

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No. 1939 of 2020

Smt. Girija Devi Agrawal W/o Shri Kamal Kumar Agrawal Aged About 48 Years R/o Main Road Jairam Nagar, Tehsil Masturi, District Bilaspur Chhattisgarh.

---Petitioner(s)

Versus

1. State of Chhattisgarh Through The Secretary, Department of Panchayat And Social Welfare, Mantralaya , Mahanadi Bhawan, Atal Nagar, Nava Raipur, District Raipur Chhattisgarh.
 2. Collector Bilaspur, District Bilaspur Chhattisgarh.
 3. Specified Officer Cum Sub Divisional Officer (Revenue) Masturi, District Bilaspur Chhattisgarh.
 4. Tahsildar Cum Returning Officer (Panchayat) Masturi, District Bilaspur Chhattisgarh.
 5. Presiding Officers Booth No. 159, 160, 161, 162, 163, 164 and 165 of Gram Panchayat Jairam Nagar, Janpad Panchayat Masturi, District Bilaspur Chhattisgarh.
 6. Smt. Leela Bai Sharma W/o Ghanshyam Prasad Sharma
 7. Smt. Bharti Pal W/o Sukhnandan Bhargav
 8. Smt. Madhuri Sahu W/o Narayan Prasad Sahu
 9. Smt. Seeta Mallick W/o Dhanraj Mallick
- Respondents No. 6 to 9 are R/o Jairam Nagar Tahsil Masturi, District Bilaspur Chhattisgarh.

---Respondents

For Petitioner	:	Shri Shashank Thakur, Advocate.
For Respondent-State	:	Shri Mateen Siddique, Dy. A.G.
For Respondent No.6	:	Shri Vaibhav Singh, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27.08.2020

1. The challenge in the present writ petition is to the impugned order Annexure P/1 dated 10.08.2020 passed in case No.09/A-89(21)/2019-20 by the respondent No.3. Vide the said impugned order, the respondent No.3 has allowed the election petition setting aside the election of the petitioner from the post of Sarpanch of Gram Panchayat Jairam Nagar, Tehsil Masturi, District Bilaspur.
2. The facts of the case is that, the election for the post of Sarpanch was conducted on 28.01.2020. The petitioner and the private respondents in

the writ petition were candidates in the said election. The results of the election were declared on 28.01.2020. The petitioner was the winning candidate with a margin of more than 90 votes. The respondent No.6 preferred an election petition under Section 122 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 on 12.02.2020. The notices were issued to the parties. The petitioner, the respondent before the election petition, appeared and submitted her reply on 26.02.2020 categorically denying all the allegations and contentions made in the election petition. Subsequently, for pretty long time, the proceedings before the election Tribunal did not take place because of the effect of Corona-19 Pandemic or the non availability of the presiding Officer and the matter for the first time was thereafter taken up on 05.08.2020 on which date since both the side did not lead evidence and expressed their unwillingness to lead evidence, the respondent No.3 closed the matter and the impugned order was passed on 10.08.2020.

- 3.** The primary challenge to the impugned order is that the said impugned order is passed in total contravention to the provisions of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (in short, the Rules, 1995). According to the petitioner, there is a specific procedure prescribed for the specified officer in the course of conducting the election petition. It is this provision which has not been adhered to before the impugned order was passed. The contention of the petitioner is that, after the reply with categorical denial being filed by the petitioner, it was required for the specified officer to proceed with the matter in accordance with procedure applicable under the Code of Civil Procedure, thereby issues ought to have been framed on the disputed questions of fact and thereafter the parties should had been

offered to lead evidence and then the specified officer after examining all the witnesses so adduced should have decided the petition issue-wise. While referring to the order sheets which have been enclosed along with the writ petition, it reflects that such procedure have not been complied with.

4. According to the petitioner, after the submission of reply, the matter was first time taken up on 05.08.2020 on which date itself since the respondent-complainant did not lead evidence the petitioner also did not lead any evidence in rebuttal and the matter was straightaway closed and the impugned order was passed by setting aside the election of the petitioner.
5. The counsel for the petitioner submitted that the mandatory requirement of following the procedure as specified in Rule 11 of Rules, 1995 has been settled by this court in series of judgments starting from the judgment in case of **Parvatia Vs. Padmini & Others**, 2005(2)CGLJ 335 and which has been reiterated end number of times in various judgments.
6. Opposing the petition, learned counsel appearing for the State as also the counsel for the election petitioner-respondent No.6 referred to the order sheet dated 05.08.2020 wherein there is an entry, of both sides to the election petition making submissions of they not wanting to lead any evidence and according to the State counsel since both the parties have not led evidence and had given up their right to lead evidence, the specified officer was left with no other option but to close the matter for orders on the basis of averments and thus the proceedings cannot be held to be bad in law.
7. Further contention of respondent No.6 is that since both the parties have not led any evidence it has to be presumed that the petitioner herein was

not having anything to lead evidence and disprove the averment or the contentions raised in the election petition and the same has to be construed as a waiver of right to lead evidence knowing fully well the consequence thereof. According to the respondent No.6, applying the doctrine of waiver, the petitioner now cannot turn around and cry foul of the specified officer not framing issues and in closing the matter without recording the evidence. The counsel for the respondents relied upon the decision of this court rendered in WPC No.1565 of 2015 which stood decided on 28.01.2016 whereby the Single Bench has dismissed the writ petition holding that only because issues were not framed, the order of the specified officer would not get vitiated where either of the parties were well aware of the limited issue on which the election petition was filed. The respondents also relied upon the judgment of Division Bench in Writ Appeal No.68 of 2016 which had affirmed the judgment dated 28.01.2016 passed by the Single Bench in WPC No.1565 of 2015.

8. Having heard the contentions put forth on either side and on perusal of records, it would be relevant at this juncture to refer to Rule 11 of Rules, 1995, which for ready reference is reproduced herein:

“Rule 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 the 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.

(2) The Specified officer, shall have the powers which are vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters :

- a. Discovery and inspection;
- b. Enforcing the attendance of witnesses, and requiring the deposit of their expenses;
- c. Compelling the production of document;
- d. Examination of witnesses on oath;
- e. Reception of evidence taken on affidavit; and
- f. Issuing commission for examination of witnesses and summoning and examining suo moto any person whose evidence, appears to him to be material.”

- 9.** A bare perusal of the aforesaid provision of law clearly requires the election Tribunal or the specified officer to conduct the election petition as if it was a case which is being conducted by a court where the Civil Procedure Code applies. It is by now well settled position of law that once when the party approaches the court and the court having seized of the matter, notices have to be issued to the opposite side and on notices being issued, the other side is required to appear and respond to the claim put forth for adjudication. The moment the respondents or the defendants enter appearance and submit their reply, in case if there are admissions in the reply, the authorities can proceed to decide the matter on the basis of admissions. However, in case if there is a categorical denial of the allegations and contentions made in the claim, the procedure or the practice is that of framing of issues on the disputed questions of fact and on the basis of issues that are framed, the parties are called upon to lead evidence. Further, it is always the responsibility of the person who has approached the court to prove his case and the averments made in his claim. It is only after the complainant adduces all his evidences then the opposite side is called upon to lead evidence in rebuttal.
- 10.** Coming back to the present case, a plain reading of the order sheets would reflect that in the instant case in the reply of the petitioner there is a

categorical denial of all the claims and allegations made in the election petition. The reading of the order impugned would further reveal that there were more than one allegation made against the petitioner in the election process in which she has been elected as Sarpanch, no issues whatsoever on the disputed question of fact has been recorded. The matter was taken up after a long gap on 05.08.2020 on which date either side expressed not to lead evidence.

- 11.** Now the point to be considered is what would be the effect so far as the present petitioner, the respondent in the election petition, who has not led evidence before the election Tribunal.
- 12.** It has to be appreciated that it was the respondent No.6 who had filed the election petition. Thus, the respondent No.6 was the complainant who was aggrieved of the petitioner's election. So it was the respondent No.6 who was required to lead evidence to prove her case and if the respondent No.6, the complainant herself, gives up her right to lead evidence, there was no occasion for expecting the petitioner, the respondent before the election Tribunal, to come forward and lead evidence particularly when the complainant herself has not led any evidence. It could not have been expected from the petitioner, the respondent before the election Tribunal, to lead evidence against herself. Such is not the mandate of law.
- 13.** Now so far as the provision of Rule 11 of the Rules, 1995 being mandatory, this court does not intend to reproduce the contents of those judgments which have been decided by this court, except referring to the citations wherein those law has been well settled starting from Parvatia Vs. Padmini (Supra) which is one of the first judgment rendered by this court on the issue and which has dealt with the subject matter in details and in very categorical terms it has been held that the procedure under

Rule 11 being mandatory, it has to be adhered to in accordance with provisions of Code of Civil Procedure.

- 14.** Similar issue has again been reiterated in cases of Ramsai Vs. State of Chhattisgarh & Others, WPC No.2652 of 2016 decided on 15.01.2017, in Smt. Bhupeshwari Sahu Vs. State of Chhattisgarh & Others, WPC No.1947 of 2016, decided on 21.09.2016, in 2016(4) CGLJ 382, in Balram Rathore Vs. State of Chhattisgarh & Ors, AIR 2011 CG 134 and in Smt. Sabyarani Vs. State of Chhattisgarh & Others, WPC 422 of 2017, decided on 23.09.2019.
- 15.** Coming to the judgment relied upon by the counsel for the respondents, what needs to be considered is that, the Division Bench while deciding Writ Appeal No.68 of 2016 has in very categorical terms held that the judgment which has been tested by the Division Bench in that writ appeal was in the peculiar facts of that case and where the limited issues involved in the matter was well known on either side. Therefore, the Bench has reached to the conclusion that in that circumstances only because the issues were not framed, the order of the specified officer would not get vitiated. The Division Bench has held that the said judgment would be in the peculiar facts of that case, whereas, the Division Bench in the very same judgment has categorically clarified that normally it is expected that the election Tribunal should first frame issues and decide the case issue-wise.
- 16.** In the instant case, perusal of order sheets would clearly reveal that firstly the issue have not been framed upon which the parties could have been called to lead evidence. Secondly, the complainant herself has not led evidence before the election Tribunal to prove her case and therefore on the petitioner (respondent before Tribunal) giving up her right to lead

evidence cannot be construed as waiver on her part to lead evidence keeping in view that the complainant has not proved her case by leading evidence.

- 17.** The impugned order Annexure P/1, dated 10.08.2020 thus is not sustainable in the eye of law. The same is in contravention to the settled legal position and also is in contravention to the statutory provision. The same deserves to be and is accordingly set aside. Once when this court holds that the order of setting aside of the election i.e. the impugned order dated 10.08.2020 to be bad in law and violative of rule provisions, any consequential action which has been passed by the authorities would also get rendered bad and *void ab initio*.
- 18.** Therefore, the action of recounting of votes done by the respondents and in the course declaring the respondent No.6 as winning candidate also is liable to be declared bad and the same is also set aside. Since the order is being set aside on the technical ground of non following the procedure as specified in Rule 11 of Rules, 1995, the matter stands remitted back to the respondent No.3 for deciding the matter afresh after framing of issues and giving opportunity of hearing to the parties to lead evidence.
- 19.** With the aforesaid direction, the writ petition stands allowed and disposed of. It is expected that the respondent No.3 shall take a decision at the earliest.

Sd/-
(P. Sam Koshy)
Judge