

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 96 of 2017**

Pratibha Panager W/o Kanshi Panager, Aged About 38 Years, Caste-
Mochi, R/o Village- Mohgaon, Tahsil- Pandariya, District- Kabirdham,
Chhattisgarh

---- Appellant

Versus

1. Smt. Amar Bai W/o Lok Kumar Gritlahre Aged About 40 Years R/o Village- Pratappur, Police Station- Pandatarai, Janpad Panchayat- Pandariya, District- Kabirdham, Chhattisgarh
2. Amrika Navrang W/o Ramprasad, R/o Villae Junglepur, Tahsil Pandariya, District Kabirdham Chhattisgarh
3. Urmila Patel, W/o Ishwari Patel, R/o Village Andhiyarkhor, Tahsil Pandariya, District Kabirdham Chhattisgarh
4. Kirti Diwakar W/o Tukaram Diwakar, R/o Village Andhiyarkhor, Tehsil Pandariya, District Kabirdham Chhattisgarh
5. Nandsati Joshi, W/o Jitendra, R/o Village Junglepur, Tehsil Pandariya, District Kabirdham Chhattisgarh
6. Malti Patre W/o Jwala Prasad, R/o Village Mohgaon, Tehsil Pandariya, District Kabirdham Chhattisgarh
7. Laxmanabai Bhaskar W/o Ramchand, R/o Village Pratappur, Tehsil Pandariya, District Kabirdham Chhattisgarh
8. Shivkumari Banjare W/o Udal Banjre, R/o Village Mohgaon, Tehsil Pandariya, District Kabirdham Chhattisgarh
9. Shyam Kumari Banjare W/o Bhawsingh, R/o Village Pratappur, Tehsil Pandariya, District Kabirdham Chhattisgarh
10. Shri Rituraj Bisen, Nayab Tahsildar Kunda And Returning Officer (Panchayat) Pandariya, District Kabirdham Chhattisgarh
11. Shri Padam Singh Marawi, (Presiding Officer Polling Booth No. 261) Lecturer (Panchayat) 30 Middle School, Rengakharkala, Tehsil School, Rengakharkala, Tahsil School, Rengakharkala, Tahsil Badla, District Kabirdham Chhattisgarh
12. Shri Balram Arya, (Presiding Officer Polling Booth No. 262) Lecturer (Panchayat) Higher Secondary School, Minminiya, Tehsil Badla, District Kabirdham Chhattisgarh
13. Shri Manohar Singh Merawi, (Presiding Officer Polling Booth No.

263) Lecturer (Panchayat) Higher Secondary School, Bamhani, Tehsil Pandariya, District Kabirdham Chhattisgarh

14. Shri Dhansingh Jharia, (Presiding Officer Centre No. 264) Teacher Panchayat Primary School, Khara, Tehsil Bodla, District Kabirdham Chhattisgarh
15. Shri Dwarika Prasad Yadav, (Presiding Officer Polling Booth No. 269) Lecturer (Panchayat) Higher School, Taregaon (Jn) Tehsil Bodla, District Kabirdham Chhattisgarh
16. Shri Manohar Prasad Chandravanshi (Presiding Officer Polling Booth No. 270) Lecturer (Panchayat) Higher Secondary School, Taregaon (Jn) Tehsil Bodla, District Kabirdham Chhattisgarh
17. Shri Manoj Mishra, (Presiding Officer Polling Booth No. 271) Lecturer (Panchayat), Higher Secondary School, Jhalmala, Tehsil Bodla, District Kabirdham Chhattisgarh
18. Shri Ajay Singh Tahkur (Presiding Officer Polling Booth No. 272) Lecturer Panchayat Higher Secondary School, Rauchan, Tehsil Bodla, District Kabirdham Chhattisgarh
19. Shri Chemandas Manikpuri, (Presiding Officer Polling Booth No. 273) Principal, Primary School, Jaitatola, Tehsil Bodla, District Kabirdham Chhattisgarh
20. Shri Roman Singh Marawi, (Presiding Officer Polling Boothe No. 274) Lecturer (Panchayat) Higher Secondary School, Khara, Tehsil Bodla, District Kabirdham Chhattisgarh
21. Shri R.K. Verma, (Presiding Officer Polling Booth No. 275) Lecturer (Panchayat) Rural Agriculture Development Officer, Agriculture Department, Bodla, Tehsil Bodla, District Kabirdham Chhattisgarh
22. Shri Suresh Kumar Lanche (Presiding Officer Polling Booth No. 276) Principal Primary Baghutola, Tehsil Bodla, District Kabirdham Chhattisgarh
23. Specified Officer Cum Additional Collector, Kabirdham, District Kabirdham Chhattisgarh

---- Respondents

For Appellant	: Shri Vaibhav A. Goverdhan, Advocate
For Respondent No.1	: Shri Rakesh Pandey, Advocate
For Respondent/State	: Shri UNS Deo, Govt. Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Sharad Kumar Gupta, Judge

Judgment On Board

Per Thottathil B. Radhakrishnan, Chief Justice

13/07/2017

1. Heard learned counsel for the appellant, the learned counsel for contesting first respondent and the learned counsel for the State Government.
2. The appellant stands returned as the successful candidate in the election of Member of Janpad Panchayat, Pandariya from Constituency No. 21. The first respondent challenged that election invoking Section 122 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (henceforth, '*the Adhiniyam*') and the Chhattisgarh Panchayat (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (henceforth, '*the Rules*'). The first respondent who was the election petitioner did not adduce evidence when the matter was posted for recording her evidence. The Statutory Authority adjourned the matter for recording the evidence of the returned candidate. Writ petition was filed by the first respondent-election petitioner challenging the procedure adopted by the Authority. Apart from contending that the Authority acted illegally in having adjourned the case for recording the evidence of the returned candidate without affording further opportunity to the election petitioner to adduce evidence, the election petitioner pleaded in her writ petition, *inter alia*, that in terms of Rule 11 of the Rules, the Authority was bound to frame issues before proceeding with the trial. The learned Single Judge decided the writ petition along with similar matters and applying certain judicial precedents, noticed that it was the

requirement that issues are framed. The learned Single Judge also adverted to the requisite facts even on other questions raised. Ultimately, the writ petition from which this appeal arises was allowed remitting the matter to the Authority with directions to frame the issues and to proceed with trial. This is challenged by the returned candidate.

3. The learned counsel for the appellant argued that the phraseology of Rule 11 of the Rules does not admit any interpretation to the effect that the provisions of the Code of Civil Procedure apply *mutatis mutandis*. He therefore argued that it was well within the Authority and jurisdiction of the Authority to have proceeded to record the evidence of the returned candidate when the election petitioner did not adduce evidence. In support, the learned counsel referred to the judgment of the Division Bench of this Court in ***Santosh Kumar Nishad vs. State of Chhattisgarh and others*, AIR 2016 C.G. 164** which *inter alia* held that absence of framing of issue is not a fatal defect.
4. It is pointed out by the learned counsel for the first respondent and the learned Govt. Advocate that while deciding Writ Appeal No. 87 of 2017, the Division Bench of this Court had, *inter alia* held that an appeal to the Division Bench may not lie since the matter is predominantly one referable to Article 227 of the Constitution and not otherwise. The learned counsel for the appellant attempted to persuade us to consider whether the decision in Writ Appeal No. 87 of 2017 requires a second look on the issue relating to the applicability, or otherwise, of Article 227 to be exclusion of Article 226 of the Constitution, in the matter of judicial review of decision rendered by the Authority under the Rules. We see that the Bench had referred to

the decision of the Supreme Court in *Kihoto Hollohan vs. Zachillhu and others, 1992 Supp (2) SCC 651* which dealt with matters relating to Schedule X of the Constitution relating to defection. Whether that precedent which deals with defection of elected Members of the Parliament and State Legislature would apply to matters relating to election petitions; which are in a totally different domain, following the result of an election; may be a matter for deeper deliberation.

5. But, we keep the aforementioned issue apart in the case in hand since we do not have to deliberate on that, as the impugned decision of the learned Single Judge insofar as it relates to the appellant before us is concerned, is one rendered also noticing that the writ petitioner who was the election petitioner was not given due opportunity to adduce evidence. In that view of the matter, even if the order handed down by the learned Single Judge is to be treated as one rendered under Article 226 of the Constitution, it does not call for interference through this appeal. Hence, this appeal fails.
6. In the result, this appeal is dismissed. No costs.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge