

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 664 of 2015**

Smt. Shivkala, W/o Shri Chatrapal Singh Kanwar, Aged About 42 Years
R/o Village Dhanras, Tehsil & Police Station Katghora, Revenue & Civil
District Korba, (Chhattisgarh)

---- Appellant

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Panchayat & Rural Development, Mahanadi Bhawan, Mantralaya, New Raipur, Revenue & Civil District Raipur, (Chhattisgarh)
2. Sub Divisional Officer, Revenue, Katghora, Revenue And Civil Distt. Korba (Chhattisgarh)
3. Smt. Kareliya Bai, W/o Shri Sahettar Bharia, Aged About 53 Years R/o Village Dhanras, P.S. & Tehsil Katghora, Revenue & Civil District Korba, (Chhattisgarh)

-----Respondents

For Appellant:	Shri Surfaraj Khan, Advocate.
For Respondents N.1 & 2/State:	Shri JK. Gilda, Advocate General.
For Respondent No.3:	Shri Anand Shukla, Advocate.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board**Per Navin Sinha, Chief Justice****5/1/2016**

1. The present appeal arises from order dated 3.12.2015 allowing Writ Petition (C) No.1998/2015. The Learned Single Judge set aside the order dated 26.10.2015 of the Sub-Divisional Officer, Khatgora which in turn had set aside the election of Respondent No.3 as Sarpanch, and remanded the matter for proper framing of issues and to then decide the Election Petition afresh within a period of three months from the date of framing of the issues.

2. Learned Counsel for the Appellant submitted that her husband had filed objections to the nomination paper of Respondent No.3 on the ground

that she was wrongly claiming Scheduled Tribe status. This was reiterated in the Election Petition also. Even if no specific issue was framed, the parties were under no confusion with regard to the ground on which the Election Petition had been filed challenging the election of Respondent No.3 against a seat meant for reserved female category of the Scheduled Tribe. It was lastly submitted that the Writ Petition itself was not maintainable as Respondent No.3 ought to have preferred an appeal before the Collector against the order of the Sub Divisional Officer under the Chhattisgarh Panchayats (Appeal and Revision) Rules, 1995.

3. Learned Advocate General and Counsel for Respondent No.3 opposing the appeal submitted that in the nature of the controversy with regard to the Scheduled Tribe status of Bhoriya and Bhariya, there ought to have been clear pleadings and an issue had to be framed specifically in this regard for a definite finding. If Respondent No.3 was not cautious at the stage of framing of issues, the Appellant did no better. It was lastly submitted by the Advocate General that the order of Sub Divisional Officer is final under Rule – 25 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership), Rules 1995 and therefore the Writ Petition was maintainable.

4. We have considered the submissions on behalf of the parties. It is not considered necessary to decide the issue regarding maintainability of the Writ Petition once the Writ Petition has been finally heard and decided, as no such objection was taken by the Appellant in her counter affidavit before the Writ Court.

5. The husband of the Appellant in his objection to the nomination filed by

Respondent No.3 stated she belonged to the Bhariya caste and had wrongly obtained a certificate as belonging to the Bhoriya caste. All such certificates had been annulled by Government Orders dated 8.5.2003 and 28.4.2005. In the Election Petition, it was reiterated that Respondent No.3 belonged to the Bhariya caste. In Part – XX of the Madhya Pradesh Re-organization Act, 2000, Bhariya has been recognized as a Scheduled Tribe in the State of Chhattisgarh.

6. In the nature of the controversy with regard to the caste status between Bhariya and Bhoriya, and that which one of them was recognized in the State coupled with the fact to which caste Respondent No.3 factually belonged, we are satisfied that the order of the Learned Single Judge calls for no interference. It being a question of fact to which Scheduled Tribe Respondent No.3 belonged, it ought to have been framed as a specific issue. We are further of the opinion that if the Appellant was contesting the caste status of Respondent No.3, it was for her to have ensured that a specific issue was framed with regard to the same, rather than to subsequently take advantage of her own lapses in not ensuring proper framing of issues to submit that the parties were well aware of the case with which they went to the Tribunal. We find no reason to interfere with the order under appeal.

7. The appeal is dismissed.

8. Before we part with the case, it is considered necessary to observe that earlier also in a judicial order, we had noticed and directed that the second copy of the Writ Petition must also be paginated by the Office. Notwithstanding our earlier order, we again find that the second copy of the brief from which the present appeal arises has not been paginated. The

Registrar General is directed to hold an administrative enquiry, fix responsibility and take appropriate administrative action to ensure that judicial orders are complied with.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE

Priya