

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 422 of 2016**

- Malikram Sahu S/o Late Purushottam Sahu, Aged About 38 Years
R/o Village & Post Amsena, Police Station Mandir Hassaud,
Tahsil Arang, District Raipur Chhattisgarh..... (Election
Petitioner)

---- Petitioner**Versus**

1. Leeladhar Beldar S/o Shri Rampyari Beldar, R/o Village & Post
Amsena, Police Station Mandir Hassaud, Tahsil Arang, District
Raipur Chhattisgarh
2. Returning Officer/ Tahsildar, Returning Region Arang, Tahsil
Office, Arang, District Raipur Chhattisgarh
3. The State Of Chhattisgarh, Through The Collector, Raipur,
District Raipur Chhattisgarh
4. The Sub Division Officer (Revenue) And Prescribed Authority,
Arang, District Raipur Chhattisgarh

---- Respondent

For Petitioner	Mr. D.K. Viswhakarma, Advocate
For Respondent /State	Mr. P.K. Bhaduri, Government Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****3/3/2017**

1. Heard.
2. The SDO(R)-cum-Election Tribunal constituted under Section
122 of the Panchayat Raj Adhiniyam, 1993 (in short "the
Adhiniyam, 1993") has passed the impugned order dismissing

the petitioner's Election Petition without framing issues and recording evidence of the parties.

3. Time and again, this Court has repeatedly held that Election Petition under the Adhiniyam, 1993 has to be tried in accordance with the procedure prescribed under Rule 11 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification For Membership) Rules, 1995. However, the Election Tribunals throughout the State are committing such mistake repeatedly unnecessarily burdening this Court with avoidable litigations.

4. In the matter of **Ajuram vs. Shatruhan Sahu and others (W.P. (C) No.2583 of 2011 decided on 28.08.2012)**, 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 the present case, none appears for the returned candidate despite service of notice, therefore, this Court proceeded to hearing the matter finally.
7. In view of the above settled legal position and for the fact that the impugned order has been passed without framing issues and recording evidence of the parties, the same is set aside and

the matter is remitted back to the Election Tribunal for holding the trial in accordance with law. Let the hearing of the Election Petition be concluded within a period of 06 months from the date of submission of certified copy of this order.

8. The writ petition is allowed to the extent indicated above.

Sd/-

Judge

(Prashant Kumar Mishra)

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