

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1210 of 2015**

- Basanti Bai W/o Ajeet Dehari Aged About 29 Years Caste Bhuiya R/o Vill. Karma, Thana & Tahsil Bagicha Distt. Jashpur (Chhattisgarh)

---- **Petitioner****Versus**

1. Domnika Xalxo W/o Nestore Xalxo Aged About 39 Years Caste Uraon, R/o Vill. Karma Thana & Tahsil Bagicha Distt. Jashpur (Chhattisgarh)
2. Sebestiyana Tirkey W/o Libon Tirkey Aged About 34 Years Caste Uraon, R/o Vill. Karma Thana & Tahsil Bagicha Distt. Jashpur (Chhattisgarh)
3. The Sub Divisional Officer (Revenue) Sub - Division Bagicha Distt. Jashpur (Chhattisgarh)
4. The Returning Officer (Panchayat) Bagicha, Tahsil Bagicha Distt. Jashpur (Chhattisgarh)

---- **Respondents**

For Petitioner	:	Shri NK Malviya, Advocate
For Respondents No.1 & 2:	:	Shri Harish Khuntiya, Advocate
For Respondent-State	:	Ms. K. Tripti Rao, PL for the State

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****01/12/2015**

1. Petitioner is aggrieved by the final order passed by the Sub-Divisional Officer (R), Bagicha, district Jashpur, the election tribunal under the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short 'the Adhiniyam, 1993').
2. Petitioner is the elected Sarpanch of Gram panchayat, Karma, Tehsil Bagicha. The notification declaring him to be elected was issued on 07.02.2015 and thereafter respondent No.1 preferred election petition under

Section 122 of the Adhinyam, 1993. The election tribunal issued notices to the opposite parties and obtained their reply, however, the election petition has been allowed and petitioner's election has been declared void without framing issues and without affording the parties opportunity to adduce evidence.

3. Without going into other details of the matter, it would be apt to refer to the settled legal position that an election petition under the Adhinyam, 1993 is to be tried in the manner required under Rule 11 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices And Disqualification for Membership) Rules, 1995 (for short the 'Rules, 1995') unless the election petition warrants dismissal in *limine* for non-compliance of mandatory provisions, under Rule 8 thereof.
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. Since admittedly, in the present case also, the election petition has been decided without framing issues or recording evidence of the parties, the impugned order suffers from palpable error of jurisdiction. It requires to be and is hereby set aside. The matter is remitted back to the election tribunal for taking decision afresh by proceeding ahead in the matter by framing issues and affording opportunity to the parties to adduce evidence on those issues. Let the election petition be decided within a period of six months from the date of framing of issues.
6. Accordingly, the writ petition stands allowed to the extent indicated above.

Sd/-

Judge
Prashant Kumar Mishra

ashu