

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 1726 of 2020**

1. Smt. Rameshwari Patel W/o Kapil Narayan Patel Aged About 36 Years R/o Village Eramsahi, Police Station Masturi, Tehsil Masturi , Janpad Panchayat Masturi , District Bilaspur Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Panchayat And Gramin Vikas Vibhag, Mahanadi Bhawan , Mantralaya , Capital Complex , Atal Nagar, Naya Raipur , District Raipur Chhattisgarh.
2. Sub Divisional Officer (Revenue) Prescribed Officer, Panchayat Raj Adhiniyam, Masturi , District Bilaspur Chhattisgarh.
3. Smt. Basanti Devi Yadav W/o Ramchandra Yadav Aged About 45 Years R/o Eramsahi , Post Eramsahi , Police Station And Tehsil Masturi, Janpad Panchayat Masturi, District Bilaspur Chhattisgarh.
4. Smt. Jai Kumari W/o Jeetram Aged About 24 Years R/o Eramsahi , Post Eramsahi , Police Station And Tehsil Masturi, Janpad Panchayat Masturi, District Bilaspur Chhattisgarh
5. Smt. Jyoti Bargah W/o Shatruhan Bargah Aged About 30 Years R/o Eramsahi , Post Eramsahi , Police Station And Tehsil Masturi, Janpad Panchayat Masturi, District Bilaspur Chhattisgarh
6. Presiding Officer Polling Booth No. 136 , Gram Panchayat Eramsahi, Janpad Panchayat Masturi , District Bilaspur Chhattisgarh.
7. Presiding Officer Polling Booth No. 137, Gram Panchayat Eramsahi, Janpad Panchayat Masturi , District Bilaspur Chhattisgarh.
8. Presiding Officer Polling Booth No. 138, Gram Panchayat Eramsahi , Janpad Panchayat Masturi , District Bilaspur Chhattisgarh.
9. Presiding Officer Polling Booth No. 139, Gram Panchayat Eramsahi , Janpad Panchayat Masturi , District Bilaspur Chhattisgarh.
10. Tehsildar And Election Officer (Returning Officer) Janpad Panchayat Masturi, District Bilaspur Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Manoj Paranjpe, Adv.
For State	:	Mr. Vivek Ranjan Tiwari, Addl. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****27/08/2020**

1. The challenge in the present writ petition is to the order Annexure P/1 dated 06.07.2020 passed in Revenue case No. 13-A-89(21)/2019-2020. Vide the said impugned order, the Sub Divisional Officer (Revenue) Masturi, District Bilaspur has rejected the election petition preferred by the petitioner.

2. The facts of the case is that the respondent No. 3 namely Smt. Basanti Devi Yadav was declared as an elected Sarpanch of Gram Panchayat Eramsahi, Tehsil Masturi District Bilaspur. The election of the respondent No. 3 was subjected to challenge by the petitioner before the respondent No. 2 -SDO under section 122 of the CG Panchayat Raj Adhiniyam. The election petition so filed by the petitioner has been rejected by the respondent No. 2 vide the impugned order. The ground of challenge to the impugned order is that the decision has been taken by the respondent No. 2 in an election petition contrary to the Rules and procedures prescribed under The Chhattisgarh Panchayats (Election Petitions Corrupt Practices and Disqualification for Membership) Rules, 1995.
3. According to the petitioner, the said Rules clearly provide for framing of issues and recording of evidences before taking a final decision on the election petition. This procedure prescribed under the law has not been followed by the respondent No. 2 in deciding the said election petition.
4. The counsel for the petitioner relied upon the judgment of **Balram Rathore vs. State of Chhattisgarh & Ors.** AIR 2011 Chhattisgarh 134 which specifically lays down the proposition that in an election petition it is mandatory for the authority hearing the election petition to frame issues on the disputed questions of fact and thereafter permit the parties to lead evidence in support of their respective contentions and then reach to a conclusion. This proposition of law has been further reiterated by this Court in the judgment of **Ghanshyam Chouhan vs. Dhal Singh Thakur and Ors.** reported in 2016 (4)CGLJ382.
5. The learned Addl. A.G. at this juncture submits that though from the perusal of the order-sheet, it reflects that the evidences have not been recorded and framing of issues have also not been done but the Learned Addl. A.G. tried to defend the impugned order relying upon a judgment passed by the Division Bench of this Court in WA No. 68 of 2016 in the case of **Santosh Kumar Nishad, Vs. State of Chhattisgarh** whereby the Division Bench has dismissed the appeal of the petitioners affirming the order passed by

the Single Bench in writ petition i.e. WP(C) No. 1565 of 2015 whereby the single Bench also had rejected the writ petition saying that only because of the election petition has been decided without framing of the issues it would not be fatal, if the parties were well aware of the limited issue involved in the petition.

6. It would be relevant at this juncture to take note of the judgment of the Division Bench in the case of **Santosh Kumar Nishad, vs. State of Chhattisgarh** (Supra) in which, in Paragraphs 9 to 15 & 17 have held as under:-

“9. It would be appropriate to mention that Rule 11 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification from Membership) Rules, 1995, lays down the procedure to be followed by the Election Tribunal while deciding the election petition. It reads as follows :

“11. **Procedure before the specified officer and his powers.**-(1) Subject to the provisions of these rules, every election 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.”

10. The Rule only lays down that the Code of Civil Procedure as far as possible should be applied in election petition. Framing of an issue(s) is one of the essential features of a civil suit and therefore we have no hesitation in holding that normally the Tribunal should frame issue(s) before deciding an election petition. The purpose of framing issue(s) is to cull out the dispute between the parties which has to be decided by the Court. Framing of issue(s) is essential to help the Court narrow down the matters on which evidence has to be led. It is also useful in appreciating evidence; assessing the relevance of evidence; deciding upon admissibility of evidence and what evidence should be rejected at the threshold. Framing of issue(s) also is a great help while delivering judgment because then the judgment can be delivered issuewise. Under Order 14

Rule 2 of the Code of Civil Procedure, the Court is required to pronounce judgment on all the issues.

11. It is normally expected that the judgment should be delivered issue-wise. We are of the view that this procedure should normally be followed by the Election Tribunal also.
12. The question that arises is that if the Election Tribunal fails to frame issue(s) is it always necessary to hold that the entire proceedings are non-est and have to be quashed. We do not think so. This will depend on the facts and circumstances of each case. If due to nonframing of any issue(s) prejudice is caused to one of the parties inasmuch as the party cannot lead evidence or is denied an opportunity to lead evidence and the election petition is decided one way or the other on the basis of that point, then definitely the order will have to be set aside. Similarly, if the Election Tribunal decides the petition on a point which has not been argued before it because no issue was framed in that regard, then also the non-framing of an issue or issues will be fatal. However, there is an Exception to this. If parties fully knowing what is the dispute in hand enter into the witness box, examine witnesses, cross-examine witnesses of the other side and argue the matter on all the issue(s) which may arise in that petition, then they have waived their right to claim that the non-framing of issue(s) is such a defect that the final order should be quashed.
13. In 2001 (2) SCC 652 (Makhan Lal Bangal v. Manas Bhunia & Others), the Apex Court has set out the importance of framing issues even in an election petition. The relevant portion of the judgment reads as follows:-
 - “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 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 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.”

14. In 2011 (11) SCC 786 (Kalyan Singh Chouhan v. C.P. Joshi), the main dispute was whether one lady had cast her vote twice under two different names and whether the tendered votes cast in the election must be counted and whether six votes polled against the tendered votes must be rejected. In that case also the margin of victory was only one vote. A prayer was made to summon certain documents with regard to the tendered votes. This prayer was rejected on the ground that these facts were not pleaded and no issue had been framed in respect of those tendered votes. An appeal was filed before the Apex Court wherein the elected candidate urged that the election petition has to be adjudicated strictly adhering to the statutory provisions and the Court cannot permit a party to lead evidence unless an issue has been framed on the controversy and an issue cannot be framed unless there are actual pleadings in respect thereof. We are not concerned with the second part because there is no allegation in the present case that the

pleadings are lacking material particulars. The only allegation is that no issue was framed. With regard to non-framing of issues, the Apex Court in the said judgment held as follows:-

“25. The object of framing issues is to ascertain/shorten the area of dispute and pinpoint the points required to be determined by the court. The issues are framed so that no party at the trial is taken by surprise. It is the issues fixed and not the pleadings that guide the parties in the matter of adducing evidence.

27. There may be an exceptional case wherein the parties proceed to trial fully knowing the rival case and lead all the evidence not only in support of their contentions but in refutation thereof by the other side. In such an eventuality, absence of an issue would not be fatal and it would not be permissible for a party to submit that there has been a mistrial and the proceedings stood vitiated.”

15. This view has been reiterated by the Apex Court in 2014 (5) SCC 312 (Arikala Narasa Reddy v. Venkata Ram Reddy Reddygari & Another) as follows :

“16. There may be an exceptional case where the parties proceed to trial fully knowing the rival case and lead all the evidence not only in support of their contentions but in refutation of the case set up by the other side. Only in such circumstances, absence of an issue may not be fatal and a party may not be permitted to submit that there has been a mistrial and the proceedings stood vitiated.”

17. We again however clarify that normally we expect the Election Tribunal to frame issue(s) and decide the case issue-wise. It is only in the peculiar facts of this case that we have held that the non-framing of issues does not materially affect the result of the case.”

7. A plain reading of the aforesaid judgment passed by the Division Bench particularly the observations made in the para- 17 clearly mandate that under the normal circumstances in the course of deciding an election petition, the election tribunal is supposed to frame issues on the disputed facts and provide opportunity to the parties to lead evidence and decide the matter issue wise.

8. The writ appeal in the said case was dismissed affirming the order of the single Bench on the ground that at the time of filing of the writ petition itself it was clear that the election petition itself has been filed on a limited issue and the parties had been contesting the said election

petition on that limited issue, which is not the case in the present election petition where the petitioner herein has raised many questions of facts for declaring the election of the respondent No. 3 to be bad. Therefore, it was required for the election tribunal to have framed issues and then permitted the parties to record their evidences and thereafter should have decided the matter issue wise.

9. In view of the aforesaid legal position as it stands, this Court is of opinion that the judgment rendered in the case of **Santosh Kumar Nishad** (Supra) was in the peculiar facts of that case, that would not be and that cannot be applied uniformly in every election petition or else the very mandate of the statute itself would get frustrated and the provisions and the procedures laid down for conducting an election petition would become redundant. The impugned order in the instant case on perusal of the entire order-sheets which have been enclosed along with the writ petition clearly reflects that the issues were not framed and evidences were also not recorded.
10. Given the said facts, the impugned order Annexure P/1 dated 06.07.2020 in Revenue case No. 13/A-89(21)/2019-2020 being in contravention to the provisions of the Panchayat Raj Adhiniyam and the Rules framed therein and the same deserves to be and is accordingly set/aside/ quashed. As a consequence, the matter stands remitted back to the respondent No. 2- SDO, who inturn shall proceed further with the election petition and shall frame issues on the disputed questions of fact and after granting opportunity of recording evidences to the disputing parties, shall pass an order on merits.
11. With the aforesaid observations, the writ petition stands allowed and disposed of.

Sd/-

(P. Sam Koshy)
Judge