

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1947 of 2016

- Smt. Bhupeshwari Sahu W/o Shri Satyanarayan Sahu, Aged About 40 Years Caste Teli, R/o Vilalge Amapendri, Tahsil Patan, District Durg Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, Mahanadi Bhawan, Mantralaya, New Raipur Chhattisgarh
2. Chaiti Bai Yadav, W/o Manharan Yadav, Aged About 54 Years Caste Yadav, R/o Village Savni, Tahsil Patan, District Durg Chhattisgarh Election Petitioner
3. Maya Rigri W/o Shri Chhannulal Rigri, Aged About 30 Years R/o Village Savni, Tahsil Patan, District Durg Chhattisgarh
4. Laxmi Yadu, W/o Ramanuj Yadav, Aged About 35 Years Caste Yadu, R/o Village Amapendri, Tahsil Patan, District Durg Chhattisgarh
5. Presiding Officer, Booth Centre No 93 R/o Village Savni, Tahsil Patan, District Durg Chhattisgarh
6. Presiding Officer, Booth Centre No 94 R/o Village Savni, Tahsil Patan, District Durg Chhattisgarh
7. Presiding Officer, Booth Centre No 95, R/o Village Savni, Tahsil Patan, District Durg Chhattisgarh
8. The Sub Divisional Officer, (Revenue) / Prescribed Authority, Patan, District Durg Chhattisgarh
9. The Collector Durg, District Durg Chhattisgarh

---- Respondent

For Petitioner	Mr. Gautam Khetrapal, Advocate
For Respondent/State	Mr. Shashank Thakur, Government Advocate
For Respondent No.2	Mr. P.P Sahu, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

21/9/2016

1. Heard.
2. The petitioner has called in question the impugned order passed by the Election Tribunal allowing the Election Petitioner's prayer for recount of the votes.
3. It is argued by learned counsel for the writ petitioners that the Election Tribunal could not have ordered for holding recount while allowing the Election Petition at the preliminary stage without framing issues and recording evidence of both the parties. He would refer to the law laid down by this Court in the matter of **Parvatia Vs.Padmini and others, 2005 (2) CGLJ 335**.
4. Learned counsel for respondent No.2 would not dispute the law laid down by this Court in the matter of **Parvatia (Supra)**, however, he would submit that there was sufficient evidence before the Election Tribunal for reaching to the conclusion that a recount is required to be held.
5. In the matter of **Parvatia (supra)**, 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.
6. In the case at hand, the Election Tribunal has recorded evidence of witnesses of the Election Petition. However, neither issues were framed nor the writ petitioner was allowed to examine her witnesses or cross-examine the witnesses who appeared for the

election petitioner, therefore, the law laid down by this Court in **Parvatia Bai (supra)** squarely applies to this case.

7. For the foregoing, the impugned order is set-aside and the matter is remitted back to the concerned Election Tribunal for deciding the Election Petition from the stage of framing of issues.
8. Let the Election Tribunal frame issues, allow both the parties to lead their evidence and thereafter, decide the Election Petition on its own merits at the earliest preferably within a period of 06 months from the date of submission of certified copy of this order.
9. The writ petition is allowed to the extent indicated above.

Sd/-

Judge

(Prashant Kumar Mishra)

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