

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2190 of 2015

Smt. Kamleshwari Tiharu Sinha W/o Shri Tiharu Sinha, Aged About 33 Years R/o Village Sakri, Janpad Panchayat Dharsiva, Tah. Raipur, Civil And Revenue District Raipur, (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through : Secretary Department Of Panchayat, Mantralaya, Mahanadi Bhawan, New Raipur, Civil & Rev. District Raipur (Chhattisgarh)
2. Sub Divisional Officer And Competent Authority, Raipur, District Raipur, (Chhattisgarh)
3. Smt. Shashi Kala Santosh Pal, W/o Shri Santosh Pal, Aged About 38 Years R/o Village Sakri, Tahsil & Distt. Raipur, (Chhattisgarh)
4. Derheen Pal, W/o Shri Bihari Pal, Aged About 37 Years R/o Village Sakri, Tahsil & Distt. Raipur, (Chhattisgarh)
5. Purnima Shyam Sinha, W/o Shri Shyam Sinha, Aged About 32 Years R/o Village Sakri, Tahsil & Distt. Raipur, (Chhattisgarh)
6. Meena Pal, W/o Shri Bharat Pal, Aged About 40 Years R/o Village Sakri, Tahsil & Distt. Raipur, (Chhattisgarh)
7. Returning Officer (Panchayat), (Kailash Verma), Janpad Panchayat Dharsiva, Distt. Raipur, (Chhattisgarh)

---- Respondents

Shri Bhaskar Payashi, Advocate for the petitioner.
Shri Ramakant Mishra Dy. A.G. for the State/Respondents
No.1,2 & 7 Mishra,
Shri P.K. Patel, Advocate for Respondent No.3

None for Respondents No.4, 5 & 6

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order

04/02/2016

Heard.

1. A short issue arises for consideration in this petition is as to whether

the Election Tribunal was justified in law in directing recount without holding any trial.

2. Learned counsel for the petitioner submits that once the election petition has been filed, unless the election petition deserves to be dismissed on account of non-compliance of mandatory provisions contained in Rule 3, 4 and 7, as provided in Rule 8 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (for short "the Rules of 1995"), election petition has to be tried. It is submitted that after receiving reply, without framing any issue, without affording opportunity to the parties to lead oral and documentary evidence, the Tribunal has passed an order of recount. It is in excess of his jurisdiction in support of learned counsel for the petitioner relies upon following decision.

3. On the other hand, learned counsel for the respondents submit that the order of recount has been passed after prima facie satisfaction of the Election Tribunal that in the matter of counting, serious irregularity has taken place.

4. A perusal of the impugned order leave no manner of doubt that the Election Tribunal has mechanically allowed recount of votes. No trial has taken place. Neither issues have been framed nor evidence has been recorded. The returned candidate has been completely denied opportunity to lead oral and documentary evidence. In his written statement, returned candidate disputed all the averments of the Election Tribunal and denied that any irregularity had taken place in the matter of recount.

5. In **Ajuram vs. Shatruhan Sahu and others** (WPC No. 2583 of 2011, decided on 28.08.2012 and **Parvatia Vs. Padmini & others [2005 (2) CGLJ 335]**, this Court has held that unless and until the election petition warrants dismissal in limine under Rule 8 of the Rules of 1995, the same has to be tried in the manner provided under Rule 11 of the Rules of 1995. Therefore, the Election Tribunal should have framed issues before proceedings to decide the matter.

6. In view of the above, the impugned order cannot be sustained in law and is therefore set aside. The matter is, however, remanded to the Election Tribunal to conduct proper trial of Election Tribunal by first framing the issues on the basis of the pleadings of the parties and thereafter, afford all the parties, opportunity to lead oral and documentary evidence and then

to decide the election petition in accordance with law.

7. Accordingly, the petition is allowed.

Sd/-

(**Manindra Mohan Shrivastava**)
J U D G E