

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1275 of 2021**

Smt. Raimuni @ Smt. Raimuni Lakda Wife of Shri Jogi Lakda Aged About 46 Years Elected Sarpanch Gram Panchayat Tildega, R/o. Village - Tildega, Janpad Panchayat- Patthalgaon, Tahsil and Police Station- Patthalgaon, District : Jashpur, Chhattisgarh
--- Petitioners

Versus

1. The State of Chhattisgarh through the Secretary, Department of Panchayat and Rural Development, New Mantralaya, Mahanadi Bhawan, Atal Nagar, New Raipur, District : Raipur, Chhattisgarh
2. The Commissioner Chhattisgarh Election Commission (Local Body), New Mantralay Campus, Mahanadi Bhawan, New Raipur, Atal Nagar, District : Raipur, Chhattisgarh
3. The Collector Cum Returning Officer, District : Jashpur, Chhattisgarh
4. Mr. Yogendra Srivas The Sub Divisional Officer (Revenue) Cum Presiding Officer, Election Tribunal, (U/s. 122 (1)(I) of The Panchayat Raj Adhiniyam, 1993), Patthalgaon, Distt. Jashpur (Chhattisgarh).
5. Mr. Mahesh Sharma Tahsildar-Cum-Panchayat Election Officer, Tahsil Patthalgaon, District : Jashpur, Chhattisgarh
6. Mr. Ashwani Kumar Lecturer, Presiding Officer, Panchayat Election, Booth No. 61, Gram Panchayat - Tildega, Tahsil and Police Station- Patthalgaon, District : Jashpur, Chhattisgarh
7. The Chief Executive Officer Janpad Panchayat - Patthalgaon, District : Jashpur, Chhattisgarh
8. Smt. Indu Sidar Wife of Shri Ghanshyam Sidar, Caste - Gond, R/o. Vill. Tildega, Tahsil and Police Station - Patthalgaon, District : Jashpur, Chhattisgarh, **Secured 3rd Place**
9. Smt. Laxmin Sidar, Wife of Shri Mahendra Sidar R/o. Vill. Patthalgaon, District : Jashpur, Chhattisgarh, **Secured 2nd Place.**
--- Respondents

For the Petitioner	: Mr. A. N. Bhakta & Mr. Vivek Bhakta, Advocates.
For the State	: Mr. Ashish Tiwari, Govt. Advocate
For Respondent no.4	: Mr. Sanjay Agrawal, Advocate
For respondents 6 & 8	: Mr. Awadh Tripathi, Advocate
For respondent No.7	: Mr. Pawan Kesarwani, Advocate
For respondent no.9	: Mr. Devashish Biswas, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****30.09.2021**

Heard.

1. The instant petition has been filed by the returned candidate for the following relief(s) :

“10.1	That the Hon'ble Court may kindly be pleased to call for the entire records of the case from the authorities concerned for its kind perusal.
10.2	That the Hon'ble Court may kindly be pleased to transfer the Election Petition No. 202002031100003/1/Year 2019-20 (A-89/21) pending before the Election Tribunal, Patthalgaon to any other Election Tribunal of any district of State of Chhattisgarh except District Jashpur (C.G).
10.3	That the Hon'ble High Court may kindly be pleased to set-aside the order dated 15.02.2021 (Annexure P-1) and allow the petitioner & provide the opportunity of cross-examinations of witnesses i.e., Non-applicants 3 & 4, in the interest of justice.
10.4	Any other relief, which this Hon'ble Court deems fit and proper be also awarded.”

2. Grievance of the petitioner is that the Presiding Officer of the Election Tribunal was biased towards this petitioner on a petition filed u/s 122 of the C.G. Panchayat Raj Adhiniyam 1993 by respondent no.8 Indu Sidar. The prayer therefore was made that the case be transferred to other officer. Further prayer is made that non-applicants 3 & 4 i.e., Mahesh Sharma, Tahsildar and Ashwini Kumar, Presiding Officer who have been arrayed in the election petition may be allowed to be cross examined against their evidence. During the course of proceeding, this petition was filed on 01.03.2021 and it is stated that subsequently the Presiding Officer, i.e., the SDO who was in seizin of the election petition u/s 122 of the P.R. Adhiniyam, 1993 has been transferred,

therefore, relief no.10.2 has already been satisfied and this Court is not required to adjudicate on this issue. With respect to relief No.10.3, it has been prayed that non-applicants 3 & 4 i.e., Mahesh Sharma and Ashwani Kumar who are the Tahsildar cum Election Officer and Presiding Officer respectively may be allowed to be cross examined.

3. Learned counsel for the petitioner would submit that respondents 3 & 4 cannot be allowed to be called in evidence which has been directed by order dated 14.01.2021 and in furtherance it is stated that the order dated 15.02.2021 whereby the right to cross examine has been closed is illegal.
4. Learned counsel for respondent no.8 would submit that the petitioner himself refused to cross examine the witnesses as such the right to cross examine was closed, therefore, relief No.10.3 cannot also be granted to the petitioner.
5. A perusal of the order sheet placed on record would show that on 14.01.2021 the Presiding Officer thought it expedient to call for the evidence of non-applicants 3 & 4 who were the Election Officer and Presiding Officer and the case was adjourned to 21.10.2021. On that date, the Presiding Officer was on leave, therefore, It was taken-up on 28.1.2021. On 28.01.2021, respondent no.3 the returning officer was examined but his cross examination remained incomplete. Thereafter, the case was fixed for cross examination of respondents 2, 3 & 4 on 04.02.2021. On that date, the evidence by way of statement under Order 18 Rule 4 of CPC was filed on behalf of respondent No.4 and it was fixed for cross-examination of non-applicants 2, 3 & 4. On 04.2.2021 nothing transpired and thereafter on 15.02.2021 the case was again taken-up. On 15.02.2021, an application was filed to transfer the case to some other officer and time was sought for which was not granted and thereafter, the

petitioner refused to cross examine non-applicants 2, 3 & 4 of the election petition. As such, the right to cross-examine was closed. Subsequently the petition has been filed.

6. Considering the issue involved in this case, it appears that on one occasion because of the fact that the petitioner sought for transfer of the case to some other Court, the cross examination was avoided and on that date, the cross examination was closed. Taking into consideration the facts situation of the case, in the opinion of this Court, it would be appropriate if an opportunity is granted to the petitioner to cross examine the witnesses i.e., non-applicants 2, 3 & 4 of the election petition to advance the cause of justice on merits.
7. Accordingly, it is directed that the parties shall appear before the Presiding Officer the SDO Pathalgaon on 20th October, 2021. Thereafter, the SDO shall proceed to decide the case after giving opportunity to the petitioner to cross examine the witnesses and shall decide the election petition in accordance with law within a further period of 60 days.
8. With the above observations/direction, this writ petition stands disposed off.

**Sd/-
GOUTAM BHADURI
JUDGE**