

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1099 of 2015

- Prashannchit Toppo W/o Shri Ajaydan Aged About 40 Years Caste Uraon, R/o Village Kaliya, Tahsil Bagicha District Jashpur Chhattisgarh

---- Petitioner

Versus

1. Smt. Sumati Nag W/o Shri Premnath Caste Nageshiya R/o Kaliya, Tahsil Bagicha, District Jashpur Chhattisgarh
2. The Sub Divisional Officer (R) Tahsil Bagicha, District Jashpur Chhattisgarh
3. The Returning Officer (Panchayat Bagicha (Namely Shri B.R. Sahu) Tahsil Bagicha, District Jashpur Chhattisgarh

---- Respondent

For Petitioners	Mr. Sushil Dubey, Advocate
For Respondent No.1	Mr. Harish Khuntiya, Advocate
For Respondent /State	Mr. Avinash Singh, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

30/10/2015

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

(2) The petitioner is an elected Sarpanch of Gram Panchyat Kaliya having been elected in the election held on 07.02.2015. Her election was challenged by respondent No.1 by preferring Election Petition under Section 122 of the Panchayat Raj Adhiniyam, 1993. The Election Petition has been allowed by the impugned order passed by the Election

Tribunal i.e. SDO (Revenue), Tahsil Bagicha District Jashpur (C.G.).

(3) It is common ground that before proceeding to decide the Election Petition, the Election Tribunal has not followed the procedure laid down under the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification For Membership) Rules, 1995 (in short "the Rules, 1995").

(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) Admittedly, in the present case also, the Election Tribunal has neither framed issues nor recorded evidence of the parties on such issues before proceeding to decide the election petition.

(6) Therefore, in the view of the above settled legal position, the impugned order is set-aside and the matter is remitted back to the concerned Election Tribunal to decide the Election Petition afresh in

accordance with the Rules, 1995. Let the Election Petition be finally decided 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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