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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1998 of 2015**

- Smt. Kareliya Bai W/o Shri Sahettar Bharia, Aged About 53 Years R/o Village Dhanras, Tehsil & Police Station Katghora, Distt. Korba (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Panchayat And Rural Development, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur (Chhattisgarh)
2. Sub - Divisional Officer, Revenue, Katghora, Distt. Korba (Chhattisgarh)
3. Smt. Shivkala, W/o Shri Chatrapal Singh Kanwar, Aged About 42 Years R/o Village Dhanras, Tehsil & Police Station Katghora, Distt. Korba (Chhattisgarh)

---- Respondent

For Petitioner : Shri Anand Shukla, Advocate.
 For Respondents 1 & 2 : Shri Bhaskar Payashi, Panel Lawyer.
 For Respondent No.3 : Shri Pravin Dhurandhar, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****03/12/2015**

1. The petitioner is Sapanch of Gram Panchayat Dhanras, Tehsil Katghora, District Korba. She was elected for the said office in the election held on 4.2.2015 for which a notification/declaration of her election was issued on 7.2.2015.
2. The petitioner is aggrieved by the order passed by the Sub Divisional Officer (Revenue) Katghora (for short 'the Election Tribunal') in an

election petition under Section 122 of the Panchayat Raj Adhiniyam, 1993 (for short 'the Act, 1993') whereby her election has been set aside.

3. Respondent No.3 preferred election petition on the ground that the petitioner is not a member of ST community, therefore, she was not entitled to contest election for the office of Sarpanch, Gram Panchayat Dhanras which was reserved for Scheduled Tribe Woman category candidate.
4. Admittedly, the Election Tribunal did not frame any issue but has recorded evidence of the parties and thereafter concluded that the petitioner has failed to establish that she belongs to 'Bhariya' ST community, therefore, her election deserves to be declared void.
5. In the Election Petition, respondent No.3 averred in paras-6 & 9 that the petitioner belongs to 'Bhariya' woman category, with further averment that the said caste is not included in the list of ST for the State of Chhattisgarh. According to the petitioner, since the law does not require submission of caste status certificate with the nomination paper, the Election Tribunal should have framed specific issue so that the petitioner could have led evidence on that issue.
6. Per contra, it is argued by learned counsel for respondent No.3 that the parties being aware of their respective cases and having led evidence before the Election Tribunal without any demur and the petitioner having not demonstrated as to what prejudice is caused to her by not framing issues by the Election Tribunal, the order does not suffer from any illegality.

7. In **Ajuram Vs. Shatruhan Sahu and others** {WPC No.2583/2011, decided on 28.8.2012} and **Parvatia Vs. Padmini & others** {2005 (2) CGLJ 335}, this Court has held that unless and until the election petition warrants dismissal *in limine* under Rule 8 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (for short 'the Rules, 1995'), the same has to be tried in the manner provided under Rule 11 of the Rules, 1995. Therefore, the Election Tribunal should have framed issues before proceeding to decide the matter.
8. True it is that the petitioner has not objected to the recording of the evidence by the Election Tribunal without framing issues, however, the mere fact that her election has been set aside on the ground that she does not belong to 'Bhariya' caste but she belongs to 'Bhoriya' caste, it was necessary for the Election Tribunal to frame issues because the election petitioner has herself made an averment that the petitioner belongs to 'Bhariya' woman category though in the same breathe election petitioner has stated that the petitioner does not belong to ST woman category candidate.
9. In the teeth of finding recorded by the Election Tribunal that the petitioner does not belong to 'Bhariya' caste but she belongs to 'Bhoriya' caste, unless the petitioner was made aware as to what fact she is required to prove in course of trial of election petition, framing of issues was necessary. When a party has proceeded to contest and participate in trial without raising any protest about non-framing of issues and it is shown that prejudice is not caused to such party, it is always open for the higher Courts to determine as to whether in

the given set of facts, framing of issues was necessary. However, in view of the above discussion, this Court finds that in this particular case, framing of issue was necessary. The mere fact that finding contrary to the pleadings made in the election petition has been recorded and the petitioner has been unseated from the office of Sarpanch is sufficient to indicate that non-framing of issues has prejudiced the petitioner.

10. In the considered opinion of this Court, the Election Tribunal has not followed the procedure prescribed under Rule 11 of the Rules, 1995 by concluding trial without framing issues, therefore, the impugned order deserves to be and is hereby set aside. The matter is remitted back to the Election Tribunal with a direction to frame issues arising out of the pleadings between the parties and thereafter afford opportunity of hearing to lead evidence to both the parties and decide the matter afresh on the basis of evidence adduced by the parties. The Election Tribunal shall conclude the proceeding at the earliest, preferably within a period of 3 months from the date of framing of issues.

11. The writ petition is accordingly allowed in the above stated terms.

Sd/-
Judge
(Prashant Kumar Mishra)

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