



HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition (c) No. 3685 of 2007

56

Petitioner

Rakesh Verma, Son of Shri Chintaram Verma, aged about 42 years, Resident of Tonatar, Police Station Bhathapara Rural, Tahsil Bhathapara, District Raipur, CG.

Versus

Respondents

- 1) Chandram Verma Son of Shri Dhajaram Verma, aged about 41 years, Resident of Village Patan, Police Station Bhathapara, Rural, Tahsil Bhathapara, District Raipur, CG.
- 2) Tikaram Netam, Son of Shri Kuduram Netam, aged about 36 years, Occupation Agriculturist, Post Barti Dhanwai, Police Station Bhathapara Town, Tahsil Bhathapara, Dist. Raipur, CG.
- 3) Ishwar Singh Thakur, Son of Shri Raghuraj Singh Thakur, aged about 58 years, Resident of In front of Church, Near Subhash Bazar, Bhathapara, Police Station, Bhathapara Town, Tahsil Bhathapara, District Raipur, CG.
- 4) Devanand Verma son of Shri Madho Prasad Verma, aged about 40 years, Occupation Agriculturist, resident of village Navagraon, Present address Parsuram Ward Bhathapara, Police Station Bhathapara, Tahsil Bhathapara, District Raipur, CG.
- 5) Dhan Singh Dhruv son of Shri Prabhuram Dhruv, aged about 52 years, Resident of Village Pasaid, Police Station Bhathapara Rural, Tahsil Bhathapara, District Raipur, CG.
- 6) Panchram Gond son of Shri Kunjram Gond, aged about 40 years, resident of Village Dhaneli, Post Dhaneli, Police Station Bhathapara Rural, Tahsil Bhathapara, District Raipur, CG.

- 7) Ramashankar Patel Son of Shri Panchram Patel, aged about 35 years, Resident of Village Karhi Bazar, Police Station Balodabazar, Chowki Karhi Bazar, Tahsil Balodabazar, District Raipur, CG.
- 8) Ramesh Navrange, Son of Shri Suhasram Navrange, aged about 35 years, resident of Village Mopka, Post Mopka, Police Station Bhathapara Rural, Tahsil Bhathapara, District Raipur, CG.
- 9) Rajendra Giri Goswami, Son of Shri Balram Giri Goswami, aged about 38 years, Resident of Village Khaira, Police Chowki Karhi Bazar, Police Station Balodabazar, District Raipur, CG.
- 10) Ramkuresh Joshi, Son of Shri Ramsai Joshi, aged about 36 years, Resident of Village Navagaon, Post Tonatar, Police Station Bhathapara Rural, Tahsil Bhathapara, District Raipur, CG.
- 11) Sukhnandan Sahu Son of Shri Kunjram Sahu, aged about 42 years, occupation Agriculturist, Resident of Village Kosmanda, Post Mopka, Police Station Bhathapara Rural, Tahsil Bhathapara, District Raipur, CG.
- 12) Sushil Lahre, Son of Shri Mahesh Lahre, aged about 40 years, Resident of Village Devrani, Post Maldhi, Police Station Bhathapara Rural, Tahsil Bhathapara, District Raipur, CG.
- 13) Santru Banjare Son of Shri Sukalu Banjare, aged about 45 years, resident of Village Khamharia, Post Arjuni, Police Station Bhathapara Rural, Tahsil Bhathapara, District Raipur, CG.
- 14) Sampat Verma, Son of Shri Balram Verma, aged about 42 years, resident of Village Pasid, Post Bitkuli, Police Station Bhathapara Rural, Tahsil Bhathapara, District Raipur, CG.

58

- 15) The Election Officer, Executive Officer Bhathapara, Mandi, Krishi Upaj Mandi Bhathapara, Police Station Bhathapara Town, Post and Tahsil Bhathapara, District Raipur, CG.
- 16) The Managing Director, Chhattisgarh State Krishi Vipnan Mandi Board, Raipur, CG.
- 17) The Collector and Election Officer (Mandi), Raipur, District Raipur, CG.
- 18) The Sub Divisional Officer (Revenue) and Deputy Election Officer, Mandi Election, Bhathapara, District Raipur, CG.

(Writ Petition under Article 226 of the Constitution of India)

SB: Hon'ble Mr. Justice Satish K. Agnihotri

Present:

Shri P.P. Sahu, counsel for the petitioner.
Shri Yashwant Singh Thakur, Govt., Advocate for the State.

ORAL ORDER

(Passed on 29th June, 2007)

Learned counsel appearing for the petitioner submits that the respondent No.1 was elected for the post of Representative of Agriculturist from Krishi Upaj Mandi, Bitkuli Area No.2/5 of Krishi Upaj Mandi Bhathapara, held in the month of January, 2006.

- 2) The petitioner, being aggrieved, filed an election petition under the provisions of Section 66-A of the Chhattisgarh Krishi Upaj Mandi Adhiniyam, 1972. The election petition was allowed ex parte vide order dated 21-5-2007 (Annexure P/4). Subsequently, respondent No.1 filed an application for restoring the election petition to the file under Order 9 Rule 13 read with Section 151 of the Code of Civil procedure (for short, "CPC").

- 3) Learned counsel appearing for the petitioner further submits that the provisions of the C.P.C., are not applicable to the present case and the Election Tribunal has no jurisdiction to restore the petition to the file under any circumstances. The application has been ordered for restoration of the case to the file without affording an opportunity of hearing to the petitioner. Further, the application was not supported by medical documents.
- 4) Be that as it may, on perusal of the impugned order dated 8-6-2007, it is apparent that the respondent No.1 could not contest the election petition properly after filing his written statement as he fell sick during period from 4-5-2007 to 25-5-2007. The Tribunal after having considered the fact that the first order dated 21-5-2007 was passed ex parte, without affording an opportunity of hearing to the respondent No.1, restored the petition to the file.
- 5) So far as contention of learned counsel appearing for the petitioner with regard to the notice is concerned, after restoration of the case, notice has been issued to the petitioner. The petitioner will have sufficient opportunity of hearing before the case is considered on merit and appropriate order is passed.
- 6) It is well settled principle of law that no adverse order can be passed without affording an opportunity of hearing to the person concerned. It is one of the cases where election petition was allowed without hearing the elected candidate i.e., respondent No.1. Thus, it is desirable, in the interest of justice, that the matter be decided after affording an opportunity of hearing to both the parties keeping in view the requirements of administration of justice, the impugned order passed by the Tribunal is just and proper and it does not warrant any interference.
- 7) The petition is accordingly dismissed.

Sd/-
Satish K. Agnihotri
Judge