

HIGH COURT OF CHHATTISGARH, BILASPUR

EP No. 15 of 2014

Shambhu Prasad Sharma S/o Late Bansh Gopal Sharma Aged
About 70 Years R/o Village And Post- Seoni, Tah. Marwahi,
Civil & Revenue Distt. Bilaspur C.G., Chhattisgarh

--- **Petitioner**

Versus

1. Dr.Banshilal Mahto S/o Late Dhaniram Mahto Aged About 73 Years R/o House No. 31, Ward No. 7, Champa Road, Main Road, Korba, Civil & Revenue Distt. Korba Chhattisgarh
2. Charan Das Mahant S/o Bisahu Das Mahant Aged About 59 Years R/o House No. 623, Mahant Para, Post- Saragaon, Tah. Champa, Distt. Janjgir-Champa Chhattisgarh
3. Heera Singh Markam S/o Late Dev Sai Markam Aged About 79 Years R/o Village & Post- Tiwrata, Tah. Pali, Civil & Revenue Distt. Korba Chhattisgarh
4. Jeevan Lal Rautel S/o Bisauha Ram Rautel Aged About 48 Years R/o House No. 224, Kolanpara, Village- Dhanauli, Post- Korja, Tah. Pendra Road, Distt. Bilaspur, Chhattisgarh
5. Amar Nath Pandey S/o Late Brajraj Pandey Aged About 48 Years R/o H.I.G. 128, M.P. Nagar, Korba, Distt. Korba Chhattisgarh
6. Dhan Singh Dhurve S/o Sri Rangae Dhurve Aged About 43 Years R/o Navgae, Post- Raghunath Nagar, Tah. Wadrafnagar, Surguja Division, Distt. Balrampur C.G., Pin- 497225, Chhattisgarh
7. Pratap Bhanu S/o Gulab Singh Aged About 45 Years R/o Village & Post- Semardarri, Tah. & Post- Marwahi, Distt. Bilaspur Chhattisgarh
8. Charan Bhaiyya S/o Ramcharan Aged About 45 Years R/o Girari, Post- Nawagaon, Tah. Pendra Road, Distt. Bilaspur, Chhattisgarh
9. Jata Shankar Pandey S/o Jagdamba Aged About 38 Years R/o Salwa, Post- Ghutra, P.S. Manendragarh, Distt. Kkorja C.G., District : Koriya (Baikunthpur), Chhattisgarh
10. S.R. Anchal S/o Late Mungeliha Das Aged About 44 Years R/o Dr. Ambedkar Chowk, House No. 632, Ward No. 39, Ayodhyapuri, Post- Ntpc Jamnipali, P.S. Darri, Distt. Korba Chhattisgarh
11. Chandra Bhuhan Pratap Singh Kanwar S/o Mool Chand Kanwar Aged About 36 Years R/o Jambahar, Post- Balco Nagar, Civil & Revenue Distt. Korba , Chhattisgarh

12. Laxman Lal Kaiwarty S/o Birbal Aged About 44 Years R/o Purani Basti, Darri, Post- Jamnipali, Tah. Katghora, Distt. Korba, Chhattisgarh
13. Phuleshwar Prasad Surjaeeha S/o Shambhunath Surjaeeha Aged About 71 Years R/o Dhinouchi, Post- Siwni, Tah. Marwahi, Distt. Bilaspur, Chhattisgarh
14. Rajesh Kumar Pandey S/o Bharat Kumar Pandey Aged About 42 Years R/o Old Kashinagar Khapra Bhattha, Budhwari Bazar, Korba, House No. 1106, Ward No. 16, Korba, Distt. Korba Chhattisgarh
15. Dr. Urmila Singh Marko D/o Rai Singh Marko Aged About 49 Years R/o Behind Secl Colony, Bandhwapara, Sarkanda, Bilaspur, Distt. Bilaspur Chhattisgarh
16. Harbhajan Singh Shyam S/o Sumer Singh Aged About 33 Years R/o House No. L/101 Chief House Bartunga, Post-Chirmiri, Tah. Khadgawan, Pin- 497449, District : Koriya (Baikunthpur), Chhattisgarh
17. Rajendra Singh Kanwar S/o Late Jai Singh Kanwar Aged About 32 Years R/o House No. 563/1/3 Padhimar Balco Nagar, Distt. Korba Chhattisgarh
18. Mohan Lal Bargahi S/o Ramadhin Bargahi Aged About 60 Years R/o Ward No. 09, South Jhagrakhand, Tah. Manendragarh, District : Koriya (Baikunthpur), Chhattisgarh
19. Fatte Singh Shyam S/o Jarman Singh Aged About 55 Years R/o Dhinouchi, Post- Siwni, Tah. Marwahi, Distt. Bilaspur, Chhattisgarh
20. Kewal Goswami S/o Bishnu Bharti Aged About 44 Years R/o Kurma, Post- Dogri, Tah. Balauda, Distt. Janjgir-Champa, Chhattisgarh
21. Sheikh Faoof S/o Sheikh Chand Aged About 46 Years R/o Ward No. 2, Haldibadi, Chirmiri, District : Koriya (Baikunthpur), Chhattisgarh
22. Rajesh Kumar Mahant S/o Daroga Das Mahant Aged About 37 Years R/o House No. 63, Belakachhar, Village- Panchayat Condro, Post Balco Nagar, Tah. & Distt. Korba, Chhattisgarh
23. Kamaldev S/o Ram Pratap Bangali Aged About 35 Years Dafaee, Heeragir Dafaee, Haldibadi, Post- Haldibadi, P.S. Chirmiri, Tah. Khadgavan, Pin- 497451, District : Koriya (Baikunthpur), Chhattisgarh

---- Respondents

For the Petitioner	:	In person.
For Respondent No.1	:	Mr. R.S. Marhas, Advocate.
For respondent No. 2	:	Mr. V.C. Ottalwar, Advocate

Hon'ble Shri Justice Goutam Bhaduri

CAV Judgment/Order

Reserved on 21.02.2018

Pronounced on 20.04.2018)

1. The present election petition touches upon the Parliamentary election held in the year 2014 for Korba constituency No.4 Korba wherein respondent No.1 Banshilal Mahto was declared elected as returned candidate. In such election respondent No.1 who contested on behalf of Bhartiya Janta party had secured 439002 number of votes and the petitioner who contested as an independent candidate has secured 1808 number of votes and the other respondents secured different number of votes.
2. (i) The challenge to the election of respondent No.1 is on the ground that respondent no.1 the returned candidate has not followed the mandatory direction/instructions issued by the Chief Election Commissioner, Chhattisgarh and the affidavit in the required format was not submitted in the office of returning officer by all the respondents including the returned candidate (R-1). It is further case of the petitioner that the information was required to be submitted u/s 8 of the Representation of the People Act 1951 (hereinafter referred to as the "Act of 1951") by all the candidates who participated in the election but the respondents failed to file such papers before the election commission and therefore, the nomination of the election itself was void *ab-initio*. It is further case of the petitioner that the contesting candidates

of the Parliamentary election had to file nomination forms by 05.04.2014, which was the date prescribed for filing nominations in the office of Election Commissioner, Korba along-with affidavit. It was stated that the scrutiny of nominations was fixed for 07.4.2014 and the election was held on 24.4.2014. The counting of ballot papers was done on 16.05.2014 and the result was also declared on the same date.

(ii) It was pleaded that the petitioner filed nomination form along-with affidavit in prescribed proforma as per the direction of the Commission, but respondent no.1 and other contesting respondents have not submitted the affidavits as required u/s 8 of the Representation of People's Act 1951. The further case of the petitioner is on the ground that the direction of the Commission was required to be followed as a statutory mandate, however, the petitioner noticed that none of the respondents have submitted the affidavit and the information as required u/s 8 of the Act of 1951. Therefore, when the petitioner after noticing the deficiency in nomination papers of the other contenting candidates filed his objection before the returning officer, Korba and filed his affidavit, the same was ignored and the returning officer dismissed the objection by holding that the affidavit so enclosed by the returned candidate was in proper format. It is the case of the petitioner that the returned candidate primarily respondent No.1 had filed the wrong nomination paper which was accepted by the returning officer and the same ought to have been dismissed in the initial stage when the objection was raised. Therefore, the election of returned

candidate on such ground may be declared void.

3. The pleading of the election petition would show that the averments are being made against other respondents also who contested the election. However, during the course of trial, the petitioner did not much press upon such averments except the averments made against respondent No.1 who is returned candidate, therefore, primarily while adjudicating the election petition, the court is concerned only with the nature of pleading and proof which is brought on record by the petitioner against respondent No.1 whose election is sought to be set aside. The further allegation of the petitioner is that in the earlier election of 2009 the petitioner secured 23136 votes, however, in subsequent election it was reduced to 1808 for the reason that he was not provided any security and the transparency in the election process was absent, therefore, the election is also liable to be cancelled.
4. In the return, respondent No.1 denied all the allegations and nothing was admitted. It is contended in reply that as per sub-section (3) of section 81 of the Representation of People's Act 1951, since the election petition was not accompanied by as many copies thereof as per the number of respondents mentioned in the petition and copies are not attested by the petitioner under his own signature to be a true copy of the petition, therefore, the petition is defectively filed.
5. It was further pleaded that the objection filed by the petitioner before the returning officer was rightly rejected as Section 8 of the Representation of People Act, 1951 prescribed for disqualification of a candidate only on

conviction of candidates for certain offences and the objection did not contain any allegation of election petitioner that the respondent was convicted. It was further stated that the affidavit along-with nomination papers was properly sworn by the respondent and the scrutiny of proposal was also not disputed as the oath and affirmation was taken by the respondent in accordance with law. All the adverse allegations made in the petition were also denied.

6. On the basis of pleadings and averments made in the petition, the court has framed the following issues:

S.No.	Issues	Findings
01.	Whether copy of the election petition served to respondent No.1 is attested by the petitioner under his own signature and whether the petition has been signed and verified by the election petitioner ? If not, the effect ?	Not Proved
02.	Whether the respondents have not submitted the affidavit and information under Section 8 of the Representation of the People Act, 1951 before the Returning Officer ? If not, the effect ?	Not Proved
03.	Whether the order Annexure P-2 rejecting objection filed by the election petitioner is wrong, illegal and void ?”	No
04.	Whether the returning officer acted illegally in not rejecting the nomination papers of the respondents ?	No
05.	Whether the election is liable to be quashed and whether the election petitioner is entitled to be declared as returned candidate ?”	No

7. The petitioner examined himself before the Court and except this examination, no other evidence was adduced. On behalf

of the respondent, returned candidate Dr.Bansilal Mahto was examined and Lakhanlal Dewangan was also examined on his behalf as D.W.2.

8. Issues 2, 3, & 4 are interlinked with each other as they are arising out of common facts and evidence as such these issues are being decided together. On behalf of the petitioner written submissions have been filed and he did not appear on different dates so fixed for arguments. The learned counsel appearing on behalf of the respondents, submits that the petitioner has not adduced any evidence to prove his case as such no case is made out in the election petition so as to declare the election of respondent No.1 as void and except this, no submission has been made.
9. In order to find out the fact whether the election petitioner was able to prove his case beyond the reasonable doubt, the pleadings and evidence were examined. In the statement of the petitioner Shambhu Prasad Sharma, he has stated that on 07.04.2014 when the scrutiny was fixed before the returning officer, Korba, he had filed an objection that except the petitioner, no other candidate has filed the nomination forms according to the proforma set out by the election commission. It is stated that since the nomination papers should be filed according to the direction of the Election Commission, the entire candidatures of the nomination papers of other candidates should have been rejected. There is no admission of any document by the respondent. The petitioner has not exhibited or proved any document except the oral evidence. The petitioner has not called for any witness to prove the fact which nomination papers were filed

by the returned candidate. If the petitioner was serious about the same to prove such facts, he could have called for the evidence of the returning officer to prove the document. Along-with with the petition, bunch of photocopies of the documents have been placed, but the documents have not been exhibited and proved in evidence by calling the originals. The returned candidate in his reply has not admitted those documents and instead he has stated that they have filed the affidavit as per the requirement of law. Therefore, if the petitioner was certain of the fact that the nomination papers were not supported by duly sworn affidavit then in order to prove the same, the documents should have been called and proved before the Court when the documentary evidence exists. Only on mere say of the petitioner that the affidavit was not executed as per the direction and legally acceptable procedure, it cannot be taken to be a gospel truth for want of any evidence to accept the averments of the petitioner. The petitioner himself has failed to prove the nature of the documents which were filed by respondent No.1 along-with affidavit when the nomination papers were filed.

10. As against the statement of the petitioner, respondent No.1 who has examined himself has deposed that when he wants to file the nomination paper before the returning officer, Korba, he filled it before him and at the same time all the requisite documents were filed. He has stated that along-with documents, he has also filed the property papers. He has further stated that he had filled all the necessary forms and fulfilled the formalities and thereafter, the returning

officer scrutinized the nomination form wherein no defect was found and having found that no defect exists, allowed him to contest the election. The respondent has further stated that it is wrong to assert that he has not filled the document as per the proforma of 6-1-98. He has further stated that his proposer Lakhan Lal Dewangan has also signed the nomination papers and admitted the fact that instead of full signature of Lakhan Lal Dewangan, he has signed as Lakhan Lal. It is further stated that the said proposer Lakhan Lal Dewangan is M.L.A., of Katghora constituency and he was elected prior to the election of the witness i.e., respondent No.1.

11. In the cross examination of the petitioner, when he was subsequently asked as to why the copy of document i.e., format of 6.1.1998 has not been attached to the petition, it was replied by him that he had filed his objection before the returning officer and has stated about the objection in it. Further when it was confronted that the returning officer has dismissed his plea holding that all the documents were in proper format, no reply was given instead it was stated that the returning officer was shown the format. Therefore, what is the format, where it exists was upon the petitioner to prove. Neither any such documents were summoned through proper authority nor any iota of evidence is on record to hold the form of affidavit sworn by the respondent was bad.
12. In the evidence of returned candidate, respondent No.1, he stated that in his nomination form of election, the proposer Lakhan Lal Dewangan has signed the proposal form wherein he has made his signature as Lakhan Lal. The witness D.W.2

Lakhan Lal Dewangan affirming the fact has stated that in the year 2014 he has signed as proposer of the nomination form of the returned candidate Bansilal Mahto and he has signed as Lakhan Lal in such paper.

13. The over all scrutiny of file would show that no documentary evidence is placed and exhibited by the petitioner in this case. The entire case is contested only on the presumption and oral evidence. The nature of pleadings and evidence would show that the petitioner has failed to appreciate that when he has come to the Court by filing election petition, it was his duty to satisfy the Court and discharge the burden of proof to substantiate the averments of the petition. Neither the copy of Annexure P-2 which was filed along-with the petition has been proved by the original nor the certified copy was called to prove the fact. Simply by placing a document, presumption cannot be drawn that it was the order dated 07.04.2014 passed by the returning officer whereby the objection of the petitioner was dismissed. What is the authority of the order and evidentiary value of it still remains mystery. To conclude, it is held that the petitioner was under duty to prove the fact that Annexure P-2 is result of objection made by the petitioner. The pleadings and the evidence are as vague as it could be and the petitioner has completely failed to discharge his burden of pleading and proof in the instant election petition.
14. In a case law reported in ***(1999) 1 SCC 666 – L.R. Shivarama Gowda vs. T.M. Chandrashekhar (para 10)*** Their Lordship of the Supreme Court have laid down the law that in order to declare an election to be void under

section 100(1)(d)(iv), it is absolutely necessary for the election petitioner to plead that the result of the election so far as it relates to returned candidate has been materially affected by the alleged non-compliance with the provisions of the Act or of the rules. Now reverting the election petition, it would go to show that the specific pleading is absent about the fact that the election result has been materially affected for non-compliance of any rules or the provision. In the case in hand since the court is examining the allegation of election petition as against the will of the people, therefore, the necessary pleading to this effect has to be there in the election petition to hold that there is a violation of specific rules or direction issued by the Election Commission coupled with the fact that the result of the election of the returned candidate has been materially affected by the alleged non-compliance.

15. The Supreme Court in case of *Jeet Mohinder Singh vs. Harminder Singh Jassi (1999) 9 SCC 386 in para 40* held that “the success of a candidate who has won at an election should not be lightly interfered with. Any petition seeking such interference must strictly conform to the requirements of the law. The Court further held that setting aside of an election involves serious consequences not only for the returned candidate and the constituency, but also for the public at large inasmuch as re-election involves an enormous load on the public funds and administration. Therefore, the inference is strict pleading of facts has to be followed by proof of facts.
16. In view of the pleadings and evidence, the Court has no

hesitation that the election petitioner has miserably failed to prove the pleadings and averments made by him. Neither any document has been exhibited which was attached with the petition by calling the original nor any officers were called to prove the same. Therefore, the photocopies of the documents attached with the petition remain as not proved. Consequently, no cognizance can be taken in this election petition about the existence of such document.

17. In the result, it is held that the petitioner has not been able to prove that the returning candidate has failed to give information as per section 8 of the R.P. Act 1951 nor is able to prove that the rejection of the objection raised by the returning officer was illegal and void. Further, the petitioner has been failed to prove that the returning officer acted illegally in not rejecting the nomination papers of the respondent thereby the petitioner has failed to prove issue nos. 2, 3 & 4.
18. with respect to issue no.1, the said issue was primarily made on the pleading of the returned candidate that the petitioner had not served the petition under his signature and was not properly verified by him. In this respect, if the evidence of respondent No.1 is seen it appears that the respondent was not serious to prove such fact and only superfluous statement has been made, therefore, only on the basis of averments in absence of any direct proof thereof the returned candidate has failed to discharge his burden as was raised by him which was framed under Issue No.1.
19. Therefore, on over all scrutiny of the entire pleadings and evidence, this Court is of the opinion that the election

petitioner has failed to prove the case beyond reasonable doubt. Consequently, the petition cannot be allowed or entertained only on presumption of facts and oral evidence. In the result, the petition has no merit and is dismissed. No order as to costs.

Sd/-

**GOUTAM BHADURI
JUDGE**

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