

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WPC No. 560 of 2016**

Ghanshyam Chouhan S/o Krit Singh, Aged About 30 Years
R/o Village Ufra, Tehsil Patan, District Durg, Chhattisgarh.

---- Petitioner**Versus**

1. Dhal Singh Thakur S/o Jahan Singh Thakur, R/o Village Ufra, Tehsil Patan, District Durg, Chhattisgarh.
2. Omprakash Sahu, S/o Dukhram Sahu, R/o Village Ufra, Tehsil Patan, District Durg, Chhattisgarh.....(Non Applicant No.2)
3. Kishore Sahu, S/o Bishram Sahu, R/o Village Ufra, Tehsil Patan, District Durg, Chhattisgarh.....(Non Applicant No.3)
4. Narayan Chandrakar, S/o Jailal Chandrakar R/o Village Ufra, Tehsil Patan, District Durg, Chhattisgarh.....(Non Applicant No. 4)
5. Narayan Sahu, S/o Punau Sahu R/o Village Ufra, Tehsil Patan, District Durg, Chhattisgarh.....(Non Applicant No. 5)
6. Leelaram Nishad, S/o Jagguram Nishad R/o Village Ufra, Tehsil Patan, District Durg, Chhattisgarh.....(Non Applicant No.6)
7. Presiding Officer, Booth Centre No. 48, Village Ufra, Tehsil Patan, District Durg, Chhattisgarh.....(Non Applicant No.7)
8. Presiding Officer , Booth Centre No. 49, Village Ufra, Tehsil Patan, District Durg, Chhattisgarh.....(Non Applicant No.8)
9. Sub-Divisional Officer (Revenue) Patan District Durg (C.G.)
10. State of Chhattisgarh, Through the Secretary, Panchayat and Rural Development, Mahanadi Bhawan, Naya Raipur (C.G.)

---- Respondents

Mr. P.P. Sahu, Advocate for the petitioner.
Mr. B. Gopa Kumar, Dy. A.G. with Ms. Tripti Rao, Panel Lawyer
for the State.
None for respondents No.1 to 6 though served.

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Oral Order

26/04/2016

Heard.

1. By this petition, under Article 226/ 227 of the Constitution of India, the petitioner has assailed correctness and validity of order dated 07.01.2016 passed by the Election Tribunal [Sub-Divisional Officer (Revenue), Patan] by which, a direction for recount has been ordered in the election petition filed by respondent No.1.

2. Learned counsel for the petitioner attacked the impugned order on submissions based solely on procedural impropriety. Learned counsel for the petitioner urged that the Election Tribunal has decided the election petition without holding proper trial in a just and fair manner, denying fair opportunity of hearing to the petitioner, contrary to the statutory scheme of Chhattisgarh Panchayats (Election Petitions, Corruption Practices and Disqualification for Membership) Rules, 1995 (for short "the Rules of 1995"). He submits that after the reply was filed, the parties were directed to submit their proposed issues which were also submitted before the Election Tribunal. The case was being listed for argument on framing appropriate issues and number of adjournments were granted because the Presiding Officer was engaged in other administrative work. All of a sudden, the Presiding Officer passed the final order without settling the issues, without affording an opportunity to the petitioner or any other party to lead evidence oral and documentary. Therefore, it is argued, the impugned order is liable to be set aside and the matter required to be remanded for proper trial.

3. On the other hand, learned counsel for the State submits

that the Tribunal did allow the parties to submit their proposed issues. Having identified the issues in this manner, the Tribunal, in the peculiar circumstances of the case, proceeded to decide the matter finally by directing recount. It is contended by learned State counsel that the Tribunal is not required to follow detailed procedure of trial as laid down in the Civil Procedure Code, 1908. The petitioner did not seek any opportunity to lead oral and documentary evidence and it is not a case where despite prayer, it was rejected and the Tribunal proceed to pass the order.

4. The petitioner is an elected representative of the people. In the election of Sarpanch of Gram Panchayat, which was held on 04.02.2015, the petitioner was declared elected, having secured highest number of votes. The respondent No.1 filed an election petition before the constituted Election Tribunal being Sub-Divisional Officer (Revenue) Patan on the allegations that proper counting as per Rules had not taken place and as the election petitioner lost by only one vote, a direction be issued for recount. The petitioner and some other candidates, who had contested the election filed their written statement. The petitioner, specifically, denied the pleadings of the election petition and stated that there was no defect in counting.

5. The order-sheets which have been placed on record reveal that after election petition was filed, parties including the petitioner, were noticed to file their respective reply. Reply of the petitioner and some other contesting candidates was also filed. Vide order dated 20.07.2015, the Tribunal recorded that reply has been received though, some of the respondents have not filed their reply, therefore, without further delay, case is listed for argument on reply. At this stage, the Tribunal neither framed any issues nor allowed the parties to lead oral and documentary evidence.

It is reflected from the order-sheets that the Tribunal, on the next day, directed that the case shall be listed for argument after framing of issues. The case was directed to be listed for framing on issues on 29.07.2015. Thereafter, the case was adjourned on

number of occasions on the ground that the Presiding Officer is not available. On 17.08.2015, it was recorded that proposed issues have not been submitted by non-applicant No.1 (petitioner herein). Accordingly, the case was directed to be listed on 24.08.2015. The case was thereafter, again adjourned on 24.08.2015 for being listed on 31.08.2015. On this date, it was recorded that issues have been submitted, therefore, the case be listed for final argument. But then on the next date, when proposed issues were submitted by the petitioner, the case was again directed to be listed for argument, followed by hearing on 18.09.2015, adjourning the case for argument on issues. Thereafter, the case was again listed on number of occasions as the Presiding Officer was not available.

6. All of a sudden, on 07.01.2016, the case was listed and it was recorded in the order-sheet that the order is separately passed and memo be issued to the Chief Executive Officer, Janpad Panchayat, Patan. The previous order-sheet dated 14.12.2015, only recorded adjournment due to non-availability of the Presiding Officer. Up to 28.10.2015, no proceeding were drawn as the Presiding Officer was not available. On 04.11.2015, both the parties were absent and the case was directed to be listed for orders on merits. Thereafter, the case was being adjourned from time to time culminating in final order dated 07.01.2016.

7. From the procedure adopted by the Tribunal, reflected from the order-sheet, this Court has no hesitation to hold that the Tribunal proceeded with the gross impropriety, without following established procedure, even without complying with minimum requirement of principles of natural justice and dealing with an election petition, in as cavalier and capricious manner, as it could be.

8. Firstly, the case was being listed for arguments on proposed issues and suddenly it appeared in one order-sheet that the case would be heard on merits. Thereafter, the case was adjourned on number of occasions due to non-availability of Presiding Officer. Then finally, the order-sheet records that the final order has been

passed. This Court is unable to comprehend as to how the Tribunal could proceed in this manner. The Tribunal has not even cared to look into the provision of the Rules of 1995 which make elaborate provision with regard to procedure to be followed by the Election Tribunal while dealing with an election petition.

9. Trial of an election petition is a serious matter. In order to preserve the sanctity of election to public office by democratic process, elaborate provision has been made in Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short “the Act of 1993”) as well as the Rules of 1995. Sarpanch and Panchas are elected as people's representative by democratic process for effective self-governance at the grassroot level. Therefore, whenever, an election petition is filed, the same is required to be tried seriously and it cannot be dealt with by the Revenue Officers as if it was an ordinary matter under the provision of the Land Revenue Code either dealing with the mutation rights or Bhumiswami rights or other matters connected therewith. The election petition is required to be tried strictly in accordance with the provision contained in the Rules of 1995 which lays down the procedure for trial of election petitions. The Tribunal acts as quasi-judicial authority. After collection of oral and documentary evidence in a fair procedure, the Tribunal is under an obligation to give serious consideration to the respective pleadings of the parties, issues arising for consideration and the evidence led by the parties, oral and documentary both.

10. It requires meticulous consideration of the evidence appearing on record, marshaling of the same, followed by reasons for believing or disbelieving the evidence of the parties before ultimate conclusion can be arrived at. The order of the Tribunal must reflect due application of mind as quasi-judicial authority. Decision of an election petition is not an administrative function but a quasi-judicial exercise.

11. Panchayat Raj Institutions have gained Constitutional status by incorporation of Part IX in the Constitution of India by Constitutional Amendment. The constitutional provision confer

constitutional immunity by providing under Article 243-O that the Panchayat Election shall not be called in question except by way of an election petition. After Constitutional Amendment, a new Act known as Panchayat Raj Adhiniyam, 1993 was enacted by the legislature of the erstwhile State of Madhya Pradesh which is applicable in the State of Chhattisgarh also after reorganization of State. Section 122 of the Act of 1993 provides for election petition. Detailed procedure has been prescribed in the Rules of 1995. The provision with regard to presentation of election petition, parties to petitions, contents of the election petition, service of election petition and amongst other provisions, Rule 11 of the Rules of 1995 lays down the procedure that may be followed in trying an election petition as below -

“Rule 11. Procedure before the specific officer and his powers.-(1) Subject to the provisions of these rules, every election petition 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.

(22) the specified officer, shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters :-

- (a) discovery and inspection;
- (b) enforcing the attendance of witnesses, and requiring the deposit of their expenses;
- (c) compelling the production of document;
- (d) examination of witnesses on oath;
- (e) reception of evidence taken on affidavit; and
- (f) issuing commission for examination of witnesses and summoning and examining suo moto and person whose evidence, appears to him to be material.”

12. The grounds for declaring election to be void have been exhaustively enumerated in Rule 21 of the Rules of 1995. Rule 25 of the Rules of 1995 provides for finality of decision that the decision of the specified officer shall be final.

13. Thus, exhaustive provisions have been made and provision of Civil Procedure Code have been incorporated in Rule 11 of the Rules of 1995 only to ensure that an election petition is tried in orderly manner which includes filing of written statement by respondents, framing of issues, collection of oral and documentary evidence. This is clear from provision contained in sub-Rule 1 of Rule 11 of the Rules of 1995. It has to be made clear that the specified officer may only take memorandum of the substance of the evidence of any witness examined by him. He has been given powers for discovery, inspection of documents as also enforcing attendance of witnesses, examination of witnesses, reception of evidence on affidavit etc. It has been also given power of issuing commission for examination of witnesses. These powers have been conferred on the Election Tribunal only in order to ensure a serious trial of an election petition, in the background of the constitutional status given to Panchayat Raj Institutions and to ensure that the elections of elected representative of Panchayat are not interfered with lightly at the drop of hat.

14. In the case of **Parvatia Vs. Padmini and ors., 2005 (2) CGLJ 335**, this Court held the order recount illegal as the same was passed without framing issues regarding the dispute and without giving the parties an opportunity to cross-examine the witnesses. It was also found that the proper opportunity adducing evidence was not given to the returned candidate and that even the arguments were not heard. It was considered to be a case of non-compliance of provision contained in Rule 11 of the Rules of 1995. In more than one decisions, this Court has been emphasizing that there has to be a proper and serious trial of an election petition wherein all the parties should be afforded proper opportunity of hearing. It has also been emphasized that proper issues are required to be framed and thereafter, the parties have to be

afforded reasonable opportunity, adducing oral and documentary evidence.

15. The factual details of present case, the manner in which, the Tribunal has dealt with the dispute is far from being in compliance of either the principles of natural justice or the provision contained in Rule 11 of the Rules of 1995.

This Court, need not burden the judgment with the settled legal position that the order of recount cannot be passed on mere asking. It requires framing of issues, evidence to be recorded and that well reasoned decision after examination of the evidence. It has been emphasized time and again that secrecy of votes cannot be lightly revealed even by consent of the parties, recount cannot be ordered mechanically. It is the duty of the Election Tribunal to be fully satisfied that a case for recount is made out, based on pleadings and evidence on record and it should not be an outcome of mere assumption, conjuncture or surmises.

16. Tested on aforesaid principles, impugned order is not sustainable in law and is liable to be set aside. The impugned order is consequently set aside. The petition is accordingly allowed. The matter is remanded to the Tribunal. It shall frame specific issues in the light of the pleadings of the parties and thereafter, it shall afford both the parties opportunity to lead to adduce oral and documentary evidence and thereafter, it shall proceed to decide the election petition in accordance with law.

Sd/-

(Manindra Mohan Shrivastava)
Judge