

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2652 of 2016

1. Ram Sai S/o Shri Chamru Ram, Aged About 40 Years
Sarpanch Of Gram Panchayat Pandridand R/o Village
Pandridand Thana And Tahsil Udaipur, Distirct Surguja
Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Department,
Of Panchayat And Social Welfare Mahanadi Bhawan
Mantralaya, New Raipur, Distirct Raipur Chhattisgarh
2. District Collector, Surguja Chhattisgarh
3. Sub Divisional Officer (R), And Presiding Officer, Udaipur,
Collector, Surguja Chhattisgarh
4. Mahendra Singh Paikra, S/o Shri Mangalu Ram
5. Jai Prakash Paikra, S/o Shri Shivram Paikara
6. Smt. Tulshi Bai S/o Shri Disnesh Paikara
7. Rajkumar Paikara S/o Shri Kenda Ram Paikara
8. Shri Pal Paikara, S/o Ujar Paikara

Respondents No.4 to 8 are r/o Village Bhandargaon, Thana
And Tahsil Udaipur, Distirct Surguja Chhattisgarh

9. Chamru Ram S/o Shri Ringta
10. Panmeshwar Paikara S/o Shri Thakur Prasad Paikara
11. Bhanupratap Paikara, S/o Shri Devman Paikara
12. Hira Lal Paikara S/o Shri Ram Prasad Paikara

Respondents No.9 to 12 are R/o Village Pandridand, Thana
And Tahsil Udaipur, Distirct Surguja Chhattisgarh

---- Respondent

For Petitioner	Shri R.K. Bhagat, Advocate
For Respondent/State	Shri Rajendra Tripathi, Panel Lawyer
For Respondent No.4 to 12	Shri Vivek Tripathi, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

05/01/2017

1. In an election petition preferred by the respondent No.4, calling in question the petitioner's election to the office of Sarpanch of Gram Panchayat, Pandridand, Tahsil Udaipur, District Sarguja, the Election Tribunal has directed for recount and based on the result thereof, the election petition has been allowed.
2. It appears the election petition has been finally decided without framing issues and recording evidence of the parties. In 'n' number of cases, notably in **Parvatia v. Padmini and others (2005 (2) CGLJ 335)** and **Ajoram v. Shatruhan Sahu and others (W.P.(C) No.2583 of 2011 decided on 28.08.2012)**, this Court has taken the view that under Rule 11 of the Chhattisgarh Panchayats Corrupt Practices and Disqualification For Membership) Rules, 1995 (in short "the Rules, 1995"), the Election Tribunal is enjoined

to frame issues, record evidence of the parties and thereafter, decide the election petition.

3. In **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."

4. Since the present impugned order has been passed by the Election Tribunal without following the procedure prescribed under Rule 11 and in complete negation of the law laid down by this Court, the impugned order deserves to be and is hereby set aside. The matter is remitted back to the concerned Election Tribunal for holding fresh trial by affording opportunity to file return to all such respondents who have not yet filed their return and thereafter, frame issues, record evidence of the parties and take final decision in the matter including holding of recount. Let the entire process be completed within a period of six months from the date of submission of certified copy of this order.

5. As an upshot, the writ petition is allowed to the extent indicated above. No order as to costs. Sd/-

Judge
Prashant Kumar Mishra

Gowri