

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2620 of 2016

- Dharam Singh, S/o Sahab Singh Porte, aged about 25 years, R/o Village Podi, Post & Tehsil Marwahi, Revenue & Civil District Bilaspur (CG)

---- Petitioner

Versus

1. Indrasen Maravi, S/o Gajroop, aged about 22 years, Caste Gond, R/o Dadiya, Village Panchayat Podi, Janpad Panchayat Marwahi, District Bilaspur (CG)
2. Ganesh Singh (mentioned as Namalum in the cause title as father's name) aged about 25 years
3. Balram Singh, S/o Kosu, aged about 40 years,
4. Manmohan Singh, S/o Sipahi Lal, aged about 28 years
5. Govind Singh (mentioned as Namalum in the cause title as father's name) aged about 22 years.

Respondent No.2 to 5 are R/o Village Podi, Post & Tehsil Marwahi, Janpad Panchayat Marwahi, Revenue & Civil District Bilaspur (CG)

6. Bachan Singh, S/o Chandrabhan Singh Porte, aged about 26 years
7. Pital Singh, S/o Kamod Singh Porte, aged about 26 years

Respondents No.6 & 7 are R/o Village Dandia, Post & Tehsil Marwahi, Janpad Panchayat Marwahi, Revenue & Civil District Bilaspur (CG)

8. Assistant Election Officer, Janpad Panchayat Marwahi, District Bilaspur (CG)
9. State of Chhattisgarh, through Collector, Bilaspur, District Bilaspur (CG)
10. Presiding Officer (Polling Officer) Polling Booth (Centre) No.08, Janpad Panchayat Marwahi, District Bilaspur (CG)

(As the respondents No.9 & 10 are not mentioned in the cause title of impugned order dated 28.09.2016, but were parties in the election petition filed by the respondent No.1 herein)

11. Sub-Divisional Officer (Revenue) and Prescribed Authority Pendra Road, Revenue & Civil District Bilaspur (CG)

----- Respondent

For Petitioner : Shri Surfaraj Khan, Advocate.
For Respondent No.1 : Shri Himanshu Kumar Sharma, Advocate.
For Respondent/State : Shri S. Majid Ali, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

10/11/2016

1. Challenge has been thrown in this petition under Article 226 of the Constitution of India to the order passed by the Election Tribunal i.e. SDO (Revenue) Pendra Road, District Bilaspur on 28.9.2016 allowing the election petition preferred by respondent No.1 Indrasen Maravi directing to hold recount and declaring the said Indrasen Maravi as elected candidate.
2. On an earlier occasion, the Election Tribunal directed for holding a recount which was assailed by the petitioner in WPC No.416/2015 wherein the following order was passed:-

“3.In view of the above joint statement made by learned counsel for the parties, the writ petition is disposed of with a direction that the SDO (Revenue), Pendra Road shall proceed with the trial of Election Petition. The parties to the Election Petition may complete the pleadings within one month and thereafter, the Election Tribunal shall proceed to frame issues, record evidence of the parties and then consider the issue concerning holding a recount afresh on the basis of evidence available on record.”

3. It is argued that despite specific direction by this Court, the Election Tribunal did not frame issues before directing the parties to adduce evidence. Therefore, not only the order passed by this Court has been violated but it is otherwise not permissible in view of Rule 11 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification For Membership) Rules, 1995 (for short 'the Rules, 1995').
4. Although learned counsel for respondent No.1 would raise plea of

absence of prejudice to the petitioner, however, present is a case where the order passed by this Court has been ignored and the election petition has been decided without framing issues. Therefore, plea of absence of prejudice is not available to respondent No.1 Indrasen Maravi.

5. Merely because the petitioner has not moved contempt proceeding against the Election Tribunal, it would not mean that no prejudice was caused to the petitioner. The nature of questions/issues to be decided by the Election Tribunal which has been framed in the final order itself but not at earlier stage would indicate that the issues were on factual aspects, therefore, the parties should be made aware of the issues so that they know before entering the witness box as to what issues they are required to deal with and what sort of evidence they are required to adduce.
6. As the Election Tribunal has violated the earlier order of this Court and has also failed to adhere to the prescribed procedure under the Rules, 1995, therefore, the impugned order deserves to be and is hereby set aside. Let the Election Tribunal again proceed with the matter afresh from the stage of framing of issues and thereafter recording of evidence of the parties.
7. Let the parties appear before the Election Tribunal on **1.12.2016**.
8. The Writ Petition is accordingly allowed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve