

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.2761 of 2017

Smt. Kareliya Bai, W/o Shri Sahettar Bhariya, aged about 54 years,
R/o Village Dhanras, Tehsil & Police Station Katghora, Distt. Korba
(C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Panchayat and Rural Development, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur (C.G.)
2. Sub-Divisional Officer, Revenue, Katghora, Distt. Korba (C.G.)
3. Smt. Shivkala, W/o Shri Chatrapal Singh Kanwar, aged about 43 years, R/o Village Dhanras, Tehsil & Police Station Katghora, Distt. Korba (C.G.)

---- Respondents

For Petitioner: Mr. Anand Shukla, Advocate.

For State/Respondents No.1 and 2: -

Mr. Arun Sao, Deputy Advocate General.

For Respondent No.3: Mr. Samir Singh, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

17/07/2018

1. The petitioner was elected as Sarpanch of Gram Panchayat Dhanras, Tahsil Katghora, District Korba on 4-2-2015 notified on 7-2-2015 which was challenged by respondent No.3 herein by way of filing election petition under Section 122 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 read with the rules made thereunder which was allowed by the Sub-Divisional Officer (Revenue), Katghora, by order dated 26-10-2015 which was the subject-matter of this Court in W.P. (C) No.1998/2015 and by order dated 3-12-2015 that was set aside directing the Election Tribunal to frame issues and to proceed in accordance with law. In writ appeal filed by respondent No.3 herein,

namely W.A.No.664/2015, the writ appeal court of this Court directed the Election Tribunal to frame specific issue as to whether the petitioner is member of ST or not, however, the writ appeal court of this Court had not interfered with the order under appeal and dismissed the appeal by order dated 5-1-2016. The Election Tribunal did not frame any such issue as directed by the writ court followed by the writ appeal court and ultimately, again allowed the election petition by order dated 21-3-2016 which was the subject-matter of W.P.(C) No.845/2016 and this Court again remanded back the matter to the Sub-Divisional Officer (Revenue), Katghora i.e. the Election Tribunal to follow the direction given by the Division Bench in writ appeal by order dated 5-1-2016 and decide the case afresh in accordance with law. This time, on remand, the Sub-Divisional Officer (Revenue) referred the matter to the High Power Caste Scrutiny Committee for verification of the petitioner's caste, but the said Committee sought certain documents which were not supplied by the Sub-Divisional Officer (Revenue) and again the SDO (R) allowed the election petition by the impugned order against which this writ petition has been preferred.

2. Mr. Anand Shukla, learned counsel appearing for the petitioner, would submit that after remand neither any enquiry was held nor the petitioner was allowed any opportunity to adduce evidence and without framing any specific issue as repeatedly directed by this Court and without any basis, repeating the earlier order, the election petition has been allowed, that deserves to be set aside.
3. Mr. Samir Singh, learned counsel appearing for the private respondent (respondent No.3), would submit that the petitioner has

no caste certificate of Scheduled Tribe granted in her favour, therefore, the election of the petitioner has rightly been set aside.

4. I have heard learned counsel for the parties and considered their rival submissions and went through the record with utmost circumspection.
5. The only dispute raised in the election petition filed by respondent No.3 is, whether the petitioner is member of Scheduled Tribe and was entitled to contest election for the post of Sarpanch, Gram Panchayat Dhanras. Therefore, the Election Tribunal i.e. the Sub-Divisional Officer (Revenue), Katghora, pursuant to the two orders passed in writ petition and one order passed in writ appeal ought to have framed specific issue, whether the petitioner belongs to ST category as the post of Sarpanch, Gram Panchayat, Dhanras was reserved for ST (woman), but that was not done in letter and spirit as directed. Not only this, even after the second remand order passed by this Court on 8-7-2016, parties were not allowed to adduce evidence to prove that whether the petitioner is a member of ST and was entitled to contest the reserved seat of Sarpanch, Gram Panchayat Dhanras. Though the matter was referred to the High Power Caste Scrutiny Committee, but documents were not supplied and therefore the Committee could not enquire into the caste of the petitioner. Thus, on the basis of no evidence, the SDO (R) came to the conclusion that the petitioner does not belong to ST category, which has resulted into prejudice to the petitioner and the order impugned has been passed which cannot be sustained. It is accordingly set aside. The election petition is restored to its original number for hearing and disposal in accordance with law. The matter is remitted to the Sub-Divisional Officer (Revenue), Katghora to give opportunity to the parties to adduce their

evidence and thereafter to decide the election petition afresh in accordance with law on the following issue: -

“Whether the petitioner is a member of Scheduled Tribe and was entitled to contest election for the post of Gram Panchayat, Dhanras, Tahsil Katghora, Distt. Korba, which was reserved for ST (woman), during the election year 2014-15.”

6. The aforesaid exercise shall be undertaken within a period of three months from the date of receipt of a copy of this order.
7. Original record be sent back forthwith.
8. The writ petition is allowed to the extent outlined herein-above leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma