

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No.767 of 2015

Tikeswar Prasad Dansena S/o Dhani Ram, Aged About 45 Years Caste Kalar,
R/o Village Katharrapali, Tehsil Dabhra, District Janjgir Champa Chhattisgarh

---- Petitioner

Versus

1. Bhuvan Lal S/o Dharam Lal, Aged About 38 Years Caste Kalar, R/o Village Nimohi, P.S. & Tahsil Dabhra District Janjgir Champa Chhattisgarh
2. Chinta Prasad, S/o Jhadu Ram, Aged About 39 Years Caste Kalar, R/o Village Kanakoat, P.S. & Tahsil Dabhra District Janjgir Champa Chhattisgarh
3. Gulabdas Vaishnav S/o Nilambardas, Aged About 60 Years Caste Vaishnav, R/o Village Nimohi, P.S. & Tahsil Dabhra District Janjgir Champa Chhattisgarh
4. Chotu Lal Dansena, S/o Anujram Dansena, Aged About 35 Years Caste Kalar, R/o Village Kanakoat, P.S. & Tahsil Dabhra District Janjgir Champa Chhattisgarh
5. Ram Lal Dansena, Aged About 60 Years Caste Kalar, R/o Village Nimohi, P.S. & Tahsil Dabhra District Janjgir Champa Chhattisgarh
6. H.R. Dhritlehre, Rural Agriculture Extension Officer Agriculture Development Department Sakti (Presiding Officer) District Janjgir Champa Chhattisgarh
7. D.S. Rathour, Rural Agriculture Extension Officer Agriculture Development Department Sakti (Presiding Officer) District Janjgir Champa Chhattisgarh
8. P.K. Miri, Agriculture Extension Officer Agriculture Development Department Sakti (Presiding Officer) District Janjgir Champa Chhattisgarh
9. Returning Officer, (Panchayat) Block Dabhra District Janjgir Champa Chhattisgarh
10. Sub Divisional Officer (Revenue), Specified Authority Dabhra Block P. S. & Tehsil Dabhra District Janjgir Champa Chhattisgarh

---- Respondents

For Petitioner	:	Shri S. N. Nande, Advocate
For Respondent No.1	:	Shri Ajay Kumar Chandra, Advocate
For Respondent/State	:	Shri Ramakant Pandey, GA

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

06/05/2016

Heard.

2. This petition is directed against order dated 21-08-2015, by which, election petition preferred by the petitioner, challenging election of respondent as Sarpanch of Gram Panchayat Nimohi, has been dismissed.

3. Learned counsel for petitioner raised two-fold submissions. Firstly, it is submitted that the trial has been done in summary manner without framing issue and recording evidence. Second submission is that the ground of dismissal of election petition is that as there is no application in writing was filed for re-count, after declaration of the result.

4. On the other hand, learned counsel for respondent No.1 submits that there is an alternative remedy of filing appeal. Second submission of learned counsel for respondent No.1 is that the Election Tribunal rightly took a view that the petitioner has not filed any application in writing seeking recount before the Presiding Officer or Returning Officer, therefore, the election petition for recount was not maintainable.

5. At the first place, the Tribunal has committed serious illegality in exercise of jurisdiction in as much as no trial has been held and after filing written statement or written arguments, the Tribunal proceeded to pass final order in the matter without recording evidence and without framing issue. This procedure followed by the Tribunal is illegal and unsustainable in law.

6. In the case of **Sohan Lal v. Babu Gandhi, (2003) 1 SCC 108**, it has been held that only on the ground that application for recount was not made, the election petition could not be dismissed as not maintainable.

7. In this case, the Tribunal has dismissed the election petition only on the ground that the application for recount was not made before the Presiding Officer or Returning Officer.

8. None of the grounds for dismissal of election petition are sustainable in law. Even if no application in writing for recount was made, the election petition seeking recount is maintainable and the Tribunal is required to hold trial and

then decide on the basis of pleadings, oral and documentary evidence on record, whether the case for recount is made out or not.

9. In the result, the impugned order is not sustainable in law and therefore set aside.

10. Accordingly, the petition is allowed. The S.D.O./Election Tribunal shall frame issue, allowing the parties to lead oral as well as documentary evidence in the matter, then decide whether any case for recount is made out or not.

Sd/-

Manindra Mohan Shrivastava
Judge