

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3203 of 2020**

- Ishwar Sahu S/o Shri Ram Ratan Sahu Aged About 35 Years R/o Village Jaroundha, Janpad Panchayat Takhatpur , District Bilaspur Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary , Department Of Panchayat And Rural Development , Mantralaya Bhawan, Atal Nagar , Naya Raipur.
2. Sub Divisional Officer (Revenue) Kota, / Specified Officer, Gram Panchayat Election Petition , Kota District Bilaspur Chhattisgarh
3. Santosh Sahu S/o Lakhan Lal Sahu Aged About 37 Years R/o Village Jaroundha, Tahsil Takhatpur, District Bilaspur Chhattisgarh
4. Returning Officer Gram Panchayat Jaroundha, Janpad Panchayat Takhatpur , District Bilaspur Chhattisgarh
5. Presiding Officer Poling Booth No. 246, Gram Panchayat Jaroundha, Janpad Panchayat Takhatpur, District Bilaspur Chhattisgarh
6. Presiding Officer Polling Booth No. 247, Gram Panchayat Jaroundha, Janpad Panchayat Takhatpur, District Bilaspur Chhattisgarh
7. Presiding Officer Poling Booth No. 248, Gram Panchayat Jaroundha, Janpad Panchayat Takhatpur, District Bilaspur Chhattisgarh
8. Presiding Officer Poling Booth No. 249, Gram Panchayat Jaroundha, Janpad Panchayat , Takhatpur , District Bilaspur Chhattisgarh
9. Ashwani Srivas S/o Sukhi Ram Srivas Aged About 40 Years R/o Gram Panchayat Jaroundha, Janpad Panchayat Takhatpur, District Bilaspur Chhattisgarh

---- Respondents

For Petitioner : Shri Ravindra Agrawal, Advocate

For Respondents/State : Shri Amrito Das, Addl. AG

Hon'ble Shri Justice Goutam Bhaduri**Order****07/01/2021**

1. Heard.
2. Challenge in this petition is to the order dated 18.11.2020 (Annexure P-1) wherein the prayer to frame additional issues have been refused.

3. The brief facts of this case are that the petitioner is an elected Sarpanch, which was challenged by the respondent No.3. The counting of the vote was done on 03.02.2020 after the polling and the petitioner along with other candidates were declared as winning candidate. The respondent No.3 had challenged the election by way of filing the election petition before the SDO on the ground that he has raised certain objections during the counting, but it was refused to be accepted by the presiding officer of the polling booth. Subsequently, when the election petition was filed by respondent No.3, the losing candidate, the preliminary objection was raised by petitioner about the maintainability of the petition as no written objection was raised as required under Rule 80 of the C.G. Panchayat Nirvachan Niyam, 1995 (for short 'the Rules, 1995') with respect to counting of votes. The said objection having been dismissed, it was subject of challenge before the Collector Bilaspur. The Collector by order dated 14.08.2020 dismissed the revision petition. Thereafter, another application under Order 14 Rule 1 CPC was filed for framing the necessary issues but the same was dismissed on the ground that the grounds mentioned in the election petition would be treated as issues. The same was subject of challenge before this Court in WPC No. 2070/2020. The said writ petition was disposed of on 14.09.2020 with the following observation,

“1. The present writ petition has been filed challenging the order dated 29.07.2020 passed by the Sub Divisional Officer (Revenue) acting in the capacity of Specified Officer in Gram Panchayat Election Petition whereby the preliminary objection raised by the petitioner has been rejected. The writ petition has been filed also challenging the order dated 24.08.2020 passed by the same authority i.e. the SDO(R) whereby the authority has decided to proceed with the election petition without framing issues and without recording evidence on the disputed question of facts.

2. From reading of the writ petition it clearly reflects that the petitioner is primarily aggrieved of the decision of the authority in not appreciating the preliminary objection that the petitioner has raised in respect of the election petition being not maintainable. According to petitioner the election petition is not supported with an application for recounting which is required to be filed immediately after the results were declared before the Returning Officer. According to the petitioner, it has to be verified whether any application has been filed before the Returning Officer or not, and unless the same is not filed before the Returning Officer promptly on that ground alone, the election petition may not be maintainable. The second ground is that the petitioner had moved an application for framing of issues and recording of evidences before proceeding further with the election petition which has not been considered by the authority.
3. So far as the preliminary objection which the petitioner had raised and which has been rejected by the Specified Officer at the first instance is concerned, this Court is of the opinion that even if the preliminary objection has been rejected by the Specified Officer, the fact which still remains is that while deciding the election petition, the Specified Officer i.e. the Sub Divisional Officer ® has to consider the aspect whether the election- etitioner had in fact filed an objection before the Returning Officer when the results were being declared or not. The Authority shall also consider as to the effect of the non-filing of the objection before the Returning Officer and the effect of filing of the objection before any other Officer other than the Returning Officer. It is expected that the Specified Officer while deciding the election petition shall specifically deal with the said issue.
4. As regards the second contention of the petitioner in respect of the issues not being framed, the said issue is by now well settled by a catena of decisions of this Court, wherein it has been held that framing of issues while deciding election petition is mandatory. Therefore, at this stage, since the election petition is still proceeding, it is expected that the Specified Officer shall frame specific issues raised by the parties in the pleadings to the election petition and thereafter, after granting opportunity of hearing to the parties and opportunity to produce their evidence, shall decide the election petition on its own merits in accordance with law.
5. With the aforesaid observation, the writ petition stands disposed of.”

Thereafter, four issues were framed and subsequently, another application was

filed under Order 14 Rule 5 read with Section 151 of the CPC for framing of additional issues, which was dismissed by the impugned order dated 18.11.2020.

4. Learned counsel for the petitioner would submit that the maintainability of the election petition itself is sought to be raised by framing issues as though the challenge in election petition is on the ground of recounting of votes, such election petition would not be maintainable as there is a failure of compliance under Section 80 of the Rules, 1995.
5. The relevant part of Rule 80 (5) of the Rules, 1995 reads as under:-

80. Recount of votes.- (5) After the total number of votes polled by each candidate has been announced under sub-rule (2) of rule 77 or sub-rule (4) the Returning Officer or such other officer authorised by him shall complete and sign the result sheet and no application for a recount shall be entertained thereafter:

Provided that no step under this sub-rule shall be taken on the completion of the counting until the candidates and election agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred by sub-rule (1).

6. Since the petitioner has raised the question about the maintainability of the petition and in the election petition recounting of the vote is one of the grounds, therefore, considering the mandate of sub-rule (5) of the Rule 80 of the Rules, 1995, the SDO before whom the election petition is pending is directed to frame another issue about the maintainability of the election petition filed by respondent No.3.
7. With such observation, the writ petition stands disposed of.

Sd/-
Goutam Bhaduri
Judge