

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 3128 of 2017

Manoj Kumar S/o Bhakulal Aged About 38 Years Caste Gabel, R/o Village Bundeli, Gram Panchayat, Ward No. 1, P. S. And Tahsil & Block Malkhroda, District Janjgir Champa Chhattisgarh **--- Petitioner**

Versus

1. State of Chhattisgarh through the Secretary, Department of Panchayat And Rural Development, Mahanadi Bhawan, Mantralaya New Raipur Chhattisgarh.
2. Sub Divisional Officer, Revenue Sakti, District Janjgir Champa Chhattisgarh.
3. Returning Officer, Tahsildar, Malkharoda, Block Malkharoda, District Janjgir Champa District : Janjgir-Champa, Chhattisgarh
4. Presiding Officer, Poling No. 23, Netram Kuldeep, Aged About 56 Years, R/o Village Tundri, P. S. & Tahsil Dabhra, District Janjgir Champa Chhattisgarh.
5. Virendra Kumar S/o Krishna Kumar, Aged About 32 Years Caste Gabel, R/o Village Bundeli, Gram Panchayat, Ward No. 1, P. S. And Tahsil & Block Malkharoda, District Janjgir Champa District : Janjgir-Champa, Chhattisgarh **--- Respondents**

For Petitioner	:	Mr. Ishwar Jaiswal, Advocate
For the State	:	Mr. Sudeep Verma, Dy. Govt. Advocate
For respondent No. 5	:	Mr. Aditya Tiwari, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

24.04.2019

1. The petitioner has contested the election to the post of ward member held at Gram Panchayat Bundeli in which a seat of Panch was reserved for OBC Male. He lost the election to respondent no.4 who after counting was declared elected as ward member. In this writ petition filed under Article 226 of the Constitution of the petitioner has mainly prayed for the following relief(s) :

“10.1 That this Hon'ble Court may kindly pleased to call the entire records of the Panchayat Case No.06-A-89(21)/2014-15 from the office of Sub Divisional Officer Sakti Distt. Janjgir Champa (C.G).

10.2 That the Hon'ble Court may kindly be pleased to issue a writ quashing the order dated 25.09.2017 passed by Sub-Divisional Officer in Panchayat Case No.06/A-89(21)/2014-2015;

10.3 That the Hon'ble Court may kindly be pleased to issue a writ directing the respondent authorities to appoint the petitioner in the post of Panch of Ward no.1 of Gram Panchayat, Bundeli”

2. On earlier occasion, this Court has directed the State to produce record of the Election Tribunal as well as the ballots of the concerned ward. Subsequently, the State was directed to sort out the number of votes as it is contended that out of 68 votes, 3 votes have been rejected and 65 votes have been taken into account. Petitioner Manoj Kumar got 32 votes and respondent Virendra Kumar got 33 votes.
3. Learned counsel for the petitioner would submit that out of 3 cancelled votes, one vote which has been cancelled should have been counted in favour of the petitioner as similar thumb impression has been marked over a ballot for Manoj Kumar Gabel, the petitioner herein. Likewise out of 32 votes, one

ballot which is stated that though the impression is not clear and correct but it was counted in favour of Virendra Kumar Gopal and in another ballot, though the casting of vote mark was made at the portion of Virendra Gopal but at the same time it also bears thumb impression on upper part wherein the name of Manoj Kumar exists, therefore, that should not be counted in favour of the winning candidate..

4. Learned counsel for respondent no.5 submits that no written complaint was made at the time of counting of votes and the petitioner has directly raised his objection before this Court.
5. Learned State Counsel has produced 3 cancelled votes. Cancelled ballots were perused. It would show that there are 3 marks of thumb impressions in one; in another one no marking was made and third one marking was placed in the middle. Therefore, three ballots were treated as invalid. Another ballot which was counted in favour of the returned candidate would show that one part bears clear marking in favour of Virendra Kumar Gabel and some mark was at the upper part which cannot be held that the ballot/vote was not in favour of Virendra Kumar Gabel. The faint mark was over the election symbol, therefore, the notion of the voter is clear that though the marking

in the ballot was faint, the same cannot be disqualified to be a valid vote.

6. After perusal of the ballot and the documents, no interference can be made in the order dated 25.09.2017. The petition is accordingly dismissed. The documents and ballots shall be sent back after putting it in a sealed cover.

**Sd/- -
(GOUTAM BHADURI)
JUDGE**