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**HIGH COURT OF CHHATTISGARH, BILASPUR****Civil Revision No. 110 of 2015****Judgment reserved on : 10-08-2016****Judgment delivered on : 02-09-2016**

Vijay Verma, son of Arjun Das Verma, aged about 38 years, resident of Ward No.13, Chakarbhata Camp, Nagar Panchayat Bodri, Police Station Chakarbhata, District Bilaspur (C.G.)

...Election Petitioner

**---- Applicant****Versus**

Kushal Pandey, Vice President, Nagar Panchayat Bodri, Corporator Ward No.9, Chakarbhata Bodri Nagar Panchayat, Police Station Chakarbhata, District Bilaspur (C.G.)

**---- Respondent**


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For Applicant: Mr. Sunil Otvani, Advocate.  
For Respondent/State: Mr. Ratnesh Kumar Agrawal, Advocate.

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**Hon'ble Shri Justice Sanjay K. Agrawal****Judgment [C.A.V.]**

(1) Invoking provisions contained in Section 26(2) of The Chhattisgarh Municipalities Act, 1961 (hereinafter called as 'Act of 1961') read with Rule 19(2) of The Chhattisgarh Municipalities (Election Petition) Rules, 1962 (hereinafter called as 'Rules of 1962'), the election petitioner, petitioner herein has preferred this revision calling in question the legality, validity and correctness of

the impugned order dated 15.10.2015 passed by the District Judge, Bilaspur in M.J.C. No.114/2015 by which learned District Judge/Election Tribunal has dismissed the election petition instituted by the petitioner herein under Section 20 read with Section 22 of the Act of 1961 and declined to the election of respondent herein/Vice-President Office of Nagar Panchayat, Bodri District Bilaspur as null & void.

(2) The aforesaid challenge has been made on the following factual backdrop:-

(2.1) Election for the office of Vice-President of Nagar Panchayat, Bodri, District Bilaspur was held on 19.01.2015 wherein the respondent stood declared as successful candidate. Election petition being M.J.C. No.114/2015 was filed on the ground that one vote, which was cast in favour of election petitioner had wrongly been declared invalid by Presiding Authority in course of counting of votes.

(2.2) The election petitioner, by filing election petition, pleaded inter alia that Nagar Panchayat, Bodri has 15 Wards; and election of Nagar Panchayat, Bodri was held on 4.1.2015 in which 15 councillors were elected and the President was also elected by direct election and, as such, 15 councillors + 1 President = total 16 candidates were eligible to cast their votes to elect Vice President in accordance with the Chhattisgarh

Municipalities (Election of Vice-President) Rules, 1998 (hereinafter called as 'Rules of 1998'). It was further pleaded that in accordance with the Rules of 1998, election of Vice President was held on 19.01.2015 and in that election, the election petitioner as well as the returned candidate, the respondent herein, stood as candidates by filing their nomination papers and the Tahsildar, Bilha was appointed as Presiding Authority for polling of the said election. On the same date, in presence of Presiding Officer, votes were counted and in such counting, the election petitioner secured seven valid votes *whereas* the respondent secured eight valid votes and one vote was declared invalid by the Presiding Authority holding that one of the councillors has not put 'X' mark in required column of the ballot paper.

(2.3) Immediately thereafter, election petitioner made a representation that one such vote has been declared invalid illegally and that be counted in his favour, but it was not done and result was declared and the respondent herein was declared elected as returned candidate.

(3) The election petitioner filed election petition under Section 20 read with Section 22 of the Act, 1961 before the Election Tribunal for declaring election of the respondent as null & void and for further declaration that one vote, which was declared

invalid by the Presiding Authority, was cast in his favour and as per Rule 12 of the Rules, 1988, the procedure as mandated by Section 25 of the Act of 1961/or Rules of 1998 be followed and accordingly the election petition be allowed.

(4) The respondent herein, filed his written statement, before the Election Tribunal opposing the election petition and raised all the permissible objections/defences in his written statement and prayed for dismissal of election petition.

(5) The Election Tribunal made an enquiry into the election petition in accordance with the Rules.

(6) On behalf of the election petitioner, the election petitioner (PW-1) and the Presiding Authority (PW-2) were examined, whereas on behalf of the respondent neither documents were filed nor he examined himself before the Election Tribunal.

(7) The Election Tribunal, by its impugned order, dismissed the election petition finding that declaration of one vote to be invalid by the Presiding Authority is legal as the election petitioner has made a mark in the ballot paper by which it can be identified that he has cast vote to a particular candidate.

(8) Feeling aggrieved and dissatisfied with the order of Election Tribunal, this revision petition has been filed questioning the order of Election Tribunal.

(9) Shri Sunil Otwani, learned counsel appearing for the petitioner would submit that the Election Tribunal, while counting the ballot paper, is absolutely unjustified in declaring one vote cast in favour of the election petitioner to be invalid merely on the ground that 'X' mark has not been put or made in the particular column of the ballot paper. He would further submit that in the Election Rules, 1998, there is no such statutory requirement requiring the voter while giving his vote to place on his ballot paper, mark 'X' in the column opposite the name of the candidate for whom he wishes to vote and if any elector has marked 'X' on his ballot paper opposite the name of candidate is the valid vote and merely because some instructions have been issued at the time of election by Election Commission/District Returning Officer that the voter has to mark 'X' mark in a particular column that will not make a valid vote to be invalid. He placed reliance upon the judgment of the Supreme Court in the matter of **Era Sezhiyan Vs. T.R. Balu and others**<sup>1</sup> in support of his submission.

(10) Per contra, Shri Ratnesh Kumar Agrawal, learned counsel appearing for the respondent would vehemently submit that the petitioner himself in his election petition has clearly stated that alleged invalid vote was cast by him and, therefore, such vote is identifiable and it has rightly been declared invalid by the Presiding Authority and placed reliance on the decision of the

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1 AIR 1990 SC 838



presiding authority and the ballot paper arranged in respect of each candidate.

(13) Thus, a conjoint reading of sub- rule (4) of Rule 10 and Rule 11 of the Rules, 1998 would show that councillors are required to make mark “X” on the ballot paper against the name of the candidate for whom he wishes to vote; and by virtue of Rule 11 of the Rules, 1998 the ballot paper can be considered and declared invalid by the Presiding Authority at the time of counting of the votes, if on any ballot paper there is “X” mark against more than one name or there is any mark or sign on a ballot paper by which the voter can be identified.

(14) In Arikala Narasa Reddy Vs. Venkata Ram Reddy Reddygari and another<sup>3</sup>, their Lordship of the Supreme Court have held that election petition should be tried strictly in accordance with procedure prescribed by statute by holding as under:-

“13. It is a settled legal proposition that the statutory requirements relating to election law have to be strictly adhered to for the reason that an election dispute is a statutory proceeding unknown to the common law and thus, the doctrine of equity, etc. does not apply in such dispute. All the technicalities prescribed/mandated in election law have been provided to safeguard the purity of the election process and the courts

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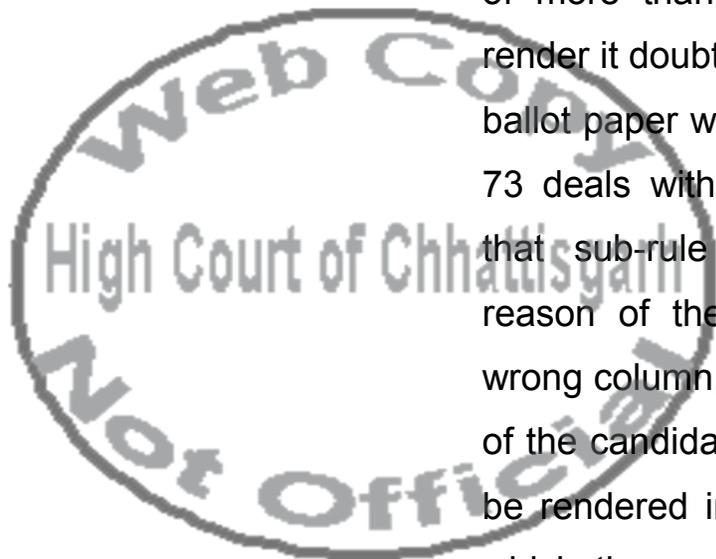
3 (2014) 5 SCC 312

have a duty to enforce the same with all rigours and not to minimise their operation. A right to be elected is neither a fundamental right nor a common law right, though it may be very fundamental to a democratic set-up of governance. Therefore, answer to every question raised in election dispute is to be solved within the four corners of the statute. The result announced by the Returning Officer leads to formation of a Government which requires the stability and continuity as an essential feature in election process and therefore, the counting of ballots is not to be interfered with frequently. More so, secrecy of ballot which is sacrosanct gets exposed if re-counting of votes is made easy. The court has to be more careful when the margin between the contesting candidates is very narrow “Looking for numerical good fortune or windfall of chance discovery of illegal rejection or reception of ballots must be avoided, as it may tend to a dangerous disorientation which invades the democratic order by providing scope for reopening of declared results”. However, a genuine apprehension of miscount or illegality and other compulsions of justice may require the recourse to a drastic step.”

(15) In the matter of **Era Sezhihan Vs. T.R. Balu & others**, reported in **AIR 1990 SC 838**, their Lordships of the Supreme Court, while interpreting Rule 37A of the Conduct of Election

Rules, 1960 which is *pari materia* with Rule 10(4) of the Rules, 1998 and while considering the similar fact situation, have held as under:-

“17. It is significant that in this sub-rule also there is nothing to indicate that the preference must be indicated in the column reserved for that purpose, the only requirement being that the figure 1 should be written opposite the name of the candidate. Similarly, sub-rule (2)(b) of Rule 73 only lays down that if the figure 1 is set opposite the name of more than candidate or is so placed as to render it doubtful to which candidate it applied, the ballot paper would be invalid. Sub-rule (2) of Rule 73 deals with the invalidity of ballot papers and that sub-rule nowhere states that merely by reason of the preference being marked in the wrong column, if the marking is opposite the name of the candidate concerned, the ballot paper shall be rendered invalid. It is true that the column in which the preference should have been marked and intended for that purpose was the column on the right-hand side of the first column where the name of the candidate was to be put; but there is no express provision to the effect that unless the preference is marked in the correct column, the ballot paper would be invalid. In such a situation, the principle enunciated by this Court in several judgments and reiterated in **S. Sivaswami Vs. V. Malaiknnan, (1984) 1 SCR 104: (AIR 1983 SC 1293)**, that the primary task of the court in a case where the question is whether the ballot paper in



invalid is to ascertain the intention of the voter, must be applied. In that case, the Court held that the ballot paper shall not be rejected as invalid if it is reasonably possible to gather a definite indication from the marking so as to identify the candidate in favour of whom the vote had been intended to be given. This, of course, is subject to the rule that before a ballot paper is accepted as valid the ballot paper must not be invalid under any other express provision and the intention of the voter must not be expressed in a manner which is contrary to or totally inconsistent with the manner prescribed under the said Act or the Election Rules for expressing the same.”

(16) Taking note of above-stated factual matrix and relevant judgment of the Supreme Court would bring me to question involved in this civil revision.

(17) The short question for consideration would be whether Presiding Authority of the election in question is justified in declaring one vote to be invalid in view of Rule 10(4) read with Rule 11 of the Rules of 1998 in the election of vice president.

(18) It is appropriate to note that immediately after counting of the votes, one of the candidates respondent herein raised an objection to the Presiding Authority vide Ex. P/1, that one vote be declared invalid as preference has not been indicated in the column reserved for that purpose and that vote be declared

invalid and the result of the election be declared. It is appropriate to reproduce the objection raised by the respondent herein vide Ex. P/1 which states as under:-

“प्रति,  
विहित प्राधिकारी  
उपाध्यक्ष पद निर्वाचन  
नगर पंचायत बोदरी

विषय:-निर्धारित समय 19/01/2015 परिणाम को शाम 04:00 घोषित किये जाने बाबत्।

महोदय,

सादर निवेदन है कि नगर पंचायत बोदरी के प्रथम सम्मेलन में निर्धारित समय पर मतदान हुआ तथा मतदान पूर्व प्रशिक्षण किया गया। पार्षद गणों में जिसमें प्रशिक्षण में जानकारी दी गई कि निर्धारित बाक्स के बाहेर किसी भी अन्य स्थल पर किसी भी प्रकार का चिन्ह पड़ने पर मत निरस्त माना जायेगा, एक मत निर्धारित बाँक्स के जगह पर अन्य स्थल पर निशान किया गया है, जो कि निरस्त माना जायेगा।

तथा निर्धारित 04:00 बजे से विलम्ब हो चुका है अतः परिणाम घोषित करने का कष्ट करें।

सही/-”

(19) The Presiding Authority declared one vote to be invalid vide Article-C by recording following reason:-“निर्धारित स्थान पर गुणा ग का निशान नहीं होने पर मतपत्र अवैध माना गया।

सही/-

13.01.2015”

(20) Thereafter, during the course of examination before the Election Tribunal, Presiding Authority Shri Prakash Chand Kori (AW-2) was examined, in which in paragrah 8, he stated reasonfor declaring one vote invalid. He made following

statement:-

“8.यह कहना सही है कि प्र०पी०-1 के अ से अ भाग में प्रशिक्षण के दौरान दी गयी जानकारी के निर्धारित स्थान पर क्रस (गुणा) का चिन्ह लगाना है लिखते हुए, किन्तु निर्धारित स्थान पर मतपत्र नहीं लगने के कारण मतपत्र को निरस्त किया गया है।”

(21) Going by the objection raised by the returned candidate/respondent herein and taking into account reason for rejection of one vote to be invalid by the Presiding Authority, it appears that particular voter has marked his preference against the name of a candidate, but not in required column of ballot paper.

(22) The requirement of Rule 10 (4) of the Rules of 1998 is that councillor should mark cross (x) on the ballot paper against the name of candidate for whom he wishes to vote.

(23) In order to judge the correctness of plea raised, I have gone through the record of the case including the one disputed ballot paper Article-C [invalid vote]. The voter/councillor has clearly marked cross on the ballot paper against the name of a particular candidate, though he has not marked the cross in the column reserved for that purpose. On perusal of said ballot paper intention of the voter can easily be gathered that he has cast vote to a particular candidate and that vote cannot be considered to be invalid vote merely on the ground that the preference has not been indicated in the particular column of the ballot paper, particularly in

view of the fact there is no such statutory requirement that cross mark should be marked in the column prescribed. Therefore, it is held that one vote which has been declared invalid by the Presiding Authority is a valid vote in accordance with Rule 10(4) of the Rules of 1998. On perusal of the said ballot paper carefully, I am of the opinion that the said vote has been cast by the voter in favour of election petitioner- Vijay Verma.

(24) However, Shri Agrawal learned counsel for the returned candidate/respondent herein would submit that the learned District Judge is justified in dismissing the election petition as that voter did not cast vote in accordance with the rules and in election petition filed before Election Tribunal, petitioner himself has admitted in his petition that his vote which he has cast in his own favour was declared invalid by Presiding Authority and, therefore, that vote has rightly been declared invalid.

(25) The submission of Mr. Agrawal, learned counsel deserves to be rejected. The Presiding Authority did not reject one vote to be invalid on the ground that invalid vote was clearly identifiable. The reason assigned by the Presiding Authority has already been recorded in the preceding paragraphs, which would show that one vote was not declared invalid on such ground. Even otherwise, the returned candidate did not take any such plea in his written statement filed before the Election Tribunal that the invalid vote was identifiable,

therefore, the judgment relied upon by the returned candidate **Dr. Anup Singh** (supra) would not be applicable to the facts of the present case. Even otherwise, returned candidate cannot be allowed to take a new plea before this Court in Revision Petition. In **Arikala Narsa Reddy** (supra) the Supreme Court has clearly held that election court cannot go beyond the pleadings of the parties. Accordingly, It is held that the Presiding Authority is absolutely unjustified in declaring the vote to be invalid vote. Accordingly, the one vote which was declared invalid is declared to be valid vote, cast in favour of Election Petitioner herein.

(26) The Presiding Authority in paragraph-5 of the statement before the Election Tribunal has made the following statement:-

“5.उत्तरवादी को आर्टिकल बी के अनुसार चुनाव में 8 मत प्राप्त हुए थे। याचिकाकर्ता को आर्टिकल ए के अनुसार 7 मत प्राप्त हुए थे तथा आर्टिकल सी के अनुसार एक मत निरस्त हुआ था।”

(27) Thus, if one vote, which is now declared valid and which was cast in favour of election petitioner is counted in his favour, total votes which he has received become eight, in view of the above position, the conclusion would be that the election petitioner and the returned candidate both have received equal number of votes. In such fact situation, Section 25 of the Act, 1961 states that the decision as to who will be the returned candidate will be decided by

draw of lots by virtue of Section 25 of the Act, 1961 by Election Judge. But here, finding of equality of votes has been recorded by this Court in revisional jurisdiction, therefore, the provisions of Section 25 of the Act, 1961 would not be applicable. However, Section 12 of the Chhattisgarh Municipalities (Election of Vice-President) Rules, 1998 (henceforth 'Rules, 1998') provides procedure in case of equality of votes & Section 13 provides for declaration of result of election, which read as under:-

**“12. Equality of votes:-** If after the counting of the votes is completed, and equality of votes is found to exist between any candidate and addition of one vote will entitle one of those candidate to be declared elected, the presiding authority shall, decide by lot in such manner as may be determined by him and proceed if the candidate on whom the lot in such manner as may be determined by him and proceed if the candidate on whom the lot falls had received an additional vote.

**13. Declaration of result of election-** When the counting of votes has been completed, the presiding authority shall, subject to the provisions of Rule 12, if and so far as they apply to particular case, declared to be elected, the candidate for whom the largest number of valid votes has been given and prepare, complete and certify a return of election.”

(28) Thus, in such a fact situation the decision as to who will be the returned candidate is to be decided by the draw of lots by virtue of

the provisions of Rule 12 of the Rules, 1998 and result will be declared by virtue of provisions contained in Rule 13 of Rules, 1998.

(29) In the result, the revision is allowed and the election of respondent herein on the post of Vice President of Nagar Panchayat, Bodri is hereby set aside. Presiding Authority i.e. Tahsildar, Bilha is directed to follow the provisions contained in Rule 12 of Rules, 1998 to decide who will be the returned candidate by draw of lots and thereafter to follow the provisions contained in Rule 13 of the Rules, 1998 and declare the result afresh, who is returned candidate on the post of Vice President, Nagar Panchayat, Bodri, District Bilaspur within ten days from receipt of copy of this order in presence of the parties.

(30) Duly attested copy of this order be sent to the Presiding Authority/Tahsildar, Bilha (Bilaspur) directly and an additional copy also be sent to Collector, Bilaspur to secure the compliance of this order in accordance with Rules 12 & 13 of Municipalities (Election of Vice President) Rule, 1998 within the stipulated time. Record be sent back forthwith.

(31) Revision is allowed to the extent indicated hereinabove. No cost(s).

Sd/-  
(Sanjay K. Agrawal)  
Judge

D/-

**Head Note**

Counting of votes for the post of Vice President, Nagar Panchayat, Bodri has to be made strictly in accordance with Chhattisgarh Municipalities (Election of Vice President) Rules, 1998.

उपाध्यक्ष, नगर पंचायत, बोदरी के पद हेतु मतों की गणना सख्ती से छत्तीसगढ़ नगर पालिका (उपाध्यक्ष का चुनाव) नियम, 1998 के अनुसार की जानी चाहिए।

