quasi-judicial function of adjudicating the dispute arising in the election petition. He submits that after filing of pleadings by the parties, the parties were allowed to lead oral and documentary evidence in support of their respective cases. The Tribunal, however, has not considered the evidence on record. He submits that under the provision of Section 122 of the Panchayat Raj Adhiniyam, 1993, the Election Tribunal is required to consider the election petition seriously and the kind of order which has been passed is wholly perfunctory, non-speaking.
3. Learned counsel for respondent No.1/returned candidate submits that though the order is brief, it does reflect application of mind by the Election Tribunal. He submits that the Election Tribunal has clearly stated that it has gone through the allegation, contents of election petition, reply and statement and then it has proceeded to record its own finding. Therefore, it cannot be said to be non-speaking order.
4. In the present case, election petition was filed by the petitioner challenging election of respondent/returned candidate on the pleadings that mandatory provision contained in Rule 73 of the Chhattisgarh Panchayat Nirvachan Niyam, 1995 in the matter of counting of votes were violated. It was also pleaded that despite complaint made to the Presiding Officer that proper sealing of ballot boxes was not taking place, no action was taken, objection raised by the petitioner under Rule 80 of the Chhattisgarh Panchayat Nirvachan Niyam, 1995 was not considered. 16 invalid votes were counted as valid votes in favour of returned candidate in polling booth 34 to 40. The ballot papers were not properly compiled, bundled, marks affixed were not disclosed. The election

petition was contested by the returned candidate and both the parties led their oral and documentary evidence. However, the impugned order does not refer to any of the oral and documentary evidence with reference to specific pleadings made in the election petition. The Tribunal has perfunctorily, in passing remarks, recorded that statement of agents were taken, reply of Presiding Officer and their documents were considered, cross examination had taken place, reply and statement has been perused. Thereafter, the Tribunal has jumped to the conclusion. In the entire order, there is no consideration of the evidence on record. The reasons why the Tribunal believed or disbelieved the oral evidence led by the respective parties, has not been discussed at all. There is no consideration at all of any of the evidence of the parties. In a slipshod manner, conclusions have been recorded without any discussion of oral and documentary evidence.

5. Trial of an election petition is a serious matter. In order to preserve the sanctity of election to public office by democratic process, elaborate provision has been made in Chhattisgarh Panchayat Raj Adhiniyam, 1993 as well as Chhattisgarh Panchayats (Election Petitions, Corruption Practices and Disqualification for Membership) Rules, 1995 (for short "the Rules of 1995". Sarpanch and Panchas are elected as people's representative for effective self-governance at the grassroot level. Therefore, whenever, an election petition is filed, the same is required to be tried seriously and it cannot be dealt with by the Revenue Officers as if it was an ordinary matter under the provision of the Land Revenue Code either dealing with the mutation rights or Bhumiswami rights or other matters connected therewith. The election petition is required to be tried strictly in accordance with the provision contained in the Rules of 1995 which lays down the procedure for trial of election petitions. The Tribunal acts as quasi-judicial authority. After collection of oral and documentary evidence in a fair procedure, the Tribunal is under an obligation to give serious consideration to the respective pleadings of the parties, issues arising for consideration and the evidence led by the parties, oral and documentary both.

6. It requires meticulous consideration of the evidence appearing on record, marshaling of the same, followed by reasons for believing or disbelieving the evidence of the parties before ultimate conclusion can be arrived at. The order of the Tribunal must reflect due application of mind as quasi-judicial authority. Decision of an election petition is not an administrative function but a quasi-judicial exercise.

The impugned order does not satisfy the aforesaid requirement and to say the least, is perfunctory and without consideration of oral and documentary evidence on record. The order only records the conclusion and not the consideration of the evidence on record led by the parties. The proper course of action that the Tribunal was required to follow was to deal with the issue one after the other in the light of oral and documentary evidence led by both the parties. This having not been done. Impugned order cannot be sustained in law.

7. The petition is accordingly allowed. Impugned order is set aside and the matter is remanded to the Election Tribunal to pass appropriate order upon due examination of oral and documentary evidence on record, after taking into consideration the respective pleadings of the parties.

8. It is made clear that this Court has not expressed any opinion on the merits of the case and only impropriety in decision making process has been noticed to set aside the impugned order. The Tribunal shall meticulously examine entire aspect of the matter and reach to its own conclusion in accordance with law and on its own merits.

Sd/-

(Manindra Mohan Shrivastava)
Judge