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**HIGH COURT OF CHHATTISGARH, BILASPUR****WP227 No. 916 of 2015**

- Kamla Devi Tandon W/o Shri Bhagwat Prasad Tandon, Aged About 40 Years Caste Suryavanshi Occupation Sarpanch Gram Panchayat Meu R/o Vilalge Meu, Post Meu, Block Pamgarh, P.S. Pamgarh, District Janjgir Champa Chhattisgarh .....(Non Applicant)

---- Petitioner

**Versus**

1. Nilam Tandon W/o Nathulal Tandon, Aged About 25 Years Caste Suryavanshi R/o Village Meu, Post Meu, Block Pamgarh, P.S. Pamgarh, District Janjgir Champa Chhattisgarh.....(Election Petitioner)
2. Raj Kumari Sarthi, W/o Shri Rahe Lal Sarthi, R/o Village Meu, Post Meu, Block Pamgarh, District Janjgir Champa Chhattisgarh.....(Non Applicant)
3. Shyama Bai Kurre, W/o Shri Sahettar Kurre, R/o Village Meu, Post Meu, Block Pamgarh, District Janjgir Champa Chhattisgarh.....(Non Applicant)
4. Sukrita Tandon W/o Shri Dev Kumar Tandon, R/o Village Meu, Post Meu, Block Pamgarh, District Janjgir Champa Chhattisgarh.....(Non Applicant)
5. Sunita Shastri, W/o Shri Ram Kumar R/o Village Meu, Post Meu, Block Pamgarh, District Janjgir Champa Chhattisgarh.....(Non Applicant)
6. Shweta Bhasker, W/o Shri Purushottam Bhasker, R/o Village Meu, Post Meu, Block Pamgarh, District Janjgir Champa Chhattisgarh.....(Non Applicant)
7. K. K. Sahu Sub Engineer, Sahdev Nagar Naruyara, Tahsil Akaltara P.S. Akaltara District Janjgir Champa Chhattisgarh .....(Non Applicant)
8. Kailash Markam, Lecturer, Governmnet High School Pakariya ( Jhulan) Tehsil Akaltara District Janjgir Champa Chhattisgarh .....(Non Applicant)
9. Piyush Sharma, Lecturer, Government High School Pakariya ( Jhulan) Tehsil Akaltara, District Janjgir Champa Chhattisgarh .....(Non Applicant)
10. Palan Kumar Koshale, Lecturer, Government High School Pakariya ( Jhulan) Tehsil Akaltara, District Janjgir Champa Chhattisgarh..... (Non Applicant)
11. Jivan Lal Yadav, Government Middle School Tilai, P.S. Akaltara Tehsil

Akaltara District Janjgir Champa Chhattisgarh .....(Non Applicant)

12.D. K. Yadav, Rural Agriculture Extension Officer, Akaltara Tehsil Akaltara District Janjgir Champa Chhattisgarh .....(Non Applicant)

13.Yogesh Rathore, Lecturer, Government Girls Higher Secondary School Akaltara P.S. Akaltara Tehsil Akaltara District Janjgir Champa Chhattisgarh .....(Non Applicant)

---- Respondent

**And**

**WPC No. 2060 Of 2016**

- Kamala Devi Tondon W/o Bhagwat Prasad Tondon, Aged About 40 Years Caste Suryavanshi (Scheduled Caste), Sarpanch Village Panchayat Meu, R/o : Village Meu, Post Meu, Tahsil : Pamgarh, Civil & Revenue District : Janjgeer Champa (Chhattisgarh)

---- Petitioner

**Vs**

1. State Of Chhattisgarh Through Its Chief Secretary, Mantralaya, Mahanadi Gate, Naya Raipur Capital Complex, Raipur, District : Raipur, Chhattisgarh. 492001.
2. District Collector, Janjgeer Champa, Civil & Revenue District : Janjgeer Champa Chhattisgarh.
3. Sub Divisional Officer ( Revenue), Pamgarh, Tahsil Pamgarh, District : Janjgeer Champa (Chhattisgarh)
4. Chief Executive Officer, Janpad Panchayat Pamgarh, Tahsil : Pamgarh, District : Janjgeer Champa (Chhattisgarh)
5. Neelam Tondon, W/o Nathlal Tondon, Aged About 25 Years Caste Suryavanshi, R/o : Village Meu, Post Meu, Tahsil Pamgarh, District : Janjgeer Champa (Chhattisgarh)
6. Laxmi Prasad Tande S/o Shri T R Tande, Aged About 56 Years Posted At Janpad Panchayat, Pamgarh, Tahsil : Pamgarh, District : Janjgeer Champa (Chhattisgarh)
7. Branch Manager , State Bank Of India, Pamgarh, Tahsil : Pamgarh, Civil & Revenue District : Janjgeer Champa (Chhattisgarh)
8. Branch Manager , Allahabad Bank, Kosala, Pamgarh, Tahsil : Pamgarh, Civil & Revenue District : Janjgeer Champa (Chhattisgarh)
9. Branch Manager , Chhattisgarh Gramin Bank, Pamgarh, Tahsil : Pamgarh, Civil & Revenue District : Janjgeer Champa (Chhattisgarh)

---- Respondent

And

**CONT No. 394 Of 2016**

- Kamala Devi Tondon W/o Bhagwat Prasad Tondon, Aged About 40 Years Caste- Suryavanshi (Scheduled Caste), Sarpanch- Village Panchayat Meu, R/o Village- Meu, Post- Meu, Tahsil- Pamgarh, Civil & Revenue District Janjgir-Champa, Chhattisgarh

---- Petitioner

**Vs**

1. Neelam Tondon W/o Nathlal Tondon, Aged About 25 Years Caste- Suryavanshi, R/o Village- Meu, Post- Meu, Tahsil- Pamgarh, District Janjgir-Champa, Chhattisgarh
2. S. Bharati Dasan, Collector, Janjgir-Champa, District Janjgir-Champa, Chhattisgarh
3. Indrajeet Burman, Sub Divisional Officer, Pamgarh, Tahsil Pamgarh, District Janjgir-Champa, Chhattisgarh
4. Bhupendra Kumar Agrawal, Presently Posted As Chief Executive Officer, Janpad Panchayat, Pamgarh, Tahsil Pamgarh, District Janjgir-Champa, Chhattisgarh
5. Laxmi Prasad Tande S/o Shri T R Tande, Aged About 56 Years Posted At Janpad Panchayat, Pamgarh, Tahsil Pamgarh, District Janjgir-Champa, Chhattisgarh .....(Contemnors

---- Respondent

And

**WPC No. 2290 Of 2015**

- Kamala Devi Tondon W/o Bhagwat Prasad Tondan, Aged About 40 Years Caste - Suryvanshi ( Scheduled Caste ), Sarpanch- Village Panchayat Meu, R/o Village - Meu, Post - Meu, Tahsil : Pamgarh, Civil & Revenue District : Janjgeer - Champa, Chhattisgarh

---- Petitioner

**Vs**

1. Neelam Tondon W/o Nathlal Tondon, Aged About 25 Years Caste- Suryavanshi, R/o Village Meu, Post- Meu, Tahsil : Pamgarh, Civil & Revenue District : Janjgeer - Champa ( Chhattisgarh )
2. Rajkumari Sarthi W/o Radhelal Sarthi, Caste Sarthi, R/o Village - Meu, Post - Meu, Tahsil : Pamgarh, Civil & Revenue District : Janjgeer - Champa,

## Chhattisgarh

3. Shyamabai Kurre W/o Sahettar Kurre, Caste Suryawanshi, R/o Village Post Meu, Tahsil Pamgarh, Distt. Janjgeer - Champa, (Chhattisgarh)
4. Sukritabai Tondon, W/o Devkumar Tondon, Caste Suryavanshi. R/o Village - Meu, Post - Meu, Tahsil : Pamgarh, Civil & Revenue District : Janjgeer - Champa, Chhattisgarh
5. Sunita Shastri W/o Ramkumar, Caste Suryavanshi. R/o Village - Meu, Post - Meu, Tahsil : Pamgarh, Civil & Revenue District : Janjgeer - Champa, Chhattisgarh
6. Sweta Bhaskar, W/o Purushottam Bhaskar Caste Suryavanshi. R/o Village - Meu, Post - Meu, Tahsil : Pamgarh, Civil & Revenue District : Janjgeer - Champa, Chhattisgarh
7. K. K. Sahu, Sub Engineer, Sahdeo Canal, Nariyara, Tahsil- Akaltara, Civil & Revenue Distt. Janjgeer - Champa, (Chhattisgarh)
8. Kailash Markam, Lecturer, Government High School, Pakariya (Jhulan) Tahsil : Akaltara, Civil & Revenue Distt. Janjgeer - Champa, (Chhattisgarh)
9. Piyush Sharma, Lecturer, Govt. High School, Pakariya (Jhulan), Tahsil : Akaltara, Civil & Revenue Distt. Janjgeer - Champa, (Chhattisgarh)
10. Palan Kumar Koshale, Lecturer, Govt. High School, Pakariya (Jhulan), Tahsil- Akaltara, Civil & Revenue Distt. Janjgeer - Champa, (Chhattisgarh)
11. Jivan Lal Yadav, Government Middle School, Tilai, Tahsil : Akaltara, Civil & Revenue Distt. Janjgeer - Champa, (Chhattisgarh)
12. D. K. Yadav, Agriculture Development Officer, Akaltara, Tahsil : Akaltara, Civil & Revenue Distt. Janjgeer - Champa, (Chhattisgarh)
13. Yogesh Rathore, Lecturer, Govt. Girls High School, Akaltara, Tahsil : Akaltara, Civil & Revenue Distt. Janjgeer - Champa, (Chhattisgarh)
14. R. P. Bandhade, Returning Officer / Tahsildar - Akaltara, Tahsil : Akaltara, Civil & Revenue Distt. Janjgeer - Champa, (Chhattisgarh)
15. Dinesh Kumar Chincholkar, Returning Officer ( Panchayat ), Pamgarh, Civil & Revenue Distt. Janjgeer - Champa, (Chhattisgarh)
16. District Collector, Janjgeer - Champa, Civil & Revenue Distt. Janjgeer - Champa, (Chhattisgarh)
17. Superintendent Of Police, Janjgeer - Champa, Civil & Revenue Distt. Janjgeer - Champa, (Chhattisgarh)
18. State Of Chhattisgarh Through Its Chief Secretary, Mantralaya, Mahanadi Gate, Naya Raipur Capitol Complex, Raipur, Civil & Revenue Distt. Raipur, (Chhattisgarh) P I N - 492 001

---- Respondent

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|----------------------------|---|----------------------------------------------------------------------------------------------------------|
| For Petitioners            | : | Shri RajKamal Singh, Advocate                                                                            |
| For Respondents-State      | : | Shri S. Majid Ali, PL for the State                                                                      |
| For Respective Respondents |   | Shri Durgesh Goyal, Shri DC Verma, Shri Anil S. Pandey, Shri PR Patankar and Shri N. Naha Roy, Advocates |

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**Hon'ble Shri Justice Prashant Kumar Mishra**

**Order On Board**

**20/01/2017**

1. All the writ petitions as well as the contempt petition arises out of the same proceedings of election petition wherein the election of the petitioner as Sarpanch of Gram Panchayat Mau, Pamgarh was called in question by the respondent Neelam Tondon by preferring election petition under Section 122 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short 'the Adhiniyam, 1993') read with the provisions contained in the Chhattisgarh Panchayats (Election Petition, Corrupt Practices and Disqualification for Membership) Rules, 1995 (for short 'the Rules, 1995').
2. In the election of the subject office held in the month of January-February, 2015, the petitioner was declared elected by a margin of 4 votes defeating her nearest rival Neelam Tondon. Petitioner's election was called in question by the respondent Neelam Tondon by preferring election petition before the Sub-Divisional Officer (R), Pamgarh. In course of trial of the said election petition, the Election Tribunal (for short 'the Tribunal') passed an order on 24.07.2015 directing holding of recount. The said order was assailed by the petitioner in **Kamla Devi Tondon Vs. Nilam Tondon & others {WP 227 No.609/2015}** which was allowed on 04.08.2015 to set aside the order dated 24.07.2015 and at the same time directing the SDO to first record finding upon appreciation of oral and documentary evidence

collected during trial on the basis of pleadings of the parties and thereafter, if a finding of recount is recorded, then only it would be open for the Tribunal to order recount.

3. Respondent Neelam Tondon thereafter preferred **WP 227 No.813/2015 {Nilam Tondon Vs. Kamla Devi Tondon & Others}** for early disposal of the election petition. By order dated 30.09.2015 in WP 227 No.813/2015, this Court directed the Tribunal to proceed in the matter in accordance with law. The Tribunal thereafter passed an order dated 30.10.2015 directing recount. This order dated 30.10.2015 is assailed by the petitioner Kamla Devi Tandon in WP 227 No.916/2015.
4. In WPC No.2060/2016 preferred by Kamla Devi Tondon prayer has been made for issuance of writ of quo warranto against respondent Neelam Tondon to demonstrate as to under what authority of law she is continuing as Sarpanch of the concerned Gram Panchayat. Whereas in WPC No. 2290/2015 yet again preferred by Kamla Devi Tondon prayer has been made for issuance of direction to analyze and examine ballot papers by any senior forensic expert; to direct the concerned police station to obtain expert opinion on tampering of ballot papers and investigate in the matter and further to cancel the result of recounting and report dated 05.11.2015 as also the election certificate dated 05.11.2015 issued in favour of respondent Neelam Tondon. Prayer is also made for quashing and setting aside the entire proceedings in the election petition.
5. In Contempt Petition No.394/2016 allegation is made against the contemnors that despite there being no declaration in favour of Neelam Tondon under Rule 23 of the Rules, 1995, she is illegally continuing in the office despite interim order passed in WPC 2060/2016, therefore, they

deserve to be punished appropriately.

6. On previous date of hearing this Court had summoned the entire record of proceedings drawn by the Tribunal. The order-sheet recorded by the Tribunal would reveal that on the basis of pleadings made by the parties issues/points were framed for consideration on 11.05.2015 and thereafter evidence of parties were recorded, however, without any discussion about the evidence adduced by the parties, the order of recount was passed on 24.07.2015, which was set aside by this Court in an earlier writ petition. When the order dated 04.08.2015 passed in WP 227 No.609/2015 was brought to the notice of the Tribunal, the Tribunal allowed the parties to produce additional oral and documentary evidence. This order by itself was a result of misinterpretation or ignorance of the order passed by this Court on 04.08.2015 because in the said order it was never directed that the parties shall be allowed to lead evidence once again. What was directed by this Court is that the SDO shall first record finding upon appreciation of oral and documentary evidence collected during trial. If the evidence was already collected there was no need for the Tribunal to have directed the parties to adduce evidence afresh because trial of election petition under the Rules, 1995 is akin to a civil suit by virtue of the provisions of the Rule 11 thereof once evidence was already recorded there was no need for fresh recording of oral evidence.
7. Be that as it may, the Tribunal once again passed an order on 30.10.2015 directing holding of recount but a similar mistake was committed by the Tribunal by directing recount without appreciating and recording a finding as to the necessity of directing a recount. The order dated 30.10.2015 is in complete defiance of this Court directed in WP 227 No.609/2015. This order is impugned in WP 227 No.916/2015. A reading of the order would

reveal that the Tribunal has not discussed the evidence adduced by the parties *vis a vis* the issues for consideration framed by the Tribunal on earlier date of hearing. The issues specifically deal with irregularities in counting in booth no.125 and 126 and whether the Presiding Officer had interpolated the counting-sheet, however, there is no discussion at all in the impugned order as to the illegality in the counting in these booth numbers and instead the Tribunal has recorded a cursory finding as if conducting a roving and fishing enquiry for all ballots polled during the election.

8. In **Satyanarain Dudhani Vs. Uday Kumar Singh**<sup>1</sup> and thereafter in catena of decisions, the Supreme Court has repeatedly held that order of recount should not be passed in a routine manner unless the party praying for recount makes out a clear case to substantiate his allegations in the election petition. The impugned order does not withstand the scrutiny of principles of law settled by the Supreme Court, therefore, the order dated 31.10.2015 deserves to be and is hereby set aside.
9. Prayer made for setting aside the proceedings of the election petition or for directing investigation by the concerned police with the help of forensic expert are not maintainable because the trial of election petition has to take place within the four corners of the Rules, 1995. It nowhere prescribes for involvement of any outside agency to decide an election petition. If the petitioner, so desires, she may herself apply for examination of the ballots by expert, but this Court under Article 226 of the Constitution of India cannot direct collection of evidence from some outside agency unless the situation so warrants. The present is not a case where the situation is such that a police investigation in the matter is needed.

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<sup>1</sup>AIR 1993 SC 367

10. For the foregoing, WP 227 No.916/2015 is allowed and the impugned order dated 30.10.2015 is set aside. Resultantly, the petitioner be handed over charge of the office of Sarpanch of the concerned Gram Panchayat at the earliest not later than 15 days from today.

11. In view of the above, other writ petitions bearing WPC No.2060/2016 and WPC 2290/2016 as well as the contempt Petition No. 394/2016 stand disposed of. The Tribunal is also directed to decide the election petition at the earliest in accordance with law.

Sd/-

Judge  
Prashant Kumar Mishra

Ashu