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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1186 of 2016

- Gouri Baghel / Gouri Devdas W/o Shankar Devdas, Aged About 35 Years R/o Village Kathiya No.1, Tahsil Tilda, District Raipur (Chhattisgarh) (Husband's Name Has Been Wrongly Mentioned In The Memo Of Election Petition As Khilavan Ram Baghel)

---- Petitioner

Versus

1. Savitri Baghel W/o Shri Chandrakumar Baghel, Aged About 29 Years
2. Aarti Kurre, W/o Tarachand Kurre,
3. Helan Dhritlahre, W/o Shatrughan Dhritlahre,
4. Geeta Ratre, W/o Heeralal,
5. Neera Jangde, W/o Mohan Jangde,
6. Pramila Jangde, W/o Kumar Jangde,
7. Fulwati Chaturvedi, W/o Punaram Chaturvedi,
8. Ramvati Mahilang, W/o Gendlal,
9. Huleshwari Jangde, W/o Mungelal,
10. Hemlal Baghel, W/o Basant Baghel,

All are R/o Village Kathiya No.1, Tahsil Tilda, District Raipur, (Chhattisgarh)
11. Election Officer, Panchayat, Tahsil Tilda, District Raipur, (Chhattisgarh)
12. Presiding Officer, Pooling Booth No. 160, Village Kathiya No.1, Tahsil Tilda, District Raipur, (Chhattisgarh)
13. Presiding Officer , Pooling Booth No. 161, Village Kathiya No.1, Tahsil Tilda, District Raipur, (Chhattisgarh)
14. Presiding Officer Pooling Booth No. 162, Village Kathiya No.1, Tahsil Tilda, District Raipur, (Chhattisgarh)
15. Sub Divisional Officer (Rev.) And Prescribed Authority Panchayat Raj Adhiniyam, Raipur, (Chhattisgarh)

---- Respondent

For Petitioner	Mr. P.P. Sahu, Advocate
For Respondent No.1	Mr. Somnath Verma, Advocate
For Respondent /State	Ms. Tripti Rao, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

17/11/2016

1. Heard.
2. Mr. P.P. Sahu, learned counsel for the petitioner, would submit that in the Election Petition preferred by respondent No.1 to challenge the petitioner's election to the office of Sarpanch, Gram Panchayat, Kathiya No.1, the Election Tribunal under Section 122 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993, has directed to hold recount without framing issues and recording evidence of the parties. He would submit that it is settled by this Court in 'n' number of cases, one such being WPC No.1947 of 2016 decided on 21.09.2016 (Smt. Bhupeshwari Sahu Vs. State of Chhattisgarh and others), that direction to hold recount and final decision in the Election Petition cannot be ordered without framing issues and recording evidence of the parties. He would also refer to the law laid down by this Court in the matters of **Parvatia Vs. Padmini and others, 2005(2) CGLJ 335** and **Ajuram Vs. Shatruhan Sahu and others (W.P. (C) No.2583 of 2011 decided on 28.08.2012.**
3. Mr. Somkant Verma, learned counsel for respondent No.1, would submit that the recount has already been taken place and respondent No.1 has been declared elected, therefore, the

present writ petition is distinguishable from the case of **Parvatia Bai (supra) and Ajuram (supra)**.

4. In the matter of **Ajuram (supra)**, this Court has held thus in para 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 has made substantial change in his election petition 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."
6. In view of the above settled legal position and since in the present case also, the Election Tribunal has directed for holding recount and thereafter, has decided the Election Petition without framing issues and recording evidence of the parties, the impugned order deserves to be and is hereby set-aside.
7. Let the Election Tribunal conduct trial of the Election Petition afresh from the stage of framing issues. The Election Tribunal shall thereafter record evidence of the parties and decide the Election Petition on the basis of evidence adduced.
8. The petitioner shall be allowed to assume the charge of Sarpanch within a period of 10 days from today.
9. The writ petition is allowed to the extent indicated above.

Sd/-

Judge

(Prashant Kumar Mishra)

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