

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.967 of 2016**

- Vineet Kumar Jain, son of Ashok Kumar Jain, aged about 35 years, resident of Nawagaron (Dhaurabhatha), Gram Panchayat Nawagaon, Janpad Panchayat Region No.10, Rakadih, Tahsil – Magarlod, District Dhamtari (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh, through the Secretary, Panchayat and Rural Development Department, Mahanadi Bhawan, Mantralaya, New Raipur (C.G.)
2. The Collector, Dhamtari, District Dhamtari (C.G.)
3. The Returning Officer (Panchayat), Janpad Panchayat Magarlod, District Dhamtari (C.G.)
4. Ban Singh Netam, Tahsildar & Returning Officer, Janpaid Panchayat Magarlod, District-Dhamtari (C.G.)
5. Chunnilal Dhruw son of Sonsai Dhruw (Return Candidate), resident of Village – Bhothidih, Tahsil – Magarlod, District Dhamtari (C.G.)
6. Bhikham Sen son of Jeevlal Sen (candidate), resident of Village – Bhothidih, Tahsil – Magarlod, District Dhamtari (C.G.)
7. Manharan Tarak son of Kunjlal Tarak (Candidate), resident of Rankadih, Tahsil-Magarlod, District-Dhamtari (C.G.)

---- Respondents

For Petitioner	:	Shri Goutam Khetrapal, Advocate
For Respondent/State	:	Smt. Astha Shukla, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****11/07/2016**

Challenge in this petition is to the order dated 30.03.2016 passed by the Collector, Dhamtari, dismissing the petitioner's election petition under Section 122 of the Chhattisgarh Panchayati Raj Adhiniyam, 1993 (hereinafter referred to as the Act of 1993), which was preferred to challenge the election of respondent No.5 – Chunnilal Dhruw as member of constituency No.10 Rankadih, Janpad Panchayat Magarlod.

2. Despite service of Dasti service, respondent No.5 has not entered appearance.

3. Short question arising for determination in this petition is whether the Election Tribunal can proceed to finally adjudicate the election petition without framing issues and without recording evidence of the parties?

4. Petitioner had challenged the election of respondent No.5 on the ground of illegal rejection of his nomination papers.

5. The issue as to the jurisdiction of the Election Tribunal to decide an election petition and the procedure to be followed therein has been settled by this Court in the matter of ***Parvatia v. Padmini and others, 2005 (1) C.G.L.J. 335*** and ***Ajuram vs. Shatruhan Sahu and others***, W.P.(C) No.2583/2011 decided on 28.08.2012.

6. In the matter of ***Ajuram v. Shatruhan Sahu and others*** (supra), this Court has held thus in paras 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 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. In the case in hand also, the Election Tribunal has dismissed the election petition without framing issues and recording evidence of the parties. The impugned order is, therefore, unsustainable being in violation of Rule 11 of the Chhattisgarh Panchayat (Election Petitions, Corrupt Practice & Disqualification for Membership) Rules, 1995.

8. The writ petition is allowed and the matter is remanded back to the Election Tribunal for deciding the election petition after framing issues and giving the parties an opportunity to lead evidence. The Election Tribunal shall decide the election petition as expeditiously as possible, preferably within a period of six months.

Sd/-
Judge
(Prashant Kumar Mishra)