

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.3963 of 2010

Natwar S/o Ramdhin, caste Bhuiya, aged about 40 years, R/o
village: Singhitarai, Tahsil Dabhra, District Janjgir-Champa (CG)
----- Petitioner

Versus

1. Parvati Bai W/o Ishwar Prasad, aged about 35 years, caste: Gond,
R/o village Kathrapali, Tahsil Dabhra, District Janjgir-Champa (CG)
2. Returning Officer/Tahsildar, Dabhra, District Janjgir-Champa (CG)
----- Respondents

For Petitioner:	Mr.Punit Ruparel, Advocate
For Respondent No.1:	None though served
For Respondent No.2:	Mr.Anand Dadariya, Dy.G.A. and Mr.Avinash Singh, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/04/2018

1. The petitioner stood as a candidate for Panch of Ward No.1, Gram Panchayat Singhitarai, Tahsil Dabhra reserved for Scheduled Tribes. He was declared elected by the order of the Election Officer. Thereafter, respondent No.1 preferred election petition before the Sub Divisional Officer (R.), Dabhra on the ground that the petitioner does not belong to Scheduled Tribe category as he is Bhuiya by caste, which is not included in Scheduled Tribe. That election petition was tried by the Sub Divisional Officer without framing any issue and without making any enquiry and by impugned order dated 5.7.2010 that election petition was allowed. Questioning the order passed by the Sub Divisional Officer, this writ petition has been filed by the petitioner herein.

2. Mr.Punit Ruparel, learned counsel for the petitioner, would submit that the Election Tribunal constituted under the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (hereinafter called as “the Act of 1993”) has no power and jurisdiction to make an enquiry with regard to caste of the petitioner. He would further submit that the election petition was tried by the Election Tribunal in violation of Rule 11 (1) and 12 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification For Membership) Rules, 1995 (hereinafter called as “the Rules of 1995”) and neither issue was framed nor enquiry was made and no evidence was allowed to be recorded by the petitioner and straightway, the impugned order has been passed, which is unsustainable and bad in law. Therefore, the impugned order deserves to be quashed.
3. Mr.Anand Dadariya, learned Deputy Government Advocate with Mr.Avinash Singh, learned Panel Lawyer for respondent No.2, would submit that on the basis of documentary evidence available on record, the impugned order has been passed, which is in accordance with law.
4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the records with utmost circumspection.
5. The first question would be whether the Sub Divisional Officer/Election Tribunal constituted under the Act of 1993 on hearing the election petition under the Rules of 1995 would have power and jurisdiction to decide the question whether a elected candidate belongs to reserved category or not.

6. This Court in Civil Revision No.62 of 2016 (**Smt.Babita Balmiki v. Amrika Bai and others**¹) referred the similar question with regard to municipal election to larger Bench for authoritative pronouncement which states as under:-

“Whether the Election Tribunal under Section 441 of the Chhattisgarh Municipal Corporation Act, 1956 is entitled to consider and decide the question as to whether the returned candidate was entitled to contest from the served seat (Scheduled Caste) which includes the question of verification/determination of caste of the returned candidate for the limited purpose of deciding validity of election or the Election Tribunal's jurisdiction is barred under Section 16 of the Chhattisgarh Scheduled Castes, Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certification) Act, 2013 in that regard and the matter has necessarily to be referred to the High Power Certification Scrutiny Committee under Section 7 of the Act of 2013 for that purpose?”

7. The Division Bench of this Court considered and answered the said question in **Smt.Babita Balmiki** (supra) and held that **Rajkumari v. State of Chhattisgarh & others**² does not lay down the correct law and observed as under:-

13. We have carefully gone through the Certification Act and we find that it does not bar the jurisdiction of the Election Tribunal constituted under the Act of 1956. We say this because what is expressly barred is only jurisdiction of the civil court. The Election Tribunal is not a civil court. Even if a Civil Judge is appointed as Election Tribunal for the purposes of deciding the election petition, he is not a civil court but a Tribunal constituted under the Act of 1956. We are therefore of the view that Section 16 of the Certification Act would not have application in such cases.

14. Even assuming that Section 16 of the Certification Act is attracted because the Election Tribunal is a civil court in terms of Section 441 of

1 2017 (II) MPJR 22 = 2017 (1) CGLJ 1603

2 2008 (2) CGLJ 45

the Act, 1956, what is prohibited under Section 441 is that a civil court would not do anything which is contrary to the provisions of the Act. The jurisdiction of the civil court to decide the issue whether a person belongs to a particular caste or not is not barred. What is barred is that it cannot take any action which is contrary to the provisions of the Certification Act. We can from a reading of Section 16 of the Certification Act assume that if the Committee passes some order upholding or rejecting the validity of the social status, then the civil court may be bound by that order because that authority has been constituted under the provisions of the Act to decide these issues. However, if the High Power Committee has never dealt with that issue in respect of an individual, then the jurisdiction of the Court to decide whether that individual belongs to a Scheduled Caste or Scheduled Tribe or not is not barred under the provisions of the Act.

15. Another reason why we are inclined to hold that Section 16 of the Certification Act does not oust the jurisdiction of the Election Tribunal is that the Election Tribunal alone can set aside an election. If we accept the argument of learned counsel for the Petitioner then one issue would be referred to the High Power Committee for decision. The Election Tribunal shall then wait for the decision of the Committee and decide the matter as per the decision of the Committee. This is not the intention of the legislature and is also against the Constitutional scheme. Once an Election Tribunal is constituted and empowered to decide whether a person has been validly elected or not, then all the disputes which relate to that election must be and should be decided only by the duly constituted Election Tribunal. If we permit bifurcation of the case then it will lead to a result where no election petition should ever be decided within a reasonable period.

16. Though we have held that there is no conflict but even if we were to assume that there is conflict between Section 16 of the Certification Act and Section 441 of the Act, 1956, we are of the view that larger interest of justice and principles of harmonious construction require that the Election Tribunal should not be divested of its power to decide the question with regard to the status of the candidate. Lastly, we are of the view that the Election Tribunal does not decide whether the

certificate granted is false or forged. It only decides whether the person belongs to particular caste or not and whether he is qualified or disqualified to contest the election and this matter has to be decided only by the Election Tribunal and cannot be decided by the Committee whose jurisdiction is limited to decide whether certification is proper or not.

17. Moreover, the jurisdiction of the Committee flows from Sections 7 and 8 of the Certification Act and Section 8 empowers the Committee to decide whether social status certificate was obtained wrongfully or fraudulently and it has power to cancel or confiscate such certificates. The role of the Committee is limited to decide whether certificates have been properly issued or not but the Election Tribunal can definitely decide the question whether a person belongs to a reserved category or not.

18. We have carefully gone through the judgment in Rajkumari (supra) and it appears that the attention of the learned Single Judge who decided the matter was not brought to the various provisions of law which we have referred to hereinabove and especially Article 243-ZG. We are unable to agree with the reasoning given and do not agree with the same. In our opinion, the decision does not lay down the correct law.

19. In view of the above discussion, we answer the question referred to us by holding that it is within the domain and jurisdiction of the Tribunal constituted under Section 441 of the Act, 1956 to decide the issue whether the elected candidate belongs to the Scheduled Caste and Scheduled Tribe category for which the seat was reserved. We do not feel it necessary to refer the matter back to the learned Single Judge because the dispute raised in this revision petition is only with regard to jurisdiction of the Election Tribunal. The petition is dismissed. The interim order is vacated and the Election Tribunal is directed to dispose of the matter latest by 31.03.2017, even if it has to hold day to day hearing.

8. Thus, it has clearly been held that the Election Tribunal constituted under the Chhattisgarh Municipalities Act, 1961 has power and

jurisdiction to decide as to whether the elected candidate belongs to reserved category (ST/SC) for which the seat was reserved. This principle of law would apply with full force to the Election Tribunal constituted under the Act of 1993 and it is held that the Sub Divisional Officer/Specified Officer has power jurisdiction to decide the question whether the returned candidate belongs to the reserved category or not and he is competent to decide the same as per law laid-down by a Division Bench of this Court in **Smt. Babita Balmiki** (supra).

9. This would bring me to the next question as to whether the Sub Divisional Officer/Specified Officer is justified in allowing the election petition without framing any issue and without recording evidence.

10. Rule 11 (1) of the Rules of 1995 states as under:-

“11. Procedure before the specified officer and his powers.”-(1) Subject to the provisions of these rules, every election petition shall be enquired into by the specified officer as nearly, as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits:

Provided that it shall only be necessary for the specified officer to make a memorandum of the substance of the evidence of any witness examined by him.”

Rule 12 of the Rules of 1995 states as under:-

“12. Parties to produce their witnesses.”-It shall be the duty of the parties to produce their witnesses on the date fixed for evidence, and they shall not be entitled to an adjournment for non-attendance of their witnesses:

Provided that the specified officer may, at his discretion, order the issue of summons to any witness on the necessary process fee and costs

being deposited by the party concerned.”

11. In the instant case, the next question would be whether the petitioner belongs to Scheduled Tribe or not and whether while deciding the election petition, the Election Tribunal has followed the procedure prescribed in Rule 11 (1) and Rule 12 of the Rules of 1995.

12. The Supreme Court in the matter of Makhan Lal Bangal v. Manas Bhunia and others³ while emphasizing the need for framing the issue held as under:-

“19. An election petition is like a civil trial. The stage of framing the issues is an important one inasmuch as on that day the scope of the trial is determined by laying the path on which the trial shall proceed excluding diversions and departures therefrom. The date fixed for settlement of issues is, therefore, a date fixed for hearing. The real dispute between the parties is determined, the area of conflict is narrowed and the concave mirror held by the court reflecting the pleadings of the parties pinpoints into issues the disputes on which the two sides differ. The correct decision of civil lis largely depends on correct framing of issues, correctly determining the real points in controversy which need to be decided. The scheme of Order XIV of the Code of Civil Procedure dealing with settlement of issues shows that an issue arises when a material proposition of fact or law is affirmed by one party and denied by the other. Each material proposition affirmed by one party and denied by other should form the subject of a distinct issue. An obligation is cast on the court to read the plaint/petition and the written statement/counter, if any, and then determine with the assistance of the learned counsel for the parties, the material propositions of fact or of law on which the parties are at variance. The issues shall be framed and recorded on which the decision of the case shall depend. The parties and their counsel are bound to assist the court in the process of framing of issues. Duty of the counsel does not belittle the primary obligation cast on the court. It is

3 (2001) 2 SCC 652

for the Presiding Judge to exert himself so as to frame sufficiently expressive issues. An omission to frame proper issues may be a ground for remanding the case for retrial subject to prejudice having been shown to have resulted by the omission. The petition may be disposed of at the first hearing if it appears that the parties are not at issue on any material question of law or of fact and the court may at once pronounce the judgment. If the parties are at issue on some questions of law or of fact, the suit or petition shall be fixed for trial calling upon the parties to adduce evidence on issues of fact. The evidence shall be confined to issues and the pleadings. No evidence on controversies, not covered by issues and the pleadings, shall normally be admitted, for each party leads evidence in support of issues the burden of proving which lies on him. The object of an issue is to tie down the evidence and arguments and decision to a particular question so that there may be no doubt on what the dispute is. The judgment, then proceeding issue-wise would be able to tell precisely how the dispute was decided.”

13. Following the statutory provisions contained in Rule 11 (1) and 12 of the Rules of 1995 and the principle of law laid-down by the Supreme Court in **Makhan Lal Bangal** (supra), I do not have slightest hesitation to hold that learned Specified Officer is absolutely unjustified in granting the election petition without framing any issue and without conducting an enquiry into the alleged action of the Election Tribunal particularly where the case of the election petitioner was that returned candidate/petitioner does not belong to Scheduled Tribe category.
14. Accordingly, the impugned order dated 5.7.2010 (Annexure P/1) passed by the Sub-Divisional Officer (R.), Dabhra is hereby quashed. However, the petitioner will not be entitled to work as his tenure as Panch has already come to an end by efflux of time.

15. The writ petition is allowed to the extent sketched herein-
above leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

B/-

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No.3963 of 2010

Petitioner

Natwar

Versus

Respondents

Parvati Bai and another

(Head-note)

(English)

Sub-Divisional Officer (Revenue)/Election Tribunal has power and jurisdiction to determine whether a elected candidate belongs to reserved category or not while dealing with election petition.

(हिन्दी)

चुनाव याचिका का निराकरण करते समय उप-खण्ड अधिकारी (राजस्व)/निर्वाचन अधिकरण को यह निर्धारित करने की शक्ति और क्षेत्राधिकार है कि निर्वाचित उम्मीदवार आरक्षित श्रेणी से संबंधित है या नहीं।