

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1003 of 2016

Smt. Dujbai Turkane W/o Shri Jawaharlal Turkane, Aged About 45 Years Caste Mehar, R/o Village Bargaon, P.S. & Tahsil Nawagarh, District Janjgir Champa (Chhattisgarh)

---- Petitioner

Versus

1. Smt. Karibai W/o Late Karmha Lahre, Aged About 52 Years Caste Satnami, R/o Pipra, Tahsil Nawagarh, District Janjgir Champa (Chhattisgarh)
2. Smt. Dujbai Ramprasad Lahre W/o Ram Prasad Lahre, Aged About 36 Years Caste Satnami, Village Pipra, P.S. & Tahsil Nawagarh, District Janjgir Champa (Chhattisgarh).
3. Smt. Sumitra Bai Lahre W/o Devram Lahre, Aged About 27 Years Caste Satnami, R/o Village Pipra, P.S. & Tahsil Nawagarh, District Janjgir Champa (Chhattisgarh)
4. Smt. Sukanya Sarthi W/o Shri Ganga Prasad Sarthi, R/o Village Bargaon, P.S. & Tahsil Nawagarh, District Janjgir Champa (Chhattisgarh)
5. Smt. Kumari Bai Sarthi W/o Shri Kumar Sarthi, Aged About 32 Years Caste Sarthi, R/o Village Bargaon, P.S. & Tahsil Nawagarh, District Janjgir Champa (Chhattisgarh)
6. The Tahsildar, Returning Officer Shri S.S. Balke (Panchayat), Nawagarh, District Janjgir Champa (Chhattisgarh)
7. The Assistant Returning Officer C.E.O. Shri R.S. Nayak, Janpad Panchayat Nawagarh, District Janjgir Champa (Chhattisgarh)
8. Shri Santlal Bharti (Lecturer) Higher Secondary School, Dhorla, District Janjgir Champa (Chhattisgarh)
9. Shri Bhagat Kanwar (Lecturer) Higher Secondary School, Sivni District Janjgir Champa (Chhattisgarh)
10. Shri Rajendra Kumar Patel (Upper Division Teacher) Middle School Bachhoud, District Janjgir Champa (Chhattisgarh)
11. Shri Umashankar Rohidas (Lecturer Panchayat), Higher Secondary School, Dhorla, District Janjgir Champa (Chhattisgarh)
12. Shri Laxminarayan Bhardwaj (Head Master) Middle School, Bhatha Para, Khaija, District Janjgir Champa (Chhattisgarh)
13. The Sub Divisional Officer (Revenue), Janjgir, District Janjgir Champa (Chhattisgarh)

---- Respondents

Shri S.C.Verma, counsel for the petitioner/s.
Shri B. Gopa Kumar, Dy.A.G. for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

25/04/2016

This petition, under Article 226 of the Constitution of India, has been preferred against order dated 15/02/2016 and 14/03/2016.

2. Learned counsel for the petitioner submits that the Election Tribunal has committed gross illegality and arbitrariness in framing an issue with regard to recount even though the election petitioner raised no dispute at or after the count of votes upon election. It is submitted that when the counting had taken place and results were declared, the election petitioner did not dispute the same but after four days, on afterthought grounds, an application was made before the Collector which was not maintainable. It was on this afterthought grounds that the election petition was filed. Therefore, it is contended that the election petition on this ground, could not be maintained and for that reason, framing of an issue as to whether a case of recount is made out or not would not arise for consideration.

3. The substance of argument of learned counsel for the petitioner is that where no dispute is raised to counting at the stage of counting during election, this issue could not be allowed to be raised subsequently by way of election petition.

4. In the judgment of the Supreme Court in the case of **Sohan Lal v. Babu Gandhi, (2003) 1 SCC 108**, earlier decision in the case of **Ram Rati v. Saroj Devi (1997) 6 SCC 66** was overruled that election petition would be maintainable on the ground of recount even if no objection for recount is raised during counting.

5. The arguments which are being raised before this Court may be taken by the petitioner in the election petition to satisfy the Tribunal not to accept the claim of recount on all those grounds which have been raised in this petition. However, framing of issue, which is substantively based on the pleadings, cannot be faulted with.

6. Reserving liberty to the petitioner to raise all the grounds in the election petition, which have been raised in this petition, this petition is dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge