

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPC No. 422 of 2017**

Smt. Sabyarani, W/o. Shri Gangaram Sarthi, Aged About 49 Years, Member Of Janpad Panchyat No.10 Pusour, District- Raigarh, R/o. Village- Kotmara, Tahsil Pusour, District- Raigarh, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Panchayat & Welfare Department, Mahanadi Bhavan, New Raipur, Chhattisgarh.
2. The Collector, Raigarh, District- Raigarh, Chhattisgarh
3. Smt. Kheer Bai, W/o. Shri Ravishankar Bhardawaj, R/o. Village & Post- Supa, Tahsil- Pusour & District- Raigarh, Chhattisgarh.
4. Smt. Nirmla Lahre, W/o. Shri Ramesh Kumar Lahre, R/o. Village & Post- Supa, Tahsil- Pusour & District- Raigarh, Chhattisgarh
5. Smt. Pan Bai Soni, W/o. Shri Shobh Ram Soni, R/o. Village & Post- Supa, Tahsil- Pusour & District- Raigarh, Chhattisgarh
6. Smt. Reeta Ratre, W/o. Shri Manoj Ratre, R/o. Village & Post- Supa, Tahsil- Pusour & District- Raigarh, Chhattisgarh
7. Smt. Preeti Chouhan, W/o. Shri Keshav Ganda, R/o. Village & Post- Supa, Tahsil- Pusour & District- Raigarh, Chhattisgarh
8. Smt. Mamta Chouhan, W/o. Shri Lalit Chouhan, R/o. Village & Post- Supa, Tahsil- Pusour & District- Raigarh, Chhattisgarh
9. Returning Officer / Election Officer, Janpad Panchyat Pusour, Tahsil- Pusour & District- Raigarh, Chhattisgarh.

---- Respondents

For Petitioner : Mr. R.S.Patel, Advocate

For State/ Respondents : Ms. Beenu Sharma, Panel Lawyer
No.1 & 2

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

23.09.2019

Heard.

1. The present petition is against the order dated 19.12.2016 passed by the Collector, Raigarh in Election Petition No.12/A-89/2014-15.



2. Learned counsel for the petitioner would submit that the petitioner was elected as Member of Janpad Panchayat No.10 of Janpad Panchayat Pusour, District Raigarh. The election was conducted on 04.02.2015 and on the basis of the election, the petitioner was declared elected. The respondent No.3 filed an election petition before the Collector under Section 122 of the Chhattisgarh Panchayat Adhiniyam, 1993 and stated that the post of Janpad Panchayat Pusour was reserved for Scheduled Caste, though the petitioner recorded herself to be Scheduled Caste, but she was not; however, the same was accepted without any enquiry by the election officer. It was further stated that the petitioner Sabyarani do not belong to Scheduled Caste, consequently the Act & Rules were not followed. It is stated that the said contention was denied by the petitioner, however, despite the denial on record, no issues were framed; in a result, no evidence could have been led and directly the orders were passed, which is against the principles laid down in case of *Kalka Prasad v. Ramji Lal & Others* reported in 2002(3) *M.P.H.T.* 547 and the judgment passed by this Court on 31.08.2015 in WPC No.848 of 2015.
3. Per contra, learned counsel for the State Respondents would submit that in para 3 of the election petition, the petitioner admitted the fact that she after marriage became Scheduled Caste and since there was an admission existing, no necessity was there for the election commission i.e. Collector to frame the issues and the order is well merited, which do not call for any interference.
4. Heard learned counsel for the parties and perused the documents.
5. It is not in dispute that the petitioner was elected as Member of Janpad Panchayat No.10 Pusour, District Raigarh. The election was held on 04.02.2015 wherein the petitioner was elected as Member. Subsequent to such declaration of election, the petitioner filed a petition under Section



122(1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993. In para 2 of the election petition, which is on record, the primarily allegations were as under :

2. यह कि, त्रिस्तरीय पंचायत चुनाव 2015 में जनपद पंचायत पुसौर क्षेत्र क्रमांक-10 अनुसूचित जाति महिला के लिये आरक्षित था जिसे भरे जाने के लिये निर्वाचन नियम प्रारूप 8 ग के अनुसार कुल 7 महिला प्रत्याशी याचिकाकर्ता एवं उत्तरवादी क्रमांक-1 से 6 तक अभ्यर्थी थी सभी ने अपने नाम निर्देशित पत्रों में अपनी-अपनी जाति-अनुसूचित जाति के अंतर्गत आने वाली जाति दर्ज की थी जिसे युक्तियुक्त जांच किये बिना निर्वाचन अधिकारी द्वारा स्वीकार कर लिया गया और क्षेत्र में दिनांक 4.2.15 को मतदान कराया जाकर अनावेदक क्र० 1 को निर्वाचित अभ्यर्थी घोषित कर दिया गया। अनावेदिका क्र. 1 सब्यारानी अनुसूचित जाति की सदस्या नहीं है फिर भी उसे अभ्यर्थी मानकर निर्वाचित घोषित किये जाने से अन्य सभी अभ्यर्थियों के संवैधानिक अधिकारों का हनन एवं निर्वाचन नियमों का उल्लंघन होने के कारण यह याचिका प्रस्तुत करने की आवश्यकता हुई।

6. In reply to such para, the petitioner herein filed the following reply :

2. यह कि याचिका के कंडिका नं. 2 के प्रथम पैरा में उल्लेखित कथन जहाँ तक जनपद पंचायत पुसौर क्षेत्र क्र० 10 अनुसूची जाति महिला के लिए आरक्षित होने एवं 7 महिला प्रत्याशी के चयन होने एवं निर्दिष्ट पत्रों में अनुसूचित जाति दर्ज करने तक यह कथन सही है शेष कथन गलत होने से इंकार है। यह भी इंकार है कि प्रत्याशीयों के अनुसूचित जाति होने के संबंध में निर्वाचन अधिकारी द्वारा युक्तियुक्त जांच किये बिना दिनांक 4.2.15 को मतदान कराया गया। यह कथन सत्य है कि अनावेदक क्र० 1 के निर्वाचित अभ्यर्थी मानकर निर्वाचित घोषित किया गया। यह कथन पूर्णतया इंकार है कि निर्वाचन अधिकारी के द्वारा संवैधानिक अधिकारों का हनन एवं निर्वाचन नियमों का उल्लंघन किया गया इस कारण याचिकाकर्ता याचिका प्रस्तुत की है।

सत्य कथन यह कि याचिकाकर्ता जानबूझकर अनावेदक क्र. 1 को नीचा दिखाने के लिए तथा परेशान करने के लिए यह चुनाव याचिका दायर की है जबकि निर्वाचन अधिकारी के द्वारा सम्पूर्ण जांच उपरांत प्रत्याशी की घोषणा की गई है एवं चुनाव उपरांत मतों की गिनती पारदर्शिता के साथ की गई है और अनावेदक क्र० 1 के विरुद्ध किसी



प्रकार की कोई आपत्ति नहीं आने तथा उसके विरुद्ध किसी भी प्रकार के कोई दस्तावेज में गलत प्रविष्टि नहीं होने के उपरांत ही उसे प्रत्याशी घोषित किया गया था। याचिकाकर्ता के द्वारा उस समय कोई किस्म की आपत्ति दर्ज नहीं की गई है।

7. The averments when are examined would show that the respondents contended that the petitioner has wrongfully described her caste as Scheduled Caste and simple declaration was accepted by the Election Commission. It was further alleged that no enquiry was conducted by the Returning Officer and thereby there has been breach of Rules & Statute. As against this, the reply would show that the averments of petition were denied. The main averments of para 2 of the election petition was not accepted by the petitioner herein. In para No.3 of the election petition, the petitioner herein contended that she was married to one Gangaram Sarthi who is Ghasiya caste and the marriage were performed according to the rituals and she belongs to the caste Ghasiya. It is also pertinent that no document filed by the respondents that petitioner belongs to Mahanti caste.
8. Reading of para 2 & 3 of the reply would show that no admission was made in reply to the averments of allegation of election petition, as has been averred by the respondents. The ratio of the judgment rendered in case of ***Kalka Prasad v. Ramji Lal & Others*** reported in **2002(3) M.P.H.T. 547** lays down that the election petition is like a civil trial, when apparently there is no admission on the factual facts then the issues are required to be framed.
9. The Supreme Court in case of ***Makhan Lal Bangal v. Manas Bhunia & Others*** reported in **(2001) 2 SCC 652**, has held that in an election trial evidence has to be adduced and issues are also to be framed. It was further laid down that the trial of an election petition is like a civil trial and unless issues are framed and evidence is recorded, proper adjudication of the dispute could not be made. The relevant part is reproduced herein :



“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 14 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 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.”

10. Considering the ratio of the judgment and the pleading as exists, in the opinion of this Court, consideration of the pleading would show that it required framing of the issues so that the parties could have known the dispute on which the lis is to be decided. If the issues are not framed, in such case, the parties to the proceeding would not know on which issue the judgment would be delivered. Furthermore, the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices & Disqualification for Membership) Rules, 1995 which is framed under Section 95(1) read with sub-section (1) & (3) of Section 122 would show that Rule 11 & 12 lays down the procedure, which 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.”

“Rule 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. The procedure which has been laid down in the aforesaid Rules would go to show that in order to hold the election illegal, the authority must follow certain procedure laid down in the Rules. Meaning thereby, the election could not be disturbed when the person has been duly elected by democratic process. Further the similar propositions have been followed in case of **Parvatia v. Padmini & Others** reported in **2005(2) C.G.L.J. 335** that Rule 11 & 12 has to be followed. Consequently, in view of the aforesaid propositions, in the opinion of this Court, the order dated 19.12.2016 cannot be sustained. Accordingly, it is set aside. The matter is referred back to the Court of Collector, Raigarh with a direction that the Collector shall be obliged to frame the issues on the disputed question of fact and thereafter shall follow the Rules provided under Rule 11 & 12 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices & Disqualification for Membership) Rules, 1995.

12. In the result, the writ petition is allowed to the above extent.

Sd/-
Goutam Bhaduri
Judge