

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1643 of 2015

- Sheikh Hanif Qureshi S/o Sheikh Amhed Qureshi, Aged About 30 Years R/o Village Gaindatola, Tahsil Chhuriya, Civil & Revenue District Rajnandgaon, (Chhattisgarh)

---- Petitioner

Versus

1. Budhram Netam S/o Jhadu Ram Netam, Aged About 35 Years R/o Village Gaindatola, Tahsil Chhuriya, Police Station Gaindatola, District Rajnandgaon, (Chhattisgarh)
2. The Presiding Officer, Election Of Upsarpanch Gram Panchayat Gaindatola, S. L. Salame Headmaster, Government Primary Middle School Belargondi, Tahsil Chhuriya, District Rajnandgaon, (Chhattisgarh)

---- Respondents

For Petitioner

Mr. Abhishek Sharma, Advocate

For Respondent No.1

Mr. Gautam Khetrapal, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

27/10/2015

Heard.

(2) The petitioner is aggrieved by the order passed by the SDO (Revenue) Dongargaon, District Rajnandgaon, whereby, the Election Petition preferred by respondent No.1 has been allowed and the election of the petitioner for the office of Up-Sarpanch of Gram Panchayat Gaindatola has been set-aside.

(3) Mr. Goutam Khetrapal, learned counsel for respondent No.1 would not dispute that while proceeding to decide the Election Petition, the Election Tribunal has neither framed issues nor recorded the evidence of witnesses.

(4) Mr. Sharma, learned counsel for the petitioner, would submit that the petitioner has also raised the objection regarding maintainability of the election petition, as the same was not presented in accordance with the Rules.

(5) The law is well settled that under the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification For Membership) Rules, 1995, the Election Petition has to be tried as if it is a civil suit, as required under Rule 11 of the aforesaid Rules, 1995.

(6) 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.”

(7) Since in the present case also, the Election Petition has been allowed without framing issues or recording evidence of the parties, the impugned order is palpably illegal and is not sustainable.

(8) Accordingly, the impugned order is set-aside and the matter is remitted back to the concerned Election Tribunal for trial of the Election Petition afresh. Needless to say that on the basis of pleadings made by the parties, the Tribunal shall frame issues and record statements of the witnesses and thereafter, proceed to decide the Election Petition 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.

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

Sd/-

Judge

(Prashant Kumar Mishra)