

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1676 of 2018**

1. Smt. Gulab Bai Maitri W/o Shri Jageshwar Maitri, Aged About 45 Years R/o Village Thakurpali, Post Office Churagantha, Police Station And Tahsil Dabhara, Civil And Revenue District Janjgir Champa Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, Government Of Chhattisgarh, Naya Raipur, District Raipur Chhattisgarh.
2. Collector Janjgir/ District Election Officer (Panchayat) District Janjgir Champa Chhattisgarh.
3. Shri Anupam Tiwari, Sub Divisional Officer (Revenue) Dabhara/ Competent Authority, District Janjgir Champa Chhattisgarh.
4. Shri Neelam Toppo Presiding Officer And Tahsildar Dabhara, District Janjgir Champa Chhattisgarh.
5. Shri Padum Lal Patel Panchayat Social Education Officer (Panchayat Inspector), Janpad Panchayat Dabhara, District Janjgir Champa Chhattisgarh.
6. Smt. Ahibaran Maitri W/o Shri Mayaram Maitri, Aged About 68 Years Panch Ward No. 1, Gram Panchayat Thakurpali
7. Smt. Mohanmati Maitri W/o Shri Hemcharan Maitri, Aged About 40 Years Panch Ward No. 2, Gram Panchayat Thakurpali
8. Shri Reeta Bai Chauhan S/o Shri Kamta Prasad Chauhan, Aged About 26 Years Panch Ward No. 3, Gram Panchayat Thakurpali
9. Shri Muralidhar Chauhan S/o Shri Ramesh Chauhan, Aged About 41 Years Panch Ward No. 4, Gram Panchayat Thakurpali

10. Shri Than Singh Maitri S/o Shri Neelambar Singh Maitri, Aged About 39 Years Panch Ward No. 5, Gram Panchayat Thakurpali
11. Smt. Anjani Bai Bareth W/o Shri Dularam Bareth, Aged About 28 Years Panch Ward No. 6, Gram Panchayat Thakurpali
12. Smt. Bhojkunwar Maitri W/o Shri Devnarayan Maitri, Aged About 53 Years Panch Ward No. 7, Gram Panchayat Thakurpali

Respondents No.6 1to 12 are R/o Village Thakurpali, Post Office Churagantha, Police Station And Tahsil Dabhara, Civil And Revenue District Janjgir Champa Chhattisgarh.

13. Smt. Devna Bai Yadav, W/o Shri Dilchand Yadav, Aged About 44 Years Panch Ward No. 8, Gram Panchayat Thakurpali
14. Smt. Nandani Maitri W/o Shri Mohankant Maitri, Aged About 30 Years Panch Ward No. 9, Gram Panchayat Thakurpali
15. Shri Sanjay Jangde S/o Shri Moharsai Jangde, Aged About 28 Years Panch Ward No. 10, Gram Panchayat Thakurpali,

Respondents No.13 to 15 are R/o Village Semradih, Post Office Kirari (D), Police Station And Tahsil Dabhara, Civil And Revenue District Janjgir Champa Chhattisgarh.

16. Shri Bharos Kumar S/o Shri Laharam, Aged About 44 Years Panch Ward No. 11, Gram Panchayat Thakurpali
17. Smt. Sukanti Bai W/o Shri Jogilal, Aged About 48 Years Panch Ward No. 12, Gram Panchayat Thakurpali
18. Shri Puran Das Bairagi S/o Shri Bhagwati Das Bairagi, Aged About 69 Years Panch Ward No. 13, Gram Panchayat Thakurpali
19. Smt. Fuleshwari Chandra W/o Shri Manohar Chandra, Aged About 27 Years Panch Ward No. 14, Gram Panchayat Thakurpali
20. Shri Rajkumar Maitri S/o Shri Kanhaiya Maitri, Aged About 46 Years Panch Ward No. 15, Gram Panchayat Thakurpali

Respondents No.16 to 20 are R/o Village Hardidih, Post Office Churagantha, Police Station And Tahsil Dabhara, Civil And Revenue District Janjgir Champa Chhattisgarh.

---- Respondent

For Petitioner	Shri Ramesh Nayak, Advocate
For Respondent/State	Ms Astha Shukla, Panel Lawyer
For Respondent No.	Shri Yogesh Chandra, Advocate
6, 7, 8, 9, 10, 11, 12, 13,	
14, 15, 17, 18, 19, 20	

Order On Board

By

Prashant Kumar Mishra, J.

23/10/2018

1. Petitioner would call in question the legality and validity of the order Annexure – P/13 & P/14. Under the first order (Annexure – P/13) the District Election Officer (Panchayat) has fixed the date of counting and by second order (Annexure – P/14) the Collector, Janjgir-Champa has dismissed the petitioner's application under Section 21 (4) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short 'the Adhiniyam, 1993').
2. Petitioner is the Sarpanch of Gram Panchayat Thakurpali, Janpad Panchayat Dabhra. 15 members of the said Gram Panchayat moved motion of no confidence against the petitioner on 19-1-2018. After verification of their

membership and signatures, the Sub Divisional Officer (Revenue) (for short 'the SDO') passed an order on 22-1-2018 appointing Tahsildar, Dabhra, as presiding officer for holding meeting to consider the meeting of no confidence on 31-1-2018. The meeting took place at the scheduled time and place and the motion was carried by the required majority as provided under Section 22 of the Adhiniyam, 1993. Out of 16 members present, 12 voted in favour of motion and 4 against it.

3. In her application under Section 21 (4) of the Adhiniyam, 1993 the petitioner alleged that several Panchas were taken out of the area and they were forced to vote against the petitioner. Similarly, one Panch namely; Bhojkunwar Maitri did not cast her vote personally, but was allowed to cast the vote with the help of a companion/assistant, which has violated the secrecy of the vote. If this vote is not counted against the petitioner the motion will not be carried as it fails to secure the required number.
4. Before the Collector the said Panch Bhojkunwar Maitri has filed an affidavit under Order 18 Rule 4 of the Code of Civil Procedure, 1908 stating that she being visually handicapped she had taken her nephew Kamal, S/o Deshi Ram Maitri with her to assist at the time of casting vote and she has voted in

support of motion of no confidence of her own without any coercion or undue influence. Her nephew Kamal has also filed affidavit stating that he had only accompanied his Aunt to the place where the ballot box was kept and that he has not interfered with the opinion of Bhojkunwar Maitri while casting vote. He would further state that Bhojkunwar Maitri had herself put the mark on the ballot and inserted the same in the ballot box.

5. It is the settled law that when there is contest between secrecy of ballot and free, fair & purity of elections, the former has to yield to the later. On this issue, I may profitably refer to the law laid down by the Supreme Court in *Kuldip Nayar and Others v Union of India and Others*¹, as propounded in paras 421, 463 & 464 of the report :

421) It was thus reiterated by this Court in *A. Neelalohithadasan Nadar v. George Mascrene* that out of the two competing principles, the purity of election principle must have its way and that the rule of secrecy cannot be pressed into service "to suppress a wrong coming to light and to protect a fraud on the election process." (SCC p. 626, para 11).

463) The principle of secrecy is not an absolute principle. The legislative amendment cannot be struck down on the ground that a different or better view is possible. It is well settled that a challenge to legislation cannot be decided on the

¹ (2006) 7 SCC 1

basis of there being another view which may be more reasonable or acceptable. A matter within the legislative competence of the legislature has to be left to the discretion and wisdom of the latter so long as it does not infringe any constitutional provision or violate the fundamental rights.

464) The secrecy of ballot is a vital principle for ensuring free and fair elections. The higher principle, however, is free and fair elections and purity of elections. If secrecy becomes a source for corruption then sunlight and transparency have the capacity to remove it. We can only say that legislation pursuant to a legislative policy that transparency will eliminate the evil that has crept in would hopefully serve the larger object of free and fair elections.

6. It requires notice that when the votes were polled during consideration of no confidence motion Bhojkunwar Maitri was allowed to be assisted by her nephew, but the petitioner did not raise any protest at that time. Having found that the no confidence motion has been passed against her now the petitioner is searching for a ground alleging violation of secrecy of ballot.
7. Considering the entire facts and circumstances of the case, the Collector rightly held that Bhojkunwar Maitri was assisted by her nephew who guided her near the ballot box and he has not interfered with her preference to vote, therefore, there is no violation of secrecy of ballot.

8. In the result, the writ petition, being devoid of merit, is liable to be and is hereby dismissed, leaving the parties to bear their own costs.

Sd/-

Judge
Prashant Kumar Mishra

Gowri