

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 552 of 2016**

- Smt. Babita Balmiki W/o Shri Chhabilal Balmiki, Aged About 32 Years R/o Gokulganj, House 342, Ward No 07, Motisagar Para Korba, Tahsil And Distirct Korba Chhattisgarh

---- Petitioner**Versus**

1. Amrika Bai W/o Shri Lakshman Bandhekar, Aged About 52 Years R/o Ward No 7, Motisagar Para Tahsil And Distirct Korba Chhattisgarh
2. Koushalya Chouhan W/o Pardeshi Chouhan, Aged About 50 Years R/o Ward No 7 Motisagarpara, Kunj Nagar, Tahsil And Distirct Korba Chhattisgarh
3. Zila Nirvachan Adhikari, Korba, District Korba Chhattisgarh
4. Maheshwari Chouhan, W/o Shri Kailash Chouhan, Aged About 30 Years R/o Dr. Shyam Lal Gali, Sitamani, Korba Tahsil And Distirct Korba Chhattisgarh

---- Respondents

For Petitioner	:	Shri Parag Kotecha, Advocate
For Respondents-State	:	Shri Shashank Thakur, GA for the State

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****19/09/2016**

1. Petitioner is the returned candidate as Councilor of Ward No.7 Municipal Corporation, Korba, her election has been called in question by the respondent No.4 by preferring election petition before the District Judge, Korba under Section 441 of the Chhattisgarh Municipal Corporation Act, 1956.
2. In the said election petition, the election petitioner produced PW-2 Anuradha Agrawal, Tehsildar, Korba, as her witness for her examination on

19.08.2016. It appears, when the witness was cross-examined by the petitioner's counsel and counsel for non-applicant No.4 in the election petition, the election tribunal did not offer opportunity to the election petitioner to re-examine the witness. This appears to have happened because the court's time was over and it is exactly for this reason the election tribunal has observed, in the impugned order, that due to paucity of time, the witness could not be re-examined and shall be summoned for recording of remaining part of her examination on the next date.

3. It is argued that once the witness has been examined, the trial Court should not have fixed another date for her re-examination without there being an application by any of the party for the purpose. He would also point out that the order-sheet has been written at 3.30pm but it is mentioned therein that till 5.30 pm examination of the witness remained incomplete and her re-examination may also take some more time. It is thus argued that enough time was available with the trial Court on the said date, yet the re-examination was deferred for another date without any such prayer.
4. On a close reading of the concluding part of the deposition as also the order-sheet recorded separately in the first half and thereafter in post lunch session of 19.08.2016, it would appear that one witness namely Maheshwari Chauhan (PW-1) was examined and discharged and examination of second witness namely Anuradha Agrawal (PW-2) was posted for the second half. Thus, the statement of the witness begun only in the second half, therefore, the second part of the order-sheet appears to be correctly recorded that the examination could not be completed till 5.30 pm. Even otherwise, the deposition of PW-2 Anuradha Agrawal does not bear an endorsement that on being offered to re-examine the witness, the election petitioner did not ask any question. Since the party who has called the witness is ordinarily

granted an opportunity to re-examine the witness, if any new statement has been made in the cross-examination, the trial Court is otherwise obliged to grant such opportunity to the person who is summoning the witness in his/her favour.

5. In the considered opinion of this Court, since the impugned order has been passed on the same day when the witness could not be re-examined due to paucity of time, an application was not required to be moved because the tenor of the order-sheet would clearly reflect that such request was made by the election petitioner but the re-examination could not be done due to paucity of time.
6. The trial Court has not committed any error of law in asking the witness to remain present for re-examination.
7. Accordingly, the writ petition stands dismissed.

Sd/-

Judge
Prashant Kumar Mishra

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