

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2320 of 2015**

- Rajesh Kumar Chouhan (but wrongly mention in the order as Rajesh Ram) S/o Shri Chandra Dev Chouhan, Aged About 32 Years, Cast Chik, R/o Village Pusara, P.S. & Tahsil Kansabel, Distt. Jashpur, (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Panchayat And Rural Development Mahanadi Bhawan, New Raipur, Distt. Raipur, (Chhattisgarh)
2. The Sub Divisional Officer (Revenue)/ Prescribed Authority, Panchayat Bagicha, Distt. Jashpur, (Chhattisgarh)
3. Vishanu Ram, S/o Ramsai, Aged About 34 Years Cast Dom, R/o Village Pusara, Tahsil Kansabel, Distt. Jashpur (Chhattisgarh)
4. Rajesh Ram, S/o Kaleshwar, Aged About 38 Years Cast Chik, R/o Village Pusara, Tahsil Kansabel, Distt. Jashpur, (Chhattisgarh)
5. Presiding Officer, Polling Booth No. 76, P.S. & Tahsil Kansabel, Distt. Jashpur, (Chhattisgarh)
6. Returning Officer, Panchayat Election Kansabel, Distt. Jashpur, (Chhattisgarh)

---- Respondents

For Petitioner : Shri A.N.Pandey, Advocate.
 For Respondent No.1 & 2 : Shri Avinash Singh, Panel Lawyer
 None for Respondent No.3, the Election petitioner.
 None for respondent No.4 despite service of notice.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****22/06/2016**

1. Challenge in this petition is to the order passed by the Sub-Divisional Officer-cum-Prescribed Authority, Bagicha, Dist. Jashpur on 02.11.2015 allowing the election petition preferred by respondent No.3 and declaring the petitioner's election as Panch of Ward No.10, Gram Panchayat Pusara, Janapad Panchayat Kansabel as null and void.

2. Learned counsel for the petitioner would draw attention of this Court to the additional documents filed on 09.03.2016, which are the order sheets of proceedings drawn by the Election Tribunal to contend that the record of proceedings would clearly establish that the election petition has been decided without framing issues or recording evidence of the parties.
3. The question as to whether the Election Tribunal can decide the election petition without framing issues and recording evidence of the parties is no longer *res integra* in view of law laid down by this Court in the case of **Ajuram vs. Shatruhan Sahu and others** {WPC No.2583/2011, decided on 28.8.2012} wherein this Court 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.”

4. In the case at hand, the election petition was filed on 25.02.2015 and the Prescribed Authority directed issuance of notice. On the next two dates, some respondents appeared and for others notices were not served. Therefore, fresh notice was issued to the respondents. On 24.07.2015, the petitioner was directed to submit fresh caste certificate which he complied with on 31.07.2015. On the next date, i.e., 07.08.2015, the Prescribed Authority finally heard the parties and posted the matter for orders and straightaway the impugned final order was passed on 02.11.2015. Thus, admittedly, neither issues were framed nor evidence of the parties was recorded by the Election Tribunal.
5. The law in this respect being settled in the matter of **Ajuram vs. Shatruhan Sahu and others** (supra) and **Parvatia vs. Padmini & others, 2005 (2) CGLJ 335**, the impugned order deserves to be and is hereby set aside being in conflict with the Rule 11 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and

Disqualification for Membership) Rules, 1995.

6. The matter is remitted back to the Election Tribunal with a direction to frame the issues on the basis of pleadings pleaded by the parties and proceed to decide the election petition after recording evidence of 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.
7. The writ petition is accordingly allowed in the above stated terms.

Sd/-
Judge
(Prashant Kumar Mishra)