

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1202 of 2015

1. Manju Kaushik W/o Shri Devanand Kaushik, Aged About 35 Years R/o Village- Chichirda, Post- Saida, Tahsil- Takhatpur, Police Station Chakarbhata, Civil & Revenue District Bilaspur (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through- The Secretary, Department Of Panchayat, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh)
 2. The Collector, Bilaspur, District Bilaspur (Chhattisgarh)
 3. Sub Divisional Officer, (Revenue) Kota, District Bilaspur (Chhattisgarh)
 4. Punita Raju Sahu, W/o Shri Raju Sahu, Aged About 40 Years R/o Village Chichirda, Post- Saida, Tahsil- Takhatpur, District Bilaspur (Chhattisgarh)
 5. Parvati Kaushik, W/o Shir Sushil Kumar Kaushik, Aged About 40 Years R/o Village Chichirda, Post- Saida, Tahsil- Takhatpur, District Bilaspur (Chhattisgarh)
 6. Presiding Officer Pooling Booth No. 287
 7. Presiding Officer. Pooling Booth No. 288
 8. Presiding Officer, Pooling Booth No. 289
 9. Presiding Officer , Pooling Booth No. 290
- Respondents No.6 to 9 Village Panchayat- Chichirda, Through Its Returning Officer (Panchayat), Janpad Panchayat Takhatpur, Distt. Bilaspur, Chhattisgarh
10. Returning Officer (Panchayat) Janpad Panchayat Takhatpur, Distt. Bilaspur, Chhattisgarh

11. Ravi Prakash Kaushik S/o Rameshwar Prasad Kaushik Aged About 32 Years R/o Village Chichirda, Post Saida, Tahsil Takhatpur, District Bilaspur, (Chhattisgarh)
12. Santoshi Sahu W/o Shri Prakash Sahu Aged About 40 Years R/o Village Chichirda, Post Saida, Tahsil Takhatpur, District Bilaspur, (Chhattisgarh)

---- Respondent

For Petitioner	Shri A.S. Rajput, Advocate
For Respondent/State	Shri Rajendra Tripathi, Panel Lawyer
For Respondent No.4	Shri Bhaskar Payasi, Advocate
For Respondent No.11&12	Shri Anurag Dayal Shrivastava, Advocate

And

WPC No. 1250 Of 2015

1. Vijay Kaushik W/o Shri Kanhaiya Lal Kaushik Aged About 33 Years R/o Village Chichirda, Post Saida Tahsil Takhatpur, P.S. Chakarbhata Civil & Revenue District Bilaspur Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through Secretary Department Of Panchayat, Mantralaya, Mahanadi Bhawan, Naya Raipur District Raipur Chhattisgarh
2. The Collector Bilaspur, District Bilaspur Chhattisgarh
3. Sub Divisional Officer Revenue Kota, District Bilaspur Chhattisgarh
4. Raju Sahu W/o Shri Mast Ram Sahu Aged About 40 Years R/o Vilalge Chichirda, Post Saida, Tahsil Takhatpur, District Bilaspur Chhattisgarh
5. Presiding Officer Pooling Booth No. 287 Village Panchayat Chichirda, Through Its Returning Officer (Panchayat) Janpad Panchayat Takhatpur, District Bilaspur Chhattisgarh

6. Returning Officer (Panchayat) Janpad Panchayat Takhatpur, District Bilaspur Chhattisgarh
7. Ravi Prakash Kaushik S/o Rameshwar Prasad Kaushik Aged About 32 Years R/o Village Chichirda, Post Saida, Tahsil Takhatpur, District Bilaspur Chhattisgarh
8. Santoshi Sahu W/o Shri Prakash Sahu Aged About 40 Years R/o Village Chichirda, Post Saida Tahsil Takhatpur, District Bilaspur Chhattisgarh

---- Respondent

For Petitioner	Shri A.S. Rajput, Advocate
For Respondent/State	Shri Rajendra Tripathi, Panel Lawyer
For Respondent No.4	Shri Bhaskar Payasi, Advocate
For Respondent No.7 & 8	Shri Anurag Dayal Shrivastava, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

13/01/2016

1. In WPC No.1202 of 2015 the petitioner had called in question the election of the respondent No.4 to the office of the Sarpanch, Gram Panchayat Chichirda and in WPC No.1250 of 2015 the petitioner had called in question the election of the respondent No.4 to the office of the Panch, Gram Panchayat Chichirda.
2. Since both the petitions involve common facts and grounds, they are considered and decided by this common order.

3. By the impugned orders, the Election Tribunal i.e. the Sub Divisional Officer (Revenue) has dismissed the election petitions without framing the issues or recording evidence of the parties.
4. Shri Rajput, learned counsel appearing for the petitioners, would refer to the law laid down by this Court in **Parvatia v. Padmini & Others**¹ and **Ajoram v. Shatruhan Sahu and Others**², to contend that the election tribunal is obliged in law to follow the procedure prescribed under the Rules namely; Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (for short 'the Rules, 1995').
5. On the other hand, Shri Payasi & Shri Shrivastava, learned counsel appearing for the respective respondents and Shri Tripathi, learned Panel Lawyer appearing for the State would submit that the impugned order itself makes it explicit that the election petitions do not disclose any triable cause of action, therefore, there was no foundation in the election petitions for framing issues and proceed to hold a regular trial.
6. In the absence of any application moved by the returned candidate or any other person impleaded as a party in the election petitions under Rule 8 of the Rules 1995 pointing out the defects in the election petitions, it is not open for the Election Tribunal to dismiss

1 2005 (2) CGLJ 335

2 WPC No.2583 of 2011 (decided on 28-8-2012)

the election petitions in *limine*, as if it is hearing the petition at the motion stage. Such course is neither prescribed nor contemplated under the Rules, 1995.

7. As a result, both the writ petitions are allowed and the impugned orders in both the writ petitions are set aside. However, considering the entire facts situation of the case, it is directed that even if the respondents have already filed their response in the election petitions, they would be at liberty to move an application under Rule 8 of the Rules, 1995 pointing out the fatal defects in the election petitions, which warrants dismissal of the election petitions in *limine*. On moving such application, the Election Tribunal shall decide the same before holding a regular trial.

8. There shall be no order as to costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri