

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1068 of 2016**

- Shiv Balak Ram Yadav S/o. Shri Ramdulare Yadav, Aged About 32 Years Caste Ahir, R/o. Village Indarpur, P.S. Tehsil Oda Gi, Revenue & Civil District Surajpur (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Commissioner Surajpur Division, Revenue & Civil District Surguja (Chhattisgarh).
2. Collector Surajpur, Revenue & Civil District Surajpur (Chhattisgarh)
3. Rajesh Kumar Tiwari, S/o Omprakash Tiwari, R/o. Village Chapda, Post Baijnathpur, P.S. & Tehsil Odagi, Civil & Revenue District Surajpur (Chhattisgarh). (Janpad Member Candidate, Area No. 9)
4. Ajay Kumar Gupta, S/o. Chhandu, R/o. Village Dhur, Post Odagi, P.S. & Tahsil Odagi, Civil & Revenue District Surajpur (Chhattisgarh). (Janpad Member Candidate, Area No. 9).
5. Chitrakut Dubey, S/o. Vishwanath Dubey, R/o. Village Indarpur, Post Odagi, P.S. & Tehsil Odagi, Civil & Revenue District Surajpur (Chhattisgarh). (Janpad Member Candidate, Area No. 9)
6. Naresh Kumar Jaiswal, S/o. Shyamdev Jaiswal, R/o. Village Dhur, Post Odagi, P.S. & Tehsil Odgi, Civil & Revenue District Surajpur (Chhattisgarh). (Janpad Member Candidate, Area No. 9).
7. Motilal Sarthi, S/o. Shivkumar, R/o. Village Dhur, P.S. & Post Odagi, Tehsil Odagi, Civil & Revenue District Surajpur (Chhattisgarh) (Janpad Member Candidate, Area No. 9).
8. Rampal Yadav, S/o. Subran Yadav, R/o. Village Indarpur, Post Odagi, P.S. & Tehsil Odagi, Civil & Revenue District Surajpur (Chhattisgarh). (Janpad Member Candidate, Area No. 9)
9. Ram Manohar Yadav, S/o. Jagdish, R/o. Village Indarpur, Post Odagi, P.S. & Tehsil Odagi, Civil & Revenue District Surajpur (Chhattisgarh). (Janpad Member Candidate, Area No. 9).
10. Vijay Kumar Gupta, S/o. Devnarayan Gupta, R/o. Village Chapda, Post Baijnathpur, P.S. & Tehsil Odagi, Civil & Revenue District Surajpur

(Chhattisgarh). (Janpad Member Candidate, Area No. 9).

11. Shivcharan Rajwade, S/o. Mangaluram, R/o. Village Indarpur, Post Odagi, P.S. & Tehsil Odagi, Civil & Revenue District Surajpur (Chhattisgarh). (Janpad Member Candidate, Area No. 9).
12. Shivmangal Kurre, S/o. Tejuram, R/o. Village Chapda, Post Baijnathpur, Post Odagi, P.S. & Tehsil Odagi, Civil & Revenue District Surajpur (Chhattisgarh). (Janpad Member Candidate, Area No. 9).
13. Sanjay Yadav, S/o. Ayodhya Prasad Yadav, R/o. Village Girjapur, Post Odagi, P.S. & Tehsil Odagi, Civil & Revenue District Surajpur (Chhattisgarh). (Janpad Member Candidate, Area No. 9).
14. Santosh Singh S/o. Shri Niwas, R/o. Village Odagi, Post Odagi, P.S. & Tehsil Odagi, Civil & Revenue District Surajpur (Chhattisgarh). (Janpad Member Candidate, Area No. 9).
15. Sandeep Kumar Singh, S/o. Ramchandra Singh, R/o. Village Indarpur, Post Odagi, P.S. & Tehsil Odagi, Civil & Revenue District Surajpur (Chhattisgarh). (Janpad Member Candidate, Area No. 9).
16. Omkar Prasad Mishra, Returning Officer (Panchayat)/ Nayab Tehsildar Odagi Post Odagi, P.S. & Tehsil Odagi, Civil & Revenue District Surajpur (Chhattisgarh).
17. Likhanram Paikra, Lecturer, Presiding Officer, Polling Centre No. 55, Through : Block Education Officer, Pratappur, Civil & Revenue District Surajpur (Chhattisgarh)
18. Bodhanram, Assistant Grade- II, Polling Officer, Polling Centre No. 55, Through : Block Education Officer, Pratappur, Civil & Revenue District Surajpur (Chhattisgarh)
19. Kameshwar Prasad Singh, Sikshak Panchayat, Polling Officer, Polling Centre No. 55, Through : Block Education Officer, Pratappur, Civil & Revenue District Surajpur (Chhattisgarh)
20. Dharamjit Ram, Assistant Sikshak Panchayat, Polling Officer, Polling Centre No. 55, Through : Block Education Officer, Pratappur, Civil & Revenue District Surajpur (Chhattisgarh)
21. Ramjeetram, Lecturer Panchayat, Presiding Officer, Polling Centre No. 56, Through : Block Education Officer, Pratappur, Civil & Revenue District Surajpur (Chhattisgarh)
22. Alekxius Kujur, Sikshak Panchayat, Polling Officer, Polling Centre No. 56, Through : Block Education Officer, Pratappur, Civil & Revenue District Surajpur (Chhattisgarh)

23. Ranjeet Dubey, Assistant Sikshak Panchayat, Polling Officer, Polling Centre No. 56, Through : Block Education Officer, Pratappur, Civil & Revenue District Surajpur (Chhattisgarh)
24. Dilip Kumar Paikra, Assistant Sikshak Panchayat, Polling Officer, Polling Centre No. 56, Through : Block Education Officer, Pratappur, Civil & Revenue District Surajpur (Chhattisgarh)
25. Laxmi Kumar Nishad, Lecturer, Presiding Officer, Polling Centre No. 57, Through : Block Education Officer, Pratappur, Civil & Revenue District Surajpur (Chhattisgarh)
26. Parasram, Sikshak Panchayat, Polling Officer, Polling Centre No. 57, Through : Block Education Officer, Pratappur, Civil & Revenue District Surajpur (Chhattisgarh)
27. Mohan Singh, Assistant Sikshak Panchayat, Polling Officer, Polling Centre No. 57, Through : Block Education Officer, Surajpur, Civil & Revenue District Surajpur (Chhattisgarh)
28. Komalkant Singh, Assistant Sikshak Panchayat, Polling Officer, Polling Centre No. 57, Through : Block Education Officer, Pratappur, Civil & Revenue District Surajpur (Chhattisgarh)
29. Bundram Sidar, Head Master, Middle School- Pasliha Para Bhaiyathan, Polling Officer, Polling Centre No. 87, Civil & Revenue District Surajpur (Chhattisgarh)
30. Rajesh Kumar Kushwaha, Sikshak Panchayat, Middle School Barpara, Polling Officer, Polling Centre No. 87, Through : Block Education Officer, Bhaiyathan, Civil & Revenue District Surajpur (Chhattisgarh)
31. Parmeshwar Ram, Assistant Sikshak Panchayat, Polling Officer, Polling Centre No. 87, Through : Block Education Officer, Pratappur, Civil & Revenue District Surajpur (Chhattisgarh)
32. Ramnarayan Singh, Assistant Sikshak Panchayat, Middle School Satyanagar, Polling Officer, Polling Centre No. 87, Through : Block Education Officer, Bhaiyathan, Civil & Revenue District Surajpur (Chhattisgarh)
33. Pradip Tiwari, Higher Grade Sikshak, Middle School Bhaonrahi, Bhaiyathan, Presiding Officer, Polling Centre No. 88, Civil & Revenue District Surajpur (Chhattisgarh)
34. Ramashankar Patel, Sikshak Panchayat, Middle School Sonpur, Polling Officer, Polling Centre No. 88, Through : Block Education Officer, Bhaiyathan, Civil & Revenue District Surajpur (Chhattisgarh)

35. Krishna Mohan Gupta, Assistant Sikshak Panchayat, Middle School Bundiya, Polling Officer, Polling Centre No. 88, Civil & Revenue District Surajpur (Chhattisgarh)
36. Brijesh Pandey, Assistant Sikshak Panchayat, Middle School Mohali, Polling Officer, Polling Centre No. 88, Civil & Revenue District Surajpur (Chhattisgarh)
37. Rameshwar Prasad Nagen, Head Master, Presiding Officer, Polling Officer, Polling Centre No. 106, Through : Block Education Officer, Pratappur, Civil & Revenue District Surajpur (Chhattisgarh)
38. Jayesh Pathak, Lecturer Panchayat, Higher Secondary School Batra, Polling Officer, Polling Centre No. 106, Civil & Revenue District Surajpur (Chhattisgarh)
39. Pradip Kumar Singh, Assistant Sikshak Panchayat, Middle School Pandopara, Tarka, Polling Officer, Polling Centre No. 106, Through : Block Education Officer, Bhaiyathan, Civil & Revenue District Surajpur (Chhattisgarh)
40. Devendra Nath Dubey, Assistant Sikshak Panchayat, Middle School Khadapara, Polling Officer, Polling Centre No. 106, Through : Block Education Officer, Bhaiyathan Civil & Revenue District Surajpur (Chhattisgarh)
41. Arun Kumar Pandey, Polling Officer, Polling Centre No. 89, Through : Block Education Officer, Odagi, Civil & Revenue District Surajpur (Chhattisgarh)
42. Ramkumar Singh, Polling Officer, Polling Centre No. 89, Through : Block Education Officer, Odagi, Civil & Revenue District Surajpur (Chhattisgarh)
43. Bechanram Kushwaha, Polling Officer, Polling Centre No. 89, Through : Block Education Officer, Odagi, Civil & Revenue District Surajpur (Chhattisgarh)
44. Dharam Singh, Polling Officer, Polling Centre No. 89, Through : Block Education Officer, Odagi, Civil & Revenue District Surajpur (Chhattisgarh)
45. O.P. Singh, Sub Divisional Officer (Revenue), Sub Divisional Office Pratappur, Civil & Revenue District Surajpur (Chhattisgarh)
46. B.R. Bhagat, Chief Executive Officer, Janpad Panchayat Odagi, Civil & Revenue District Surajpur (Chhattisgarh)
47. M.L. Dhritlahre, Additional Collector, Surajpur, Civil & Revenue

District Surajpur (Chhattisgarh)

---- Respondent

For Petitioner : Shri Surfaraj Khan, Advocate.
For Respondent/State : Shri Arun Sao, Deputy Advocate General.
For Respondent No.12 : Shri Sanjay Patel, Advocate.
For Respondent No.46 : Shri R.S.Baghel, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

13/07/2016

1. The petitioner has preferred election petition under Section 122 of the CG Panchayat Raj Adhiniyam, 1993 (for short 'the Adhiniyam') challenging the election of respondent No.3 Rajesh Kumar Tiwari as member of Janpad Panchayat, Odgi from Constituency No.9. In the said election petition, an application under Order 7 Rule 11 CPC was preferred by respondent No.12 Shivmangal Kurre which was rejected. Subsequently, an application under Order 9 Rule 7 CPC was moved by Shivmangal Kurre for setting aside ex-parte order dated 20.5.2015. This application was rejected by the Collector, Surajpur on 9.3.2016. Shivmangal Kurre thereafter preferred an appeal before the Commissioner, Surguja Division under Section 91 of the Adhiniyam wherein the impugned order has been passed to set aside the order passed by the Collector on 9.3.2016 and to remit the matter to the Collector for deciding the application filed by Shivmangal Kurre under Order 9 Rule 7 CPC afresh.

2. It is argued that the Commissioner has no jurisdiction to entertain an appeal under Section 91 of the Adhiniyam.
3. Admittedly, the order passed by the Election Tribunal has been attached finality and no appeal against the said order has been provided under the provisions of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (for short 'the Rules, 1995').
4. On a combined reading of the Rules, 1995 and Section 122 of the Adhiniyam, attaching finality to the order passed by the prescribed authority, it clearly appears that there is no appellate or revisional remedy to a person to challenge any interim or final order passed by the Election Tribunal.
5. The Commissioner, Sarguja Division has committed serious error of law and jurisdiction to entertain the appeal. Therefore, the impugned order being ex-facie or patently illegal deserves to be and is hereby set aside. The Commissioner is directed to send back the record to the concerned Collector forthwith.
6. The Writ Petition is accordingly disposed of.

Sd/-
Judge
(Prashant Kumar Mishra)