

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT APPEAL NO. 68 OF 2016

Santosh Kumar Nishad, S/o Bahurram Nishad, aged about 37 years,
R/o Village & Post Patewa, P.S. Patewa, Tahsil & Dist. Mahasamund
(C.G.)

... Appellant

Versus

1. State of Chhattisgarh, through the Sub Divisional Officer (Revenue)/Prescribed Officer under the Chhattisgarh Panchayat Raj & Gram Swaraj Adhiniyam, 1993, Mahasamund (C.G.)
2. Sanjeev Sinha, S/o Late Shri Vyas Narayan Sinha, aged about 35 years, R/o Village & Post Patewa, P.S. Patewa, Tahsil & Dist. Mahasamund (C.G.)
3. Ajay Sahu, S/o Lala Ram Sahu, aged about 23 years, R/o Village & Post Patewa, P.S. Patewa, Tahsil & Dist. Mahasamund (C.G.)
4. Doman Sahu, S/o Anandram Sahu, aged about 22 years, R/o Village & Post Patewa, P.S. Patewa, Tahsil & Dist. Mahasamund (C.G.)
5. Bhoj Kumar Sahu, S/o Chunnulal Sahu, aged about 35 years, R/o Village & Post Patewa, P.S. Patewa, Tahsil & Distt. Mahasamund (C.G.)
6. Returning Officer (Panchayat), Mahasamund, Block & Tahsil Mahasamund, Dist. Mahasamund (C.G.)
7. Presiding Officer, Booth No. 125, Lecturer (Panchayat), Government Higher Secondary School, Pachedus, PO Pacheda, Tahsil & Dist. Mahasamund (C.G.)
8. Presiding Officer, Booth No. 126, Lecturer (Panchayat), Government Higher Secondary School, Mungaser, PO Mungaser, Tahsil Bagbehera, Distt. Mahasamund (C.G.)

Note : The respondent No. 6 to 8 have been impleaded as by name before the SDO, but their impleadment is by post itself is sufficient, thus they are impleaded by post, not by name in the instant writ appeal.

... Respondents

For Appellant	:	Mr. Vivek Shrivastava, Advocate.
For Respondent No.1	:	Mr. B. Gopa Kumar, Deputy Advocate General.
For Respondent No.2	:	Mr. Manoj Paranjpe, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per Deepak Gupta, C.J.

23/06/2016

1. The short but interesting question which arises in this Writ Appeal is “whether the order passed in an Election Petition can be set aside only on the ground that issues were not framed despite the fact that the parties have led evidence in support of and in refutation of all the materials points of dispute between them”.

2. As far as the present appeal is concerned, the facts necessary for disposal of the appeal are that the Appellant/Petitioner was elected as Sarpanch of Gram Panchayat Patewa in the elections conducted on 4.2.2015. He secured 314 votes. Sanjeev Sinha was one of the other contestants and he had secured 313 votes. Thus, the Appellant was declared elected by a margin of only one vote. Sanjeev Sinha preferred an Election Petition alleging that initially he was shown to have secured 314 votes and the Appellant/Petitioner, Santosh Kumar Nishad, was shown to have secured 313 votes. There was also a dispute with regard to proper counting of votes at Booth Nos. 125 and 126. The case of the Election Petitioner, Sanjeev Sinha, was that the elected candidate, Santosh Kumar Nishad, had secured 175 votes in Booth No. 125 which was subsequently interpolated and he was shown to have secured 177 votes. On this averment, the Election Petitioner filed an election petition and mainly claimed that votes be recounted.

3. The Writ Petitioner (elected candidate) submitted his reply before the Election Tribunal and denied all the averments made in the Election Petition stating that no mistake has been committed in counting of ballots.

4. The short dispute raised before the Election Tribunal was whether it was a fit case for ordering recounting of votes or not.

5. It is not in dispute that the Election Tribunal did not frame any issue(s) whatsoever in the case. It however allowed the Election Petition by holding that there were irregularities in the counting and therefore ordered recounting of the votes.

6. This order dated 18.8.2015 of the Election Tribunal was challenged by the Appellant/Writ Petitioner in a writ petition registered as Writ Petition (C) No. 1565 of 2015 before the Learned Single Judge. The only ground raised before the Learned Single Judge was that without framing issues, no proper decision could have been given and therefore the order passed in the Election Petition was sought to be set aside.

7. The Learned Single Judge rejected the Writ Petition by holding that absence of framing of issues in the facts and circumstances of the present case was not a fatal defect.

8. Aggrieved by this order dated 28.1.2016 of the Learned Single Judge, the Appellant has filed the present Writ Appeal.

9. It would be appropriate to mention that Rule 11 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification from Membership) Rules, 1995, lays down the procedure to be followed by the Election Tribunal while deciding the election petition. It reads as follows :

“11. Procedure before the specified officer and his powers.-(1) Subject to the provisions of these rules, every election shall be enquired into by the specified officer as nearly, as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits:

Provided that it shall only be necessary for the specified officer to make a memorandum of the substance of the evidence of any witness examined by him.”

10. The Rule only lays down that the Code of Civil Procedure as far as possible should be applied in election petition. Framing of an issue(s) is one of the essential features of a civil suit and therefore we have no hesitation in holding that normally the Tribunal should frame issue(s) before deciding an election petition. The purpose of framing issue(s) is to cull out the dispute between the parties which has to be decided by the Court. Framing of issue(s) is essential to help the Court narrow down the matters on which evidence has to be led. It is also useful in appreciating evidence; assessing the relevance of evidence; deciding upon admissibility of evidence and what evidence should be rejected at the threshold. Framing of issue(s) also is a great help while delivering judgment because then the judgment can be delivered issue-wise. Under Order 14 Rule 2 of the Code of Civil Procedure, the Court is required to pronounce judgment on all the issues.

11. It is normally expected that the judgment should be delivered issue-wise. We are of the view that this procedure should normally be followed by the Election Tribunal also.

12. The question that arises is that if the Election Tribunal fails to frame issue(s) is it always necessary to hold that the entire proceedings are non-est and have to be quashed. We do not think so. This will depend on the facts and circumstances of each case. If due to non-framing of any issue(s) prejudice is caused to one of the parties inasmuch as the party cannot lead evidence or is denied an opportunity to lead evidence and the election petition is decided one way or the other on the basis of that point, then definitely the order will have to be set aside. Similarly, if the Election Tribunal decides the petition on a point which has not been argued before it because no issue was framed in that regard, then also the non-framing of an issue or issues will be

fatal. However, there is an Exception to this. If parties fully knowing what is the dispute in hand enter into the witness box, examine witnesses, cross-examine witnesses of the other side and argue the matter on all the issue(s) which may arise in that petition, then they have waived their right to claim that the non-framing of issue(s) is such a defect that the final order should be quashed.

13. In 2001 (2) SCC 652 (Makhan Lal Bangal v. Manas Bhunia & Others), the Apex Court has set out the importance of framing issues even in an election petition. The relevant portion of the judgment reads as follows:-

“19. An election petition is like a civil trial. The stage of framing the issues is an important one inasmuch as on that day the scope of the trial is determined by laying the path on which the trial shall proceed excluding diversions and departures therefrom. The date fixed for settlement of issues is, therefore, a date fixed for hearing. The real dispute between the parties is determined, the area of conflict is narrowed and the concave mirror held by the court reflecting the pleadings of the parties pinpoints into issues, the disputes on which the 'two sides differ'. The correct decision of civil lis largely depends on correct framing of issues, correctly determining the real points in controversy which need to be decided. The scheme of order XIV of the Code of Civil Procedure dealing with settlement of issues shows that an issue arises when a material proposition of fact or law is affirmed by one party and denied by the other. Each material proposition affirmed by one party and denied by other should form the subject of distinct issue. An obligation is cast on the court to read the plaint/petition and the written statement/counter, if any, and then determine with the assistance of the learned counsel for the parties, the material propositions of fact or of law on which the parties are at variance. The issues shall be framed and recorded on which the decision of the case shall depend. The parties and their counsel are bound to assist the court in the process of framing of issues. Duty of the counsel does not belittle the primary obligation cast on the court. It is for the Presiding Judge to exert himself so as to frame sufficiently expressive issues. An omission to frame proper issues may be a ground for remanding the case for retrial subject to prejudice having been shown to have resulted by the omission. The petition may be disposed of at the first hearing if it appears that the parties are not at issue on any material question of law or of fact and the court may at once pronounce the judgment. If the

parties are at issue on some questions of law or of fact, the suit or petition shall be fixed for trial calling upon the parties to adduce evidence on issues of fact. The evidence shall be confined to issues and the pleadings. No evidence on controversies not covered by issues and the pleadings, shall normally be admitted, for each party leads evidence in support of issues the burden of proving which lies on him. The object of an issue is to tie down the evidence and arguments and decision to a particular question so that there may be no doubt on what the dispute is. The judgment, then proceeding issue-wise would be able to tell precisely how the dispute was decided.”

14. In 2011 (11) SCC 786 (Kalyan Singh Chouhan v. C.P. Joshi), the main dispute was whether one lady had cast her vote twice under two different names and whether the tendered votes cast in the election must be counted and whether six votes polled against the tendered votes must be rejected. In that case also the margin of victory was only one vote. A prayer was made to summon certain documents with regard to the tendered votes. This prayer was rejected on the ground that these facts were not pleaded and no issue had been framed in respect of those tendered votes. An appeal was filed before the Apex Court wherein the elected candidate urged that the election petition has to be adjudicated strictly adhering to the statutory provisions and the Court cannot permit a party to lead evidence unless an issue has been framed on the controversy and an issue cannot be framed unless there are actual pleadings in respect thereof. We are not concerned with the second part because there is no allegation in the present case that the pleadings are lacking material particulars. The only allegation is that no issue was framed. With regard to non-framing of issues, the Apex Court in the said judgment held as follows:-

“25. The object of framing issues is to ascertain/shorten the area of dispute and pinpoint the points required to be determined by the court. The issues are framed so that no party at the trial is taken by surprise. It is the issues fixed and not the pleadings that guide the parties in the matter of adducing evidence.

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27. There may be an exceptional case wherein the parties proceed to trial fully knowing the rival case and lead all the evidence not only in support of their contentions but in refutation thereof by the other side. In such an eventuality, absence of an issue would not be fatal and it would not be permissible for a party to submit that there has been a mistrial and the proceedings stood vitiated.”

15. This view has been reiterated by the Apex Court in 2014 (5) SCC 312 (Arikala Narasa Reddy v. Venkata Ram Reddy Reddygari & Another) as follows :

“**16.** There may be an exceptional case where the parties proceed to trial fully knowing the rival case and lead all the evidence not only in support of their contentions but in refutation of the case set up by the other side. Only in such circumstances, absence of an issue may not be fatal and a party may not be permitted to submit that there has been a mistrial and the proceedings stood vitiated.”

16. What we have to decide is whether the present case falls within the exception carved out by the Apex Court. As pointed out before, the dispute in the election petition was very short. Detailed allegation had been made challenging the correctness of the counting of the votes and specific allegations were made with regard to alleged wrong counting of votes of particular booths. These allegations were specific and were denied by the elected candidate. On these specific pleadings, evidence was led by the Election Petitioner and the Election Petitioner and his witnesses were cross-examined on these aspects of the matter by the elected candidate and thereafter the elected candidate also led evidence and he examined himself and other witnesses with regard to these very allegations and counter-allegations. Therefore, this clearly shows that the elected candidate was clearly aware of what was the dispute between the parties. In this case there was only one dispute and that was whether the votes have been properly counted or not and

even with regard to that there was specific allegation and it was not a general plea of recounting. Since evidence has been led by both the parties on these specific pleadings knowing fully well what was the case set up by the election petitioner and what was the defence of the elected candidate. Therefore, it cannot be said that the non-framing of issue(s) has caused prejudice to the elected candidate. As such, in the facts of this case we hold that the non-framing of issue(s) is not fatal to the decision of the case and therefore we find no merit in the appeal which is accordingly dismissed.

17. We again however clarify that normally we expect the Election Tribunal to frame issue(s) and decide the case issue-wise. It is only in the peculiar facts of this case that we have held that the non-framing of issues does not materially affect the result of the case.

18. Appeal disposed of with the aforesaid observations.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge