

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.457 of 2018

Dharam Singh Rathiya, S/o Panchram Rathiya, Aged about 41 years,
Elected Sarpanch of Gram Panchayat Dehjari, P.S. & Tahsil Kharsiya,
District Raigarh (C.G.)

---- Petitioner

Versus

1. Vijay Rathiya, S/o Tikaram Rathiya, Aged about 43 years, R/o Village Bhalunara, Tahsil - Kharsiya, District Raigarh (C.G.)
2. Baikunth Bihari, Head Master, Primary School, Bijli, Dipa, Gobarsingha, Block Baramkela, District Raigarh (C.G.) Presiding Officer, Polling Booth No. 37, (Kharsiya)
3. Dhaniram Sidar, Lecturer, Government Higher Secondary School, Sariya, District Raigarh (C.G.) Presiding Officer, Polling Booth No. 38 (Kharsiya)
4. Jukson Alias Lusuram Rathiya, S/o Jagbandhu Rathiya, R/o Village Bhalunara, Tahsil Kharsiya, District Raigarh (C.G.)
5. Sukmati Rathiya, W/o Virsir Rathiya R/o Village Dehjari, Tahsil Kharsiya, District Raigarh (C.G.) wrongly mentioned as Yukmati.
6. Sub Divisional Officer (R)/Presiding Officer, Kharsiya, District Raigarh (C.G.)

---- Respondents

For Petitioner	:	Mr. F.S. Khare, Advocate.
For Respondent No.1	:	Mr. Sunil Sahu, Advocate.
For State/Respondent	:	Mr. Arun Sao, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/02/2018

1. Learned counsel for the petitioner submits that learned Sub Divisional Officer has relied upon the written statement filed by Shri Dhaniram Sidar, Lecturer and allowed election petition in part and directed for re-counting of the votes. He further submits that his application for examination of Shri Baikunth Bihari and Shri Dhaniram Sidar has

been rejected in view of order dated 07-12-2017 which is bad in law.

2. Learned counsel for Caveator/respondent No.1 and State Counsel would support the impugned order dated 07-12-2017.
3. With consent of both the parties, the matter is heard finally.
4. The petitioner has made an application for examination of Shri Baikunth Bihari and Shri Dhaniram Sidar as they were Presiding Officers of the election but his application was rejected on 07-12-2017. No sufficient and valid reasons have been assigned by the learned Sub Divisional Officer (S.D.O.) for rejecting the said application and on the contrary their statement has been relied upon to grant the relief of re-counting against the petitioner. This application ought to have been granted by the S.D.O. as they have admitted the case of election petitioner against the returned candidate/petitioner, as the petitioner is entitled to cross-examine Shri Baikunth Bihari and Shri Dhaniram Sidar. In view of the above, the impugned orders dated 06-02-2018 and 07-12-2017 are hereby set aside and the S.D.O. Kharsiya is directed to examine Shri Baikunth Bihari and Shri Dhaniram Sidar within a period of 30 days from today and permit the petitioner to examine/cross-examine and to pass a fresh and reasoned order within two months from the date of their examination.
5. In view of the above observation, the writ petition is allowed to the extent indicated above.

Sd/-
(Sanjay K. Agrawal)
Judge