

(2008) 11 CHH CK 0011
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 5912 of 2005

Kunti Bai (Smt.)

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 25-11-2008

Acts Referred:

Chhattisgarh Panchayat Raj Adhiniyam, 1993 — Section 122
Constitution of India, 1950 — Article 227

Citation : (2009) 1 MPJR 80

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.

By this petition, the petitioner challenges the order dated 29.7.2006 (Annexure P/4), passed by the Sub Divisional Officer Sakti, District Janjgir Champa in Revenue Case No.12/A-89/04-05.

The petitioner and the respondent No.5 (Smt. Hema Bai) were rival candidates in the election held on 23.1.2005 for the post of panch from the Ward No.3 of Village Panchayat Arsia Tahsil Jaijaipur, district Janjgir Champa. The respondent No. 5 filed an election petition (Annexure P/1) u/s 122 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993, stating that in the election held on 23.1.2005 total 44 votes were caste, out of which three votes were declared as invalid. Thus out of 41 valid votes, 25 votes were caste in favors of the respondent No.5 and 16 votes were caste in favour of the petitioner. It was told by the Presiding Officer on 23.1.2005 that the respondent No 5 would get the certificate that she is elected as Panch through the election officer, Jaijaipur. But surprisingly, on 1.2.2005 the petitioner had got the certificate that she is elected as Panch, through the Secretary of the Panchayat.

The Sub Divisional Officer (Revenue), Sakti entertained the election petition and

directed for recounting of votes. In recounting of votes it was found that the concerned officer inadvertently mentioned that the respondent No. 5 got 15" votes, instead of "25" Thus, vide order dated 29.7.2006 (Annexure P/4) the respondent No.5 was declared as winning candidate.

Learned counsel appearing for the petitioner submits that without affording proper opportunity of hearing to the petitioner, who was declared as a winning candidate for the post of Panch from ward No.3 of village Panchayat Arsia, the impugned order has been passed Thus, the impugned order is not sustainable in the eyes of law.

I have heard learned counsel appearing for the parties and perused the documents appended thereto.

It is evident from the order sheets (Annexure P/2) that the election petition was registered on 5.2.2005 and notices were issued to the parties. Thereafter, the proceedings were taken up on various dates and after summoning the relevant records and affording opportunity of hearing to the parties, it was found by the Sub Divisional Officer (Revenue), Sakti that the petitioner got 16 votes and respondent No. 5 got 25 votes out of 41 valid votes, whereas, 2 votes were declared as invalid out of total caste 43 votes.

In view of the above, it is clear that the Sub divisional Officer (Revenue) found strong and cogent reasons in directing for recounting of votes and thereafter passing of the order that the votes polled in favour of the petitioner have been counted in favour of other candidate and as such, result and certificate was vitiated. Thus, it is apparent that the Sub Divisional Officer (Revenue) has rightly found that the will of people was in favour of the respondent No.5.

The contention of learned counsel appearing for the petitioner that the petitioner was not afforded an opportunity of hearing is contrary to the facts on record. Notice was issued and proper opportunity of hearing was afforded to all the parties. All the records were examined and thereafter the Sub Divisional Officer (Revenue), Sakti, recorded his findings that by-mistake it was recorded that respondent No.5 got "15" votes instead of "25" votes.

It is well settled principle of law that will of people, expressed through election, cannot be set aside on a vague and flimsy ground, as is made in the instant case, except in cases of gross violation of norms, rules regulations and statutory provisions.

This Court, in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India should refrain itself from interfering with the order passed by the Court below, except in such cases where perversity, illegality irregularity or jurisdictional error is writ large on the face of the record, which is not in the present case.

In view of the foregoing, this petition is de hors the foundation and merit, It is accordingly dismissed, summarily.

Consequently, M(W) P No. 4430/06, application for grant of adinterim writ, stands disposed of.