



HIGH COURT OF CHHATTISGARH AT BILASPUR

EP No. 9 of 2024

PREM PRAKASH PANDEY *versus* DEVENDRA YADAV

Order Sheet

30.6.2026	Dr. Nirmal Shukla, Senior Advocate assisted by Ms. Priya Mishra, Mr. Devashish Tiwari, Mr. Dinesh Bole and Mr. Nitikesh Gupta, Advocates for the election-petitioner. Mr. B.P. Sharma, Advocate along with Mr. Manay Nath Thakur and Mr. Pratap Kumar Gupta, Advocates for the respondent-turned candidate. Heard on I.A. No. 18 of 2026, an application under Order XIV Rule 2 read with Section 151 of Code of Civil Procedure for framing of preliminary issues. Respondent-turned candidate has moved this application making prayer to try issue Nos. 2 and 4

framed by this Court on 21.8.2024 as preliminary issues. It is pleaded in the application that precious time of the Court may be saved and there would be no need to examine witnesses, if the election petition is disposed on preliminary issues.

The petitioner has preferred this election petition under Sections 80, 80A, 81, 100(1)(b), 100(1)(d)(i) and 100(1)(d)(iv) of the Representation of People Act, 1951 [for brevity 'Act of 1951'] challenging the declaration of the respondent as a returned candidate from 65-Bhilai Nagar constituency. The respondent filed written statement on 31.7.2024 and this Court after going through pleadings made in the election petition as well as written statement framed five issues on 21.8.2024, which are reproduced herein-below :-

1. Whether the nomination paper of respondent No. 1 (returned candidate) was improperly accepted by the returning officer contrary to the provisions of Representation of People Act, 1951 and rules made thereunder and acceptance of nomination paper materially effected the result of election?

2. Whether the respondent No. 1(returned candidate) has furnished all statutory information required under the Representation of People Act, 1951 and rules made there under and whether it would come within the purview of electoral offence?

3. Whether the respondent No. 1 or his agent or by any person with his consent (sic) (Consent) made publication or statement of false facts regarding conduct or personal character of the petitioner and it would come within the definition of corrupt practice under Section 123 of the People Act, 1951 ?

4. Whether the election petition filed by the petitioner fulfills the mandatory requirement of Section 83 of the Representation of the People Act, 1951 and its effect on the Election Petition?

5. Whether the petitioner is entitled for declaration as sought for?

Mr. B.P. Sharma, learned counsel for the respondent submits that statutory information required under the Act of 1951 and the rules made thereunder were furnished by the returned candidate whereas petitioner in this election petition has specifically pleaded that the returned candidate failed to furnish

information in respect of social media accounts, income, assets and pending criminal cases, whereas all required details including details of pending criminal cases were duly provided on affidavit. He further submits that petitioner has challenged the election of respondent on two grounds which are :- (1) improper acceptance of nomination paper of the returned candidate by the Returning Officer and (2) returned candidate was involved in corrupt practices. He also submits that no material was placed before the Returning Officer at the time of scrutiny of nomination paper and the authority concerned acted within the parameters of Section 36 of the Act of 1951 while accepting the nomination paper of returned candidate, therefore this ground is not available to the petitioner. With regard to corrupt practices, he contends that petitioner has not alleged any of the corrupt practices defined under Section 123 of the Act of 1951 thus, in absence of material facts and particulars, this election petition should be heard and decided finally on the

	preliminary issue no. 2 and 4 according to the provisions of Order XIV Rule 2 of CPC. He further contends that despite rejection of application under Order 7 Rule 11 of CPC moved by the respondent, the instant election petition can be decided after taking into consideration the written statement filed by the respondent, in accordance with the provisions of Order XIV Rule 2 of CPC. He has placed reliance on the judgments rendered by the Hon'ble Supreme Court in the matters of Ajmera Shyam Versus Kova Kaxmi and Others¹, Manjula and Others Versus D.A. Srinivas², Saranpal Kaur Anand Versus Praduman Singh Chandhok and Others³ and Virindar Kumar Satyawadi Versus State of Punjab⁴. On the other hand, Dr. Nirmal Shukla, learned Senior counsel appearing for the election petitioner submits that issue Nos. 2 and 4 cannot be decided as preliminary issues as the material proposition of facts
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1. (2026) 3 SCC 373

2. (2026) SCC OnLine 831

3. (2022) 8 SCC 401

4. (1955) 2 SCC 540

	pleaded in the election petition have been denied in its entirety by the respondent in the written statement. He further submits that based on the pleadings, issues were framed by this Court on 21.8.2024 and the issue Nos. 2 and 4 are issues of facts and whether conduct of returned candidate would fall within purview of electoral offense or not can be decided after adjudication of the issues particularly after recording evidence of the parties. He also submits that whether the election petition has been filed in accordance with the provisions of Section 83 of Act of 1951 or not can be considered in a trial and final judgment cannot be pronounced on preliminary issues. He would contend that if the Court is of the opinion that the case or any part thereof may be disposed on an issue of law only, it may try that issue first if that issue relates to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force. He contends that High Court has jurisdiction to entertain and try an election petition wherein election of a returned
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	candidate of a legislative assembly of the State of Chhattisgarh has been challenged, this Court has jurisdiction to adjudicate the issues involved in the election petition and further election petition is not barred by any law therefore application under Order XIV Rule 2 of CPC moved by the respondent deserves to be dismissed. He has placed reliance on the judgments rendered by the Hon'ble Supreme Court in the matters of Sathyanath and Another Versus Sarojmani⁵, Kuldeep Singh Pathania Versus Bikram Singh Jaryal⁶ and Nusli Neville Wadia Versus Ivory Properties Others⁷. I have heard learned counsel for the parties and perused the application moved by the respondent and the provisions of Order XIV Rule 2 of CPC. The judgments quoted by Mr. B.P. Sharma are summarized herein below :- i. In Ajmera Shyam (supra), Hon'ble Supreme Court held that mandate of the people, expressed
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5. (2022) 4 SCR 46

6. (2017) 1 SCR 915

7. (2019) 15 SCR 795

through democratic elections, must be respected and protected and the judiciary must exercise extreme caution and circumspection when asked to invalidate an election result. Revelant paragraphs 57 and 59 read as under :-

57. Under the circumstances, once the people have spoken their mind by casting their votes through the ballot box and reposed their confidence in the elected candidate, whenever the issue of invalidating the people's mandate is raised before the court, the court must be very careful and circumspect.

59. Thus, while the court plays a vital role in upholding the Rule of Law, utmost care must be taken to ensure that election results are not invalidated based on subjective interpretation and minor or technical irregularities that do not substantially impinge on the law, since unwarranted interference with the electoral process and overturning election results can erode public trust in democratic institutions.

ii. In **Manjula** (supra), Hon'ble Supreme Court while discussing the scope and ambit of Order XIV

Rule 2 of CPC held in paragraphs 10.2 and 10.5 as under :-

10.2. On the other hand, a preliminary objection as to the jurisdiction of the trial court or the maintainability of the suit on the ground that it is barred by law can be raised in the written statement. The trial court may then take up the issues relating to jurisdiction or statutory bar as preliminary issues under Order XIV, Rule 2, leaving the remaining issues framed under Order XIV, Rule 1 to be decided at a later stage, if necessary. The object behind the provision is to ensure that judicial time is not wasted and that the suit is disposed of at the earliest possible stage, so as to prevent abuse of process of law and dismiss frivolous suits. Rule 2 of Order XIV, which enables the court to decide a question of law on undisputed facts, is an exception to rule 1, which contemplates pronouncement of judgment on all issues. Therefore, where a pure question of law can be decided without entering into disputed facts requiring evidence, the court may decide the same at the earliest stage.

10.5. A conjoint reading of

	Order VII, Rule 11 and Order XIV, Rule 2 of the Code of Civil Procedure would show that both provisions enable the court to examine the maintainability of a suit at the earliest possible stage, though they operate in distinct procedural spheres. Order VII, Rule 11 is confined to the averments contained in the plaint and the documents relied upon by the plaintiff. Order XIV, Rule 2, on the other hand, comes into operation after pleadings are complete and issues arise for adjudication. If the statutory bar is apparent upon a meaningful reading of the plaint, the plaint may be rejected under Order VII, Rule 11. If, however, the objection requires consideration of admitted or foundational facts emerging from the pleadings, the court may frame and decide a preliminary issue under Order XIV, Rule 2, where permissible in law. The distinction is one of procedure and evidentiary scope. Under Order VII, Rule 11, the court does not embark upon disputed questions of fact, nor can it rely upon the defence in the written statement to reject the plaint. Under Order XIV, Rule 2, however, the court may examine whether a pure question of law arises on
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admitted facts so as to obviate a full-fledged trial. Thus, while the former tests the sustainability of the plaint on its face, the latter concerns the mode of adjudication after issues are framed.

iii. In **Saranpal Kaur Anand** (supra), Hon'ble Supreme Court described when to decide preliminary issues under Order XIV Rule 2 of CPC. Relevant paragraph 7 reads as under :-

7. A decision under clause (d) of Rule 11 Order 7 of the Civil Procedure Code, 1908 (for short "the Code") normally proceeds on "demurrer". This means that the party objecting to the legal action assumes the truth of the matter alleged by the opposite party and sets up that it is insufficient in law to sustain the claim or there is some other defect on the face of the pleadings constituting a legal reason why the proceedings should not be allowed to proceed further. This is also the underlying principle behind clause (d) of Order 7 Rule 11 of the Code which applies when it appears from a statement in the plaint that the suit is barred by any law. The law would include the Limitation Act, 1963. Section 3 of the Limitation Act mandates that

every suit, appeal or application instituted, preferred or filed after the prescribed period, and subject to provisions of Sections 4 to 24, shall be dismissed although limitation has not been set up as a defence. Sub-rule (2) to Rule 2 Order 14 of the Code lays down that where issues of both law and fact arise in the same suit, and the court is of the opinion that the case or any part thereof can be disposed of on an issue of law only, it may try that issue first if the issue (a) relates to the jurisdiction of the court, or (b) bar to the suit is created by any law for the time being in force. Therefore, when decision on issues of law depend upon decision on issues of fact, the issue of law should not be decided as a preliminary issues. However, when the issue of law can be adjudicated on "admitted facts", the court can decide the issue of law as a preliminary issue under Order 14 Rule 2 of the Code.

iv. In Virindar Kumar Satyawadi (supra), Hon'ble Supreme Court clarified that a Returning Officer evaluating the validity of election nomination papers does not qualify as a "court" under Section 195(1)(b) of the Code of Criminal

Procedure (CrPC). Relevant paragraph 13 reads as under :-

13. We are of opinion that the Returning Officer deciding on the validity of a nomination paper is not a court for the purpose of Section 195(1)(b) of the Code of Criminal Procedure, and the result is that even as regards the charge under Section 193, the order of the Magistrate was not appealable, as the offence was not committed in or in relation to any proceeding in a court. In this view, the learned Sessions Judge was right in dismissing the appeal as incompetent, and the question argued by Mr N.C. Chatterjee that the learned Judge of the High Court ought to have remanded the case for hearing by the Sessions Judge on the merits does not arise.

The judgments quoted by Dr. Nirmal Shukla are summarized herein-below :-

- i. In **Sathyanath** (supra), Hon'ble Supreme Court while clarifying the purpose and strict limitations of Order XIV Rule 2 held in paragraph 20 as under :-

20. The provisions of Order XIV Rule 2 are part of the procedural law, but the fact remains that

such procedural law had been enacted to ensure expeditious disposal of the lis and in the event of setting aside of findings on preliminary issue, the possibility of remand can be avoided, as was the language prior to the unamended Order XIV Rule 2. If the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may decide such issues with the sole objective for the expeditious decision. Thus, if the Court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach the civil court to delay the proceedings on false pretext.

- ii. In **Nusli Neville Wadia** (supra), Hon'ble Supreme Court held that preliminary issues are confined to pure questions of law or questions of law based on undisputed facts; mixed questions or law

dependent on contested facts must await full trial and cannot be decided under Order XIV Rule 2 or at the injunction stage under Section 9A. Relevant paragraphs 46 and 47 read as under :-

46. The provision has been carved out under Section 9A, CPC to decide, question of jurisdiction to entertain, at the stage of deciding the interim application for injunction and the very purpose of enactment of the same was that the suits were being instituted without serving a notice under Section 80, which at the time of initial incorporation of provisions could not have been instituted without serving a notice of two months. There was a bar to institute a suit. It became practice that after obtaining injunction, suit was allowed to be withdrawn with 3 liberty to file fresh suit after serving the notice. To take care of misuse of the provisions, Section 9A was introduced in the year 1970 and had been re-introduced again in 1977 to consider question of jurisdiction to entertain at the stage of granting injunction or setting aside. The provision has been inserted having the narrow meaning as at the stage of granting ex parte injunction; the question can be considered. The

written statement, set-off and counterclaim are not filed, discovery, inspection, admission, production and summoning of the documents stage has not reached and after the stages described above, framing of issues takes place under Order XIV. As per Order XIV Rule 1, issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. The issues are framed on the material proposition, denied by another party. There are issues of facts and issues of law. In case specific facts are admitted, and if the question of law arises which is dependent upon the outcome of admitted facts, it is open to the Court to pronounce the judgment based on admitted facts and the preliminary question of law under the provisions of Order XIV Rule 2. In Order XIV Rule 2(1), the Court may decide the case on a preliminary issue. It has to pronounce the judgment on all issues. Order XIV Rule 2(2) makes a departure and Court may decide the question of law as to jurisdiction of the Court or a bar created to the suit by any law for the time being in force, such as under the Limitation Act.

47. In a case question of limitation can be decided based on admitted facts, it can be

decided as a preliminary issue under Order XIV Rule 2(2)(b). Once facts are disputed about limitation, the determination of the question of limitation also cannot be made under Order XIV Rule 2(2) as a preliminary issue or any other such issue of law which requires examination of the disputed facts. In case of dispute as to facts, is necessary to be determined to give a finding on a question of law. Such question cannot be decided as a preliminary issue. In a case, the question of jurisdiction also depends upon the proof of facts which are disputed. It cannot be decided as a preliminary issue if the facts are disputed and the question of law is dependent upon the outcome of the investigation of facts, such question of law cannot be decided as a preliminary issue, is settled proposition of law either before the amendment of CPC and post amendment in the year 1976.

In view of the legal principles established by the Apex Court in the above stated judgments, it is abundantly clear that preliminary issues are confined to pure questions of law or questions of law based on undisputed facts and mixed questions or law

dependent on contested facts must await full trial and cannot be decided under Order XIV Rule 2.

In the present case, by way of this application, respondent has made a prayer to try issue Nos. 2 and 4 as preliminary issues. At this stage, it would be apt to quote Order XIV Rule 2 of CPC herein-below :-

2. Court to pronounce judgment on all issues.—(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if the issue relates to—

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that

issue.

Thus it is apparent that issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. In the present case, respondent has denied the pleadings made in the election petition and after going through the pleadings, issues were framed by this Court on 21.8.2024. The above-quoted provision states that a case may be disposed of on preliminary issue and court may try an issue of law, particularly if such an issue relates to jurisdiction of the court or a bar created by any law.

With regard to issue No. 2, the petitioner has to prove the fact that returned candidate failed to furnish statutory information required under Act of 1951 and it would fall within the purview of electoral offense whereas the returned candidate has to prove that all necessary information required under the Act was furnished.

With regard to issue No. 4, the petitioner has to prove the fact that mandatory requirements of Section

83 of Act of 1951 have been complied with in order to establish that election petition is valid and within the four corners of Act of 1951 whereas the returned candidate has to establish that the election petition lacks mandatory requirement of Section 83.

In the election petition, the petitioner has specifically pleaded that the alleged conduct of respondent amounted to electoral misconduct affecting the fairness of election process. Whether such conduct constitutes a corrupt practice, whether there was non-compliance with the provisions of the Act of 1951 and whether the election result was materially affected thereby, are all questions which require appreciation of oral and documentary evidence and cannot be decided as preliminary issues merely because the respondent disputes the correctness of the allegations.

Preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may

decide such issues with the sole objective for the expeditious decision.

However, in case like this where the issues of both law and fact arise in the same suit, such issues can only be adjudicated upon after complete trial.

In view of the aforesaid discussion, in my considered view, the issue Nos. 2 and 4 do not touch upon the jurisdiction of this Court or any bar created by the law and such issues can only be adjudicated upon after the parties lead evidence during trial.

Accordingly, I.A. No. 18 of 2026, an application under Order XIV Rule 2 read with Section 151 of Code of Civil Procedure for framing of preliminary issues deserves to be, and is hereby, rejected.

List the election petition for further proceedings on 04.08.2026.

Sd/-
(Rakesh Mohan Pandey)
JUDGE