

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 712 of 2015

- Vidya Devi Saxena W/o Birendra Kumar Saxena, Aged About 29 Years R/o Village Buchihardi, Post Baloda, Tahsil Akaltara, District Janjgir Champa, (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Welfare Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur, (Chhattisgarh)
2. Sub Divisional Officer (Revenue) And Presiding Officer/ Specified Officer, Panchayat Election Petition, Janjgir, District Janjgir Champa, (Chhattisgarh)
3. The Collector/ District Election Officer, District Janjgir Champa, (Chhattisgarh)
4. Chief Executive Officer, Janpad Panchayat/ Assistant Election Officer, Akaltara, District Janjgir Champa, (Chhattisgarh)
5. The Tahsildar/ Returning Officer, Janpad Panchayat Akaltara, District Janjgir Champa (Chhattisgarh), (wrongly mentioned the name of the authority).
6. Presiding Officer, Election Booth No. 18, Gram Panchayat Buchihardi, Block Akaltara, District Janjgir Champa (Chhattisgarh) & Lecturer Panchayat, Govt. Higher Secondary School, Kurma Tahsil Baloda, District Janjgir Champa (Chhattisgarh) (wrongly mentioned the name of authority)
7. Presiding Officer, Election Booth No. 19, Gram Panchayat Buchihardi, Block Akaltara, District Janjgir Champa (Chhattisgarh) & Lecturer Panchayat, Govt. Hr. Secondary School, Tahsil, District Janjgir Champa, (Chhattisgarh) (wrongly mentioned the name of authority)
8. Presiding Officer, Election Booth No. 20, Gram Panchayat Buchihardi, Block Akaltara, District Janjgir Champa (Chhattisgarh) & Lecturer Panchayat, Govt. Higher Secondary School, Jata, Tahsil Champa, District Janjgir Champa, (Chhattisgarh) (wrongly mentioned the name of authority)
9. Presiding Officer, Election Booth No. 21, Gram Panchayat Buchihardi, Block Akaltara, District Janjgir Champa, (Chhattisgarh) & Upper Division Teacher, Govt. Middle School Baksara, Tahsil Baloda, District Janjgir Champa, (Chhattisgarh) (wrongly mentioned the name of authority)

10. Presiding Officer, Election Booth No. 22, Karhidih, Gram Panchayat Buchihardi, Block Akaltara, District Janjgir Champa, (Chhattisgarh) & Upper Division Teacher, Block Baloda, District Janjgir Champa, (Chhattisgarh) (wrongly mentioned the name of authority)
11. Smt. Isha Rate W/o Arun Kumar Ratre Aged About 32 Years R/o Village Karhidih, Post Baloda, Tahsil Akaltara, District Janjgir Champa, (Chhattisgarh)
12. Smt. Asha Bai Patle W/o Devi Prasad Patle Aged About 30 Years R/o Village Buchidih, Post Baloda, Tahsil Akaltara, District Janjgir Champa, (Chhattisgarh)
13. Smt. Tirath Bai Patle W/o Sitaram Patle Aged About 40 Years R/o Village Buchidih, Post Baloda, Tahsil Akaltara, District Janjgir Champa, (Chhattisgarh)
14. Smt. Bharti Dewangan W/o Satyendra Dewangan Aged About 27 Years R/o Village Buchidih, Post Baloda, Tahsil Akaltara, District Janjgir Champa, (Chhattisgarh)
15. Smt. Raj Kumar Yadav W/o Barelal Yadav Aged About 30 Years R/o Village Buchidih, Post Baloda, Tahsil Akaltara, District Janjgir Champa, (Chhattisgarh)
16. Smt. Shanti Bai Banjare W/o Gorelal Banjare Aged About 35 Years R/o Village Buchidih, Post Baloda, Tahsil Akaltara, District Janjgir Champa, (Chhattisgarh)
17. Smt. Sarojani Bai Yadav W/o Mukesh Yadav Aged About 25 Years R/o Village Buchidih, Post Baloda, Tahsil Akaltara, District Janjgir Champa, (Chhattisgarh)

---- Respondent

For Petitioner	Mr. Vivek Singhal, Advocate
For Respondent/State	Mr. Majid Ali, Panel Lawyer
For Respondent No.11	Mr. M.D. Dhote, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board

17/12/2015

Heard finally with the consent of learned counsel for the parties.

(2) The petitioner is aggrieved by the order passed by the Election Tribunal i.e. SDO (Revenue), Janjgir, dismissing his Election Petition in

limine without framing issues or recording evidence of the parties.

(3) While Mr. Singhal, learned counsel for the petitioner would submit that in view of the settled legal position, the impugned order deserves to be set-aside at once, Mr. Dhote, learned counsel for respondent No.11, would submit that if the Election Petition does not disclose any triable cause of action, the Election Tribunal would be competent to dismiss the Election Petition in limine.

(4) In the matter of **Ajuram vs. Shatruhan Sahu and others (W.P. (C) No.2583 of 2011 decided on 28.08.2012)**, this Court has held thus in para 5 to 7 :

5. After going through the record, it appears that the Election Tribunal has not framed any issue(s) in the matter. After reply submitted by Respondent Nos.9, 10 & 11, the Presiding Officers of the respective Polling Booths with respect to whom, the election irregularities in polling and recounting has been alleged, even if the petitioner did not submit his reply, when the contents of the election petition have been controverted by some of the non-applicants/defendants, it was the duty of the Election Tribunal to have framed issues and recorded evidence on those issues. Not only, this, the Election Tribunal recorded the statement of witnesses on a date which was not fixed in the order sheet. When the matter was fixed for evidence on 12.01.2011 and for any reason, whatsoever the matter could not be taken up it was the duty of the Election Tribunal to have informed the parties about the change of date of hearing instead of writing some other dates in the order sheet and then proceed to record evidence on the date of hearing. Similarly when fresh application was moved under Order 6 Rule 17 of CPC by which the election petitioner has made substantial

change in his election petition with respect to ground of recount and corresponding prayer in the relief clause, copy of this application should have been served and the application should have been taken up for hearing in the presence of the petitioner.

6. In the matter of *Parvatia vs. Padmini and others, 2005 (2) CGLJ 335*, this Court has taken a view that the Election Tribunal cannot proceed to decide the election petition u/s 122 of the C.G. Panchayat Raj Adhiniyam without framing issues and without recording evidence in those issues. This judgment has consistently been relied upon by this Court in number of cases. Thus, the trial of election petition as conducted by the Election Tribunal is vitiated on account of non-adherence to the procedure and being in violation of law laid down by this Court in *Parvatia (supra)*

7. Similarly, in the matter of *Uday Chand vs. Surat Singh and other, (2009) 10 SCC 170 Para 32*, Hon'ble the Supreme Court has held that even if the recount has taken place and it has produced a result whereby the election of the returned candidate has been set aside and the election petitioner has been declared elected, that will not render an appeal against the said order infructuous."

(5) In the case at hand, the Election Petition was filed on 15.03.2015, which was posted for preliminary hearing on 11.03.2015 without issuing notice of the Election Petition to the opposite parties. After hearing the Election Petitioner on 11.03.2015, the Election Tribunal dismissed the Election Petition on 25.03.2015. Thus, it would clearly appear that the Election Tribunal has not even issued notice to the opposite parties much less has framed issues and recorded evidence of the parties. The

impugned order is wholly unsustainable as it is in absolute violation of the procedure prescribed under Rule 11 Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification For Membership) Rules, 1995 (in short "the Rules, 1995").

(6) Consequently, the impugned order is set-aside and the matter is remitted back to the concerned Election Tribunal for deciding the Election Petition afresh in accordance with law. Needless to say the Election Tribunal shall issue notice to the respondents and obtain their reply. If the respondents raise any objection to the maintainability of the Election Petition, the Election Tribunal may proceed to decide the same under Rule 8 of the Rules, 1995 and if the Election Petition is found not to suffer from any inherent fatal defects, the Tribunal shall frame issues; give opportunity to the parties concerned to lead evidence and thereafter, decide the same on its own merits in accordance with law. Let the hearing of the Election Petition be concluded within a period of 06 months from the date of submission of certified copy of this order.

(7) The writ petition stands allowed to the extent indicated above.

Sd/-

Judge

(Prashant Kumar Mishra)

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