



मध्य प्रदेश राज्य निर्वाचन आयोग

हर वोट कीमती • हर निकाय महत्वपूर्ण

महत्वपूर्ण न्यायालयीन फैसले

नगरीय निकायों एवं पंचायतों के
निर्वाचन से सम्बंधित महत्वपूर्ण निर्णय

IMPORTANT COURT ORDERS

on Municipal and Panchayat Elections



Madhya Pradesh State Election Commission

58, Arera Hills, Bhopal-462011



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संकलन एवं प्रकाशन द्वारा

मध्यप्रदेश राज्य निर्वाचन आयोग (विधि शाखा), भोपाल

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मूल्य - एक प्रति 250 रुपये

आकल्पन : मध्यप्रदेश माध्यम

नोट - माननीय न्यायालयों द्वारा पारित निर्णयों को प्रकाशित कराये जाने में पूर्ण सावधानी बरती गई है। फिर भी सलाह दी जाती है, कि आदेशों को संदर्भ हेतु उपयोग किए जाने पर न्यायालय के वेबसाइट, लॉ जनरल अथवा सत्यापित प्रति को पढ़ा जाए।

मुद्रण :/फरवरी 2017

"In the domain of elections to the Panchayats and the Municipal bodies under Part IX and Part IX-A of the Constitution, for the conduct of elections to these bodies, the State Election Commissions enjoy the same status as the Election Commission of India and that the powers of the State Election Commissions in respect of conduct of elections are no less than those of the Election Commission of India in their respective allotted domains."

Hon'ble Supreme Court of India in the case of Kishansing Tomar V/s Municipal Corporation of the City of Ahmedabad (AIR 2007 S.C. 269)



The orders passed by the Supreme Court of India and the High Courts have an immediate and long-term effect on elections to the Panchayats and Municipal bodies. Over time these orders have proved significant in strengthening the election procedures, maintain transparency and facilitate the establishment of a level playing field for all political parties, ruling and in opposition, and independent candidates.

We have ventured here to make a compendium of some of these important orders. As elections are conducted across all States and UTs by thirty-two State Election Commissions it is not exhaustive. Even so we are strong in our belief that this compendium will prove to be useful and will encourage similar such publications in the future.

Shri J.P. Vyas, IAS (Rtd.) as our legal consultant has put in a great deal of effort which bears mention.

Date 4 February 2017
Bhopal

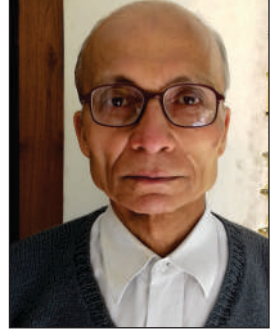
(R. Parasuram)
State Election Commissioner
Madhya Pradesh State Election Commission



यह अत्यन्त हर्ष का विषय है कि नगरीय एवं पंचायत निर्वाचनों से संबंधित न्यायालयों द्वारा पारित महत्वपूर्ण निर्णयों का प्रथम संकलन हम आप सभी के उपयोग हेतु उपलब्ध करा रहे हैं। इस संकलन को तैयार करने में आयोग की विधि शाखा के कर्मचारियों एवं अधिकारियों ने पूर्ण मनोयोग व अथक परिश्रम से कार्य किया है। हमें पूर्ण विश्वास है कि यह संकलन निर्वाचन से जुड़े समस्त सहभागियों के लिए उपयोगी साबित होगा तथा भविष्य में भी ऐसे संकलन के प्रकाशन की दिशा में एक पहला प्रयास साबित होगा।

दिनांक 4 फरवरी 2017
भोपाल

Sunita Tripathi
(सुनीता त्रिपाठी)
सचिव
मध्यप्रदेश राज्य निर्वाचन आयोग



मध्य प्रदेश राज्य निर्वाचन आयोग द्वारा संचालित निर्वाचन सम्बन्धी प्रावधानों में यद्यपि स्पष्टता है, उनके क्रियान्वयन में कभी-कभी एक से अधिक सम्भावित व्याख्याओं के कारण भ्रम की स्थिति निर्मित होती है। ऐसी स्थिति में न्यायपालिका द्वारा पारित आदेशों से प्रावधानों के भावार्थ समझने एवं उचित निर्णय लेने में सहायता मिलती है। मुझे विश्वास है कि आयोग द्वारा प्रस्तुत इस संकलन से निर्वाचन कार्य से जुड़े अधिकारियों को अपने कर्तव्य पालन में वांछित मार्गदर्शन प्राप्त होगा और यही इस संकलन की उपयोगिता को रेखांकित करेगा।

दिनांक 4 फरवरी 2017
भोपाल

(ज.प्र. व्यास)
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7.	अध्यक्ष नगरपालिका को वापिस (Recall) बुलाने के आवेदन पत्र की जाँच म.प्र. नगरपालिका अधिनियम 1961 की धारा 47(2) के अंतर्गत कलेक्टर के द्वारा स्वयं की जाना अपेक्षित है। यह दायित्व अन्य अधिकारी को नहीं सौपा जा सकता।	24-31
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2. आरक्षण, मतदान, रिक्त पदों को भरना

15. न्यायिक अभिरक्षा अधीन अभ्युक्त को स्थानीय संस्थाओं के निर्वाचन में मतदान देने की अनुमति बिना परीक्षण के नहीं दी जा सकती। मतदान करना कानूनी अधिकार है जिस पर रोक लगायी जा सकती है। 75-78
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3. निर्वाचन याचिका

25. निर्वाचन याचिका, म.प्र. (निर्वाचन अर्जियाँ, भ्रष्टाचार और सदस्यता के लिए निरर्हता) नियम 1995 के नियम 3 के अनुसार प्रस्तुत होना चाहिए। 117-120
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स्पष्ट निष्कर्ष निकाला जाना चाहिए।

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31. चुनाव याचिका में म.प्र. पंचायत (निर्वाचन अर्जियाँ, भ्रष्टाचार और सदस्यता के लिए निरर्हता) नियम 1995 के नियम 3(2), 7 एवं 8 का पालन किया जाना आवश्यक है। 147-149
32. निर्वाचन याचिका में मुद्दे निर्धारित किये जाना चाहिए एवं उभयपक्षों की साक्ष्य लेकर निष्कर्ष निकाले जाना चाहिए। ऐसा न किया जाना विधि के प्रतिकूल है। 150-151
33. चुनाव याचिका में पुनर्मतगणना का आदेश होने पर यदि कुछ मतदान केन्द्रों के मतपत्र नष्ट या क्षतिग्रस्त हो जावें, तो उनकी पूर्व में हुई गणना को अंतिम मानते हुए केवल शेष मतदान केन्द्रों में ही पुनर्मतगणना की जाय। 152-155
34. निर्वाचन याचिका में पुनर्मतगणना के मुद्दे पर साक्ष्य के आधार पर निकाले गये निष्कर्ष को गलत नहीं कहा जा सकता एवं पुनर्मतगणना के परिणाम की प्रतीक्षा की जाना चाहिए। 156-161
35. निर्वाचन याचिका में बिना साक्ष्य लिए पुनर्मतगणना का आदेश देना अवैधानिक है। प्रत्यावर्तित होने पर साक्ष्य के आधार पर निकाला गया निष्कर्ष पूर्व परिणाम को स्वाभाविक रूप से निरस्त करेगा। 162-165

4. विविध

36. उप चुनाव के दौरान निर्वाचित होने पर सरपंच की कार्यावधि केवल पंचायत की शेष कार्यावधि तक रहेगी, न कि 5 वर्ष तक। 166-168
37. म.प्र. पंचायत राज एवं ग्राम स्वराज अधिनियम 1993 की धारा 40 के अंतर्गत एस.डी.ओ. द्वारा कारण बताओं नोटिस दिये जाने पर प्रकरण का निराकरण 90 दिन के भीतर किया जाना आवश्यक है। 169-171
38. सरपंच के विरुद्ध अविश्वास प्रस्ताव पर चर्चा हेतु आहूत बैठक की सूचना 7 दिन पूर्व दी जाना आवश्यक है। 172-174

रिट याचिका क्र. 12109/2009

उच्च न्यायालय मध्यप्रदेश

प्रमुखपीठ जबलपुर

मान. न्यायमूर्ति श्री एस.के.बोबड़े, मुख्य न्यायाधीश

मान. न्यायमूर्ति श्री के.के. त्रिवेदी, न्यायाधीश

किशोर समराइट

बनाम

म.प्र.शासन एवं अन्य

भारतीय संविधान अनुच्छेद 226 : के अंतर्गत म.प्र. नगरपालिका अधिनियम 1961 की धारा 5क के अंतर्गत जारी अधिसूचना दिनांक 25.08.2009, जिसके द्वारा नगर पंचायत लांजी की सीमाओं से कुछ क्षेत्रों को अपवर्जित किया गया, के विरुद्ध याचिका।

प्रकरण के तथ्य : लांजी नगर पंचायत का गठन अधिसूचना दिनांक 12.08.2008 द्वारा किया गया था एवं इसमें ग्राम पंचायत बिसोनी, पूर्वटोला, टेकरी और दुल्हापुर को शामिल किया गया था। इन पंचायतों को शामिल किये जाने के संबंध में आपत्तियां प्राप्त हुई थी। किन्तु नगरपालिका अधिनियम 1961 की धारा 5क में निर्धारित प्रक्रिया के अनुसार उन पर यथा समय विचार नहीं किया गया। तत्पश्चात् अधिसूचना दिनांक 25.08.2009 द्वारा इन ग्राम पंचायतों के क्षेत्र को उक्त नगर पंचायत लांजी से अपवर्जित कर दिया गया। इस अधिसूचना की वैधता को इस आधार पर चुनौती दी गयी कि धारा 5क में निर्धारित प्रक्रिया के अनुसार शासन की उक्त मंशा के संबंध में आपत्तियां आमंत्रित नहीं की गयी।

न्यायालय का आदेश : अधिसूचना दिनांक 25.08.2009 अवैध होने से निरस्त की गयी। धारा 5क में निर्धारित प्रक्रिया का पालन करते हुए ही शासन नगर पंचायत की सीमाओं में परिवर्तन कर सकती है।

HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR
Wrti Petition No.12109/2009

Kishore Samriti
Versus
State of M.P. and others

PRESENT : Hon'ble Shri Justice S.A. Bobde, Chief Justice.

Hon'ble Shri Justice K.K. Trivedi, Judge

Ms. Shobha Menon, learned Senior counsel assisted
by Shri C.A. Thomas, learned counsel for the
Petitioner

Shri Kumares Pathak, learned Deputy Advocate
General for respondents No. 1 to 3.

ORDER
(23.01.2013)

Per : S.A. Bobde, Chief Justice.

The petitioner, by way of filing this petition under Article 226 of the Constitution of India, has called in question the constitutional validity of the M.P. Gazette Notification dated 25.8.2009, whereby the Gram Panchayats, Bisoni, Purva Tola, Tekri and Dulhapur were excluded from the area of Nagar Panchayat Lanji.

2 : In the M.P. Municipalities Act, 1961 (hereinafter referred to as the Act for brevity), there is a power conferred on the Governor to include or exclude certain area from the limits of Municipal areas under Section 5-A of the Act, which reads as follows :-

“5-A. Power of Governor to include or exclude certain area – (1) The Governor may by notification in the Gazette, declare the intention to include within or exclude from the limits of a municipal area, any specified area.

(2) If the local authority having jurisdiction in the said area or any person resident therein, objects to such declaration, such authority or person may submit an objection in writing to the Collector within a specified period and the Governor shall take such objection into consideration.

(3) When the said period has expired and the Governor has considered the objection under sub-section (2), the Governor may by notification include within or exclude from the limits of a municipal area, any specified area: Provided that when an area is excluded from the limits of any municipal area, such area notwithstanding such exclusion shall continue to be within the limits of the municipal area until the area so excluded is included in a duly constituted Panchayat area.”

3 : In the present case, the Municipal area of Lanji was constituted by Notification dated 12.8.2008.

In this Municipal area, the Gram Panchayats Bisoni, Purva Tola, Tekri and Dulhapur along with the Gram Panchayat Lanji, were included. Apparently, objections were received by the State that the areas of Gram Panchayats Bisoni, Purva Tola, Tekri and Dulhapur into the larger area of Nagar Panchayat Lanji, were illegally included without following procedure laid down in Section 5-A of the Act. Since the intention to include such areas as required by Section 5-A of the Act was not declared nor objections were invited before the inclusion of these areas, these objections found favour with the Government, which decided to exclude these area of Bisoni, Purva Tola, Tekri and Dulhapur from the larger area of Nagar Panchayat Lanji. This has been done by the Notification dated 25.8.2009. The petitioner has approached this Court for a declaration that the exclusion of the aforesaid areas from the larger area of Nagar Panchayat Lanji, is illegal, because prior to the exclusion of these areas, the procedure prescribed by Section 5-A of the Act has not been followed. That is to say a Notification declaring the intention to exclude such areas from the limits of Municipal area was not published and objections in writing were not considered before such exclusion.

4 : We have given the anxious consideration to the matter and we are of the view that the action of exclusion of the areas from the larger area of Nagar Panchayat Lanji, is not illegal since the exclusion was done purely by way of rectification upon considering without calling for any objections. Thus, in the first place if the inclusion of these areas was itself found to be illegal and the Government decided to exclude those areas after considering the objections in that regard to be valid, it is necessary for the Government to resort the procedure prescribed by Section 5-A of the Act i.e. again declaring their intention to exclude the aforesaid areas and then again inviting objections.

5 : After giving anxious consideration to the matter, we find that though the second Notification for excluding the areas of Bisoni, Purva Tola, Tekri and Dulhapur from the larger area of Nagar Panchayat Lanji has been done because of the upholding of objections received in regard to the first Notification of inclusion, it was nevertheless the duty of the Government prescribed under Section 21 of the M.P. General Clauses Act, 1957, to exercise the power of exclusion “in like manner and subject to like sanction and conditions”. Section 21 of the General Clauses Act reads as follows :-

“21. **Power to make, to include, power to add to, amend, vary or rescind orders, etc.,** - Where, by any Madhya Pradesh Act, a power to issue notification, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanctions and conditions, if any, to add to, amend, vary or rescind any notifications, orders, rules or bye laws, so issued.”

6 : The requirement of law is, thus, clear. The Government having notified the larger area by including the areas in question, if of the view that the any area must now be excluded for any reason, it must again follow the procedure prescribed by Section 5-A of the Act. We find that there is no Notification declaring the intention of the Governor to exclude the areas of Bisoni, Purva Tola, Tekri and Dulhapur from the larger area of Nagar Panchayat Lanji. Indeed it has been the “contention of the learned Dy. Advocate General appearing on behalf of respondents No 1 to 3 that the subsequent exclusion is purely due to the upholding of objections of the earlier inclusion. Admittedly, the entire procedure contemplated by Section 5-A of the Act have not been followed, even again.

7 : In the circumstances, the subsequent Notification dated 25.8.2009 excluding the areas of Bisoni, Purva Tola, Tekri and Dulhapur from the larger area of Nagar Panchayat Lanji, is illegal and is hereby quashed and set aside. The Government may proceed in accordance with Section 5-A for the aforesaid purpose.

8 : The writ petition stands disposed of to the extent indicated herein above. There shall be no order as to costs.

(S.A. Bobde)
Chief Justice

(K.K.Trivedi)
Judge

रिट याचिका क्र. 8844/2013

उच्च न्यायालय मध्यप्रदेश

खण्डपीठ ग्वालियर

न्यायाधीश : मान. न्यायमूर्ति श्री सुजय पाल

श्रीमती राधा गहलोत

बनाम

श्रीमी शशि जाटव एवं अन्य

भारतीय संविधान अनुच्छेद 227 : के अंतर्गत जिला न्यायाधीश गुना द्वारा निर्वाचन याचिका में पारित आदेश दिनांक 06.04.2013 के विरुद्ध अपील, जिसके द्वारा पुनर्मतगणना आवेदन पत्र निरस्त किया गया। मध्यप्रदेश नगरपालिक निर्वाचन नियम 1994 के नियम 54 के अनुसार अलग लिफाफा में रखे गये निविदत्त मतपत्र को गणना में नहीं लिया जा सकता। नियम 72 के अनुसार पुनर्मतगणना आवेदन पत्र में ऐसी मांग के आधारों को स्पष्ट किया जाना आवश्यक है।

प्रकरण के तथ्य : नगर पालिका गुना के पार्षद के निर्वाचन में याचिकाकर्ता 01 मत से पराजित रही। उसने म.प्र. नगरपालिका अधिनियम 1961 की धारा 20 के अंतर्गत जिला न्यायाधीश गुना के समक्ष चुनाव याचिका प्रस्तुत की। उसमें कहा गया कि कुल 49 मत अवैध घोषित हुए थे जबकि कम से कम 10-11 वैध मत निकलेंगे। अतः इनकी पुनर्मतगणना एवं एक मतदाता रिशी का निविदत्त मतपत्र भी गणना में लिया जाय। जिला न्यायाधीश ने दोनों आधार अमान्य करते हुए चुनाव याचिका खारिज की। इस आदेश के विरुद्ध उक्त याचिका प्रस्तुत की गयी है।

न्यायालय का आदेश : जहाँ तक अवैध माने गये मतों का संबंध है, गणना के समय आपत्ति उठाने पर अवैध मतों की पुनः गणना की गयी थी एवं उनकी संख्या वही रही थी। नियम 72(1) के अनुसार पुनर्मतगणना के लिए प्रस्तुत आवेदन-पत्र में ऐसी मांग के आधारों को स्पष्ट किया जाना आवश्यक है। ऐसे आधारों को स्पष्ट न किये जाने पर ऐसा आवेदन-पत्र मान्य नहीं किया जा सकता। जहाँ तक निविदत्त मतपत्र का प्रश्न है, नियम 69 में ही स्पष्ट व्यवस्था है कि ऐसे मतपत्र को गणना में नहीं लिया जायेगा। अतः याचिका खारिज की गयी।

संदर्भित केस लॉ : हनुमन्त सिंह बनाम म.प्र. शासन एवं अन्य 2012(3) MPLJ191

वडिवेलू बनाम सुन्दरम एवं अन्य (2000)8 एस.सी.सी. 355

**HIGH COURT OF MADHYA PRADESH,
BENCH AT GWALIOR.**

**SB: Hon'ble Shri Justice Sujoy Paul
Writ Petition No. 8844 of 2013**

Smt. Radha Gahlot
Versus
Smt. Sashi Jatav & Ors.

Shri Amit Lahoti, Advocate for the petitioner.
Shri Sanjay Sharma, Advocate for the respondent No.1.

**O R D E R
(Passed on 05th May, 2014)**

This petition filed under Article 227 of the Constitution, is directed against the order dated 06-04-2013 (Annexure P-1) passed by District Judge, Guna in Election Petition No.02 2012, whereby the application of the petitioner for recounting of votes (Annexure P-3), is rejected.

(2) Brief facts necessary for adjudication of this matter, are as under:-

Petitioner and respondent No.1 were candidates in the election of Corporator in Guna Municipality. Respondent No.1 was elected by margin of only one vote. Feeling dissatisfied with the said election, petitioner preferred an election petition under Section 20 of Madhya Pradesh Municipalities Act, 1961 (Annexure P-3). Petitioner also impleaded the Election Officer as non-applicant No.4 in the said election petition before the District Judge (hereinafter called as "Election Tribunal"). The Election Officer filed his reply. The main ground in the election petition is that somebody in the name of Rishi cast his vote. Thereafter, another person turned up and claimed himself to be real Rishi. As per Rule 54 of Madhya Pradesh Nagar Palika Nirvachan Niyam, 1994 (hereinafter called as "the Rules"), the said vote was subsequently permitted to be cast and was treated as "tendered vote" and was kept in a cover specially made for this purpose. This exercise was done as per Rule 54 of the Rules. Petitioner, in her election petition, has stated that recounting is necessary because 49 votes were rejected. Out of these 49 votes, at least 10-11 votes were valid votes. These valid votes were wrongly rejected and, therefore, recounting is necessary.

(3) Shri Amit Lahoti, learned counsel for the petitioner, drew attention of this Court towards pleadings of election petition in paragraphs 3, 5, 8 and 9. By taking this Court to the reply filed by the Election Officer, it is urged that one vote is kept as "tendered vote" and petitioner had submitted an application for recounting of votes. Attention is also drawn on the statement of petitioner's witness, namely, Shri Ashok Gehlot who deposed that the application for recounting was preferred at the relevant time. On the basis of pleadings and evidence, it is contended that the court below has erred in rejecting the application. In support of his contention, learned counsel for the petitioner relied on **2011(3) MPLJ 499 (Ladkunwar Kori vs. Arya Lalaram & Ors.) and AIR 1989 SC 640 (P.K.K. Shamsudeen vs. K.A.M. Mappillai Mohindeen & Ors.)**.

(4) Shri Sanjay Sharma, learned counsel for respondent No.1 supported the impugned order. By taking this Court to Rule 69 (1) proviso, it is urged that the cover containing the votes need not be opened nor such ballot could be counted. In addition, he drew attention of this Court on Rule 72 of

the Rules and submitted that the order of recounting can be made only under Rule 72 of the Rules. By relying on various judgements, it is contended that the court below has considered every aspect raised by the petitioner and, therefore, no interference is warranted by this Court.

(5) Shri Amit Lahoti, learned counsel for the petitioner, submits that the proviso to Rule 69 (1) may be applicable for the Officers, who are engaged in the work of conducting in the election but the same cannot be taken as an impediment for the Courts to take it into account.

(6) No other point is pressed by the parties.

(7) I have heard learned counsel for the parties and perused the record.

(8) Before dealing with the rival contentions advanced, I deem it proper to quote the relevant rules.

Rule 69 reads as under:-

“69. Counting of votes.- (1) Every ballot paper which is not rejected under Rule 68 shall be counted:

Provided that no cover containing tendered ballot paper shall be opened and no such ballot paper shall be counted.

(2) In case the number of polling station in a ward is more than one, the counting for various polling stations in that ward shall be taken up one by one and the result thereof shall be recorded separately for each polling station in Form 21.

(3) After the counting in respect of all polling stations in a ward has been completed, the Returning Officer shall compile the result in the final result sheet in Form -22.

He shall also record therein the number of E.D. votes cast in favour of each candidate on the basis of entries in Form 20 and then total-up the number of valid votes polled by each candidate and announce the same.”

(Emphasis supplied)

Rule 72 reads as under :-

“72. Recount of votes.- (1) After an announcement has been made by the Returning Officer of the total number of votes polled by each candidate under subrule(3) of Rule 69, a candidate or in his absence his election agent may apply in writing to the Returning Officer to recount the votes either wholly or in part, stating the grounds on which he demands such recount.

(2) On such an application being made, the Returning Officer shall decide the matter and may allow the application in whole or in part or may reject it in toto if it appears to him to be frivolous or unreasonable.

(3) Every decision of the Returning Officer under sub-rule(2) shall be writing and contain the reasons therefor.

(4) If the Returning Officer decides under subrule (2) to allow an application either in whole or in part he shall-

(a) count or cause to be counted the ballot papers again in accordance with his decision;

(b) amend the result sheet in Form 22 to the extent necessary after such recount; and

(c) announce the amendments so made by him.

(5) After the total number of votes polled by each candidate has been announced under subrule (3) of Rule 69 or under sub-rule(4) the Returning Officer 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 subrule (1).

[(6) All valid ballot papers shall be bundled together and kept alongwith the bundle of rejected ballot papers in a separate packet which shall be sealed and on which shall be recorded the following particulars, namely:-

(a) The name of the Municipality and the nomenclature of the seat to which the ballot papers relate, such as Mayor, President or Councillor.

(b) The number of ward in the case of election of a Council.

(c) The number of the polling station where the ballot papers have been used; and

(d) The date of Counting.]”

(Emphasis supplied)

(9) The first contention of Shri Amit Lahoti, learned counsel for the petitioner, is that one "tendered vote" was kept in closed cover by the Election Officer. Thus, it is necessary to examine as to who is the real person, who had cast this vote in the name of Rishi. In other words, it needs to be determined whether the original vote cast by Rishi, was cast by correct person or whether the "tendered vote" was cast by real/actual Rishi.

(10) In the opinion of this Court, in view of the language employed in the proviso to Rule 69 (1), this exercise is not permissible. The provision in no uncertain terms makes it clear that the tendered ballot paper shall not be opened and such ballot paper shall not be counted. This is settled in law that if language of the Statue is clear and unambiguous, it must be given effect to irrespective of the consequences. **[See:- Nelson Motis Vs. Union of India and Another reported in (1992) 4 SCC 711]**. I do not see anything in Rule 69 of said Rules which permits the Court to take into account the said tendered vote.

(11) In view of the aforesaid provision, it is not open to remove the cover containing tendered ballot paper and count it for any purpose.

(12) So far the prayer for recounting is concerned, Rule 72 aforesaid makes it clear that the candidate aggrieved needs to prefer an application before the Returning Officer. In turn, the Returning Officer needs to consider and either allow or reject or partly allow or partly reject the said application. The application of the petitioner seeking recount filed before the Election Officer, has not been placed on record in the present case. Rule 72(1) aforesaid shows that the candidate seeking recount needs to state the grounds on which he/she demands recount. In absence of filing such application before this Court, this Court is unable to gather what were the grounds prayed of, for recounting. The court below passed a detailed order and considered the allegations of the petitioner that out of 49 rejected votes, 10-11 votes were valid for which recount is necessary. The court below recorded the statement of the petitioner's husband Shri Ashok Gahlot, who admitted in his cross-examination that the votes which were rejected, were again counted and on recount, number was tallied with earlier original number. There was no material placed before the court below to show that such recounting was incorrect, perverse or arbitrary. In absence of such evidence, recount cannot be ordered on mere asking. The court below has assigned cogent and justifiable reasons for rejecting the said application. The court below considered the proviso to Rule 69 aforesaid and opined that such "tendered vote" cannot be counted. There is no illegality in the said finding.

(13) The Apex Court has consistently taken the view that recount of votes could be ordered very rarely and on specific allegation in the pleadings in the election petition that illegality or irregularity was committed while counting. The petitioner who seeks recount should allege and prove that there was improper acceptance of invalid votes or improper rejection of valid votes. If the court is

satisfied about the truthfulness of the allegation, it can order recount of votes. Secrecy of ballot has been considered sacrosanct in a democratic process of election and it cannot be disturbed lightly by bare allegations of illegality or irregularity in counting. But if it is proved that purity of elections has been tarnished and it has materially affected the result of the election whereby the defeated candidate is seriously prejudiced, the court can resort to recount of votes under such circumstances to do justice between the parties. [See:- **Vadivelu vs. Sundaram and Others, (2000) 8 SCC 355**].

(14) This Court in the case of **Hanumant Singh vs. State of MP and Others reported in 2012 (3) MPLJ 191** has opined as under :-

“20. In AIR 1993 SC 367 *Shri Satyanarain Dudhani vs. Uday Kumar Singh and others*, it has been held that secrecy of ballot cannot be lightly tinkered. In a democratic set up secrecy of ballot is of utmost importance and in absence of very specific pleading of material facts and particulars supported by contemporaneous evidence, neither election can be quashed nor recount can be ordered. In (2003) 1 SCC 390, *Mahender Pratap vs. Krishan Pal and Others*, it was held that the onus of proof on the basis of proper pleading is on the election petitioner. It is further held that the degree of proof must be of very high standard to annul an election or for direction for a recounting.”

(Emphasis supplied)

(15) In the present case, there is no clinching evidence to show that the valid votes were illegally rejected. In absence thereof, the recount cannot be ordered on mere asking. Even otherwise, prayer for recounting, is not in consonance with the requirement under Rule 72 of the Rules. At the conclusion of hearing, Shri Amit Lahoti, prayed for permission to file appropriate proceeding to challenge the constitutionality/validity of Rule 69 aforesaid.

(16) As analyzed, I find no merit in this petition and it is accordingly dismissed. However, liberty is reserved to the petitioner to challenge constitutionality of Rule 69 of the Rules. Petition is dismissed by reserving aforesaid liberty. No costs.

(**Sujoy Paul**)

Judge

05/05/2014

रिट याचिका क्र. 1626/2007

उच्च न्यायालय मध्यप्रदेश

खण्डपीठ ग्वालियर

मान. न्यायमूर्ति श्री एस.के. गंगोले

मुन्नालाल

बनाम

म.प्र.शासन एवं अन्य

भारतीय संविधान अनुच्छेद 226 : म.प्र. नगरपालिका निगम अधिनियम 1956 की धारा 14क के अनुसार मेयर नगरनिगम ग्वालियर के लिए चुनाव लड़ने के उपरान्त निर्वाचन परिणाम की घोषणा के दिनांक 24-11-2004 के 30 दिन के भीतर निर्वाचन व्यय का लेखा प्रस्तुत न करने पर राज्य निर्वाचन आयोग द्वारा याचिकाकर्ता को आदेश दिनांक 28-11-2006 द्वारा पांच वर्ष तक मेयर/पार्षद का चुनाव लड़ने से निरह किये जाने के विरुद्ध रिट याचिका।

प्रकरण के तथ्य : याचिकाकर्ता ने नगरनिगम ग्वालियर के मेयर पद के लिए नवम्बर 2004 में चुनाव लड़ा जिसके परिणाम की घोषणा 24-11-2004 को हुई। इस दिनांक के 30 दिन के भीतर उसे निर्वाचन व्यय का लेखा म.प्र. नगरपालिका अधिनियम 1957 की धारा 14क के अनुसार प्रस्तुत करना अनिवार्य था, जो उसने नहीं किया। अतः उसे दिनांक 12-07-2005 को कारण बताओं नोटिस दिया गया, जिसकी उस पर तामीली दिनांक 22-07-2005 को हुई। उसने दिनांक 29-07-2005 को हिसाब पेश किया किन्तु उसके पूर्व ऐसा लेखा प्रस्तुत न कर सकने का कोई कारण नहीं बताया। अतः आदेश दिनांक 28-11-2006 द्वारा राज्य निर्वाचन आयोग ने उसे 5 वर्ष तक के लिए पार्षद/मेयर का चुनाव लड़ने से निरह किया। इस आदेश के विरुद्ध यह याचिका प्रस्तुत की गयी है।

न्यायालय का आदेश : निर्वाचन व्यय (लेखा का संधारण एवं प्रस्तुति) आदेश 1997 के पैरा 5 एवं 6 में व्यवस्था है कि परिणामक घोषणा के 30 दिन के भीतर निर्वाचन व्यय प्रस्तुत न करने पर निर्वाचन आयोग द्वारा संबंधित को कारण बताओं नोटिस दिये जाने पर वह 15 दिन के भीतर लेखा प्रस्तुत कर सकता है। चूंकि इस प्रकार याचिकाकर्ता ने व्यय लेखा प्रस्तुत कर दिया है, उसे चुनाव लड़ने से निरह करना विधि के विपरीत है। अतः आयोग का उक्त आदेश दिनांक 28-11-2006 निरस्त किया गया।

**IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR**

S.B. : Hon'ble Shri S.K. Gangele, J.

**O R D E R
(18.11.2009)**

18.11.2009 -

Shri S.K. Jain, Advocate and Shri Ankur Mody, Advocate, for petitioner.

Smt. Ami Prabal Advocate, for respondent No.1.

Shri Praveen Newaskar, Dy. Govt. Advocate, for respondent - State.

Heard.

1. The petitioner has filed this petition challenging the order, Annexure-P/1 dated 28.11.2006, by which the petitioner has been disqualified to contest election of Counselor or Mayor of Municipal Corporation for a period of five years.

2. The petitioner contested election for the post of Mayor of Municipal Corporation, Gwalior, which was held in the month of November, 2004. The allegation against the petitioner is that he failed to submit account of election expenses within the statutory period and thereafter he also failed to explain the delay in submitting election expenses and he has been declared disqualified for five years to contest election.

3. Respondents in the return stated that the petitioner did not submit account of election expenses within a period of thirty days from the date of election as required under section 14-A of the Municipal Corporation Act, 1956, hereinafter referred to as the 'Act of 1956'. Hence, as per provisions of section 14-C of the Act of 1956 the petitioner has been disqualified for contesting election of Counselor or Mayor of the Corporation for a period of five years because lodging of accounts of election expenses within a period of thirty days from the date of election is a mandatory requirement.

4. It is an admitted fact that petitioner contested the election of Mayor of Municipal Corporation, Gwalior. The result of the election was declared on 24th November 2004. The petitioner had to submit accounts of election expenses within a period of thirty days from the date of declaration of result of the election. A show cause notice was issued to the petitioner on 12.07.2005 and it was served on the petitioner on 22.07.2005. Thereafter, the petitioner submitted his account of election expenses on 29-07-2005. The allegation against the petitioner is that he did not submit any reason for not submitting the account of election expenses within thirty days after declaration of result of the election.

5. Order 7 of Election Expenses (Maintenance and Lodging of Account) Order, 1997, hereinafter referred to as the 'Order of 1997', prescribes submitting of account of election expenses by a candidate within a period of 30 days from the date of election. The rule is as under :

“7. Lodging of account of election expenses :-

- (1) Every contesting candidate or his election agent shall lodge the account of election expenses with the District Election Officer, within the time specified in the Act, that is 30 days from the date of election.
- (2) The account of election expenses shall comprise the following documents, namely :-

- (a) The register of day to day account of election expenses referred to in paragraph 4 in original;
- (b) vouchers relating to the entries made in the register of election expenses, and
- (c) abstract statement of election expenses, referred to in paragraph 6.
- (3) The register of day to day account of election expenses and the abstract statement of election shall be authenticated and countersigned by the candidate in case they have been prepared and signed by his election agent and the vouchers shall also be countersigned by him, before being lodged.
- (4) The account of election expenses shall be accompanied by an affidavit of the candidate in Proforma C and shall not be resgarded complete without such as affidavit.”

6. Similarly, sub-para 5 and 6 of Order 10, prescribes that any contesting candidate may within fifteen days from the receipt of such notice of Commissioner, shall send the respresentation along with the accounts of election expenses to the District Election Officer. The relevant orders are us under:

- (5) Where the Election Commission decides that a contesting candidate has failed to lodge his account of election expenses within the time and in the manner required by that Act and this Order, it shall by notice in writing call upon the candidate to show cause why he should not be disqualified under Section 14-C of the M.P. Municipal Corporation Act, 1956 or as the case may be, Section 32-C of the M.P. Municipalities Act, 1961 for the failure.
- (6) “Any contesting candidate who has been called upon to show under paragraph (5) may within fifteen days of the receipt of such notice submit in respect of the matter a representation in writing to the Election Commision, and shall at the same time send to the District Election Officer a copy of his representation together with a complete account of his election expenses if he had not already furnished such an account.”

7. From the aforesaid statutory order, it is clear that a candidate is at liberty to submit accounts of election expenses within a period of 15 days from the date of receipt of notice.

8. In the present case, notice was issued to the petitioner by the Election Commission on 12-07-2005. The petitioner submitted accounts of election expenses and the same was received in the office of Commission on 29-07-2005. Hence, the petitioner has complied with the irregularity. The petitioner has complied the legal obligations of submitting accounts within 15 days from the date of receipt of notice from the Election Commission. However, there is a delay and the petitioner has not explained the delay. It is a fact that he received notice and he submitted the accounts. This Court in the case of **Jawahar Lal Gupta Vs. Rajya Nirvachan Ayog, Bhopal and another (reported in 2003 (1) M.P.L.J.)** Page 180, after considering other judgements of the Hon’ble Supreme Court, has observed that the substantial non-compliance of the Order of 1997 on the part of contesting candidate is necessary in order to disqualify the candidate to contest future elections.

9. In the present case, in my opinion, there is a substantial compliance on the part of the petitioner, in such circumstances, the order of disqualification of the petitioner to contest the future election, is contrary to law.

10. Consequently, the petition of the petitioner is allowed. Impugned orders Annexure-P/1 dated 28-11-2006 disqualifying the petitioner for contesting future elections for five years, is hereby quashed. No order as to cost.

(S.K. Gangele)
Judge

सिविल रिवीजन क्र. 493/2011
उच्च न्यायालय मध्यप्रदेश, जबलपुर

मान. न्यायमूर्ति श्री एन.के. गुप्ता

श्रीमती रेखा चौधरी
बनाम
श्रीमती सुमन अहिरवार एवं अन्य
सिविल रिवीजन क्र. 275/2012

श्रीमती प्रेमबाई अहिरवार
बनाम
श्रीमती सुमन अहिरवार एवं अन्य

महापौर नगर निगम सागर के निर्वाचन के विरुद्ध प्रस्तुत निर्वाचन याचिका में जिला न्यायाधीश सागर के आदेश दिनांक 09.12.2011 द्वारा विजयी अभ्यर्थी श्रीमती कमला किन्नर का निर्वाचन शून्य घोषित किया गया। इस आदेश के विरुद्ध यह सिविल रिवीजन है। इसी आदेश के विरुद्ध अन्य याचिकाकर्ता द्वारा दूसरी सिविल रिवीजन (क्र. 275/2012) दायर की गयी है।

प्रकरण के तथ्य: नगर निगम सागर के महापौर के लिए सम्पन्न चुनाव में दिनांक 15.12.2009 को घोषित परिणाम के अनुसार कमला किन्नर को विजयी घोषित किया गया। उसे 64683 मत मिले। द्वितीय स्थान पर उत्तरवादी क्र.1 श्रीमती सुमन अहिरवार रही, जिसे 21250 मत मिले जबकि याचिकाकर्ता श्रीमती रेखा चौधरी को 11799 मत मिले। उत्तरवादी क्र.1 श्रीमती सुमन अहिरवार ने जिला न्यायाधीश सागर के समक्ष प्रस्तुत चुनाव याचिका में बताया कि महापौर सागर का पद अनुसूचित जाति की महिला के लिए आरक्षित है। चूंकि विजयी अभ्यर्थी कमला किन्नर, न तो महिला है और न ही अनुसूचित जाति की है, उनका निर्वाचन शून्य घोषित करते हुए उन्हें निर्वाचित घोषित किया जाय। जिला न्यायाधीश सागर ने पाया कि विजयी अभ्यर्थी उक्त पद का निर्वाचन लड़ने के लिए पात्र नहीं है। अतः उसका निर्वाचन शून्य घोषित करते हुए श्रीमती सुमन अहिरवार को निर्वाचित घोषित किये जाने के आदेश को चुनौती दी गयी।

न्यायालय का आदेश : म.प्र. नगरपालिका निगम अधिनियम 1956 की धारा 441- डी की सूक्ष्म व्याख्या करते हुए पाया गया कि चूंकि इस निर्वाचन में 6 अभ्यर्थी थे, विजयी अभ्यर्थी के चुनाव न लड़ने पर उसके मत किसे मिलते यह नहीं कहा जा सकता। ऐसी स्थिति में बहुमत किसे मिला माना जाय, यह निश्चय करना संभव नहीं है। अतः रिवीजन मान्य करते हुए यह माना गया कि किसी भी अन्य अभ्यर्थी को निर्वाचित नहीं माना जा सकता। अतः जिला न्यायाधीश के आदेश के संबंधित अंश को निरस्त किया गया।

**HIGH COURT OF JUDICATURE MADHYA PRADESH,
JABAPLUR**

**Single Bench: Hon'ble Shri Justice N.K.Gupta,J
CIVIL REVISION NO.493 OF 2011**

Smt. Rekha Choudhary.

A.F. R.

Versus

Smt. Suman Ahirwar & others.

Judge

CIVIL REVISION NO.275 OF 2012

Smt. Prembai Ahirwar

Versus

Smt. Suman Ahirwar & others

In CR No.493/2011

Shri P.D.Gupta, Advocate for the applicant.

Shri Sanjay K. Agrawal, Advocate for the respondent No.1. Shri Santosh Yadav, Panel Lawyer for the respondent No.7.

In CR No.275/2012

Shri Pranay Verma, Advocate for the applicant.

Shri Sanjay K. Agrawal, Advocate for the respondent No.1.

Shri Santosh Yadav, Panel Lawyer for the respondent No.8.

O R D E R

(Passed on the 3rd day of July, 2013)

Both civil revisions are connected with the common judgement passed by the learned District Judge, Sagar in Election Petition No.25-A/2010, therefore the same are decided by the common order.

2. By way of the present civil revisions, the applicants have challenged the judgement dated 9.12.2011 passed by the learned District Judge, Sagar in Election Petition No.25-A/2010, whereby the election of one Kamla Kinnar was declared *void* and the respondent No.1 Smt. Suman Ahirwar was declared to be elected for the post of “*Mahapaur*” (Mayor) to the Municipal Corporation, Sagar.

3. The brief facts of both the cases are that an election to the post of “*Mahapaur*” took place in the year 2009. After adopting the due procedure the results were declared on 15.12.2009. Six candidates had contested the election. Out of them one Kamla Kinnar was declared elected with 64683 votes, whereas the respondent No.1 Smt. Suman Ahirwar bagged 21250 votes, whereas Smt. Rekha Choudhary applicant in the Civil Revision No.493/2011 received 11799 votes. Each of the remaining candidates could not get the votes more than two thousand in the election. The respondent No.1 of Civil Revision No.493/2011 had moved an election petition on the basis that the seat for “*Mahapaur*” of the Municipal Corporation, Sagar was reserved for a woman candidate of Scheduled Caste and the

candidate who was declared elected was neither a woman nor a person belonging to Scheduled Caste. After recording the evidence, the learned District Judge, Sagar found that the elected candidate was not competent to contest the election, and therefore its election was declared *void*. Simultaneously it was declared that runner up candidate i.e. Smt. Suman Ahirwar was declared to be elected as “Mahapaur” of the Municipal Corporation, Sagar.

4. I have heard the learned counsel for the parties at length.

5. The learned counsel for the applicant in Civil Revision No.493/2011 has submitted that the elected candidate had received 64683 votes, whereas the respondent No.1 Smt. Suman Ahirwar received only 21250 votes, and therefore if the candidate Kamla Kinnar would not have fought the election, it cannot be said that its votes could be received by Smt. Suman Ahirwar. Under such circumstances, it cannot be said that the respondent No.1 Smt. Suman Ahirwar had received majority of votes, and therefore she could not be declared elected. In this connection, the learned counsel for the applicant has placed his reliance upon the judgement of Hon’ble the Apex Court in the case of “**Prakash Khandre Vs. Dr. Vijaya Kumar Khandre**”, (AIR 2002 SC 2345) and in the case of “**Manohar Nathusao Samarth Vs. Marotrao & others**” (AIR 1979 SC 1084) to show that the respondent No.1 could not be declared elected only because she was in a runner up position.

6. The learned counsel for the applicant in Civil Revision No.275/2012 has submitted that according to the provisions of Section 441-F of the Madhya Pradesh Municipal Corporation Act, 1956 (hereinafter referred to as “**Act, 1956**”), any person aggrieved by the decision passed by the District Court in election petition could file a revision within 30 days from such decision, and therefore though the applicant was not the contesting person in that election, she was entitled to file a civil revision. The learned counsel for the applicant in Civil Revision No.275/2012 has similarity in submission made in the Civil Revision No.493/2011.

7. On the other hand, the learned counsel for the respondent No.1 has submitted that the contention of the learned counsel for the applicants was dependent upon the provisions of the Representation of the Peoples Act, 1951 (hereinafter referred to as “RP Act”), whereas the provisions relating to election are different in the RP Act and the Act of 1956, and therefore the law laid down by Hon’ble the Apex Court in the matter of RP Act is not applicable in the present case and the District Judge has rightly held that the respondent No.1 was elected.

8. After considering the submissions made by the learned counsel for the parties (it be noted here that the Civil Revision No.482/2011 filed by the alleged returned candidate Kamla Kinnar, was dismissed being withdrawn on 24.8.2012 and the proposition relating to declaring the election of Kamla Kinnar to be *void* is not required to be discussed here), and it appears that only one short question is involved in the present revisions that whether the respondent No.1 could be declared elected or not. In this context, the provisions of Section 101 of the RP Act may be perused, which are as under:-

“101. Grounds for which a candidate other than the returned candidate may be declared to have been elected.— If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and 2[the High Court] is of opinion -

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate by corrupt [***] practices the petitioners or such other candidate would have obtained a majority of the valid votes,

[the High Court] shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.”

9. Similarly, the provisions of the Act, 1956 relating to declaration of a candidate other than returned candidate to be elected as mentioned in Section 441-D(2) of the Act, 1956, may be perused, which are as under:

“441—D. Decision of Election petition—At the conclusion of the trial of an election petition, the Court shall make an order—

.....

(2) If any person who has filed an election petition has, in addition to calling in question the election or [nomination] of the returned candidate, claimed declaration, that he himself or any other candidate has been duly elected or [nominated] and the Court is of opinion-

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate the petitioner or such other candidate would have obtained a majority of the valid votes;

the Court shall, after declaring the election or [nomination] of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected or [nominated].”

By the language of the aforesaid provisions, it is apparent that any declaration regarding the election of returned candidate to be void does not include the declaration of the next candidate as elected candidate. It is nowhere mentioned in both the Acts that the runner up candidate shall be declared elected. On the contrary, it is provided that it is to be established by the person who claims to be elected that he would have received majority of such valid votes those were received by the returned candidate if the returned candidate would not have fought the election.

10. The learned counsel for the respondent No.1 has submitted that under the provisions of Section 101 of the RP Act the votes received by the returned candidate through a corrupt practices shall be excluded, whereas there is no such provision under Section 441-D of the Act, 1956. In the present case, the election of the returned candidate was not declared to be void on the basis of incompetency of the candidate. There is no information from the Election Authority that some of the votes obtained by the returned candidate were obtained by any corrupt practices. When there was no evidence that the returned candidate obtained the votes on the basis of corrupt practices, then the remaining provisions of Section 101 of the RP Act is similar to the Section 441-D of the Act, 1956. It is pertinent to note that the returned candidate in the election received 64683 votes whereas first runner up candidate received 21250 votes and second runner up candidate received 11799 votes. If the votes of first runner up candidate and second runner up candidate are added, then still the returned candidate received more votes than their consolidated votes. If the returned candidate would not have fought the election, then no criteria could be shown by the respondent No.1 that how many votes she would have received in absence of the returned candidate. In the election there is no method to ascertain that in the absence of the returned candidate Kamla Kinnar, the respondent No.1 or the applicant of Civil Revision No.493/2011 would have received the votes which were at present received by the returned candidate. Looking to the difference of votes, it cannot be said that the respondent No.1 got the majority of votes that she could be declared elected when the election of returned candidate was declared *void*.

11. In this context, the judgement of Hon'ble the Apex Court in the case of Prakash Khandre (supra) may be perused, particularly the para 14, which is as under:

“However, in an election where elected candidate is declared to be disqualified to contest election and there are more than two candidates contesting election, there is no specific provision under the Act

under which the person who has secured the next highest number of votes could be declared as elected. The Act is silent on this point. Further, it cannot be presumed that the votes secured by the disqualified elected candidates would have been wasted or would have been secured by the next candidate who has secured more votes. If disqualified candidate was not permitted to contest the election then how the voters would have voted in favour of the candidate who has secured more votes than other remaining candidates would be a question in the realm of speculation and unpredictability. In such a situation, declaring the election of the returned candidate on the ground of his initial disqualification to contest the election by itself would not entitle the election petitioner or any other candidate to be declared elected."

Similarly, in para 21 of the aforesaid judgement Hon'ble the Apex Court has held as under:

"The Court also considered the dictum in the case of Viswanath (*supra*) and observed that the ratio decidendi of said case is applicable only where (a) there are two contesting candidates and one of them is disqualified; and (b) the election is on the basis of single non-transferable vote."

12. On the basis of the law laid down by Hon'ble the Apex Court in the case of **Prakash Khandre (*supra*)**, it is apparent that if there is no law laid in any enactment relating to election proceeding that when the election of the returned candidate is declared *void*, then the runner up candidate be declared elected then unless it is established that he could get majority of the votes in absence of the returned candidate that candidate cannot be declared elected. If only two candidates were contesting the election, then if the election of the returned candidate is declared *void*, then it can be presumed that in the absence of that returned candidate, the runner up candidate would have received entire votes which were received by the returned candidate, and therefore in such a case runner up candidate can be declared elected.

13. In the present case, six candidates fought the election and there is no method to assess that if the returned candidate Kamla Kinnar would not have participated in the election, then how many votes would have been received by the remaining candidates. Under such circumstances, looking to the law laid down by Hon'ble the Apex Court in the case of **Prakash Khandre (*supra*)**, it cannot be said that the respondent No.1 would have received the majority of the votes in absence of the returned candidate Kamla Kinnar, and therefore according to the provisions of Section 441-D of the Act, 1956 the respondent No.1 could not be declared as elected candidate. The learned District Judge, Sagar did not discuss on the point before considering the matter relating to the declaration of respondent No.1 to be elected as "*Mahapaur*" of the Municipal Corporation, Sagar. Under such circumstances, both the civil revisions filed by the applicants can be accepted. The respondent No.1 cannot be declared elected when the election of the returned candidate Kamla Kinnar has been declared *void*.

14. On the basis of the aforesaid discussion, the civil revisions filed by the applicants are allowed. The portion of the impugned judgement dated 9.12.2011 passed by the learned District Judge, Sagar, by which the respondent No.1 Smt. Suman Ahirwar was declared to be elected to the post of "*Mahapaur*" is hereby set aside. It is directed that since the election of the returned candidate Kamla Kinnar was already declared *void*, and no other candidate can be declared elected, then it is for the Returning Officer to arrange for fresh election. There is no order as to costs.

15. A copy of this order be sent to the trial Court along with its record for information.

(N.K.Gupta)
Judge
03/07/2013

रिट याचिका क्र. 1161/2004

उच्च न्यायालय मध्यप्रदेश,

बैच इन्दौर

मान. न्यायमूर्ति श्री विनय मित्तल

पारसचंद्र जैन

बनाम

म.प्र. राज्य निर्वाचन आयोग एवं अन्य

भारतीय संविधान अनुच्छेद 226 : 1999 में सम्पन्न नगरपालिका निर्वाचन में निर्वाचन व्यय का लेखा प्रस्तुत न करने पर याचिकाकर्ता को आदेश दिनांक 16.10.2004 द्वारा 5 वर्ष तक चुनाव लड़ने से निरहित करने के विरुद्ध याचिका।

प्रकरण के तथ्य : दिसम्बर 1999 में याचिकाकर्ता ने नगरपालिका आगर मालवा जिला शाजापुर के अध्यक्ष पद के लिए चुनाव लड़ा था, जिसमें वह असफल रहा। म.प्र. नगरपालिका अधिनियम 1961 की धारा 32(ख) के अनुसार निर्वाचन व्यय की जानकारी न देने पर याचिकाकर्ता को कारण बताओ नोटिस जारी किया गया एवं तत्पश्चात् आदेश दिनांक 16.10.2004 द्वारा उसे 5 वर्ष तक चुनाव लड़ने से निरहित किया गया। इस आदेश के विरुद्ध याचिका प्रस्तुत की गयी।

न्यायालय का आदेश : निर्वाचन आयोग ने लगभग 4 वर्ष बाद प्रश्नास्पद आदेश पारित किया जो उचित नहीं कहा जा सकता। अतः याचिका मंजूर की गई एवं उक्त आदेश निरस्त किया गया।

**IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE**

WRIT PETITION No. 1161 of 2004

Date of Decision : March 19, 2009

Paraschand Jain

.....Petitioner

Versus

M.P. State Election Commission and others

.....Respondents

CORAM :- HON'BLE MR. JUSTICE VINEY MITTAL.

**PRESENT :- Shri A.K. Sethi, Senior Advocate with Shri Harish Joshi Advocate,
for the petitioner.**

Shri Sunil Jain Advocate for respondent No.1

Ms. Rashmi Pandit Deputy Government Advocate. for respondents No.2 & 3.

VINEY MITTAL J. (Oral)

The petitioner has riased a challenge to an order dated August 16, 2004, publised in the government gazette dated October 20, 2004, whereby the M.P. State Election Commission, respondent No. 1, has declared the petitioner as disqualified for a period of five years from contesting the elections under the Madhya Pradesh Municipalities Act, 1961 (hereinafter called as Act), from the date of the said order. A copy of the aforesaid order dated October 20, 2004 has been appended as P-10 with the petition.

The brief facts may be noticed.

The petitioner was a candidate in an election process for the post of President of Municipal Council Agar- Malwa. District Shajapur held in the month of December, 1999. However, he remained unsuccessful. As per the provisions of Section 32-A of the Act, every candidate participating in the election process is required to maintain a separate and correct account of all expenses incurred by him in the election and the said account is required to be submitted under Section 32-B of the Act. In case of any default in submission of the account expenses, committee by a candidate, provisions of Section 32-C of the Act are invokable and the State Election Commission is competent in law to declare a candidate as disqualified for a period not exceeding five years. On the basis of non submission of the accounts statement, with regard to the expenses incurred by the petitioner, a show cause notice was issued to him by the election authorities. On receipt of the said notice, the petitioner submitted the aforesaid accounts statement to the Notified Authority. However, the State Election Commission, on the basis of the default committed by the petitioner, having not submitted the accounts statement to the

Notified. Authority within the period of limitation, has passed the order dated October 16, 2004, disqualifying him under Section 32-C of the Act, for a period of five years from contesting the elections, from the date of the said order.

The claim made by the petitioner has been contested by the respondents. It has been maintained that since the petitioner was mandatorily required to submit the original accounts statement as per Section 32-A of the Act to the Notified Authority and had not done so, and later on also had submitted the photocopy of the aforesaid accounts statements, therefore, the disqualification has rightly been imposed upon the petitioner.

Shri A.K. Sethi, learned senior counsel for the petitioner has argued that since the election had taken place in the year 1999 therefore, the disqualification order, if at all, was required to be passed at that point of time only, and an order having been passed in the year 2004, a period of five years had unnecessarily been lost, and the petitioner has unnecessarily been prejudiced for a further period of five years not to be participate in the election process.

On the other hand, Shri Sunil Jain, learned counsel appearing the respondent No.1 has maintained that the delay if any, was caused on account of the default committed by the petitioner, having not submitted the accounts statement to the Notified Authority, and the petitioner cannot be permitted to take advantage of his own wrong.

After hearing learned counsel for the parties and on taking into consideration the facts and circumstances of the case, I find that the controversy in question is squarely covered by a judgement of this Court rendered in the case of **Mahendra Vs. M.P. State Election Commission and others (2005 (1) MPLJ 245**, wherein certain observations made by this Court are relevant and extracted as follows.

"16. The Election Commission is under an obligation to record its satisfaction whether a person has failed to make out good reasons or justification for his failure in not submitting the account within time period. If a person is required to make out a good reason or justification as to why and for what reason he could not submit the account in time, it is equally obligatory on the part of the Election Commission to examine as to whether ground or cause stated in reply constitutes good reason. To arrive at a finding it requires application of mind judiciously to the facts of each case and thereafter to pass a reasoned order in respect of acceptance or rejection of explanation. Not only this, the said order should be communicated to the petitioner by which his explanation or contention was rejected by the Election Commission. The Election Commission has notified the order in all the cases which are similar in nature. But whether the Election Commission decided the matters after due consideration of explanation given by the candidate for the delay in lodging the account of election expenses by a reasoned order does not find place in the order."

"18. From the perusal of the scheme of Expenses Order in para 10, it is apparent that the said order is to be passed within reasonable time. Within a period of 30 days from the date of declaration of the result, the candidate has to lodge his account. Thereafter, the District Election Officer immediately has to send a report to the Election Commission about non-lodging of the account. Sub-para (4) of para 10 also provides that as soon as the Election Commission receives the report, it shall consider same and when Election Commission decides that the contesting candidate has failed to lodge account of election expenses, then it has to issue a show cause notice. In the cases, show-cause notice was issued in the year 2000 and the impugned order has been passed in 2004 after nearabout four years. If Election Commission would have acted promptly then the said order ought to have been passed in the year 2000 itself. Considering explanation, it was within discretion of the Election Commission to disqualify the candidate for a lesser period than five years and it is not mandatory that in every case Election

Commission shall disqualify the candidate for maximum period of five years. In these circumstances, if the decision would have been taken by the Election Commission in the the year 2000 then period for disqualification must have ended before the next election, as the case may be. But the Election Commission took a period of nearabout 4 years for considering the explanation and reasons assigned by the candidate which cannot be appreciated. Petitioner cannot be penalized to contest present election on the basis of the order which has been issued, by the Election Commission in the year 2004 after four years from the date of submitting explanation by the candidate."

In view of the law laid down by this Court in Mahendra's case (supra), the present petition is also allowed and the order Annexure P-10 passed by the State Election Commission ordering disqualification of the petitioner for a period of five years from the date of said order is hereby quashed.

C.c. as per rules.

INDORE :

(VINEY MITTAL)

DATED : March 19, 2009

JUDGE

BDJ

रिट याचिका क्र. 7101/2014

उच्च न्यायालय मध्यप्रदेश

बैच ग्वालियर

मान. न्यायमूर्ति श्री बी.डी. राठी, न्यायाधीश

कु. विमलेश वंशकार

बनाम

राज्य निर्वाचन आयोग एवं 01 अन्य

भारतीय संविधान अनुच्छेद 226 : वर्ष 2009-10 में नगर पंचायत बड़ोनी जिला दतिया में अध्यक्ष पद का चुनाव लड़ने के उपरांत निर्वाचन व्यय की जानकारी प्रस्तुत न करने के आधार पर म.प्र. नगरपालिका अधिनियम 1961 की धारा 32(ग) के अनुसार उसे 5 वर्ष तक चुनाव लड़ने से निरहित करने के आदेश दिनांक 21.08.2014 के विरुद्ध याचिका।

प्रकरण के तथ्य : वर्ष 2009 में नगर पंचायत बड़ोनी जिला दतिया के अध्यक्ष पद के लिए चुनाव लड़ने के उपरांत म.प्र. नगरपालिका अधिनियम 1961 की धारा 32 ख के अनुसार याचिकाकर्ता ने निर्वाचन व्ययों का लेखा प्रस्तुत नहीं किया। इस पर कारण बताओ नोटिस दिनांक 09.09.2010 को जारी किया गया, जिसकी तामीली उसके बजाय उसके पिता पर की गयी, जो संयुक्त परिवार में उसके साथ रहते थे। कोई स्पष्टीकरण प्राप्त न होने पर राज्य निर्वाचन आयोग ने अपने आदेश दिनांक 21.08.2014 द्वारा आगामी 5 वर्षों तक अध्यक्ष नगर पंचायत बड़ोनी का चुनाव लड़ने के लिए निरहित किया गया। इस आदेश के विरुद्ध प्रस्तुत याचिका में मुख्य तर्क यह उठाया गया कि याचिकाकर्ता को सुनवायी का पर्याप्त अवसर नहीं दिया गया और प्रश्नास्पद अत्यन्त विलम्ब से पारित किया गया।

न्यायालय का आदेश : प्रश्नास्पद आदेश 5 वर्ष के पश्चात् पारित किया गया है। इस आधार पर याचिकाकर्ता को दण्डित नहीं किया जा सकता। अतः उक्त आदेश निरस्त किया गया।

IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR
Class of Case...W.P. No. 7101/2014

Ku. Vimlesh Vanshkar

Versus

State of M.P.

22/12/14

Shri D.S.Raghuvanshi, Advocate for the petitioner-Ku. Vimlesh Vanshkar.

Smt. Ami Prabal, Advocate for the respondents.

Heard finally with the consent of the counsel for the parties.

Present writ petition filed under Article 226 of the Constitution of India has been preferred seeking the following reliefs to the extent mentioned below:

- (i) By allowing the writ petition, the impugned order dated 21/8/2014 (Annexure-P/1) be quashed.
- (ii) The petitioner be permitted to participate in Nagar Panchayat Election held for the post of Chairman in the month of February, 2015.
- (iii) Any other relief which the Hon'ble court deems fit and proper.

The facts in short are that the impugned order dated 21/8/2014, marked as Annexure-P/1 was communicated to the petitioner on 4/9/2014 whereby she was declared as disqualified to take part in coming election held for the post of Chairman of Nagar Panchayat, Badoni, district Daita for next five years on her failure to furnish accounts of election expenses which were held in the year 2009. It was alleged that the petitioner took part in the said election but failed to submit accounts of election expenses.

It is submitted by the counsel for the petitioner that previously election was held in the year 2009 whereas the impugned order has been passed in the year 2014, after a period of five years which indicates *malafide* on the part of the respondents. Apart that, no show-cause notice was given to the petitioner. Opportunity of hearing was also not given. Therefore on these two counts, firstly in violation of principles of natural justice in not affording opportunity of hearing to the petitioner and because the impugned order was passed after a period of five years, the petition is sought to be allowed and the impugned order dated 21/8/2014 (Annexure-P/1) is prayed to be set aside by permitting the petitioner to participate in the election of Nagar Panchayat held for the post of Chairman in the month of February, 2015. In support of the arguments, learned counsel for the petitioner placed reliance on the decision in the case of **Mahendra s/o R.S.Palraiya Vs. M.P. State Election Commission and others [2005(1) MPLJ 245]**.

Prayer was opposed by the learned counsel appearing for the other side on the ground that show-notice (Annexure-R/2) was served on the father of the petitioner. The petitioner is one of the family members of the joint family who is residing with her father but despite serving of aforesaid notice no reply was submitted by her. Secondly, it was the duty of the petitioner to furnish the accounts of the election expenses within a period of 30 days from the date of election of the return candidate before the officer nominated for the said election as per the provisions given under Section 32-B of M.P. Municipalities Act, 1961 but same particulars have not been furnished, therefore, the respondents/ election commission as per provisions given under section 32-C of the aforesaid Act held disqualification of the petitioner on her failure to lodge the account of election expenses. Hence, it is prayed that the

petition having no substance be dismissed.

Having regard to the arguments advanced above, the entire case has been examined.

Before dwelling upon the issue involved in the case, the relevant provisions are quoted below:

“32-B. Lodging of account of election expenses.- Every contesting candidate at an election of President shall, within thirty days from the date of election of the returned candidate lodge with the officer notified by the State Election Commission an account of his election expenses which shall be a true copy of the account kept by him or by his election agent under section 32-A.

32-C. Disqualification for failure to lodge account of election expenses. - If the State Election Commission is satisfied that a person -

(a) has failed to lodge an account of election expenses within the time and in the manner required by or under this Act; and

(b) has no good reason or justification for the failure, the State Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for being chosen as, and for being a Councillor or President of the Municipal Council or Nagar Parishad, as the case may be, for a period not exceeding five years from the date of the Order.”

Admittedly, as per the facts on record, the previous election was held in the month of February, 2010 but the show-cause notice (Annexure-R/2) dated 9/9/2010 was not served on the petitioner at previous point of time. Instead the same was served on Harprasad, the father of the petitioner. Nowhere it was evidentially clear that the petitioner is residing with her father Harprasad as a member of joint family. Therefore, it is discernible from the record that opportunity of hearing was not afforded to the petitioner. Moreover, it was mentioned in the notice that previously the election was held in the month of February, 2010 under the M.P. Gazette Notification filed as Annexure-R/6. By the aforesaid Notification the election was held in the month of February, 2010 but in the impugned order dated 21/8/2014, Annexure P/1, it was mentioned that the election was held in the month of December, 2009. It means that impugned show cause notice for the election held in the month of December, 2009 was not given but the notice given was for the election held in the month of February, 2010. No order has been passed against the petitioner for the election held in the month of February, 2010. Therefore, in the considered opinion of this court, the impugned order issued against the petitioner is bad in law. The same was issued without giving an opportunity of hearing to the petitioner. Suffice it to observe that if the election commission would have acted properly then the said order ought to have been passed in a proper manner for the election in question. But the election commission took a period of near about five years for consideration which cannot be appreciated. The petitioner cannot be penalized to contest the next election on the basis of the order which has been issued by the election commission after a lapse of five years. It is also pertinent to mention here that the impugned order dated 21/8/2014 (Annexure-P/1) was issued against in all fourteen candidates. It shows that a joint order was passed against all the aforesaid fourteen candidates which can be termed as stereo typed order. So, admittedly, the detailed order has not been passed and in a routine way the case of the petitioner has been examined by the respondents/authorities.

For the aforesaid reasons, the impugned order passed by the respondents disqualifying the petitioner for election with further disqualification for five years from the date of order cannot be sustained under the law. The order by Gazette Notification issued by the Election Commission in respect of the petitioner is hereby set aside. Accordingly, the petition is allowed.

No order as to costs.

(B.D. Rathi)
V. Judge

(Bu)

रिट याचिका क्र. 5293/2007

उच्च न्यायालय मध्यप्रदेश

बैंच ग्वालियर

मान. न्यायमूर्ति श्री राजेन्द्र मेनन

श्रीमती सत्य प्रकाशी परसादिया

बनाम

म.प्र. शासन

भारतीय संविधान अनुच्छेद 226- याचिकाकर्ता जो अध्यक्ष नगरपालिका डबरा के पद पर निर्वाचित थी, को म.प्र. नगरपालिका अधिनियम 1961 की धारा 47 के अंतर्गत वापिस बुलाने (Recall) की कार्यवाही करने के शासन के आदेश के विरुद्ध याचिका।

प्रकरण के तथ्य : याचिकाकर्ता 2004 में सम्पन्न चुनावों में नगरपालिका डबरा की अध्यक्ष निर्वाचित हुई थी। दिनांक 03.11.2007 को 20 पार्षदों ने कलेक्टर को म.प्र. नगरपालिका अधिनियम 1961 की धारा 47 के अंतर्गत इस आशय का प्रस्ताव दिया कि उक्त अध्यक्ष को वापिस (रिकाल) बुलाया जाय। कलेक्टर से प्रस्ताव राज्य शासन को अग्रेषित करने पर राज्य शासन ने राज्य निर्वाचन आयोग को 'वापिस बुलाने' की कार्यवाही करने के लिए लिखा। इस आदेश के विरुद्ध यह याचिका इस आधार पर प्रस्तुत की गयी है कि कलेक्टर ने वैधानिक प्रावधानों के विपरीत कार्यवाही की है क्योंकि उन्होंने स्वयं जांच न कर मामला परियोजना अधिकारी डी.यू.डी.ए. को भेजा एवं उनकी अनुशंसा पर उसे राज्य शासन को भेजा।

न्यायालय का आदेश : अधिनियम की धारा 47(2) के अंतर्गत कलेक्टर द्वारा स्वयं आवश्यक जांच कर शासन को प्रतिवेदन भेजना अपेक्षित है। यह दायित्व किसी अन्य को नहीं सौंपा जा सकता। अतः याचिका स्वीकार की गयी एवं वापिस बुलाने की कार्यवाही निरस्त की गयी।

**HIGH COURT OF JUDICATURE OF MADHYA PRADESH
JABALPUR BENCH AT GWALIOR
S.B. : HON'BLE MR. JUSTICE RAJENDRA MENON
Writ Petition No. 5293/2007**

Smt. Satya Prakash Parsadia
Versus
State of Madhya Pradesh and Others

Appearance

Shri. V.K. Bharadwaj, Shri Raju Sharma, Shri A.V. Bhardwaj and Shri Raja Sharma, advocate for the petitioner.

Shri S.B. Mishra, Additional Adocate General, Shri Vivek Khedkar, Govt. Advocate and Shri Praveen Newaskar, Deputy Government Advocate for the respondents/State.

O R D E R

(passed on this 25th day of January, 2008)

Petitioner who is the elected President of Municipal Council, Dabra feels aggrieved by the action taken by the respondents in proposing to recall her under Section 47 of the M.P. Municipalities Act, 1961 (hereinafter referred to as the Act of 1961) and the direction issued to the State Election Commissioner for holding the election for recall of the petitioner.

2. Facts in brief necessary for disposal of this petition are that election to the Municipal Council, Dabra for electing councillors and President was held on 20th November, 2004, the result were declared on 24th November, 2004 and petitioner was elected as a President by the State Government. Grievance of the petitioner in this petition is that 20 councilors are alleged to have submitted a representation to the Collector on 3rd November, 2007 under Section 47 of the Act for recalling her. It is stated that this proposal for recall has been accepted by the Collector and the Collector in accordance with Section 47(2) of the Act of 1961 has forwarded the same to the State Government and the State Government accepted the same and has made reference to the State Election Commission and the State Election Commission on such reference is arranging to take steps for election on the proposal to recall the petitioner. Inter alia contending that action initiated in the matter and powers exercised by the Collector is contrary to the requirement of Sub-Section 2 of Section 47 of the Act, petitioner has filed this petition.

3. Shri V.K. Bhardwaj, learned counsel for the petitioner taking me through the procedure followed by Collector for forwarding the proposal to the State Government, points out that the Collector has not himself arrived at the satisfaction required under Sub-section 2 of Section 47 of the Act and has acted on the basis of recommendations made by the Project Officer of District Urban Development Agency (DUDA). Taking me through the note-sheet available at Annexure R/I, Shri Bhardwaj tried to demonstrate that the Collector after receiving the proposal from the councilors on 03.11.07 forwarded the same to the Project Officer, DUDA for taking action. The note-sheet was prepared and

it is the Project Officer who judged the satisfaction with regard to compliance of the requirement of sub-section 1 of section 47 of the Act and recommended for forwarding the proposal to the State Government. It is argued by Shri Bhardwaj that this recommendation made by the Project Officer is approved by the Collector and the entire action is taken on the basis of aforesaid procedure. Emphasising that the statutory requirements of Section (2) of Section 47 of the Act is that Collector himself is to satisfy and verify the proposal and this procedure is not followed in the present case, the Collector has delegated his powers under sub-section 2 of Section 47 of the Act of 1961 to the Project Officer, DUDA, which is impermissible under the law, Shri Bhardwaj prays for interference in the matter on the ground that statutory requirements under the law is not complied with.

4. That apart, Shri Bhardwaj has referred to certain irregularities committed in the matter and attributing *malafide* on the action taken to be at the instance of a State Minister it was argued that the proposal was submitted to the Collector at his house and the Chief Municipal Officer, Dabra was ready with the various information, he has questioned the *bonafide* of the Chief Municipal Officer, Dabra in coming along with councilors at the time of presentation of the proposal to the Collector and submits that the Dabra is about 40 km away from the Gwalior, there is nothing to show that the Collector had summoned the Chief Municipal Officer, Dabra, Shri Bhardwaj emphasised that presence of the chief municipal officer, Dabra at Gwalior at the time of presentation of the proposal along with the councilors is doubtful and attributing *malafide* and political inference into the matter. Shri Bhardwaj prays for interference.

5. Placing reliance on the following judgements, Shri Bhardwaj argues that when the statutory requirements are not followed in the manner prescribed any action taken in violation of the statutory requirement, is illegal and cannot be sustained. It was further argued by him that from the return, additional return of the respondents, it is seen that Collector forwarded the proposal to the Project Officer in pursuance to the certain recommendations and observations contained in Annexure R/7 dated 02 September, 2000, it is argued by Shri Bhardwaj that recommendation and observations made in this letter are only recommendatory in nature and even if such a direction is assumed to in existence, the same being contrary to the statutory provisions cannot given effect too and therefore the action taken by the Collector by referring the matter to the Project Officer, DUDA being contrary to the statutory provisions, is unsustainable. The judgements relied upon by Shri Bhardwaj in this regard are :-

- (i) *Commissioner of Police, Bombay vs. Gordhandas Bhanji* (AIR 1952 SC 16);
- (ii) *Feroz Ahmad vs. Delhi Development Authority and others* (2006 [10] SCC 399);
- (iii) *V.C. Banaras Hindu University and others vs. Shrikant* (2006{11} SCC 42);
- (iv) *Punjab Water Supply and Sewerage Board vs Ranjodh Singh and others* (2007 {2} SCC 491); and
- (v) *a judgement of the Punjab High Court in the case of Faqir chand Sultani Ram and another vs Bana Ram Mansa Ram and others* (AIR 1957 Punjab 303).

Accordingly, Shri Bhardwaj submits that action taken in this particular case is clearly contrary to the requirement of law and therefore the entire proceedings initiated being vitiated and is liable to be quashed.

6. Refuting the aforesaid contentions and trying to justify the action of the respondents, it was submitted by Shri S.B. Mishra, learned Additional Advocate General by referring to the documents and affidavits available on record that on 03.11.07 all the 20 councilors appeared before the Collector at 11.15 am., Collector received the proposal, made endorsement as contained in page 23 of the paper

books and thereafter the Chief Municipal Officer, Dabra who was also present there, was directed to verify the signatures of the 20 councilors, the same was verified in the presence of the Collector and thereafter the Collector directed the Project Officer, DUDA to proceed in the matter. By referring to the note-sheet Annexure R/I, Shri Mishra tried to emphasise that action is taken by the Collector only after he was satisfied with regard to requirement of Sub-section (1) of Section 47 being complied with Shri Mishra emphasises that the Collector is only required to see that the requirements of sub-section 1 of Section 47 of the Act are complied with and as the said compliance is established from the note-sheet Annexure R/I, there is no illegality in the matter. Taking me through the affidavits filed of 20 councilors as contained in Annexure R/2, emphasizing that Collector has performed his function in accordance with the provisions of law, Shri Mishra learned Additional Advocate General sought for dismissal of this petition. In support of this contentions, he invites my attention to a judgement of Full Bench of this Court in the case of *State of M.P. and another vs Mahendra Kumar Saraf and others* (2005 {3} MPLJ 578) to submit that as the mandatory requirement of Section 47(1) of the Act is complied with, no case is made out for interference. He also invites my attention to another judgement of this Court in the case of *Smt. Anubha Munjare vs. State Election Commission and others* (ILR 2007 M.P. 1203) to submit that the Collector having satisfied himself about the proposal being submitted by the 20 councilors, no case is made out for interference. It was further submitted by him by placing reliance on a judgement of this Court in the case of *Gaya Prasad Modi vs. M.P. and others* (2002 {4} MPHT 38) that a writ petition directly before this Court is not maintainable and petitioner are required to challenge the election after it is held. On the ground of no jurisdiction under Article 226 of the constitution reliance is also placed on another judgement rendered by a Division Bench of this court in the case of *Gopal Yadav vs. State of M.P. and other* (2002 {4} MPLJ 369).

7. I have heard learned counsel for the parties at length and perused the record.

8. Before advertng to decide the controversy in question, it would be appropriate to take note of the provisions of Section 47 of the M.P. Municipalities Act, 1961. The said provision reads as under :-

“[47. Recalling of President : (1) Every President of a Council shall forthwith be deemed to have vacated his office if he is recalled through a secret ballot by a majority of more than half of the total number of voters of the municipal area casting the vote in accordance with the procedure as may be prescribed :

Provided that no such process of recall shall be initiated unless a proposal is signed by not less than three fourth of the total number of the elected Councilors and presented to the Collector :

Provided further that no such process shall be initiated :

(i) within a period of two years from the date on which such President is elected and enters his office.

(ii) if half of the period of tenure of the President elected in a by-election has not expired : provided also that process for recall of the president shall be initiated once in his whole term.

(2) The Collector, after satisfying himself and verifying that the three fourth of the councillors specified in sub-section (1) have signed the proposal of recall shall send the proposal to the State Government and the State Government shall make a reference to the State Election Commission.

(3) On receipt of the reference, the State Election Commission shall arrange for voting on the proposal of recall in such manner as may be prescribed.]”

For the purpose of deciding this petition, sub-section 2 of the aforesaid provision is important. A perusal of sub-section 2 indicates that it provides for action to be taken by the Collector on the proposal

received by him for recalling of the President. The section mandates the Collector to satisfy himself and verify that 3/4th of the councilors have submitted the proposal. The requirement of sub-section (1) have to be complied with, it is only then that the proposal can be forwarded to the State Government for further action. The word “the Collector after satisfying himself and verifying” in Sub-section 2 are the important words and the main thrust of the argument of Shri Bhardwaj was that in the present case Collector himself has not arrived at the satisfaction but the satisfaction has been arrived at by a delegated authority, satisfaction and recommendation of the said authority is accepted by the Collector. At this stage, it would be appropriate to refer to some of the judgements which are applicable, even though no judgement directly on the question is brought to notice of this Court but certain observations are available in the case of Smt. Anubha Munjare (supra) relied upon by Shri S.B. Mishra. In the said case, Division Bench of this Court in para 14 has observed as under :-

“14.....On a reading of Section 47 in entirety and especially sub-section 2 of Section 47 there can be no scintilla of doubt that the Collector has to satisfy himself with regard to the conditions precedent engrafted under Section 47(1) namely, that the proposal has been signed by not less than 3/4th of total number of elected councillors, the proposal has not been initiated within a period of two years from the date on which such President is elected and enters his/her office; that half of the period of tenure of the President elected in by-election has expired; and that the process for recall is the first proposal in the whole term of the elected candidate and he must verify the proposal that 3/4th of the total number of elected councillors have signed the proposal for recall.....”

(Emphasise supplied)

It is clear that the Division Bench in the aforesaid case has clearly emphasised that it is the Collector who is to satisfy himself with regard to compliance with the condition prescribed in Section 47(1) for proceedings under sub-section (2). Similarly another Division Bench of this Court while considering the true meaning of Section 47 in the case of *Narayan Nagina vs. State of M.P. and others (2004 (1) MPHT 312)*, in para 10 has observed that proceedings for recall are initiated when the Collector himself is satisfied that the proposal is signed by 3/4th of the councilors after verification. It is therefore, clear that emphasises in the Sub-section (2) and requirement of law is that, it is the Collector who is required to arrive at the satisfaction and the subjective satisfaction is that of the Collector concerned.

9. The question as to whether in the present case, subjective satisfaction arrived at is of the Collector himself or this satisfaction is based on the opinion and recommendation of a third person? In this regard if note-sheet Annexure R/1 and the endorsement made by the Collector in the proposal submitted on 03.11.07 and the facts stated in the return, additional return and affidavits are taken note of, the following factual scenario emerges;

“When the proposal was presented to the Collector on 03.11.07, he made a endorsement to the effect that he has received the proposal today on 03.11.07 at 11.15 a.m. and forwarded the same to the Project Officer, DUDA. Available on record at page 22 of Annexure R/1 is a typed note-sheet wherein the fact of receiving the proposal by the Collector is indicated and the matter is placed before the Project Officer. This note-sheet is typed and does not bear signatures of the Collector or any other person. Thereafter a hand-written note-sheet is available which is prepared by the Project Officer and this note sheet indicates that Project Officer after verifying the proposal submitted for recall of the petitioner by the 20 councillors, has indicated that councillors have affixed their signatures and signatures are verified by the Chief Municipal Officer, Dabra thereafter in para 2, he says that the Chief Municipal Officer, Dabra vide letter on. 6062 dated 03.11.07 has informed by him that the President was elected in November, 2004, the result was notified in the gazette on 20th December, 2004 and the

President assumed office on 12.01.05, thereafter the Project Officer indicates that requirement of Section 47 are such and such, he says that all requirement of the rules are complied with and therefore proposal can be accepted and forwarded to the State Government. He says that it would be appropriate to forward the proposal to the State Government and thereafter he places the matter before the Collector for further action. The Collector had accepted the proposal and thereafter the matter is sent to the State Government not by the Collector but by the Project Officer as evident from the note-sheet Annexure R/1.”

It is, therefore clear that in the present case, the Collector has not himself conducted the verification and the satisfaction arrived at with regard to the proposal is not the subjective satisfaction of the Collector, it is based on the recommendations of the Project Officer, DUDA.

10. At this stage, it would be appropriate to take note of the affidavit filed by the State Government along with the additional return. The additional return submitted by the State Government on 04.12.07 is supported by the affidavit of Project Officer, District Urban Development Authority, Gwalior. This officer seems to be the same officer who had prepared the note-sheet Annexure R/1. In the aforesaid, additional return in para 2 it is so stated by the respondents :-

“2..... Merely persuing the documents i.e. the application submitted by the Councilors, it is clearly revealed that the application was duly submitted before the Collector at 11.15 a.m. *and the Collector after receiving the same endorsed to the Project Officer. District Urban Development Agency (for brevity “P.O. DUDA”) for initiating the action under Section 47.*”

(Emphasise supplied)

It is further stated in the said additional return that the signatures of 20 councilors has been duly verified by the C.M.O. as is evident from the endorsement made on the 26th page i.e. last page of the application. It is further stated in page 4 of the additional return that in the instance case when the application along with affidavit was submitted by the councillors before the Collector, the same was verified by the C.M.O. In page 6 of the additional return it is so stated :- *"after receiving the request letter by the Collector, the Collector forwarded the matter to the P.O. DUDA, who is under the control of Collector. It is also respectfully submitted that the State Government has already issued certain direction to the Collectors that any matter pertaining to Urban Administration should be forwarded to the Collector through P.O.DUDA. Copy of the direction issued by the Commissioner, Urban Administration and Development, Bhopal is enclosed herewith and marked as Annexure R/7. In these facts and circumstances, the Collector has rightly forwarded the matter to P.O. DUDA and the P.O. DUDA has started the proceedings as revealed in Annexure R/1 and accordingly it was produced before the Collector and the Collector approved the note-sheet on 03.11.07. So, there is no irregularity or infirmity in the matter."*

From the aforesaid narration made by the respondents, it is clear that on the basis of delegation of powers and as per the directions contained in Annexure R/7, the matter was sent to Project Officer, DUDA and the entire action has been taken by the Project Officer, DUDA and the Collector has only approved the action taken by the Project Officer, DUDA.

11. At this stage, it may be relevant to consider the direction contained in Annexure R/7. Annexure R/7 is not a delegation of powers to any officer under Section 47 of the M.P. Municipalities Act, 1961, it is only the recommendatory letter issued by the Commissioner, Public Administration and Development, Bhopal to various Collectors expressing his opinion that Collectors would be right in case that they forwarded all the proposal pertaining the urban development to the Project Officer, DUDA and papers are proceeded and routed through this office. In this letter, apart from making some

opinion, there is nothing which amounts to delegating the powers under Section 47 to any other authority. In the case relied upon by Shri V.K. Bhardwaj, particularly in the case of Commissioner of Police, Bombay (supra) and in the case of Feroz Ahmed (supra), it is laid down by the Supreme Court that the statutory provisions cannot be substituted by supplementary of executive order, they also lay down a principle that if statutory powers is vested on an authority it is for that authority only to exercise that power and if the powers are exercised by some other authority the action stands vitiated. In the case of Punjab Water Supply and Sewerage Board (supra) relied upon by Shri Bhardwaj, directions given by the State Government contrary to the statutory rules were held to be unsustainable and unenforceable under law. That being so, contentions of the respondents based on delegation letter Annexure R/7 cannot be accepted as it amounts to circumventing to the said provisions.

12. As already indicated hereinabove, the statutory requirement under sub-section 2 of Section 47 of the Act of 1961 is that Collector himself should satisfy and verify. The purpose of given the powers to the Collector is to ensure that power verification is done and satisfaction of the Collector with regard to propriety and genuineness of the proposal is arrived at. When the statutory requirement is that Collector himself has to arrive at the satisfaction and verification, satisfaction arrived at by a third person and acceptance of the same by the Collector will not be compliance with the requirement of law. If the procedure followed in the present case is evaluated, it would be seen that collector at the first instance forwarded the papers to the Project Officer, DUDA, the Project Officer verified the signatures on the basis of certificate given by the Chief Municipal Officer, Dabra thereafter based on the communication received from the Chief Municipal Officer, Dabra recorded his satisfaction and recommended to the Collector for forwarding the proposal to the State Government. The Collector accepted this proposal. It is the considered view of this Court that in following the aforesaid procedure, it cannot be said that Collector himself has arrived at the satisfaction, on the contrary, the procedure followed is such that the Collector has accepted and approved the satisfaction arrived at by the Project Officer, DUDA. This being not in accordance with provisions of statute i.e. sub-section 2 of Section 47 of the Act. Contentions advanced by Shri Bhardwaj, learned counsel for the petitioner has to be accepted and it has to be held that in accepting and forwarding the proposal to the State Government under Section 47(2), the Collector has delegated his powers to the Project Officer, DUDA and has not conducted the procedure for initiating the process of recall in accordance with law.

13. Objections raised by Shri S.B. Mishra, learned Additional Advocate General for the respondents/State with regard to maintainability of this petition is also to be addressed by this Court. Normally in a matter pertaining to recall of an elected representative or passing a motion of no-confidence when the statutory remedy are available interference is not made by this Court exercising jurisdiction under Article 226 of the Constitution, but at the same time, it is a well settled principle of law that if breach of the statutory provision, violation of fundamental rights and action taken to be contrary to law, are pointed out, Interference in a petition under Article 226 of the Constitution can be made. In this regard reference may be made to a judgement rendered by a Division Bench of this Court in the case of *M/s P.C.C. Construction Co. and others vs Debts Recovery Tribunal and another* (2003 (1) MPJR 260) and *the Life Insurance Corporation vs. Ramji Kewat and others* (2002 (2) MPJR 69) where it has been held that any action which is violative of the principle of natural justice or contrary to the statutory provisions can be interfered with in a petition under Article 226 of the Constitution and the normal rules of refusal to interfere, when the statutory alternate remedy is available is not to be enforced in such cases. Accordingly, as in the present case statutory provisions is found to have been breached and violated, the entire action stands vitiated and, therefore, the bar of entertaining in a writ petition directly without resorting to the statutory remedy will not apply and this Court can exercise jurisdiction in this petition under Article 226 of the Constitution.

14. Before parting with the case, this Court is also required to considered some contentions advanced by Shri Bhardwaj. Record indicates that when the proposal was brought to the Collector on 03.11.07 at 11.15 a.m. at Gwalior, the Chief Municipal Officer, Dabra is present. Dabra is about 40 km away from Gwalior and there is nothing in the proceedings to indicate that Collector had summoned the CMO, Dabra to be present before him in person along with councillors when the proposal is presented at Gwalior, the question with regard to presence of CMO, Dabra at Gwalior remains unanswered. That apart, further peculiar fact to be noted is that when the proposal is forwarded to the Project Officer, DUDA for satisfaction and verification, the CMO, Dabra is ready with the letter bearing no. 6026 dated 03.11.07 containing details about the requirement to be fulfilled under section 47(2) of the Act. It is not known as to why the CMO, Dabra came to Gwalior with the prepared letter indicating the details which are required to be taken note of for compliance of sub-section (1) of Section 47 of the Act. Presence of the CMO, Dabra ready with all these materials at Gwalior at the very relevant time indicates that Shri Bhardwaj is right in submitting about presence of extraneous consideration.

15. Accordingly, taking note of the totality of the facts and circumstances of the case and the illegality which is apparent from the face of the record, this petition is allowed. Action initiated against the petitioner on the basis of the proposal and recommendation made by the Collector are quashed. It is held that the State Government and the Chairman, State Election Commissioner shall not proceed with the recommendations made by the Collector under section 47(2) of the Act.

16. Petition stands allowed and disposed of with the aforesaid without any order so as to cost.

R. Menon

Judge

25.01.2008

रिट याचिका क्र. 14819/2014
उच्च न्यायालय मध्यप्रदेश, जबलपुर

मान. न्यायमूर्ति श्री के.के. त्रिवेदी, न्यायाधीश

श्रीमती संगीता बंसल

बनाम

म.प्र. शासन एवं अन्य

भारतीय संविधान अनुच्छेद 226 : 30 वार्ड वाली नगरपालिका हरदा के 23 पार्षदों द्वारा अध्यक्ष नगरपालिका को वापस बुलाने के प्रस्ताव को राज्य शासन द्वारा स्वीकृत किए जाने के आदेश दिनांक 25.09.2014 के विरुद्ध याचिका।

प्रकरण के तथ्य : 30 वार्ड वाली नगरपालिका हरदा में याचिकाकर्ता विज्ञप्ति दिनांक 09.11.2011 के अनुसार अध्यक्ष निर्वाचित घोषित हुई थी। दिनांक 08.09.2014 को 23 पार्षदों ने म.प्र. नगरपालिका अधिनियम 1961 की धारा 47 के अन्तर्गत अध्यक्ष को वापिस बुलाने (recall) का आवेदन पत्र कलेक्टर हरदा के समक्ष प्रस्तुत किया जिन्होंने आवश्यक सत्यापन के बाद उसे राज्य शासन (उत्तरवादी क्र. 1) को भेजा। उत्तरवादी क्र. 1 ने आदेश दिनांक 25.09.2014 द्वारा वापिस बुलाने का प्रस्ताव स्वीकार करते हुए आगामी कार्यवाही हेतु उसे राज्य निर्वाचन आयोग को प्रेषित किया। याचिकाकर्ता ने इस आदेश के विरुद्ध प्रस्तुत याचिका में यह तर्क उठाया है कि धारा 19 में प्रावधानों को देखते हुए अध्यक्ष को भी पार्षदों की संख्या में शामिल करते हुए गणना करने पर वापिस बुलाने के लिए पार्षदों की तीन चौथाई संख्या 23 से अधिक होती है। इस दृष्टि से वापिस बुलाने की कार्यवाही धारा 47 के प्रावधानों के अनुसार वैधानिक या सक्षम नहीं है।

न्यायालय का आदेश : म.प्र. नगरपालिका अधिनियम 1961 में पार्षदों की परिभाषा एवं धारा 47 में प्रावधानों से स्पष्ट है कि निर्वाचित पार्षदों में से तीन चौथाई द्वारा वापिस बुलाने की कार्यवाही की जा सकती है। अध्यक्ष को पार्षदों की संख्या में शामिल नहीं किया जा सकता। अतः याचिका खारिज की गयी।

HIGH COURT OF MADHYA PRADESH : JABALPUR
WRIT PETITION No.14819/2014

Smt. Sangeeta Bansal
Versus
State of Madhya Pradesh & others

Shri Rajendra Tiwari, learned senior Counsel assisted by Shri Manikant Sharma, learned Counsel for the petitioner.

Shri R.P. Tiwari, learned Govt. Advocate for respondents No.1 and 2.

Shri Siddharth Seth, learned Counsel for respondent No.4.

Shri V.S. Shrotri, learned senior Counsel assisted by Shri Ashish Shrotri, learned Counsel for the intervenor in I.A. No.12964/2014.

Shri V.S. Shukla, learned Counsel for the intervenor in I.A.No.13970/2014.

Present : Hon'ble Shri Justice K.K. Trivedi

O R D E R
(20/12/2014)

This writ petition take exception to the order dated 09.09.2014 passed by the respondent No.2 as also the final order dated 25.09.2014 passed by the respondent No.1 accepting the proposal made for recall of the petitioner as President of the Municipal Council, Harda. Undisputedly the petitioner was elected as President of the said Municipal Council and such election was notified in the year 2011. The Municipal Council, Harda consists of 30 wards and 30 members have been elected as Councillors. Such notification of election was issued on 9th November, 2011 in the M.P. Gazette (Extraordinary).

2. It is the contention of the petitioner that in terms of Section 47 of the Madhya Pradesh Municipalities Act, 1961 (herein after referred to as 'Act'), a proposal was made by 23 Councillors before the Collector for recall of the petitioner. The fact stated in the said application/proposal was that the manner of working of the petitioner was not in the interest of the Municipal Council and, therefore, such proposal was made. It is contended by the petitioner that in fact the strength of 23 elected Councillors was short of three-fourth elected Councillors of the Municipal Council and, therefore, the proposal was liable to be rejected. When the petitioner came to know about this fact that such proposal was made, she immediately made an objection on 08.09.2014 but the objection was not looked into. No document was made available to the petitioner even when a demand was made and matter was referred to the State Government. Without there being any justified reason or complete satisfaction of the authorities, the matter was referred to the State Election Commission to take action under Section 47(3) of the Act. That being so, the order passed in that respect was liable to be quashed. Hence this petition has been filed by the petitioner.

3. The writ petition was entertained and interim stay was granted to the petitioner to the effect that the Election Commission may take all steps and process for recall but the notification of the date of election shall not be issued till the next date of hearing.

4. A return has been filed by the respondents No.1 and 2 contending *inter alia* that the procedure as laid-down under Section 47 of the Act was complied with and after being satisfied with the proposal

made by the Councillors, the Collector has forwarded the same to the State Government, which has been further sent to the State Election Commission to take action in accordance to law. In fact the voting has to be done on the proposal so made in the matter of recall of the petitioner and in case the votes are cast against the petitioner and in favour of proposal of recall then only the petitioner would be liable to vacate the seat of the President of Municipal Council. It is contended that no wrong has been committed by the respondents in doing so and as such the writ petition is liable to be dismissed.

5. The intervenors have filed applications seeking permission to intervene in the writ petition to oppose the same. I.A. No.12964/2014 has been filed by one Lokesh Rao, son of Shri Ram Chandra Rao, an elected Councillor of Municipal Council, Harda to oppose the prayer made by the petitioner in the writ petition and I.A. No.13970/2014 has been filed by Dilawar Khan, son of Majid Khan, Councillor of Municipal Council, Harda, for the same purpose. The applications for intervention have been treated as reply of the aforesaid intervenors and they are also granted permission to be heard. Such intervenors were also heard at the time of final hearing. The contentions raised by the intervenors are that since there were 30 elected Councillors of Municipal Council, Harda, three-fourth of the same would be 22.5, rounding of which would mean 23 and, therefore, if 23 Councillors have signed the proposal for recall of the petitioner, the same is in accordance to the provisions of Section 47 of the Act. Therefore, proposal has rightly been accepted by the Collector, forwarded to the State Government and action has been taken by the State Government in appropriate manner. It is, thus, contended that the claim made in the writ petition cannot be granted to the petitioner and the same deserves to be dismissed.

6. The only submission made by learned Counsel for the State Election Commission is that the Commission is duty bound to comply with the requirement of Section 47(3) of the Act, the moment proposal is sent by the State Government to the Commission for recall of any elected President of the Municipal Council. For the said purposes entire process has to be done, voting is required to be done and then only on the basis of the votes cast, the proposal to recall is to be accepted or to be denied. It is submitted that since such a process is held up because of interim order passed by this Court, it would be just and expedient to decide the controversy at an early date.

7. To buttress the submissions and the grounds raised in the writ petition, learned senior Counsel for the petitioner has submitted that the composition of a municipality is prescribed under Article 243R of the Constitution of India. It is nothing but the enabling power of the State Legislature to make laws with respect to the filling in the seats in the municipality, making of territorial constituencies in the name of wards within the municipal area and the law for representation in a municipality but nominated members are not authorized to cast a vote in the meeting of the municipality. The other special power provided to the Legislature for making of the law is the manner of election of the Chairperson of a Municipality. For the purposes of election of the Chairperson of the Municipality, it is contended that the entire area of Municipal Council is to be treated as constituency and, therefore, the Chairperson of a municipality is also to be treated as a Councillor having all rights to vote in such meetings of the Municipal Council. It is, thus, contended that the composition of the Municipal Council would be number of wards made by the Legislature in particular municipality plus the Chairperson of the Municipal Council. Thus, the submission is made that the strength of the Municipal Council should be calculated on the basis of the number of wards, elected Councillors and adding in it the President as a Councillor. According to learned senior Counsel for the petitioner, the notified strength of the wards in Municipal Council, Harda is 30 and as one President is elected in the entire municipal area, adding the same as one of the Councillor, the total strength of the elected Councillors of Municipal Council would be 31. In any case if three-fourth elected Councillors of the Municipal Council, Harda are calculated, it would be more than 23 and not 23 as is claimed by the respondents and the intervenors. The submission is that the proposal made by the elected Councillors was short of the strength and, therefore, was not required to be referred to the State Government for its transmission to the Election Commission for initiating any

action of recall of the petitioner.

8. The other submission made by learned senior Counsel for the petitioner is that one of the elected Councillor was subjected to an election dispute before the Election Tribunal and his election was set aside by the Election Tribunal. A civil revision was preferred before this Court against the said order and an interim stay was granted in respect of the said elected Councillor. However, the said interim stay was not made absolute and was not extended and, therefore, the said Councillor was not authorized to sign the proposal for recall of the petitioner. If that Councillor is removed from the list of Councillors, who have made proposal against the petitioner, there would be only 22 elected Councillors available to propose the action for recall of the petitioner and that being not in consonance of Section 47(1) of the Act, the proposal was liable to be turned down. It is further submitted by learned senior Counsel for the petitioner that no subjective satisfaction was recorded by the Collector in respect of making of the proposal to recall the petitioner and, therefore, the forwarding letter of the Collector itself was bad in law. That being so, no action could be founded on such a forwarding memo and, therefore, the action initiated against the petitioner for her recall is liable to be quashed. Lastly, it is submitted that an elected member like petitioner is not to be thrown out without assigning any reason. The proposal made by the elected Councillors for recall of the petitioner contains no reason except that the working of the petitioner was not in the interest of Municipal Council. There was no valid ground raised for recall of the petitioner from the post of President of the Municipal Council concerned and, therefore, the proposal was liable to be rejected. Rather it has been accepted and forwarded to the State Government for taking action against the petitioner, which in turn has been transmitted to the Election Commission, therefore, entire proceedings in that respect are bad in law and are liable to be quashed. Putting great reliance in the provisions of Section 47 of the Act, seeking interpretation of the said provisions in terms of the orders passed by this Court in earlier occasion, it is contended that the action taken by the respondents was per se illegal and thus liable to be quashed.

9. *Per contra* learned Government Advocate has contended that the action is rightly taken, in the original proceedings placed before the Court, subjective satisfaction was recorded by the Collector after verifying the correctness of the proposal, therefore, no interference in such proceedings is called for. As is referred to herein above, learned Counsel for the State Election Commission has submitted only this much that the election process for recall of the petitioner is held up because of the interim stay granted by this Court, therefore, an early disposal is required.

10. Much stress has been placed by learned senior Counsel for the intervenor that the provisions of Article 243R of the Constitution of India are nothing but the enabling provisions to constitute the municipality in terms of the provisions made in Part-IXA of the Constitution of India. It is contended that in terms of the provisions of Article 243Q, a municipality is to be constituted for a smaller urban area. The law has been made by the State Government in terms of the provisions of the Act, therefore, relevant amendments have been made after coming into force of provisions of Part-IXA of the Constitution of India in the Act. It is contended that the elections of the ward members after making of a ward within municipal area are differently conducted. Section 19 of the Act deals with such composition where the President is to be elected by direct election from the municipal area whereas the Councillors are elected by direct election from the wards. Undisputedly the municipal area of Harda is distributed in 30 wards and, therefore, Councillors will mean the Councillors elected from the said wards excluding the Chairperson or the President, who is to be elected directly from the municipal area. Reading out the provisions of Section 47 of the Act, learned senior Counsel for the intervenor has emphatically contended that the word used by the Legislature is, only the Councillors in appropriate number, as indicated in sub-section (2) of Section 47 of the Act, who are required to make the proposal and that has to be verified by the Collector and is required to be referred to the State Government. According to learned senior Counsel for the intervenor, since there were only 30 wards within the municipal area of Harda,

22.5 was the required number of the Councillors to make a proposal and, therefore, if 23 elected Councillors have made the proposal for recall of the petitioner, the same was in consonance to the provisions of sub-section (2) of Section 47 of the Act. The Collector has got the proposal verified through his subordinate Officer, that too of the rank of Joint Collector and after verifying the relevant documents annexed with the proposal, he personally called the Councillors, satisfied himself with respect to making of proposal by each of them and then only forwarded the same to the State Government. Therefore, according to learned senior Counsel for the respondents, there is no violation of the provisions of law by the Collector, Harda, in forwarding the proposal for recall of the petitioner. It is contended that the reasons are not required to be mentioned in the proposal for recall of the elected President as such would be tested by cast of votes by the electors and, therefore, it was not necessary to mention any such reason for recall of the petitioner in her capacity as President of the Municipal Council. Sufficient reason was mentioned if it was said in the proposal that the working of the petitioner was not in the interest of the Municipal Council. Lastly, it is submitted by learned senior Counsel for the intervenor that there was no vacation of interim order granted in favour of the elected Councillor, who has suffered an order in the Election Tribunal in an election petition as in the civil revision, till the same was dismissed, there was no vacation of interim stay. Interpreting the word “till the next date of hearing”, learned senior Counsel for the intervenor submitted that since there was no vacation of interim order, no hearing had taken place on the date when the matter though was listed but was adjourned on account of non-availability of the Counsel for the parties because of call of the lawyers for abstaining the Court work. Therefore, it is submitted that the order of interim stay was in operation and, therefore, said Councillor has rightly signed the proposal for recall of the petitioner. It is, thus, contended that the entire claim in the writ petition is baseless and misconceived and such petition deserves to be dismissed.

11. This Court has directed the respondents to produce the original record for perusal, which has been produced in sealed cover and is examined. Heard learned Counsel for the parties at length and perused the record.

12. First of all it would be necessary to interpret the provisions of the law made in respect of controversy involved and, therefore, relevant provisions are to be quoted. Undisputedly, constitution of municipalities is prescribed under Article 243Q of the Constitution of India, which simply says that there shall be constituted in every State a **Municipal Council for a smaller urban area**. Nothing more is added except exclusion of certain areas or non-constitution of a municipality in particular area, subject to the satisfaction of the Governor having regard to the size of the area and municipal services being provided or proposed to be provided. The most important aspect is in Article 243R of the Constitution of India where the composition of the municipalities is prescribed. Since the same is relevant for the purposes of adjudication of the claim made in the present writ petition, the provisions of Article 243R of the Constitution of India are reproduced below, which read thus:

“243R. Composition of Municipalities. - (1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2) The Legislature of a State may, by law, provide -

(a) for the representation in a Municipality of -

- (i) persons having special knowledge or experience in Municipal administration;
- (ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;
- (iii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;

(iv) the Chairpersons of the Committees constituted under clause (5) of article 243S:

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) the manner of election of the Chairperson of a Municipality.”

13. As has been pointed out herein above, the provision of Part-IXA of the Constitution of India was inserted by 74th amendment in the Constitution with effect from 01.06.1993. In the State of Madhya Pradesh the Municipalities Act was made in the year 1961 by the Legislature. The relevant provisions have been inserted in the Act aforesaid after coming into force of the 74th amendment in the Constitution of India. Certain provisions have been omitted, which were not in consonance to the prescribed law in the Constitution of India. However, the provisions of Section 19 of the Act were inserted vide an amendment made on 21.04.1997 by M.P. Act No.18 of 1997. The provisions of Section 19 consisting of composition of Municipal Council or Nagar Panchayat read thus :

“19. Composition of Municipal Council or Nagar Parishad. - (1) A Municipal Council or a Nagar Parishad, shall consist of -

- (a) President, that is Chairperson, elected by direct election from the Municipal area;
- (b) Councillors elected by direct election from the wards;
- (c) Not more than four persons in the case of Municipal Councils and not more than two persons in the case of Nagar Parishads having special knowledge or experience in Municipal Administration nominated by the State Government:

Provided that only a person residing within the Municipal area and being otherwise not ineligible for election as a Councillor may be nominated;

- (d) Members of the House of the people and the Members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the municipal area;
- (e) Members of the Council of State registered as electors within the municipal area;

Provided that a member of the House of the people and a member of the State Legislative Assembly as mentioned in clause (d) or a member of council of State, as mentioned in clause (e) may nominate his representative, who possesses such qualifications as may be prescribed in this behalf to attend the meeting of the Council.

- (2) The persons nominated under clause (c) of sub-section (1) shall hold office during the pleasure of the State Government.
- (3) Persons referred to in clauses (c), (d), and (e) of sub-section (1) shall be deemed to be councillors, but shall not have the right to vote in the meetings of the Council.
- (4) If any municipal area fails to elect a President or any ward fails to elect a Councillor, fresh election proceedings shall be commenced for such municipal area or ward, as the case may be, within six months to fill the seat, and until the seat is filled it shall be treated as casual vacancy:

Provided that proceedings of election of Vice-President, or any of the Committees under the Act shall not be stayed, pending the election of such seat.”

A perusal of this will leave no doubt that the municipal area is required to be divided into wards and each ward is to be represented by a Councillor, who is to be elected directly by the electors of the concerning ward. The definition of Councillor, as given in Section 3(7) of the Act means any person who is legally a member of a Council. However, the definition of President or the Chairperson is not given in the Act. For the said purpose if the provisions of Article 243 of the Constitution of India are seen, the State Legislature is given the power to make laws for the manner of election of the Chairperson

of a Municipality. In Section 19 of the Act, while prescribing the composition of Municipal Council or Nagar Parishad, it is said that the Municipal Council or a Nagar Parishad, as the case may be, shall consist of the President, i.e. the Chairperson, elected by direct election from the **municipal area**. The other part of the composition is the elected Councillors **from the wards**, therefore, at any rate the President of the Municipal Council may be an elected person but he is not to be treated as a Councillor in either case because of the reason that in the definition of the Councillor given under the Act, such persons are the elected representatives of the wards of municipal area but not the representative of the entire municipal area. The President or a Chairperson of the Municipality is to be treated as representative of the entire municipal area. Therefore, the submission which is made that the President of the Municipal Council is also to be treated as a Councillor, cannot be accepted.

14. The other aspect is that every Municipal Council is required to be bifurcated in wards and a notification is required to be issued in that respect. The petitioner herself has placed on record Annexure P-1 indicating that the notification of election of the Municipal Council, Harda was issued on 9th November, 2011 where the petitioner was shown to be elected as President and there were 30 Councillors elected. Therefore, though the petitioner has taken part in the election of Vice President, has cast her vote but that would not mean that the petitioner became a Councillor. The Councillor is otherwise defined under the Act and, therefore, at any rate the petitioner is not to be treated as a Councillor nor to be included in the number of Councillors. She was elected as a President of the Municipal Council and she was to be treated as President of the Municipal Council.

15. Now in the context of the aforesaid, if provisions of Section 47 of the Act are seen, which provisions again have been inserted by amendment made in the Act on 23.04.1999 by M.P. Act No. 11 of 1999, it is clear that only the Councillors are required to make a proposal for recall of the President. Since the interpretation of the said provisions is also required, the amended provisions of Section 47 of the Act are reproduced, which read thus :

“47. Recalling of President.- (1) Every President of a Council shall forthwith be deemed to have vacated his office if he is recalled through a secret ballot by a majority of more than half of the total number of voters of the municipal area casting the vote in accordance with the procedure as may be prescribed :

Provided that no such process of recall shall be initiated unless a proposal is signed by not less than three-fourth of the total number of the elected Councillors and presented to the Collector :

Provided further that no such process shall be initiated :-

- (i) within a period of two years from the date on which such President is elected and enters his office;
- (ii) If half of the period of tenure of the President elected in a bye-election has not expired.

Provided also that process for recall of the President shall be initiated once in his whole term.

- (2) The Collector, after satisfying himself and verifying that the three-fourth of the Councillors specified in sub-section (1) have the proposal of recall, shall send the proposal to the State Government and the State Government shall make a reference to the State Election Commission.
- (3) On receipt of the reference, the State Election Commission shall arrange for voting on the proposal of recall in such manner as may be prescribed.”

16. It is not in dispute that the proposal was made on 08.09.2014 for recall of the petitioner. It is also not in dispute that on the date of making of the proposal the same was signed by 23 elected Councillors. The said proposal was required to be verified by the Collector in terms of provisions of Section 47(2) of the Act. The original record produced before the Court indicates that when the Collector

received the proposal, he got the same verified. Certain affidavits, photocopy of identity cards and certificate of elections were produced along with the said proposal. It appears that for the verification of the said documents and signatures, the Collector asked all the Councillors to remain present before him, who came at 12.30 AM in his office and their documents were got verified, signatures were compared. All those proceedings were written by the Collector in presence of one of the Joint Collector posted in his office and facts were recorded that all those 23 elected Councillors have verified the documents annexed with the proposal for recall of the petitioner, verified their signatures and stated that they have signed such proposal without any fear or duress. The Joint Collector witnessed such proceedings and did nothing. The entire proceedings were signed by the Collector himself.

17. After undergoing this requirement, the Collector forwarded the proposal to the respondent No.1 vide his memo dated 08.09.2014, a copy of which is already placed on record as Annexure R-3 with the return of the respondents No.1 and 2. From the recital in the said memo and from the perusal of the original record, it is clear that in none than the definite words the Collector recorded his satisfaction with respect to making of the proposal for recall of the petitioner and referred the matter to the respondent-State for onward action in terms of provisions of sub-section (3) of Section 47 of the Act.

18. It is the submission made by learned senior Counsel for the petitioner that such an act of the Collector was not in accordance to the law. Placing reliance in the case of **Laxmi Narayan Garg vs. Municipal Council Sardarpur and others, M.P. No.90/1976**, decided on 12.04.1977 (1977 J.L.J SN 63), it is contended by learned senior Counsel for the petitioner that if the total strength of the Municipal Council was one President plus 30 Councillors, that would be 31 as the President is also elected from amongst the persons, who were not the Councillors and, therefore, the total number of Councillors determined shall, in respect of such Municipality, be deemed to have been increased by one. First of all the provisions of Section 43 of the Act, which were dealt with in the said case are not *pari materia* to the provisions of Section 47 of the Act. The Act as amended did not contain any provision for No Confidence Motion against the President of the Municipal Council. Secondly it is to be seen that even in the case of No Confidence Motion, two-third of elected Councillors present and voting in the meeting was the requirement for passing of the said No Confidence Motion whereas in the new provisions of recall of President, making of a proposal by three-fourth of the total number of elected Councillors is the requirement of law. As has been pointed out, in that situation the petitioner who is not to be treated as an elected Councillor, was not to be included amongst the elected Councillors. Therefore, such a decision is not helpful to the petitioner.

19. Essentially it has to be seen that earlier the procedure which was prescribed under the Act was for moving of a notice of No Confidence against the President of the Municipal Council but subsequently by amending the provisions since the election of the President of Municipal Council is prescribed directly and all the electors of the municipal area are required to elect the President of the Municipal Council, only a proposal is required to be made by the elected Councillors to initiate such process of recall of President. By making the provisions in Madhya Pradesh Nagar Palika Nirvachan Niyam, 1994, the process for recall of the President of Municipal Council is prescribed. A time and schedule for the poll aforesaid is to be notified in the manner indicated in the Rules, polling stations are to be established, symbols are to be allotted and then polling is to commence. All electors of the municipal area are required to cast their votes either in favour or against recall of the President of Municipal Council. Thus, mere making of proposal will not be enough for stepping down the President of the Municipal Council by initiation of process of recall under the provisions of Section 47 of the Act. On the other hand, if the proposal of recall is not acceptable to the electors and they vote against it, the said proposal would be turned down and the elected President will continue on the post till completion of the term of office. This being a special feature, the President of the Municipal Council cannot be termed as a Councillor in any manner after the amendment in the Act. Earlier the No Confidence Motion was

moved against a President, who was elected by the elected Councillors themselves and who was one of them. Therefore, the proposition of law laid-down by the Division Bench of this Court in the case of **Laxmi Narayan Garg** (*supra*) would not be attracted at all in the present situation after the change of law.

20. The interpretation of the provisions of Section 47 of the Act have to be done to ascertain what was the intention of the Legislature to prescribe three-fourth of the total number of elected Councillors, as is mentioned in the proviso to sub-section (1) of Section 47 of the Act. The simple interpretation of total number of the elected Councillors would mean the available elected Councillors and not otherwise the total strength of the elected Councillors constituting the Municipal Council for the simple reason that had it been so, instead of mentioning the total number of elected Councillors, it would have been specifically mentioned by the Legislature the total strength of the elected Councillors constituting the Municipal Council. Therefore, it has to be held that total number of the elected Councillors available on the date of signing of the proposal would be taken into consideration and on the basis of that calculation, the three-fourth strength of the said elected Councillors is to be worked out. Having said so, now it has to be examined whether the proposal as was made was in consonance to the provisions of Section 47(1) of the Act or not.

21. Reliance is placed by learned senior Counsel for the petitioner in the case of **Madan Lal Narvariya vs. Smt. Satya Prakash Parsedia and others**, [2008(4) MPLJ 316] and it is contended that the satisfaction of the Collector as prescribed in sub-section (2) of Section 47 of the Act means personal satisfaction of the Collector concerned and it has a much higher degree, therefore, mechanically proposal was not to be sent to the State Government. The distinction between the case in hand and case of *Madan Lal Narvariya (supra)* is that the Collector in the case of *Madan Lal Narvariya (supra)* has approved the decision taken by his subordinate, who verified the documents of Councillors, who have made proposal for recall of the President in that Municipal Council whereas in the case in hand, the Collector himself has recorded the satisfaction with respect to verification of documents, eligibility of the Councillors and their intention of making proposal for recall of the petitioner by verifying their signatures on the said proposal. The Joint Collector has simply witnessed such proceedings and did nothing else. Therefore, it cannot be said that the Collector has not personally satisfied himself with the intention of making of proposal for recall of the petitioner by the elected Councillors and as such the submission made by learned senior Counsel for the petitioner is not to be accepted at all. Further reliance is placed by learned senior Counsel for the petitioner in Full Bench decision of this Court in the case of **State of M.P. and another vs. Mahendra Kumar Saraf**, [2005(3) MPLJ 578] contending inter alia that the requirement is that signing the proposal has to be verified by the Collector as the State Government is nothing but required to forward the proposal to the State Election Commission like a Postoffice after its receipt from the Collector. For the reasons and finding recorded herein above, such submission is not acceptable as the correctness of signing of the proposal was tested by the Collector himself as has been held by this Court after perusal of the original record produced before it.

22. It is submitted on behalf of learned senior Counsel for the petitioner that even if it is taken for the sake of arguments that total strength of elected Councillors of Municipal Council was 30, even then when the proposal was made, one of the Councillor signing proposal was ineligible as he has already suffered a decision against him in the election dispute before the Election Tribunal and the interim stay granted by this Court was not in operation. Thus, the contention raised by learned senior Counsel for the petitioner is that such a person was ineligible and if his number is excluded, there would be only 22 elected Councillors available to sign the proposal to recall the petitioner and that would be short of total strength of three-fourth elected Councillors and, thus, the proposal was not to be forwarded at all. Main emphasis has been placed on the interim order passed by this Court in Civil Revision No.64/2014, which order was passed with a condition that the same was to remain in force **till the next date**

of hearing. It is the contention that the interim order was passed on 10.02.2014. The matter was again posted on 06.05.2014 on which date the interim order was made to remain continue again till the next date of hearing. On 04.07.2014 since the Advocates were adjusted, the matter was adjourned and the interim order was not extended. As a result, there was no interim order after 04.07.2014 and the said person namely Deepak Kumar Soni was not authorized to sign the proposal of recall of the petitioner as made on 08.09.2014. It is, thus, contended that there would be only 22 elected Councillors available on that date and three-fourth of the total elected Councillors would mean more than 22 elected Councillors and as such the proposal was not to be forwarded. For the purposes of rounding off, learned senior Counsel has relied in the case of **State of U.P. and another vs. Pawan Kumar Tiwari, AIR 2005 SC 658.**

23. First of all the submissions made by learned senior Counsel for the intervenor in respect of continuance of interim stay is required to be tested and it is to be examined whether the said stay was continuing on the date when the proposal was made or not. It is the contention of learned senior Counsel for the intervenor that the interim stay has to be vacated specifically if an order is passed to the effect that interim stay would remain in operation till the next date of hearing. Placing reliance in the Division Bench decision in the case of **Kunal Kanti Majee vs. Chancellor, Rani Durgawati Vishwavidyalaya, Jabalpur and others, [2008(1) MPLJ 577]**, it is contended that unless an interim stay is specifically vacated, it will remain in operation. Reading paragraph 18 of the aforesaid decision, it is contended that there is a distinction between the quashment of an order and stay of an order. The stay of an order will remain effective from the date of its passing and if the action in terms of the order sought to be stayed has been taken, the said action is not required to be interfered with as the doctrine of relation back does not come to play to an executed order. However, there was no execution of the order passed in respect of the said intervenor as after the decision in the election petition against him, the seat was not declared vacant by the competent authority nor any action was taken for filling the said seat. Further placing reliance in the case of **Mahadev Govind Gharge and others vs. Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka, (2011) 6 SCC 321**, it is contended that the date of hearing is to be only when the Court applies its mind and it should not be confused with the expression step in the proceedings. Since there was no application of mind on the date when the Civil Revision filed by said Councillor was adjourned on 04.07.2014, there was no vacation of interim stay as the same was made to remain in operation **till next date of hearing.**

24. After giving thoughtful consideration and looking to the law laid-down by the Apex Court, one thing is clear that though an interim stay was granted by this Court in the case of the said Councillor, by name Deepak Kumar Soni in Civil Revision No.64/2014, but the said interim stay was not vacated specifically. On 04.07.2014 for the reasons of non-availability of the Counsel, the case was simply adjourned and there was no hearing which had taken place. Precisely this is what the ratio of the law laid-down by the Apex Court in the case of *Mahadev Govind Gharge* (supra) in paragraphs 39 to 42 of the report, which reads thus :

“39. First and foremost, we must explain what is meant by ‘hearing the appeal’. Hearing of the appeal can be classified in two different stages; one at the admission stage and the other at the final stage. Date of hearing has normally been defined as the date on which the court applies its mind to the merits of the case. If the appeal is heard ex-parte for admission under Order XLI Rule 11 of the Code, the Court could dismiss it at that very stage or admit the same for regular hearing. Such appeal could be heard in the presence of the other party at the admission stage itself, particularly, in cases where a caveat is lodged by the respondent to the appeal.

40. The concept of ‘hearing by the Court’, in fact, has common application both under Civil and Criminal jurisprudence. Even in a criminal matter the hearing of the case is said to be commenced by the Court only when it applies its mind to frame a charge etc. Similarly, under civil law also it is only when

the Court actually applies its mind to averments made by the party/parties, can it be considered as hearing of the case.

41. This Court in *Siraj Ahmad Siddiqui v. PremNath Kapoor* while dealing with the provisions of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972, referring to the concept of first hearing, held as under : (SCC p.412, para 13)

"13. The date of first hearing of a suit under the Code is ordinarily understood to be the date on which the court proposes to apply its mind to the contentions in the pleadings of the parties to the suit and in the documents filed by them for the purpose of framing the issues to be decided in the suit. We are of the view, therefore, that the date of first hearing as defined in the said Act is the date on which the court proposes to apply its mind to determine the points in controversy between the parties to the suit and to frame issues, if necessary."

42. The date of hearing must not be confused with the expression 'step in the proceedings'. These are two different concepts of procedural law and have different connotation and application. What may be a 'step in the proceeding', essentially, may not mean a 'hearing' by the Court. Necessary ingredients of 'hearing' thus are application of mind by the court and address by the party to the suits."

Therefore, in the considered opinion of this Court, the stay was in operation and the said Councillor was competent to sign the proposal for recall of the petitioner.

25. Even otherwise if such analogy is not applied, since it has already been held herein above that the petitioner was not to be treated as elected Councillor, there would be only 29 elected Councillors, who were available and from amongst them, 22 have signed the proposal for recall of the petitioner, if one Councillor is excluded from amongst 23 elected Councillors, who have signed the proposal. The available Councillors who have signed the proposal for recall of the petitioner were in fact just more than three-fourth of the elected Councillors. In that case, the requirement was only of 21.75 and rounding off in terms of the law laid-down by the Apex Court in the case of *Pawan Kumar Tiwari (supra)*, the figure would reach to 22 elected Councillors and accordingly those Councillors have signed the proposal for recall of the petitioner. In that circumstances as well, the proposal sent by the Collector against the petitioner for her recall, as made by the elected Councillors, cannot be said to be bad in law. Such a finding is further fortified by a Division Bench decision of this Court in the case of **Kamal Kant Bhardwaj vs. State of Madhya Pradesh and others, W.A. No.663/2014**, decided on 25.08.2014. This has been held by this Court that in case the procedure is properly followed and if it is found that the requirement of law was satisfied, interference in such an action is not called for.

25. In the totality of the circumstances and specially after the perusal of the original proceedings, this Court finds no error of law in making proposal for recall of the petitioner. Consequently, the writ petition fails and is hereby dismissed. However, there shall be no order as to costs.

(K.K. Trivedi)
Judge

रिट याचिका क्र. 1987/2015
उच्च न्यायालय मध्यप्रदेश, बैच इन्दौर

मान. श्रीमती न्यायामूर्ति एस.आर. वाघमारे

दिग्विजय सिंह भण्डारी
बनाम
श्रीमती मालिनी गौड एवं अन्य

भारतीय संविधान अनुच्छेद 226- श्रीमती मालिनी गौड, सम्प्रति विधायक के मेयर नगर निगम इन्दौर के पद पर निर्वाचित होने एवं विधायक के पद से 7 दिन के भीतर त्यागपत्र न देने की स्थिति में, मेयर के पद को रिक्त घोषित किये जाने के लिए याचिका।

प्रकरण के तथ्य : उत्तरवादी श्रीमती मालिनी गौड, सम्प्रति विधायक इन्दौर ने वर्ष 2014 में नगरनिगम इन्दौर के मेयर पद के लिए चुनाव लड़ा एवं वे निर्वाचित घोषित हुईं। म.प्र. नगरपालिका निगम अधिनियम 1956 की धारा 9(1) (डी) के अनुसार विधायक संबंधित नगरनिगम का पदेन पार्षद होता है। पुनः धारा 16(4) के अनुसार यदि कोई व्यक्ति महापौर और पार्षद दोनों पदों के लिए निर्वाचित होता है तो उसे 7 दिन के भीतर किसी एक पद से त्यागपत्र देना होगा। याचिकाकर्ता ने अनुरोध किया कि चूंकि उत्तरवादी ने विधायक पद से त्यागपत्र नहीं दिया है, मेयर के पद को रिक्त घोषित करने के निर्देश दिये जावें।

न्यायालय का आदेश : नगरपालिक निगम अधिनियम 1956 की धारा 16(4) के प्रावधान निर्वाचित पार्षद एवं मेयर को लागू होते हैं। चूंकि उत्तरवादी विधायक होने के नाते पदेन पार्षद है, उक्त प्रावधान के अनुसार वह मेयर एवं विधायक दोनों पद धारित कर सकती है।

**IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE**

S.B.:- Hon'ble Smt. Justice S.R. Waghmare
W.P. No.1987/2015

Digvijaysingh Bhandari
Versus
Smt. Malini Gaud and others

O R D E R
(Passed on 28/10/2015)

By this writ petition under Article 226 of the Constitution of India, the petitioner Divijaysingh Bhandari has challenged the fact whether respondent No.1 Smt. Malini Gaud can continue on the post of Mayor of Indore since it is per se illegal and unconstitutional.

02. Briefly put under Section 9(1)(d) of Madhya Pradesh Municipal Corporation Act, 1956 (hereinafter called as "The Act"), she also becomes a Councillor of the Municipal Corporation of Indore by virtue of being a Member of the Legislative Assembly of the State and peculiarly Smt. Gaud was elected Mayor of the City of Indore and took oath on 19.02.2015 administered by Shri Shivraj Singh Chouhan, the Hon'ble Chief Minister of Madhya Pradesh.

03. Counsel for the petitioner has vehemently urged the fact that per se the continuation of Mayor on her post was de-hors the provisions of the M.P. Municipal Corporation Act, 1956 as well as the Constitution of India. Referring to Article 243-R of the Constitution of India which mandates thus:-

"243-R. Composition of Municipalities.-(1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2) The Legislature of a State may, by law, provide-
(a) for the representation in a Municipality of-
(i) persons having special knowledge or experience in Municipal administration;
(ii) the members of the House of the People and the members of the Legislative Assembly of the
State representing constituencies which comprise wholly or partly the Municipal area;
(iii) the members of the Council of States and the members of the Legislative Council of the

State registered as electors within the Municipal area;
(iv) the Chairpersons of the Committees constituted under clause (5) of article 243S: Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality; (b) the manner of election of the Chairperson of a Municipality."
And reading the said Article in conjunction with Section 16(4) of "The Act", it is found that 16(4) of "The Act" states thus:- "16 (iv) If a person is elected for the Office of Mayor and

Councillor both, he shall have to resign from one of the office within seven days from the date on which he is declared elected.”

Then under the circumstances a preliminary objection has been raised regarding the continuance in office by respondent No.1 Smt. Gaud as Mayor as well as the Councillor. Whereas Counsel submitted that even according to the proviso under Section 9 of the Act, 1956 the Member of the House of the People and the State Legislative Assembly can only nominate his representative who possess the qualifications in this behalf to attend the meeting of the Corporation but cannot vote and Counsel urged that for all practical purposes the Member of the Legislative Assembly is only a deemed Councillor and on a harmonious reading of all these provisions it is imperative for the Mayor to have resigned from one of the office; within 7 days from the date on which she was declared Mayor Elect. The legislative intent seems to have been misread and Counsel urged that continuation of the respondent No.1 Smt. Gaud on post of Mayor is per se illegal and unconstitutional. Counsel submitted that directions be issued to the respondent No.4 Municipal Corporation to declare the post of Mayor vacant and her continuation in the Office would be a colourable exercise of power and directions or writ be issued to the said effect in the circumstances.

04. Senior Counsel Shri Ashok Garg appearing on behalf of respondent No.1 Smt. Malini Gaud has vehemently urged the fact that respondent No.1 was already a Member of the Legislative Assembly of the M.P. State during her direct election, when she was elected from the Municipal Area of Indore City for the post of Mayor. Besides as per the proviso of Section 9(1)(d) of “The Act” of 1956 she is also deemed to be a Councillor for all purposes of the Act although the right to vote in the meeting of the Corporation is withheld. Referring to the controversy raised by the Counsel for the petitioner, Counsel also urged that provision of Section 16(4) and Section 21 of “The Act”. 1956 would not be attracted in the present case since the office of Mayor has not become vacant. Counsel submitted that respondent No.1 Smt. Gaud has been appointed as Mayor and Councillor in accordance with the provisions of the M.P. Municipal Corporation Act, 1956 and Counsel submitted that the petition was without merit and the same be dismissed.

It was also urged by the Counsel for the respondent No.1 that the post of Member of the Legislative Assembly is not a office of profit under the Government and person holding the post of MLA is entitled to contest the election of Mayor. Counsel placed reliance on **Suresh Seth Vs. Commissioner, I.M.C. and others** reported in AIR 2006 S.C. 767. Similarly Counsel submitted that there was no bar for a person from simultaneously holding two offices, one is Member of the Legislative Assembly and another is Mayor of Municipal Corporation and the Municipal Corporation as well as the Legislative Assembly are two different authorities and have the power to enact their own laws. Referring to Section 17 of the Municipal Corporation Act of 1956 Counsel for the respondent No.1; also interestingly raised the ground that the final authority to decide whether the office of Mayor was vacant shall be decided by the State Government and only the Government decides that the vacancy has arisen, the Councillor or the Mayor shall not be disabled under Sub-Section (2) from continuing as Councillor or Mayor and at present no such application has been filed nor has the Government decided that the office of the Mayor should lie vacant and the present writ petition is, therefore, not maintainable in the circumstances. If at all the petitioner is aggrieved there is a statutory alternative remedy available to him and in this regard also the petition is not maintainable. Counsel prayed that the petition be dismissed.

05. Senior Counsel Shri Sunil Jain, Additional Advocate General and Shri Pushyamitra Bhargava, Dy. Advocate General appearing on behalf of Counsel for the respondents No.2 & 3 have also supported the contentions of the Counsel for the respondent No.1. Referring to various Sections of the Municipal Corporation Act, Counsel submitted that bare perusal of provisions of Section 9 of “The Act” makes it

clear that Mayor and other Councilor shall be elected through direct election whereas, six persons shall be appointed by State Government and the MLAs and MP shall be deemed to be Councilor by virtue of their office, but they have no right to vote. Referring to Section 16(4) of "The Act", 1956 which reads thus:-

(4) If a person is elected for the office of Mayor and Councilor both, he shall have to resign from one of the office within 7 days from the date on which he is declared elected.

Counsel urged from bare reading of the provisions of Section 16(4) of "The Act" makes it crystal clear that to attract the rigor of this provision the qualifying word is 'elected'. Counsel urged that although at a first blush it appears that the office of the Mayor as well as Councilor both cannot be held by a singular person and he has to resign from one office within a period of 7 days, however, surprisingly the fact that the rigors of Section 16(4) of "The Act", 1956 would be attracted only if a person is elected both for the office of the Mayor and elected for the office of the Councilor. Whereas in the present case by virtue of holding office as a Member of the Legislative Assembly, the present respondent No.1 Smt. Gaud happens to be a Councilor and by direct election she has been elected as a Mayor and it was vehemently contended that had she been elected to the office of the Councilor; only then she would be required to resign from the post of Mayor; which is not the present case. And Counsel vehemently urged the fact that the ingredients of election as per Section 2(d) of the Madhya Pradesh Nagar Palika Nirvachan Niyam, 1994 were not fulfilled regarding the respondent No.1 being elected as Councilor. And in this light Counsel submitted that there is no room for doubt that the provision of Section 16(4) of "The Act", 1956 are not attracted and Counsel prayed that the petition was without merit and the same be dismissed.

06. Supporting the arguments put forth by the Counsel for the respondent No.1, 2 & 3, Shri Ashok Kutumbale, Senior Counsel appearing on behalf of respondent No.4-Indore Municipal Corporation has vehemently urged that respondent No.1 Smt. Gaud was elected by direct election from the Municipal area of Indore City for the post of Mayor and she, already being a member of Legislative Assembly of M.P. State, has a choice to nominate her representative and she also deemed to be a Councilor for all purposes of this Act without having the right to vote in the meeting of the Corporation. Counsel also urged that by virtue of deeming provision of Section 9(1)(d) of "The Act" of 1956, the respondent No.1 was also a deemed Councilor and not elected Councilor to attract the rigors of Section 16(4) of "The Act". Consequently the office of the Mayor has not become vacant and, therefore, provision of Section 21 of "The Act" would not be attracted in the present case. He also vehemently urged that there is no illegality in the election of the respondent No. 1 as Mayor of Indore Municipal Corporation and same is not the ground put forth by the Counsel for the petitioner. Moreover there has been no application to the State Government and, therefore, Section 17 of "The Act" were also not attracted since there is no disqualification as is being urged by the Counsel for the petitioner. Placing reliance on **Bhanukumar Jain Vs. Kamal Gupta and others** [2003(3) M.P.L.J. 182] Counsel submitted that the Mayor does not hold the office at the pleasure of the Government and virtually it is an independent elected office in a Parliamentary democracy under the Constitution and by virtue of this public office, he also performs public duties cast upon him by the Constitution. Besides the office of the MLA is not a office under the Government and it, therefore, cannot be termed as a office of profit and hence Counsel submitted that the provision of Section 9(1)(d) and Section 16(4) of "The Act" are not at all attracted in the present circumstances. He submitted that the petitioner had raised bald and baseless grounds and the same is devoid of any substance and the petitioner was not entitled to any relief as was being claimed. Counsel prayed that the petition be dismissed with heavy costs.

07. On considering the above submissions, I find that the Counsel for the petitioner Dr. Manohar Dalal has raised an important issue whether a person at one time can hold two offices i.e. one for a

‘Mayor’ and the other is ‘Councillor’ under the M.P. Municipal Corporation Act of 1956 at the same time. It is an admitted position that the respondent No.1 Smt. Malini Gaud was elected as a Mayor and declared to be sworn by Hon'ble Chief Minister Shri Shivraj Singh Chouhan on 19.02.2015 and at that time she was also an MLA of the State of M.P. and, therefore, the question has to be re-framed whether the MLA could be elected to the office of Mayor and after election continue to hold both the posts that of a Mayor and a Councillor ?

I find that, to some extent, the matter was discussed in para-45 of the judgement rendered in case of **Bhanukumar (supra):-**

“45. Virtually, in this case, I am not required to consider whether the office of Mayor is an office of profit under Government or not and it is not the matter of challenge in this revision. Similarly, I am also not required to consider in this case whether a person at a time can hold two offices of equal status or not. Shri S. Seth, respondent no.10, who appeared in person, produced before me a number of local Acts and submitted that under various local Acts the State Government has prohibited the MLAs to hold two offices at a time. He further submitted that under local Acts as many as 178 MLAs of rural areas have been debarred from holding two offices of profit whereas 52 MLAs of urban areas are enjoying this facility, which is a legal and legislative discrimination. The question of this discrimination is also not under consideration or under challenge in this revision before this Court and it cannot be a subject matter of the revision also. It is for the State Government and State legislature to consider about the removal of these discriminations and to pass appropriate uniform legislation in this regard by incorporating amendments in the local Acts. The legislature has provided disqualification for the post of Mayor but that disqualification is not applicable to the MLAs. It is also for the legislature and for the government to consider this aspect of the matter.”

08. Thus under the peculiar circumstances, it may be safely concluded that in the past MLAs have been holding two posts of equal status in the State of Madhya Pradesh.

09. However, the legislative intent according to Section 16(4) of “The Act” clearly indicates that an elected Mayor and elected Councillor, both offices cannot be held by a singular person elected to both the posts and that they hold office to the pleasure of the State Government and would incur in disqualification in this regard. Similarly the inescapable and inevitable conclusion that S.16(4) of “The Act” would be attracted only if a person is elected for the office and although Shri Dalal, Counsel for the petitioner has submitted that in the case of respondent No.1 Smt. Malini Gaud she has been elected to the Legislative Assembly and in this sense could be termed elected Councillor, however, I find that this would be stretching the analogy a bit too far. The words of the statute have to be precisely interpreted: the word 'elected' in Section 16(4) of “The Act” is directly connotative and applicable to the office of the Mayor and Councillor or both; clearly specifying that the person has to be elected could either one of the offices or to both; thereby excluding nomination as Councillor. Thus in the present case; Smt. Gaud being the Member of the Legislative Assembly was by the virtue of her holding the office of the Member of the Legislative Assembly, and she was not an elected Councillor but a nominated Councillor and in this sense for a harmonious reading of the provisions, it would be also appropriate to consider Sections 17, 19 & 21 of “The Act” of 1956. Section 17 of the M.P. Corporation Act pertains to general disqualifications for becoming a Councillor or Mayor, it has been inserted by the amendment of 1997. Referring to Section 17 Sub-Section (bb) of “The Act” states thus:-

“(bb) has been disqualified for further election or [nomination] as a [Councillor or Mayor] under section 17-A unless he has been relieved by the Government from such disqualifications;”

Section 17-3 of “The Act” states that the Government is the final authority competent to decide whether a vacancy has occurred. The decision may be given by the State either: on any application,

made by any person; or suo motu, until the Government, decides that the vacancy has arisen and Sub-Section 3 of Section 17 provides for the continuation of the Councillor or Mayor till the final decision is taken by the State. Therefore, clearly indicating that the State is the final authority to decide whether a vacancy in the office of the Mayor or Councillor has occurred and in the present circumstances, Counsel for the State Government Shri Sunil Jain has categorically stated that such a contingency has not arisen at all in the present case and then reading this Section along with Section 16(4) of “The Act” and Article 243-R of the Constitution of India, I find that it is in the realm and jurisdiction of the State Government to decide whether the present Mayor has incurred disqualification and noting the contentions of the learned Additional Advocate General, I find that the disqualification as alleged by the petitioner is not incurred at all since the respondent Smt. Malini Gaud was already a Councillor nominated at the time of election as a Mayor and was thereafter elected by direct election to the post of Mayor. Then the rigors of Section 19 of the M.P. Municipal Corporation Act have also not been incurred. Section 19 of “The Act” pertains to removal of the Councillor. Section 19(a) of “The Act” particularly authorises the Divisional Commissioner to discontinue the Councillor if in his opinion it is not desirable in the interests of the public or the Corporation. Similarly Section 19-B of “The Act” pertains to removal of the Mayor or Speaker or Chairman of a Committee and Section 19-C pertains to resignation of Mayor and declaration of the vacancy.

Section 21 of “The Act” pertains to the filling of casual vacancies by the State Government by declaring the office of the Mayor or Councillor Elect to be vacant and I find that the State Government of Madhya Pradesh is the final authority to declare such a vacancy. It has also been candidly agreed before me by all the Counsel that the application was never moved before the Corporation and alternative efficacious remedy is available to the petitioner, if he is still so aggrieved.

10. However, in the present case, I find that the provisions of Section 16(4) of “The Act” are not attracted at all since as already declared above, the present respondent No. 1 is undoubtedly a Mayor Elect but not a Councillor Elect but deemed to be a Councillor by virtue of her being an MLA and thus I find in peculiar facts and circumstances of this case that respondent No. 1 Smt. Malini Gaud can hold two offices/posts in the Municipal Corporation at Indore at present and the allegations of the petitioner in this regard are demolished. And considering the sum total of the circumstances and that there is a nexus between the term elected Mayor and elected. Councillor which has to be considered first; there is no scintilla of doubt in my mind that in the present case, there is no bar to the respondent No. 1 Smt. Malini Gaud, Mayor Elect in holding two posts, however, the right to vote is curtailed under the provisions of law.

With the aforesaid observation, this writ petition is disposed of. No costs. CC as per rules.

(Mrs. S.R. Waghmare)
Judge

रिट याचिका क्र. 8123/2015

उच्च न्यायालय मध्यप्रदेश

खण्डपीठ ग्वालियर

मान. न्यायमूर्ति श्री रोहित आर्य, न्यायाधीश

चन्द्रप्रकाश शर्मा

बनाम

राज्य निर्वाचन आयोग एवं अन्य

भारतीय संविधान अनुच्छेद 226- रजिस्ट्रीकरण अधिकारी, जनपद पंचायत अटेर जिला भिण्ड ने ग्राम पंचायत जतरी की मतदाता सूची में से उत्तरवादी क्र.4 से 36 तक के मतदाताओं के नाम बिना उन्हें नोटिस दिये या उन्हें सुने बिना दिनांक के आदेश से हटाने के आदेश दिये। इसके विरुद्ध पंचायत निर्वाचन नियम 12(5) के अंतर्गत प्रस्तुत अपील में उक्त आदेश निरस्त किया गया। इस अपीलीय आदेश दिनांक 18.12.2014 के विरुद्ध यह याचिका प्रस्तुत।

प्रकरण के तथ्य : उत्तरवादी क्र. 4 से 36 के नाम ग्राम पंचायत जतरी जिला भिण्ड की मतदाता सूची में अभी तक थे। उनके नामों को हटाने के लिए आपत्तियां आने पर रजिस्ट्रीकरण अधिकारी ने बिना कोई जांच या सम्बधितों को नोटिस दिये उनके नाम मतदाता सूची से बिना दिनांक के आदेश द्वारा हटा दिये। इस आदेश का ज्ञान दिनांक 03.12.2014 को होने पर उक्त उत्तरवादियों ने नियम 12(5) के अंतर्गत अपील प्रस्तुत की। अपीलीय अधिकारी ने अपने आदेश दिनांक 18.12.2014 द्वारा रजिस्ट्रीकरण अधिकारी का उक्त आदेश निरस्त किया एवं मतदाता सूची संशोधित की। इस आदेश को इस आधार पर निरस्त करने हेतु याचिका दायर की गयी कि मतदाता सूची का अंतिम प्रकाशन दिनांक 24.10.2014 को हो चुका था एवं अपील की अवधि निकल चुकी थी एवं निर्वाचन की अधिसूचना भी दिनांक 22.12.2014 को जारी की जा चुकी है।

न्यायालय का आदेश : रजिस्ट्रीकरण अधिकारी का आदेश नियम 12(1) के प्रावधानों की अवहेलना करते हुए पारित किया गया है, जिस पर दिनांक भी नहीं है। अतः अपीलीय आदेश उचित है। अपीलीय आदेश के अनुसार मतदाता सूची का संशोधन भी नियम 12 के परन्तुक द्वारा मान्य होना स्पष्ट है। अतः याचिका खारिज की गयी।

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR
Writ Petition No.8123/2014

Chandra Prakash Sharma
Versus
The State Election Commission, M.P., & Others

Shri Anil Mishra, Advocate for petitioner.
Shri M.P.S.Raghuvanshi, Additional Advocate General and Smt. Ami
Prabal, Advocate for respondents No.1 to 3.
Shri D.P.Singh, Advocate for the respondents No.4 to 36.

O R D E R
(29.01.2015)

Rohit Arya, J

By this petition under Article 226 of the Constitution of India, petitioner has questioned legality, validity and propriety of impugned order dated 18/12/2014 passed by the Collector/appellate authority, District Bhind setting aside undated order passed by the Registration Officer, Janpad Panchayat, Ater District Bhind in exercise of its appellate jurisdiction under rule 12(5) of the Madhya Pradesh Panchayat Nirvachan Niyam, 1995 (hereinafter referred to Nirvachan Rules, 1995).

2. Facts necessary for disposal of this petition are to the effect that respondents' No.4 to 36 were in the voters' list issued under rule 10 of the Election Rules, 1995 in respect of Gram Panchayat, Jarri, Janpad Panchayat, Ater District Bhind uptill now and acted upon in recently held parliamentary elections. Thereafter, objections were filed for deletion of their names from the voters' list. The Registration Officer without notice to the aforesaid respondents' No.4 to 36 and without enquiry, much less, summary enquiry has deleted their names from the voters' list by an undated order. Thereafter, final voters list was published. Respondents' No.4 to 36 having come to know about the order passed by the Registration Officer on 03/12/2014 have filed an appeal on 08/12/2014. The order passed by the Registration Officer has been challenged *in italics* on the ground that their names appearing in the voters' list of Gram Panchayat, Jaari, Janpad Panchayat Ater, District Bhind uptill now and but without any notice and opportunity of hearing, the Registration Officer has deleted their names from the voters' list. No enquiry was held and the same is contrary to the mandate contained under rule 12(1) of the Nirvachan Rules, 1995. Further, the order by which their names were deleted is an undated order. The Registration Officer has not mentioned even the date of receiving the objections and no date was given for appearance. That is the sole basis for deleting their names from the voters' list. It was, therefore, submitted that the Registration Officer had acted in high-handed manner and in flagrant violation of statutory provisions contained in rule 12 of the Nirvachan Rules, 1995. As the order was undated, the same was not in the knowledge of the respondents No.4 to 36. However, no sooner, they acquired knowledge of the order on 03/12/2014, appeal was filed before the Collector, i.e., within 05 days from the date of acquisition of knowledge. The aforesaid fact of acquisition of knowledge of the order on 03/12/2014 was explained in the application filed under section 5 of the Limitation Act on 10/12/2014 by the respondents' No.4 to 36. With the aforesaid submissions, it was submitted that the appeal was filed within limitation and the order passed by the Registration Officer was

patently illegal and unsustainable in the eye of law. The petitioner was not party before the Registration Officer, however, filed an application for permission to participate in the appellate proceedings before the appellate authority. The appellate authority has observed that the petitioner has not filed any objection before the Registration Officer for deletion of names of the respondents' No.4 to 36. There was nothing on record to demonstrate and establish that the petitioner could be said to be party and, therefore, turned down the application of the petitioner to participate in the appellate proceedings. Though, the appellate authority has recorded contentions of the petitioner related to preliminary objection as regards limitation on the ground that the voters' list was finalized on 24/10/2014 and since the appeal was not filed within the prescribed period under rule 12(5) of Nirvachan Rules, 1995, therefore, the appeal was barred by time and no interference was warranted. The appellate authority on perusal of the original record has found that no proceedings whatsoever were initiated by the Registration Officer before deletion of names of respondents' No.4 to 36 from the voters' list of Gram Panchayat, Jaari, Janpad Panchayat Ater. Besides, before taking the aforesaid action for deletion of names of respondents' No.4 to 36 from the voters' list, they were not even noticed and no opportunity of hearing was afforded. That apart, no enquiry has been conducted before passing the order for deletion of their names. The authority so exercised by the Registration Officer is vitiated by law and fact. The impugned order passed by the Registration Officer was found to be in excess of the authority. As the order itself was undated and not preceded by an proceeding as contemplated under rule 12(1) of the Nirvachan Rules, 1995, therefore, the period of 05 days has to be reckoned from the date of acquisition of knowledge of the date of the order by the respondents' No. 4 to 36. The explanation offered in that behalf was accepted and the appeal was found to be within limitation. With the aforesaid reasoning, the appellate authority has set aside the order of the Registration Officer and ordered to maintain *status quo ante*, i.e., to restore the names of respondents No.4 to 36 in the voters' list of Gram Panchayat, Jaari. It is relevant to mention that consequent upon voters' list having been updated and finalised, the respondent No.24, Sushil s/o Bal Krishna, respondent No.35, Smt. Aarti w/o Arvind are contesting the elections for the post of Sarpanch. Respondent No.13, Smt. Karuna w/o Arpit are contesting the election for the post of Panch of Ward No.7.

3. Petitioner assails the aforesaid order passed by the Collector on the following premise:

(i) the appeal having been filed belatedly, i.e., much after passing of the order by the Registration Officer, the appeal ought to have been dismissed on the ground of limitation as there is no provision for condonation of delay by the appellate authority; and

(ii) once the voters' list was finalized on 24/10/2014, no inclusion of names could have been made by the Collector/appellate authority in view of rule 15 of the Nirvachan Rules 1995. Hence, the Collector has acted in excess of the jurisdiction while setting aside the order of the Registration Officer and ordered that the voters' list as in existence prior to passing of the order by the Registration Officer shall be maintained.

(iii) As names of respondents' No.4 to 36 appeared in the voters' list of Nagar Parishad, therefore, Registration Officer was justified deleting their names from the voters' list of Gram Panchayat, Jaari, and no notice or opportunity of hearing was required to be afforded to respondents' No.4 to 36 in the obtaining facts and circumstances of the case. Hence, the impugned order deserves to be set aside and relied upon the following judgements.

(a) 2007 (4) SCC 54, Ashok Kumar Sonkar Vs. Union of India and others,

(b) 2013 Legal Eagle (SC) 847, Yazdani International P. Ltd., Vs. Auroglobal Comtrade P. Ltd., & ors.,

(c) 2005(1) MPLJ 168, Uttam Chand S/o Kundanlal Khatik Vs. State Election Commissioner of M.P., and others;

(d) 2012(3) MPHT 146, Ravindra Chandoria Vs. Ramashankar and others;

(e) 2008(3) JLJ 293, Bhuvaneshwar Prasad alias Guddu Dixit Vs. State of Madhya Pradesh.

4. Per contra, respondents' No.1 to 3 have submitted that notification for election was issued on 22/12/2014 by the Election Commission under rule 28 of the Nirvachan Rules, 1995; the nomination forms for first phase of elections were to be submitted from 22/12/2014 to 29/12/2014 and for the second phase of elections, the nominations were to be submitted from 31/12/2014 to 07/01/2015. The date of polling is fixed as 05/02/2015 for the second phase. The relevant date/period in the instant case is second phase for filing nomination. Hence, it is submitted that as the election process has already started, no interference is warranted in terms of Article 243-O of the Constitution of India. The relevant portion thereof reads as under:

“243-O. Bar to interference by courts in election matters.- Notwithstanding anything in this Constitution-

(a)

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any Law made by the

Legislature of a State. In support of their contentions, relied upon decisions of the Hon'ble Apex Court reported in **(1996) 3 SCC 416 Boddula Krishnaiah and another Vs. State Election Commissioner, A.P., and others, (2000) 8 SCC 216 Election Commission of India through Secretary Vs. Ashok Kumar and others, (2001) 8 SCC 509 Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another.**

5. The respondents' No.1 to 3 have further submitted that the Registration Officer was obliged to issue notice and afford opportunity of hearing and thereafter has to hold summary enquiry and only thereafter could have resorted for deletion of names of respondents' No.4 to 36 from the voters' list whose names did appear in the voters' list up till deletion by the Registration Officer. Admittedly, no notices were issued and no opportunity of hearing was afforded to respondents' No.4 to 36. As per record, no enquiry, much less, summary enquiry was conducted before deletion of names of respondents' No.4 to 36, the order so passed by the Registration Officer was in flagrant violation of rule 12(1) of the Nirvachan Rules, 1995. Even the order so passed is undated, so much so, no mention in the record as to on which date the objections were received and the date of appearance of the party was given for deciding the objections. The whole exercise has been conducted in a slipshod manner and in hot-haste for no justification whatsoever. Under such circumstances, the entire action is *ultra vires* to the mandate contained in the Nirvachan Rules, 1995 and, therefore, cannot be sustained. The Collector was fully justified having set aside the action and restoring the position as was existing prior to passing of the order by the Registration Officer. It is submitted that as per the scheme of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as the Adhiniyam, 1993) under rule 12(1) of the Nirvachan Rules, 1995 the Registration Officer after holding such summary inquiry into claims and objections as he thinks fit shall record his decision in writing and shall make available on demand copy of such decision to the objector free of charge forthwith. Therefore, before resorting to deletion of names of the respondents' No.4 to 36, there is procedural safeguard as submitted above. It is also submitted that there ought to have been decision with due advertance to the objections. There is nothing on record to suggest that any decision

was taken upon enquiry as per rule 12(1) of the Nirvachan Rules, 1995 after notice to affected individual and affording opportunity of hearing.

6. It is further submitted that in terms of proviso to rule 12(5) thereof which reads as under: “provided that no amendment shall be carried out in the voters' list according to the decision of the Appellate Authority after the last date and time fixed for making nominations in the notice issued under rule-28 and before the completion of election.”

The appellate authority has full competence to pass an order for amendment in the voters' list up-till the last date and time fixed for making nominations. In the instant case, the Collector has passed the order on 18/12/2014, much prior to the last date of making nominations on 07/01/2015. Hence, there is no jurisdictional error while passing the impugned order by the Collector.

7. It is submitted that as the order passed by the Registration Officer was itself undated and there was no notice to the respondents' No.4 to 36, as such, the aforesaid order passed by the Registration Officer cannot be said to be in the knowledge of respondents' No.4 to 36. Therefore, the date of acquisition of knowledge shall be the starting point for counting the limitation of 05 days for filing the appeal. As the order, much less; the impugned order was passed behind back of the objector cannot be said to be an order passed under rule 12(1) of the Nirvachan Rules, 1995 to construe the period of limitation as contemplated under rule 12(5) of the Nirvachan Rules, 1995 for the purpose of filing the appeal. Hence, date on which the respondents' No.4 to 36 have acquired the knowledge of the order, i.e., 03/12/2014 shall be the starting point of reckoning the period of limitation. Therefore, the appeal filed by the respondents' No.4 to 36 on 08/12/2014 well within time.

8. Counsels for the respondents' No.1 to 3 have also submitted that there is no express exclusion of non-applicability of section 5 of the Limitation Act and the same shall apply by force of provisions contained in section 29 of the Limitation Act. In support of the submission, relied upon of the decisions of the Hon'ble Apex Court in the cases reported in **AIR 1970 SC 1477, D.P.Mishra Vs. Narayan Sharma and another, (1996) 5 SCC 342 State of W.B. And others Vs. Kartick Chandra Das and others, (2000) 8 SCC 649 Tarun Prasad Chatteerjee Vs. Dinanath Sharma and (2008) 7 SCC 169 Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and others.**

9. With the aforesaid submissions, it is submitted that this writ petition is misconceived and the order passed by the appellate authority is legal and proper, therefore, no interference is warranted by this Court in exercise of jurisdiction under Article 226/227 of the Constitution of India. Accordingly, it is prayed that this writ petition be dismissed.

10. Heard.

11. The following questions emerge for consideration,

(i) whether the Registration Officer while disposing of the claims and objections under rule 12(1) of the Nirvachan Rules, 1995 in the course of summary enquiry is obliged to issue notice to such persons who are likely to be affected by his decision?

(ii) What is the nature and scope of summary enquiry and what is the meaning of expression 'Decision'?

(iii) As to when the voters' list can be said to be finalized and not open for correction or amendment by way of addition or deletion of names of voters' in the voters' list?

(iv) Whether a person who is not objector before the Registration Officer in the proceedings under rule 12(1) of the Nirvachan Rules, 1995 can be allowed to become party to the appellate

proceedings under rule 12(5) of the Nirvachan Rules, 1995?

(v) What shall be the meaning attributable to “any person aggrieved” used in rule 12(5) of the Nirvachan Rules, 1995 in the context of the appellate proceedings?

12. In the instant case, the voters' list has been restored by setting aside the undated order passed by the Registration Officer under the orders passed by the appellate authority dated 18/12/2014. Thereafter, notification for election was issued by the State Government under rule 28 of the Nirvachan Rules, 1995 on 22/12/2014. As per the election schedule, as regards the elections in issue, the nominations were to be submitted from 31/12/2014 to 07/01/2015 and the date of polling fixed is 05/02/2015. As such, the election process has commenced.

13. Law is well settled that once election process has commenced, no interference by the High Court under Article 226 of the Constitution of India is warranted as Article 243-O of the Constitution of India envisages constitutional bar of interference with the election process except by an election petition, presented to an Election Tribunal as provided under the Adhiniyam, 1993. Besides, the power of the Court granting stay of the election process is no more *res integra*. The aforesaid principle was reiterated in the case of **Lakshmi Charan Sen Vs. A.K.M. Hassan Uzzaman, (1985) 4 SCC 689 in para 30 at page 708-09** which reads as under:

“The High Court acted within its jurisdiction in entraining the Writ Petition and in issuing a Rule Nisi upon it, since the petition questioned the vires of the laws of election. But, with respect, it was not justified in passing the interim orders dated February 12, and 19, 1982 and in confirming those orders by its judgement dated February 25, 1982. Firstly, the High Court had no material before it to warrant the passing of those orders. The allegations in the Writ Petition are of a vague and general nature, on the basis of which no relief could be granted. Secondly, though the High Court did not lack the jurisdiction to entertain the Writ Petition and to issue appropriate directions therein, no High Court in the exercise of its powers under article 226 of the Constitution should pass any orders, interim or otherwise, which has the tendency or effect of postponing an election, which is reasonably imminent and in relation to which its writ jurisdiction is invoked. The imminence of the electoral processes is a factor which must guide and govern the passing of orders in the High Court's writ jurisdiction. The more imminent such process, the greater ought to be the reluctance of the High Court to do anything, or direct anything to be done, which will postpone that process indefinitely by creating a situation in which, the Government of a State cannot be carried on in accordance with the provisions of the Constitution. India is an oasis of democracy, a fact of contemporary history which demands of the Courts the use of wise statesmanship in the exercise of their extra-ordinary powers under the Constitution. The High Courts must observe a self-imposed limitation on their power to act under article 226, by refusing to pass order or give directions which will inevitably result in an indefinite postponement of elections to legislative bodies, which are the very essence of the democratic foundation and functioning of our Constitution. That limitation ought to be observed irrespective of the fact whether the preparation and publication of electoral rolls are a part of the process of 'election' within the meaning of article 329(b) of the Constitution.”

14. In the aforesaid case, the Hon'ble Supreme Court further observed that even assuming, that the preparation and publication of electoral rolls are not a part of the process of 'election' within the meaning of Article 329(b) of the Constitution of India, the High Court ought not to have passed the impugned interim orders, whereby it not only assumed control over the election process but, as a result of which, the election to the Legislative Assembly stood the risk of being postponed indefinitely.

15. Three judges Bench in the case of **Election Commission of India through Secretary Vs. Ashok Kumar and others, (2000) 8 SCC 216**, the Hon'ble Apex Court has addressed upon

the issue as regards jurisdiction of the High Court to entertain writ petition under Article 226 of the Constitution of India and issue of interim direction after commencement of election process in the context of Article 329 of the Constitution of India. The term "election" as occurring in Article 329 of the Constitution of India has been held to mean and include the entire process from the issue of the notification under section 14 of the Representation of People Act, 1951 to the declaration of result under section 66 of the said Act.

16. True, it is that power of judicial review is part of a basic structure of the Constitution of India; concept no more in issue but the scope of interference under Article 226 of the Constitution of India in the light of the embargo envisaged by Article 329 of the Constitution of India is well addressed by the Hon'ble Apex Court in the case of **N.P.Ponnuswami Vs. Returning Officer, Namakkal Constituency**, AIR 1952 SC 64 and reiterated in subsequent judgement in the case of **Mohinder Singh Gill Vs. Chief Election Commissioner, (1978) 1 SCC 405**. The provision as contained in Article 329 of the Constitution of India was described by the Constitution of India on two principles; (I) the peremptory urgency of prompt engineering of the whole election process without intermediate interruptions by way of legal proceedings challenging the steps and stages in between the commencement and the conclusion; (2) the provision for special jurisdiction which can be invoked by an aggrieved party at the end of the election excludes other form, the right and remedy being creatures of statutes and controlled by the Constitution of India. In Mohinder Singh Gill's case, the authoritative meaning of Article 329 of the Constitution of India has been further reiterated as follows:

(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election"; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the "election" and enable the person effected to call it in question, they should be brought so before a special tribunal by means of an election petition being and not be made the subject of a dispute before any court while the election is in progress."

The same principle was reiterated by the Hon'ble Apex Court in the case of **Boddula Krishnaiah and another vs. State Election Commissioner, A.P., and others, 1996(3) SCC 416**.

17. There is no cavil of doubt that aforesaid principles squarely applies to Panchayat elections as well. For that reason alone, as a matter of fact, no interference is warranted in this writ petition. The remedy of filing an election petition is very much available to a party seeking to challenge the election of the declared/returned candidate whose name has been published, under section 122 of the Adhiniyam, 1993 read with the Madhya Pradesh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 on the grounds specified under rule 21 thereunder.

18. However, it is considered apposite to answer the questions involved in this petition.

19. In Nirvachan Rules, 1995 under chapter IV provision as regards List of Voters are made and *inter alia* for preparation of voters list under rule 9, publication of voters' list for inviting claims and objections under rule 10, claims and objections by any person to the voters' list under rule 11, disposal of claims and objections under rule 12, finalization of voters' list under rule 15 and

deletion of entire names in voters' list in certain cases under rule 15A.

20. Rule 12 of Nirvachan Rules, 1995 provides for 'summary inquiry'. For the purpose of answering the questions formulated, rule 12 is relevant:

“12. Disposal of claims and objections.- (1) The Registration Officer shall, after holding such summary inquiry into the claims or objections as he thinks fit, record his decision in writing and shall make available on demand copy of such decision to the objector free of charge forthwith.

(2) No person shall be presented by any legal practitioner in any proceeding under this rule.

(3) The Registration Officer shall amend the voters' list in accordance with his decision.

(4) The voters' list so amended shall be subject to decision in appeal, if any, be final and a copy thereof duly signed by the Registration Officer shall be kept in his office and another copy deposited in the office of District Election Officer.

(5) Any person aggrieved by the decision of the Registration Officer may prefer an appeal to the Appellate Authority within five days of such decision. Every appeal shall be in such form as may be prescribed by the Commission and presented to the Appellate Authority accompanied with a copy of the decision of the Registration Officer. The Appellate Authority, after giving the appellant an opportunity of hearing and making such enquiry as it deems fit, shall pass suitable orders expeditiously and in the event of the appeal succeeding, direct the Registration Officer to amend the voters' list to give effect to its decision. The decision of the Appellate Authority shall be final:

Provided that no amendment shall be carried out in the voters' list according to the decision of the Appellate Authority after the last date and time fixed for making nominations in the notice issued under rule-28 and before the completion of election.”

21. As such, under rule 12(1) of the Nirvachan Rules, 1995 the procedure prescribed is to hold a summary inquiry into the claims and objections as the Registration Officer thinks fit and record his decision in writing. In the opinion of this Court, on objections being submitted by any person against the inclusion of the name of a person in the voters' list, the Registration Officer is obliged to take the objection on record specifying the date and time and thereafter has to issue notice to the person against whom objection is filed and also to call upon him to reply thereto by affording a reasonable opportunity. Though, after submission of the reply, the Registration Officer is not required to hold an elaborate inquiry but nevertheless, he is obliged to apply his mind to the merits of the objections and the reply submitted thereto. Thereafter, he is required to reach a conclusion with reasoning either by rejecting the objection or accepting the objection resulting into deletion of the entry in the voters' list. Summary inquiry, therefore, does not mean non-reasoned disposal. More so, when the order is appealable, the decision must be a reasoned decision. 'Summary inquiry' only means that it should be short and quick and not elaborate but requirements of observance of the principles of natural justice and fair play are not done away with. Likewise, it cannot be based on mere hearsay or unverified facts. [1995 Suppl. Vol.4 SCC 684, **Mohan Lal Vs. Kartar Singh and others** is referred to]. Therefore, the order of the Registration Officer passed in slipshod manner and in a hot-haste without observance of requirement of law as observed above cannot be justified under the pretext that the said authority only required to hold the summary inquiry.

22. Besides, under rule 12(1) of the Nirvachan Rules, 1995, the Registration Officer after summary inquiry into claims and objections has to record his reasons in writing. “Decision” does not mean a mere conclusion but the conclusions led by reasons. (1995) 1 SCC 761, **Sohan Lal Vs. Satnam Singh and others** is referred to wherein in paragraph 10 it is observed as under:

“.....Since, the first appeal lay to this Court, the trial court should have reproduced and discussed at least the essential parts of the evidence of the witness besides recording the submissions made at the bar to enable the appellate court to know the basis on which the 'decision' is based. A 'decision' does not merely mean the 'conclusion' – it embraces within its fold the reasons which form the basis for arriving at the 'conclusions'. The judgement of the trial court contains only the 'conclusions' and nothing more. The judgement of the trial court cannot, therefore, be sustained. The case needs to be remanded to the trial court for its fresh disposal by writing a fresh judgement in accordance with law.

23. Rule 12(5) of the Nirvachan Rules, 1995 provides that 'any person aggrieved' by the decision of the Registration Officer may prefer an appeal to the appellate authority within 05 days of such decision. Phrase 'any person aggrieved' by the decision of the Registration Officer must receive contextual interpretation and in the opinion of this Court, the 'person aggrieved' shall be a person either who was party to the decision making process before the Registration Officer or the person desirous of filing the appeal is adversely effected by the decision of the Registration Officer as the phrase 'Any person aggrieved' has to be interpreted in the context of appellate proceedings.

24. Hon'ble Supreme Court in **Md. Sharfuddin Vs. R.P.Singh and others, AIR 1961 SC 1312** while interpreting the words “any person aggrieved” has given contextual meaning in the context of the Act in which the words were used and held in paragraph 6 as under:

“6. Learned counsel for the respondents contends that the words “any person aggrieved” in Section 25 of the Act are comprehensive enough to include a Custodian and, therefore, a Custodian can prefer an appeal against an order of a Custodian releasing properties under Section 7 of the Act. Realising that an obvious anomaly is implicit in the argument, learned counsel concedes that an appeal can be filed only by a Custodian other than the Custodian who made the order releasing the properties. It is said that the Central Government may, under Section 6 of the Act, provide for the distribution of work among the various Custodians, namely, Additional, Deputy and Assistant Custodians, and in such allocation the power to inquire whether a property is an evacuee property or not may be conferred on one Custodian and the power to manage it on another, and that, in that event, the Custodian on whom the power to manage is conferred will be a person aggrieved within the meaning of Section 24 of the Act. In our view this argument is not consistent with the scheme of the Act. Though for the purpose of convenience of management or judicial determination of disputes the Act provides different categories of Custodians, all of them fall within the definition of “Custodian” in the Act. The Act further provides a hierarchy of tribunals under the superintendence and control of the Custodian General. It would be anomalous were it to be held that a Custodian could prefer an appeal against the order of a Custodian. The Act does not contemplate one officer preferring appeals against the orders of another officer. If an Assistant Custodian or a Custodian went wrong in the matter of declaring a property to be an evacuee property, the Act provides that the Custodian or the Custodian General, as the case may be, before 1956, and the Custodian General thereafter, may set right the wrong. In the premises the word “any person aggrieved” in Section 24 of the Act can only mean a person whose properties have been declared to be evacuee properties by the Custodian, or a person who moved the Custodian to get the properties so declared or any other such aggrieved person. The words “any person aggrieved” in the context of the Act cannot include any Custodian as defined in the Act.”

25. Further, rule 12(5) of the Nirvachan Rule, 1995 provides for an appeal before the appellate authority against the decision by the Registration Officer. Besides, as discussed above the decision must bear the date on which the decision is taken only then the period of limitation can be reckoned as provided for under rule 12(5) of the Nirvachan Rules, 1995. More over, as there is no

exclusionary provision under this Special Act, as such, the provision of Limitation Act apply in terms of section 29(2) of the Limitation Act. Thus, the provisions in sections 4 to 24 of the Limitation Act are applicable [AIR1970 SC 1477 **D.P.Mishra Vs. Kamal Narayan Sharma, (1996) 5 SCC 342, State of W.B. And others Vs. Kartick Chandra Das and others & (2008) 7SCC 169** , **Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and others** are referred to].

26. Under such circumstances, the question arises as to what shall be the starting point for reckoning the limitation of 05 days for the purpose of filing the appeal before the appellate authority when the decision of the authority (Registration Officer) is undated? Certainly, it shall be the date of knowledge of the order passed and not otherwise by applying the principles underlying section 5 of the Limitation Act.

27. Proviso to rule 12(5) of the Nirvachan Rules, 1995 provides that after the last date and time fixed for nomination in the notice issued under rule 28 of the Nirvachan Rules, 1995 and before completion of elections, no amendment shall be carried out in the voters' list according to the decision of the appellate authority. Therefore, the voters' list finalized under rule 15 thereof after disposal of claims and objections under rule 12(1) thereof by the Registration Officer can always be amended by the orders of the appellate authority as the voters' list so far prepared under rule 12(1) is subject to the decision in the appeal. Therefore, under rule 12(5) of the Nirvachan Rules, 1995 amendment can be carried out in the voters' list but before the last date of time and place fixed for filing the nomination.

28. Now adverting to the factual matrix in hand, upon perusal of the record, it appears that no date was mentioned by the Registration Officer while receiving the objections, no notices were issued to the respondents' No.4 to 36 calling upon them to reply to the aforesaid objections for deletion of their names in the voters' list and no inquiry whatsoever was held. The decision so taken as a matter of fact is contrary to the provisions of rule 12(1) of the Nirvachan Rules, 1995 and such decision cannot be said to be decision in the legal parlance. Besides, the reason/decision is undated. Hence, the Registration Officer has committed grave illegality by deleting the names of the respondents' No 4 to 36 from the voters' list of Gram Panchayat, Jarri, Janpad Panchayat, Ater, District Bhind by orders of the so called decision.

29. Respondents' No.4 to 36 under such circumstances since had no knowledge of the proceedings of the decision taken by the Registration Officer resulting into deletion of their names from the voters' list were justified having preferred the appeal upon acquisition of knowledge. In the instant case, the date of knowledge of the aforesaid decision of the Registration Officer is 03/12/2014 and the appeal was filed on 08/12/2014. Hence, the appeal has rightly been found to be within time from the date of knowledge by the appellate authority. Merely because, the application under section 5 of the Limitation Act was filed on 10/12/2014, this by itself shall not render the appeal barred by time as it is settled law that the starting point of limitation is from the date of filing of the appeal. Application for condonation of delay can always be submitted on a later date explaining the sufficiency of cause and the same shall relate back to the date of filing of the appeal.

30. Hence, in the opinion of this Court, the appellate authority has not committed any error of law and fact having entertained the appeal to be well within time.

31. Admittedly, the petitioner was not an objector before the Registration Officer and the application for intervention before the appellate authority was rejected on the aforesaid ground.

32. The question arises is whether the petitioner could be said to be a person entitled for hearing in the appellate proceedings. As has been held above, 'aggrieved person' is a person either a per-

son; party to the decision making process before the Registration Officer or is adversely effected by the decision of the Registration Officer. Petitioner is neither a party to the aforesaid proceedings nor could be said to be aggrieved person of the aforesaid proceedings. The appellate jurisdiction was exercised by the Collector by virtue of rule 12(5) of the Nirvachan Rules, 1995. Hence, his jurisdiction is confined to the mandate contained in rule 12(5) of the Nirvachan Rule, 1995. For want of any provision other than of any person aggrieved by the decision or the order appealed against, the application filed by the petitioner has rightly been rejected by the appellate authority for intervention.

33. The appellate authority has after scrutiny of the record has reached the conclusion that the Registration Officer in fact and in effect acted in utter disregard and gross violation of the provisions contained under rule 12(1) of the Nirvachan Rules, 1995 in the matter of ordering for deletion of the names of respondents' No.4 to 36 from the voters' list. For the reasons already mentioned in the preceding paragraphs, the appellate authority has not committed any error of law and fact in setting aside the decision of the Registration Officer and restoration of position as regards voters' list as was existed prior to the decision of the Registration Officer.

34. The allegations made in the petition that the names of respondents' No.4 to 36 did appear in the voters' list of Nagar Parishad, Bhind cannot be countenanced. To this, there is specific denial of the allegations with supporting documents. This Court does not deem it fit to hold an enquiry into the allegations and the counter allegations made by the parties as the same are in the realm of disputed questions of fact which cannot be adverted to under Article 226 of the Constitution of India.

35. This Court has also perused the judgements relied upon by the counsel for the petitioner. However, considering the nature of factual matrix of the case and the controversy involved, the aforesaid judgements are of no assistance to the petitioner having no bearing in the present case.

36. As consequent upon the order passed by the appellate authority on 18/12/2014, the voters' list has been finalized, thereafter the notification under rule 28 of the Nirvachan Rules, 1995 was issued, the date of filing of the nominations has come to an end on 01/01/2015 and the polling is scheduled on 05/02/2015, no further interference is warranted and the election must proceed as per the schedule.

37. In view of the aforesaid, in the opinion of this Court, the appellate authority has not committed error of law or jurisdictional error warranting interference by this Court in exercise of writ jurisdiction.

38. Petition sans merit and is hereby dismissed.

(Rohit Arya)
Judge
29-01-2015

रिट याचिका क्र. 7371/2014

उच्च न्यायालय मध्यप्रदेश

खण्डपीठ ग्वालियर

मान. न्यायमूर्ति श्री शील नागू, न्यायाधीश

धनोबाई

बनाम

म.प्र. शासन एवं तीन अन्य

भारतीय संविधान अनुच्छेद 226- ग्राम चरई श्यामापुर तहसील घाटीगांव जिला ग्वालियर की मतदाता सूची में याचिकाकर्ता का नाम क्र. 229 पर दर्ज था। रजिस्ट्रीकरण अधिकारी द्वारा उसका नाम विलोपित किये जाने के विरुद्ध म.प्र. पंचायत निर्वाचन नियम 1995 के नियम 12(5) के अंतर्गत प्रस्तुत अपील की निराकरण निर्धारित समयावधि में न होने पर अनुतोष पाने के लिए याचिका

प्रकरण के तथ्य : याचिकाकर्ता धनोबाई का नाम ग्राम चरई श्यामापुर तहसील घाटीगांव जिला ग्वालियर की मतदाता सूची क्रमांक 299 पर दर्ज था। रजिस्ट्रीकरण अधिकारी ने म.प्र. पंचायत निर्वाचन नियम 1995 के नियम 11 एवं 12(1) के प्रावधानों के अंतर्गत आदेश दिनांक 23.10.2014 द्वारा उसका नाम उक्त मतदाता सूची से विलोपित कर दिया। इस आदेश के विरुद्ध उसने नियम 12(5) के अंतर्गत अपील प्राधिकारी के समक्ष अपील प्रस्तुत की, जिसका निराकरण 5 दिन के भीतर किए जाने के आदेशात्मक प्रावधान है। किन्तु अपील प्राधिकारी द्वारा कोई निर्णय न लेने के फलस्वरूप याचिकाकर्ता ने यह रिट याचिका प्रस्तुत की।

न्यायालय का आदेश : दिनांक 07.01.2015 को पारित अंतरिम आदेश द्वारा याचिकाकर्ता को पूर्व की तरह उक्त ग्राम पंचायत का मतदाता मान्य किया गया। उक्त नियम 12 के परन्तुक के अनुसार नामनिर्देशन पत्र प्रस्तुत करने के लिए नियत अंतिम दिनांक के पश्चात मतदाता सूची में कोई परिवर्तन नहीं किया जा सकता। तथापि न्यायालय ने माना कि यह व्यवस्था तभी लागू हो सकती है जबकि अपील का निराकरण 5 दिन के भीतर हो। चूंकि इस प्रकरण में अपील अभी भी लंबित है, उक्त अंतरिम आदेश अपील के निराकरण तक प्रभावशील रहेगा।

**IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR**

WP.No. 7371/2014

Dhano Bai Parihar
Versus
State of M.P. & Others

Shri A.K. Nirankari Advocate for the petitioner.

Shri Praveen Newaskar Dy. Govt. Advocate for the respondents no. 1, 3 and 4.

Smt. Ami Prabal, Advocate for respondent no. 2.

Shri G.S. Sharma, Advocate for respondent intervener.

**O R D E R
07.01.2015**

This petition under Article 226 of the Constitution of India has been filed aggrieved by the deletion of the name of the petitioner from voter list prepared in the ensuing Panchayat elections.

2. Learned counsel for the rival parties are heard on the question of admission.

3. Learned counsel for the petitioner submits that in the voter list of village Charai Shyampur, Tehsil Ghatigaon, District Gwalior prepared under Rule 9 and published under Rule 10 of the M.P. Panchayat Nirvachan Niyam, 1995 (1995 Niyam for brevity), the name of the petitioner was mentioned at serial no. 299. it is his contention that by order passed by Registration Officer on 23.10.2014 the name of the petitioner was deleted from the voter list by invoking provisions of Rule 11 and 12 (1) of 1995 Niyam. Thereafter it is submitted that petitioner preferred an appeal under Rule 125 of 1995 Niyam within the prescribed period of five days before the appellate authority who is stated to be sitting over this appeal and has not taken any decision on the same.

4. This court after hearing the matter on admission on 18.12. 2014 directed as an interim measure as follows:-

“Considering the aforesaid, as an interim measure, it is directed that petitioner be treated as a voter of Gram Panchayat Charai-Shyampur and her name be treated as included in the voter list of said Gram Panchayat for all purpose”

5. Pursuant to the above interim order which is subsisting till date the name of the petitioner has been included in the voter list of the above said village.

6. Rule 12 (5) obliges the appellate authority to make enquiry and pass suitable orders expeditiously on an appeal preferred within the prescribed period of five days. The said provision further lays down that in case the appeal succeeds then the voter list shall be suitably amended in line with the decision taken by the appellate authority. The proviso to the said rule places bar on the power of the appellate authority by laying down that no amendment in the voter list shall take place even to implement the appellate order passed under Rule 12 (5) of 1995 Niyam, after the last date fixed for making nominations mentioned in notice issued under Rule 28 and before election.

7. From the scheme of 1995 Niyam, it is ostensibly evident that no amendment in the voter list is permissible after expiry of the last date for filing of the nomination.

8. It is not disputed that last date for filing of the nomination is 7.1.2015 i.e. the date on which the order is being passed.

9. The petitioner places heavy reliance on the enquiry report dated 8.11.2014 Annexure P-2 provided by the CEO of Janpad Panchyat Ghatigaon stating inter alia that the name of the petitioner was wrongly deleted without following the due process of law.

10. In the conspectus of factual scenario, it is evident that the present case is an exceptional one due to following exceptional circumstances;

1. This court while exercising power of judicial review has already granted interim order vide order dated 18.12.2014 directing for treating the petitioner as voter of said Gram Panchayat and;

2. the apathy/inaction on the part of the appellate authority to discharge its statutory obligation of deciding the appeal preferred by the petitioner under Rule 12 (5) of 1995 Niyam.

11. The bar contained in proviso to Rule 12 (5) of 1995 Niyam can become operational only when the statutory obligation of the appellate authority is duly discharged in terms of Rule 12 (5). If the appellate authority does not discharge its statutory obligation of deciding the appeal expeditiously then the right of the appellant/petitioner which he could have exercised if his appeal was decided expeditiously, cannot be foreclosed by taking recourse to the prohibitory nature of the proviso.

12. No doubt proviso to the statutory provision qualifies and imposes certain restrictions upon the main proviso i.e. Rule 12 (5) of 1995 Niyam herein. At the same time the proviso cannot be a complete bar to the extent of supplanting the entire main provision. A proviso is merely to qualify the main provision and not to supersede it. In this regard the decision of the Apex Court in the case of **Dwarka Prasad v. Dwarka Das Saraf** reported in AIR 1975 SC 1758 is worthy of reference. The relevant extract of para 18 of this judgement is reproduced herein below:-

“The law is trite. A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. 'Words are dependent on the principal enacting words, to which they are tacked as a proviso. They cannot be read as divorced from their context' (1912 A.C.544). If the rule of construction is that prima facie a proviso should be limited in its operation to the subject matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso in such manner that they mutually throw light on each other and a result in a harmonious construction”

13. Following this decision, similar view was expressed in the case of **Dashrath Rupsingh Rathod v. State of Maharashtra** reported in (2014) 9 SCC 129

14. In the instant case the bar contained in the proviso prohibiting change in the voter list after the expiry of the last date of nominations mentioned in notice under Rule 28 could have become operational only if the appeal preferred by the petitioner within the prescribed period of five days under Rule 12 (5) of 1995 Niyam was decided expeditiously. Herein, the appeal is stated to be still pending. If that is so then the appellant/petitioner who has exercised his rights to prefer an appeal under Rule 12 (5) of 1995

Niyam within the stipulated period of time cannot be left remediless by invoking the prohibitory proviso to Rule 12 (5) despite the appellate authority failing to discharge its statutory obligation of deciding the appeal expeditiously.

15. In view of the above, this court has no hesitation to hold that the bar contained in Proviso to Rule 12 (5) shall not come in way of the petitioner to pursue his appeal if filed within the prescribed period of five days and if the same is still pending. The proviso shall also not come in way of the appellate authority to decide the same in accordance with law or in way of the Registration Officer to carry out any amendment in the voter list in terms of the appellate order which ultimately passed by the appellate authority.

16. Accordingly, this petition deserves to be and is hereby allowed to the following extent;

1. That in case the petitioner's appeal against the order preferred within stipulated period of five days is pending before the appellate authority then the same shall be decided by the appellate authority under Rule 12 (5) of 1995 Niyam on its own merits without being influenced to the bar contained in Rule 12 (5) and the fact of the petitioner having approached this court.

2. In case appeal of the appellant is allowed then the consequential action of the amendment in the voter list be carried out as expeditiously as possible.

3. Till the decision is taken in the appeal by the appellate authority, the interim order passed on 18.12. 2014 by this court shall remain in operation.

(Sheel Nagu)
Judge

रिट याचिका क्र. 2463/2004

उच्च न्यायालय मध्यप्रदेश

बैंच ग्वालियर

मान. न्यायामूर्ति श्री राजेन्द्र मेनन, न्यायाधीश

संजय अग्रवाल एवं अन्य

बनाम

म.प्र. शासन एवं अन्य

भारतीय संविधान अनुच्छेद 226 : निवास के ग्राम की मतदाता सूची में नाम दर्ज होने के आधार पर याचिकाकर्ताओं ने अन्य ग्राम की मतदाता सूची से नाम हटाये जाने के अनुरोध पर रजिस्ट्रीकरण अधिकारी द्वारा अर्जी खारिज करने एवं निवास के ग्राम की मतदाता सूची से नाम हटाये जाने के आदेश के विरुद्ध याचिका।

प्रकरण के तथ्य : याचिकाकर्ता जो पति, पत्नि हैं, का नाम ग्राम सान्दखेड़ा जिला गुना की मतदाता सूची में दर्ज है। उनके नाम ग्राम मार की महु में भी दर्ज है। अतः उन्होंने उनके नाम ग्राम मार की महु की मतदाता सूची से हटाये जाने के लिए आवेदन दिया। किन्तु इसे अमान्य करते हुए उनके नाम ग्राम सान्दखेड़ा की मतदाता सूची से हटाने का आदेश रजिस्ट्रीकरण अधिकारी ने दिया। अपीलकर्ता अधिकारी ने भी इस आदेश की पुष्टि की। इस आदेश के विरुद्ध यह याचिका दायर की गयी है। उल्लेखनीय है कि याचिकाकर्ता क्र. 1 ने वर्ष 2000-2004 में हुए चुनाव में ग्राम सान्दखेड़ा से पंच के लिए चुनाव लड़ा था। पुनः 2004 में याचिकाकर्ता क्र. 2 ने भी चुनाव लड़ा था एवं पंच निर्वाचित हुई थी।

न्यायालय का आदेश : याचिकाकर्ता ग्राम सान्दखेड़ा के निवासी है, इसके पर्याप्त प्रमाण है। यहां से वे चुनाव भी लड़ चुके हैं। यहां की मतदाता सूची से नाम विलोपित करने के पूर्व याचिकाकर्ताओं को सुनवायी का उपयुक्त अवसर नहीं दिया गया। रजिस्ट्रीकरण अधिकारी एवं अपीलीय अधिकारी के आदेशों को निरस्त करते हुए निर्देश दिये गये कि याचिकाकर्ताओं के नाम सान्दखेड़ी की मतदाता सूची में रहेंगे एवं ग्राम मार की महु की सूची से उन्हें विलोपित किया जाए।

HIGH COURT OF MADHYA PRADESH BENCH GWALIOR

(SB : HON. Shri Rajendra Menon J)

Wrti Petition No. 2463 of 2004

Sanjay Agrawal and others

Versus

The State of M.P. & others

Shri R.D. Jain, Sr. Advocate with Shri S.N. Seth, Advocate for petitioner.

Smt. Ami Prabal, Dy. Advocate General for respondents no. 1 to 3 and 5

Shri M.P.S. Raghuvanshi, Advocate for respondent No. 4.

WHETHER APPROVED FOR REPORTING

O R D E R

18/09/2007

Challenging the orders passed by Assistant Registration Officer, Guna and the order passed by the appellate authority rejecting the appeal filed by the petitioner vide Annexure P/1 and P/2, petitioner has filled this petition.

2. Petitioners husband and wife clamis to be voter, residing in village Sandkheda District Guna. It is stated that their name is entered in the voter list of said village however their name is also recorded in Village Mar Ki Mahu, the petitioners submitted a application for deleting their name from the voter list of Village Mar Ki Mahu vide annexure P/4, this application has been rejected and by deleting the name of the petitioner in the voter list of Sandkheda. It is stated that petitioner have been deprived from benefit to contest the election of Gram Panchayat. Inter alia contending that in the ration card issued by the competent authority i.e. and P/6(a), petitioner seeks interference in the matter. Petitioner have also filed various documents Annexure P/7 and P/8 in form of affidavit indicating that petitioners are staying in village Sandkheda and therefore, the name is correctly entered in the voter list in Village sandkheda, petitioner no. I have contested the election for the post of Panch for the period 2000-2005 and have filed various documents showing the fact that they have contested the election in the said constituency, however in the election to the Gram Panchayat held in January 2004 it is stated that petitioner no. 2 also contested and won for the post of panch. Shri R.D. Jain learned senior counsel for petitioners placing reliance on a judgement of this court in the case of Chandra Bhan Patel Vs. State of M.P. & 4 others 2005 (II)MPJR 300 argued that in the lighth of overwhelming evidence adduced by the petitioner, finding recorded by the respondents to the effect that petitioner is not resident of Village Sandkheda is a perverse and illegal finding, the same having been recorded without application of mind and without considering the totality of the facts and circumstances. That apart Shri R.D. Jain, learned Sr. Counsel submits that before deleting the name of petitioners from the voter list in Village Sandkheda as indicated in order dated 12-10-2014 no notice to the petitioner have issued, on the contrary when they submitted application for deleting their name from the voter list of Mar Ki Mahu their application has been rejected without considering the facts and circumstances of the case.

3. On notice being issued respondents have appeared and respondent no. 5 had filed the return. It is submitted that on inspection patwari submitted a report to the effect that both the petitioners are not staying in village Sandkheda and therefore, action is taken, the appellate authority also in the impugned order has held that report of patwari indicates that petitioner are not residing at Village sandkheda

thereafter action has been taken correctly.

4. Having heard learned counsel for parties and on going through the records it is seen that before passing the order Annexure P/1 proper notice and opportunity of hearing is not extended to the petitioner. According to the guidelines and policy issued by the Election Commission in the matter of preparation of the voter list and deleting the name of a voter as contemplated in Annexure P/13 the name of person can be deleted from the voter list only after hearing him. In the present case petitioner no. 1 has contested the election in the year 2000-04 and his name has entered in the voter list of Village - Sandkheda, petitioner no. 2 is wife of the petitioner no. 1, she has already contested the election as her name is mentioned in the voter list right from the year 2000. That apart in the ration card name of petitioners are available, a panchanama prepared by the Villager to this effect as contained in annexure P/9 indicates the fact that petitioners are staying in the Village Sandkheda for more than 5 years, that apart the documents of the excise department available on record. Annexure 2/6 and P/6 (a) issued by the Excise Director showing petitioner no. 1 to be a resident of village Sandkheda, that being so there is overwhelming evidence produced by the petitioner to show that they are resident of village Sandkheda. Per contra respondents have taken action only on the basis of the some report of Patwari. Even though state have filed Annexure R/5-1 along with return. In the return it is stated that this is the report received from the Patwari, no such report is available on record to show that as to on what basis respondents have contended that petitioners are residing in village Mar Ki Mahu and on what basis the complaint filed by respondent no. 4 is said to be justified. On the contrary overwhelming evidence available on record indicates that right from the year 2000 petitioners name is entered in the voter list of the said village and petitioner no. 1 has contested the election held in the year 2000-2004, thereafter, in the current election held petitioner no. 2 has been elected. In the judgement relied by Shri R.D. Jain, Sr. Advocate in the case of Chandra Bhan Pate (supra) similar question has been considered by a Bench of this court and the principle laid down is that if the application is filed for deleting the name from one voter list the name can be deleted from the said voter list In the present case petitioners submitted application for deleting their name from the voter list of village Mar Ki Mahu and prayed for retaining their name in the voter list of village Sandkheda, apart from the aforesaid is seen that in writ petition No. 2462/04 filed by Manoj Agarwal elder brother of the present petitioner Sanjay Agrawal and his sister in law Smt. Mamta Agrawal, similar action is taken in the said case it is seen that Manoj is staying in Village Sandkheda right from 1995 petitioners have moved application for deleting their names from the voter list of village Mar Ki Mahu and they have produced overwhelming material to show that they are residing in Village Sandkheda, respondents have not consider the question in the right perspective, that apart report of patwari cannot form the basis for taking action in the matter when the evidence available on record shows that right from the year 2000 both the petitioners are staying in Village Sandkheda. Accordingly I find much force in the contention advanced by learned counsel for petitioners and hold that their name have been deleted from the voter list of Village Sandkheda in an arbitrary manner without any just cause and reason, the Patwari report which forms the basis for taking action is not produced before this court. That apart the said report cannot be given any weightage in the face of overwhelming evidence adduced by the petitioner. Accordingly, this petition is allowed, Annexure P/1 and P/2 passed by the Assistant Registrar Officer, and appellate authority, deleting the name of the petitioner from the voter list of village Sandkheda is quashed, it is directed that name of the petitioners should be retained in the voter list of village Sandkheda and as the petitioners have moved application for deleting their name from the voter list of village Mar Ki Mahu the same be deleted.

5. Accordingly petition stands allowed and disposed of without any order so as to costs.

(Rajendra Menon)
Judge

रिट याचिका क्र. 2426/2004
उच्च न्यायालय मध्यप्रदेश, जबलपुर

मान. न्यायमूर्ति श्री राजेन्द्र मेनन, न्यायाधीश

सोमती

बनाम

म.प्र. शासन एवं 8 अन्य

भारतीय संविधान अनुच्छेद 226 : रजिस्ट्रीकरण अधिकारी के आदेश के विरुद्ध दिये गये अपीलीय अधिकारी के आदेश दिनांक 05.11.2004 जिसके द्वारा उत्तरदायी क्रमांक 5 से 8 के नाम मतदाता सूची में शामिल करने के निर्देश दिये गये, के विरुद्ध याचिका।

प्रकरण के तथ्य : ग्राम बरोली तहसील विजयपुर जिला श्योपुर के निवासी उत्तरवादी क्र. 5 से 8 ने रजिस्ट्रीकरण अधिकारी विजयपुर के यहां ग्राम की मतदाता सूची में नाम दर्ज कराने के लिये आवेदन दिया जो अमान्य किया गया। एक अजय कुमार (उत्तरवादी क्र. 9) द्वारा अपील किये जाने पर अपीलकर्ता अधिकारी ने उक्त आवेदकों के नाम मतदाता सूची में दर्ज करने के आदेश दिनांक 05.11.2004 को रजिस्ट्रीकरण अधिकारी को दिये। याचिकाकर्ता ने इस आदेश के विरुद्ध इस आधार पर याचिका प्रस्तुत की है कि अपीलकर्ता को अपील करने का अधिकार नहीं था क्योंकि वह व्यथित पक्षकार नहीं था। इसके अलावा उत्तरवादी क्रमांक 5 से 8 उक्त ग्राम के निवासी नहीं हैं।

न्यायालय का आदेश : म.प्र. नगरपालिका निर्वाचन नियम 1995 के नियम 12 में व्यथित व्यक्ति से आशय ऐसे व्यक्ति से जो मतदाता सूची में परिवर्द्धन/विलोपन से प्रभावित होगा क्योंकि इससे ग्राम पंचायत के गठन पर प्रतिकूल प्रभाव पड़ेगा। याचिकाकर्ता ने भी इसी हैसियत से याचिका दायर की है। अपील अधिकारी के नाम शामिल करने के लिए आधार स्पष्ट न करने मात्र से उनके निर्णय को गलत नहीं कहा जा सकता क्योंकि पूर्ण प्रक्रिया का पालन करते हुए ऐसा आदेश उन्होंने दिया है। अतः याचिका निरस्त की गयी।

**IN THE HON'BLE HIGH COURT OF JUDICATURE M.P.
JABALPUR BENCH AT GWALIOR**

W.P. No. 2426/2004

Smt. Somoti, W/o Shri Gulab Rawat, Aged - about 45 years, Occupation - Housewife, R/o Village Baroli, Teh. Vijaypur, Distt. Sheopur, (M.P.)

PETITIONER

Versus

1. The State of M.P. through the Princiopal Secretary, Department of Panchayat & Rural Development, Vallabh Bhawan, Bhopal, (M.P.)
2. The M.P. State Election Commission, Nirvachan Bhawan, 58-Arera Hills, Bhopal, (M.P.) Through Its Secretary
3. The Sub Divisional Officer / Appellate Authority / Election Officer Janpad Panchayat Election, Vijaypur, Distt. Sheopur, (M.P.)
4. The Registration Officer, Panchayat Election/Tehsilar, Vijaypur, Distt. Sheopur, (M.P.)
5. Ram Charan, S/o Shri Panna Aadiwasi
6. Smt. Seji Bai, W/o Shri Ram Charan
7. Kallu, S/o Shri Devhansh Aadiwasi
8. Smt. Pati Bai, W/o Shri Kallu Aadwasi
All are resident of village Dhori Babadi, Teh. Vijaypur, Distt. Sheopur, (M.P.)
9. Ajay Kumar Sharma, S/o Shri Ram Charan Lal,
R/o village Baroli, Teh. Vijaypur, Distt. Sheopur, (M.P.)

उच्च न्यायालय, मध्यप्रदेश

मामला क्रमांक W.P. No. 21 सन् २००

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार
दिनांक तथा		के अन्तिम आदेश
आवास क्रमांक		

(S B = Hon'ble Rajendra Menon, J.,)

16.12.2004

Shri M.P.S. Raghuvarshi, Advocate for the petitioner.

Shri K.B. Chaturvedi, Addl. Govt. Advocate for the State.

Shri V.K. Yogi, Advocate for the respondents No. 5 to 9

Petitioner claiming to be elected sarpanch of the village Panchayat, Baroli tehsil Vijaypur district Sheopur has filed this petition being aggrieved by an order Annexure P/1 dated 5.11.2004 passed by the appellate authority, namely; the Sub Divisional Officer, Vijaypur exercising the powers under rule 12 (5) of the Madhya Pradesh Panchayat Election Rules 1995 (thereinafter referred to as the Rules, 1995).

Case of the petitioner is that the respondents No. 5 to 8 and many other persons filed applications

for including their names in the voters list in the village Baroli before the respondent no. 4. The respondent no. 4 conducted enquiry through the specified employees and on finding that the respondents no. 5 to 8 are not ordinary residents of the said village rejected their applications. Copies of the orders rejecting the applications are filed as Annexure P/2. Against the aforesaid order of rejection, it is stated by the petitioner that the respondents no. 5 to 8 have not filed any appeal but the decision of the Registering Authority was challenged by one Ajay Kumar Sharma (respondent no. 9). It is stated that Ajay Kumar Sharma has no locus standi to file the appeal and without considering this fact and without recording any reason by the impugned order, the appellate authority has directed the Registering Authority to include the names of respondents no. 5 to 8 in the voters list of the village Baroli. It is stated by the petitioner that the appellate authority has interfered with the order without any justification and without giving any reason. It is stated that the respondents no. 5 to 8 are the residents of village Dhori Babadi, their names appear at sl. no. 664, 665, 1155 and 1156 in the voters list of the said village and ignoring these documents, order passed by the appellate authority is illegal. Shri Raghuvanshi, learned counsel for the petitioner argued that the order passed by the appellate authority is liable to be quashed on the ground that the respondent No. 9 has no locus standi to file the appeal as he is not an aggrieved person as per the provisions of rule 12 (5) of the Rules, 1995 and the order passed by the appellate authority being without any reason is unsustainable.

Shri V.K. Yogi, learned counsel appearing for the respondents no. 5 to 8 so also for the respondent no. 9 argued that any resident of the village who is a voter has a right to challenge inclusion or deletion of the names in the voters lists. It is stated by him that if the respondent no. 9 had no locus standi to file the appeal then the petitioner herein also does not have any locus standi to file this petition challenging the order of the appellate authority. It is stated by him that the "aggrieved person" means any person who is resident of the village and who is aggrieved by preparation of the voters list which has the effect on constitution of the Gram Panchayat on the basis of the election to be conducted as per the voters list.

Accordingly, it is stated by Shri Yogi that no interference into the matter is called for. On merits, it was argued by Shri Yogi that on enquiry, the Revenue Inspector has only recorded that the respondents no. 5 to 8 are "Adiwasis" they have gone out to work and they are not available in the village. It is stated by him that this does not mean that the said persons are not ordinary residents of the village in question. They still reside in the village and by incorrectly interpreting the report of the Revenue Inspector order passed by the Registering Authority has been rightly interfered with by the appellate authority. It is stated by him that the persons whose names are included at sl. No. 664, 665, 1155 and 1156 of the voters list of the village Dhori Babadi are not the present respondents no. 5 to 8 but they are other persons having identical names. It is stated that for misusing this, petitioner has filed this petition.

I have heard learned counsel for the parties at length and perused the record.

The main ground of attack made by Shri Raghuvanshi, learned counsel for the petitioner is that the respondent no. 9 has no locus standi to file the appeal. This argument even though prima facie looks attractive but goes against the petitioner herself for the simple reason that if the "aggrieved person" has always been the person concerned whose name is included or excluded in the voters list then the petitioner should also not agitate the grievance before this court. The meaning of the word aggrieved person as appearing in rule 12 of the Rules, 1995 has to be given a broad meaning and it would include all such persons who feel aggrieved by inclusion or exclusion of certain names from the voters list and who feel that preparation of the voters list is done in a manner which will adversely effect constitution of the Gram Panchayat and the entire election process. Considering the meaning of the aggrieved person in the light of the aforesaid, there is much force in the contention of Shri Yogi to just the locus standi of respondent no. 9 to file the appeal. Accordingly, I find no substance in the objection of the petitioner in this regard.

As far as the order passed by the Registering Authority for deleting the names of respondents no. 5 to 8 are concerned, it is seen that the Revenue Inspector in his report has merely stated that at the time of inspection. Panchs of the village informed that the respondents no 5 to 8 are Adiwasis, they are staying in the village, now they went out to do Mazdoori and at present they are not in the village. This report has been considered by the appellate authority and after considering the fact the respondents no. 5 to 8 are Adiwasis and are ordinary residents of the village has directed for inclusion of their names in the voters list. Objection of the petitioner to the effect that they are residents of village Dhoru Babadi and their names are included in the voters list of this area seems to be incorrect on consideration of the affidavits filed by the respondents no. 5 to 8 in this petition and the difference in the names and fathers names of these persons. This is a matter which has been considered by the appellate authority and the appellate authority has passed the order. Merely because the appellate authority has not indicated any reason, it cannot be construed that the order is unsustainable. A perusal of the order, Annexure P/1 dated 5-11-2004 indicates that the appellate authority has gone through the entire records and thereafter he has passed the order taking note of the report of the Revenue Inspector. This Court while exercising the limited jurisdiction cannot sit over the findings of the appellate authority as if it is exercising further appellate jurisdiction in the matter. This Court can only see the decision making process and once it is held that the decision making process has been done properly, there is no violation of any statutory rule or regulation and merely because a different finding can be arrived at on the basis of the material produced before this Court, the order of the appellate authority cannot be interfered with.

Keeping in view the totality of the facts and circumstances of the case, so also taking note of the documents filed by either parties, the affidavits of the villagers, it is not a fit case where interference into the matter is called for only on the ground that the order of the appellate authority is not a speaking order. In such matters pertaining to preparation of the voters list, a presumption has to be drawn that the authorities have considered the entire material and passed the order unless otherwise proved contrary.

Accordingly, I find no ground to interfere in the petition. Accordingly, it is directed that the names of the respondents no. 5 to 8 be included in the voters list in question as directed by the appellate authority.

Accordingly, the petition stands dismissed without any order as to cost.

(Rajendra Menon)

Judge

रिट याचिका क्र. 1882/2015 जनहित याचिका
उच्च न्यायालय मध्यप्रदेश
बैच ग्वालियर

मान. न्यायमूर्ति श्री एन.के. गुप्ता, न्यायाधीश
मान. न्यायमूर्ति श्री शील नागू, न्यायाधीश

मुकेश प्रजापति
बनाम
म.प्र. शासन एवं 3 अन्य

भारतीय संविधान अनुच्छेद 226 : यह जनहित याचिका उत्तरवादी क्र. 4 के द्वारा गलत शपथ पत्र पेश करने एवं इस तथ्य को छिपाने के विरुद्ध प्रस्तुत की गई है कि वह दो जगह मतदाता के रूप में दर्ज है।

प्रकरण के तथ्य : याचिका में यह आक्षेपित है कि उत्तरवादी क्र. 4 ग्राम पंचायत सतारी जिला दतिया के वार्ड क्र. 3 में एवं नगरपालिका दतिया के क्षेत्र में मतदाता के रूप में दर्ज है। उसने अपने शपथ पत्र में इस तथ्य को छिपाया है एवं जिला पंचायत दतिया के सदस्य के लिए निर्वाचन लड़ा है। अतः उत्तरवादी क्र. 4 के विरुद्ध दण्डिक कार्यवाही के लिए यह याचिका प्रस्तुत की गयी है।

न्यायालय का आदेश : म.प्र. पंचायत राज एवं ग्राम पंचायत अधिनियम 1993 की धारा 122 के अन्तर्गत उत्तरवादी क्र. 4 के निर्वाचन के विरुद्ध चुनाव याचिका दायर की जा सकती है। इसी प्रकार गलत शपथ पत्र पेश करने के लिए भारतीय दण्ड विधान की धारा 181 के अन्तर्गत कार्यवाही की जा सकती है। अतः यह जनहित याचिका (पी.आई.एल.) खारिज की गयी।

**IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR**

Class of Case...W.P. No. 1882/2015

**O R D E R
(06.04.2015)**

Shri G.P. Chaurasiya, Advocate for the petitioner.

Shri Prabal Solanki, learned Govt. Advocate for the respondents/State.

The present writ petition under Article 226 of Constitution of India as a Public Interest Litigation has been filed seeking penal action against respondent No. 4 for furnishing incorrect affidavit by suppressing the fact that she is registered voter in two different constituencies and has exercised her right to franchise at Ward no. 3 of Gram Panchayat, Satari, District Datia and also at Municipal Council Datia. It is further alleged that respondent No. 4 has contested election to the office of member of Zila Panchayat, Datia.

Learned counsel for the rival parties are heard on the question of admission.

Indisputably, the cause raised in this Public Interest Litigation can be ventilated before the Election Tribunal constituted under M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam 1993 ('1993 Adhiniyam', for brevity) in the manner prescribed under the M.P. Panchayat (Election Petition, Corrupt Practices and Disqualification for Membership), Niyam 1995 (1995 Niyam for brevity)

For convenience and ready reference relevant provision i.e Section 122 of 1993 Adhiniyam and Rule 4 & 21 of 1995 Niyam are reproduced herein below.

“Section 122 of 1993 Adhiniyam:- Election Petition- (1) An election under this Act shall be called in question only by a petition presented in the prescribed manner:-

1. In case of [Gram Panchayat or Gram Sabha] to the Sub-Divisional Officer (Revenue);
2. In case of Janpad Panchayat to the Collector; and
3. In case of Zila Panchayat to the Divisional Commissioner and not otherwise.
4. No such petition shall be admitted unless it is presented within thirty days from the date on which the election in question was notified.
5. Such petition shall be inquired into or disposed of within six months according to such procedure as may be prescribed.

Rule 4 of 1995 Rules:- Parties to the petition :- Where the petitioner in addition to claiming a declaration that the election, of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected he shall join as respondents to his petition all the contesting candidates at the election.

Rule 21 of 1995 Rules:- Ground for declaring election to be void:- (1) Subject to the provisions of sub-rule (2) if the specified officer is of opinion-

- (a) that on the date of his election the returned candidate who was not qualified or was disquali-

fied to be chosen to fill the seat under the Act; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination paper has been improperly rejected; or

(d) that the result of the election in so far as it concerns returned candidate has been materially affected-

(i) by the improper acceptance of any nomination; or

(ii) by a corrupt practice having been committed in the interest of the returned candidate by a person acting with the consent of the candidate or his agent; or

(iii) by the improper acceptance, refusal or rejection of any vote or the reception of any vote which is void; or

(iv) *by any non-compliance with the provisions of the Act or of any rules or orders made there under;*

the specified officer shall declare the election of the returned candidate to be void.

(2) If in the opinion of the prescribed authority a returned candidate has been guilty by an agent of any corrupt practice, but the prescribed authority is satisfied_

(a) that no such corrupt practice was committed at the election by the candidate and every such corrupt practice was committed contrary to the instructions and without the consent of the candidate;

(b) that the candidate took all reasonable means for preventing the commission of corrupt practice at the election; and

(c) that in all other respect the election was free from any corrupt practice on the part of the candidates or any of his agent; then the prescribed authority may decide that the election of the returned candidate is not void.

Plain reading of above said statutory provisions reveals that the same do not restrict filing of election petition before the Tribunal to any particular person or a class of persons. 1993 Adhiniyam and 1995 Niyam, therefore, leave it open for any person to assail election to any office of any of the Panchayats, be it, Gram Panchayat, Janpad Panchayat or Zila Panchayat. Though the term 'person' implied by Rule 3 of 1995 Niyam has been interpreted to mean 'person aggrieved'.

In the Single Bench decision of this Court delivered in the case of **Hukum Singh Rajput Vs. Collector, Panna** reported in **2002(1) MPLJ 233**, which is evident by extract of the said judgement reproduced herein below:-

“The matter possibly would have been different if the petitioner would not have been elected as Up-Sarpanch. In any case, I do not intend to dilate on that issue. By becoming Up-Sarpanch he comes to hold a responsible post in the Gram Panchayat. In that event, the concept of wards melts into insignificance and his election becomes a cause of grievance for any person who belongs to the Gram Panchayat. It is to be borne in mind that in absence of any categorization who can file an election petition and the only provision that throws some light being Rule 3 of the 1995 Rules, the same has to be purposively interpreted. The said provision enshrines that an election petition is to be presented to the Specified Officer during office hours by the person making a petition or by a person authorized in writing in that behalf by the person making the petition. If the said provision is read conjointly with the other rules it is apparent that a relief can be claimed declaring the election of the returned candidate to be void in addition to further

declaration. Thus, a person may not claim that he himself or other Candidate has been duly elected but may seek a relief for declaration simplicitor that the election of the elected candidate is void. Thus, the keyword is 'person'. Though the word 'person' has been mentioned, it would not engulf in its ambit or sweep a person from anywhere. He must have some connection or nexus with the election. He must be a 'person aggrieved'."

A profitable reference for ascertaining the scope and ambit of the term 'person' can be made by reproducing para 21 of the Single Bench decision of this Court in the case of **Anjana Mulkalwar (Smt.) v. Bhanu Yadav & Ors.** reported in **1997 (1) J.L.J. 78** which is reproduced herein below :-

"A few legal questions were raised by learned counsel for the petitioner that the persons, who had filed the election petitions, were not qualified to file the election petitions. A perusal of the provisions of the Act would show that an election petition could be presented by any person authorized in this behalf by person making the petition within 30 days from the date on which the election or cooption was notified. The question is who can file the election petition. I may also refer to section 122 which speaks about the grounds for declaring the election or cooption as void, which reads as under :- 122 Election Petition- (1) An election or cooption under this Act shall be called in question only by a petition presented in the prescribed manner:-

- (i) in case of Gram Panchayat to the SubDivisional Officer (Revenue);*
- (ii) in case of Janpad Panchayat to the Collector; and*
- (iii) in case of Zila Panchayat to the Divisional Commissioner and not otherwise.*

(2) No such petition shall be admitted unless it is presented within thirty days from the date on which the election or cooption in question was notified.

(3) Such petition shall be inquired into or disposed of according to such procedure as may be prescribed.

The section does not prescribe as to who can file the election petition. Ordinarily person who is voter in the constituency can challenge the election of a returned candidate."

A registered voter of the constituency falls within the definition of 'person aggrieved' for assailing the election to any office of any Panchayat.

The petitioner does not dispute that he is a resident and voter of the constituency in question.

Thus, the petitioner by virtue of being voter can very well file an election petition assailing the election of respondent no. 4.

Moreso, the grievance of the petitioner regarding submission of incorrect affidavit by private respondent can very well be ventilated by initiating criminal prosecution u/S. 181 of IPC in accordance with law. This is because the 1993 Act or rules framed thereunder do not prescribe any provision similar to Section 125-A of Representation of People Act, 1951.

In view of above, this Public Interest Litigation is not maintainable on account of availability of statutory remedy of filing election petition.

Accordingly, this public interest litigation deserves to be and is, therefore, dismissed.

(N.K. Gupta)
Judge

(Sheel Nagu)
Judge

रिट याचिका क्र. 257/2015

उच्च न्यायालय मध्यप्रदेश

बेंच इन्दौर

मान. न्यायमूर्ति श्री पी.के. जायसवाल

मान. न्यायमूर्ति श्री जे.के. जैन

सैय्यद अशहर अली वारसी

बनाम

म.प्र. राज्य निर्वाचन आयोग एवं अन्य

भारतीय संविधान अनुच्छेद 226- लोकहित याचिका : स्थानीय संस्थाओं के निर्वाचन में मतदान करने की अनुमति अपर सत्र न्यायाधीश ने अपने आदेश दिनांक 08.01.2015 द्वारा प्रदान किये जाने के विरुद्ध याचिका दायर की गई।

प्रकरण के तथ्य : एक अभियुक्त महेश, जो न्यायिक अभिरक्षा में था, की ओर से ग्राम कलारिया में होने वाले सरपंच के निर्वाचन के लिए मतदान करने की अनुमति मांगे जाने पर विद्वान अपर सत्र न्यायाधीश ने दिनांक 13.01.2015 को होने वाले सरपंच के निर्वाचन में मतदान करने की अनुमति प्रदान की। इसके विरुद्ध उक्त याचिका दायर की गई।

न्यायालय का आदेश : सर्वोच्च न्यायालय द्वारा प्रकरण - मुख्य निर्वाचन आयुक्त एवं अन्य बनाम जन चौकीदार एवं अन्य - प्रकाशित 2013(7) एस.सी.सी. 507 में व्यक्त अभिमत के अनुसार न्यायालय ने माना कि मतदान करना कानून द्वारा प्रदत्त अधिकार है जिस पर रोक लगायी जा सकती है। लोक प्रतिनिधित्व अधिनियम 1951 की धारा 62(5) में ऐसी रोक लगाने के प्रावधान हैं। इसका परीक्षण किये बिना अभियुक्त को मतदान की अनुमति नहीं दी जाना थी। भविष्य में सावधानी वर्तन के लिए ट्रायल कोर्ट को सचेत किया गया।

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

Class of Case...W.P. No. 257/2015 (PIL)

O R D E R
31.07.2015

Shri Amit Dube, learned counsel for the petitioner.

Shri Sunil Jain, learned A. A. G. with Shri A. A. Naik,

learned Dy. G. A. for the respondents – State.

They are heard.

By this writ petition under Article 226 of the Constitution of India, the petitioner, who is a practising Advocate based at Indore, preferred this public interest litigation in the light of wide coverage in the local newspapers on 10.01.2015 regarding permission having been granted to an under-trial prisoner by Shri Priyadarshan Sharma, 11th Additional Session Judge, Indore on 08.01.2015 to cast his vote in the ensuing elections for the local bodies.

2. The order dated 08.01.2015 passed by the 11th Additional Session Judge, Indore reads as under :-

08-01-2015 म. प्र. राज्य द्वारा श्री हेमंत मुंगी, ए. जी. पी उप.।

अभियुक्त महेश न्यायिक अभिरक्षा से उपस्थित। उनकी ओर से श्री धर्मेन्द्र गुर्जर अधिवक्ता उप.।

अभियुक्तगण लाखन एवं जालम अनुपस्थित। उनकी ओर से श्री धर्मेन्द्र गुर्जर अधिवक्ता ने एक आवेदन-पत्र अंतर्गत धारा 317 दप्र.सं. प्रस्तुत किया जो विचारोपरांत स्वीकार किया गया।

प्रकरण आज ट्रायल प्रोग्राम प्रस्तुत एवं अभियुक्त महेश की ओर से प्रस्तुत आवेदन-पत्र पर विचार हेतु नियत है।

अभियोजन की ओर से ट्रायल प्रोग्राम प्रस्तुत किया गया।

अभियुक्त महेश की ओर से प्रस्तुत आवेदन-पत्र पर तर्क सुने गये।

अभियुक्त महेश के आवेदन-पत्र पर विचार किया गया।

अभियुक्त महेश की ओर से उसके ग्राम कलारिया में होने वाले सरपंच चुनाव दिनांक 13-01-2015 में मतदान हेतु पुलिस कस्टडी में अभियुक्त महेश उपस्थित किये जाने हेतु जेल अधीक्षक को आदेशित किये जाने हेतु निवेदन किया गया है। अभियुक्त के मतदान के संवैधानिक अधिकार को दृष्टिगण रखते हुए विचारोपरांत अभियुक्त महेश की ओर से प्रस्तुत आवेदन-पत्र इस निर्देश के साथ स्वीकार किया जाता है कि यथोचित पुलिस बल उपलब्ध होने की दशा में अभियुक्त महेश को ग्राम कलारिया में दिनांक 13-01-2015 को होने वाले सरपंच चुनाव में मतदान हेतु उपस्थित किया जावे। इस संबंध में जिला जेल अधीक्षक को पत्र जारी कर निर्देशित किया जावे कि पर्याप्त एवं यथोचित पुलिस बल होने की दशा में अभियुक्त महेश को उसके ग्राम कलारिया में आयोजित सरपंच चुनाव दिनांक 13-01-2015 में मतदान हेतु उपस्थित किया जावे तथा मतदान पश्चात् पुनः विधिवत् जेल भेजा जावे।

प्रकरण अभियोजन साक्ष्य हेतु दिनांक 09 एवं 10 फरवरी 2015 को पेश हो।

3. In the present case, under-trial prisoner – Mahesh made a prayer before the learned ASJ seeking permission to cast vote in the elections at Village Kalaria for Sarpanch, which was scheduled to be held on 13.01.2015. Learned ASJ, without considering the provisions of Section 62(5) of the Act of 1951 granted permission to cast his vote in the election for Sarpanch in the police custody. The Panchayat

Elections are governed by The Madhya Pradesh Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993. However, the aforesaid Adhiniyam is silent about casting of vote by prisoners. The right to vote is subject to the limitations imposed by the Statute which can be exercised only in the manner provided by the statute.

4. Learned counsel for the petitioner submits that there is a statutory bar created by Section 62(5) of the Representation of People Act, 1951 (in short “the Act of 1951”) prohibiting casting of votes by prisoners. To support the aforesaid, he has drawn our attention to the decision of the Apex Court in the case of **Anukul Chandra Pradhan vs. Union of India & Others reported in 1997(6) Supreme 220.**

5. Shri Sunil Jain, learned A. A. G. has submitted that right to vote is a statutory right and not a common right. Every person who is a citizen of India and who is not disqualified under any law made by the appropriate legislature on the ground of crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any election.

6. *Section 62(5) of the Representation of People Act, 1951*

reads as under :-

Section 62

(1)

(2)

(3)

(4)

(5) No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of police:

Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under law for the time being in force.

Provided further that by reason of the prohibition to vote under this sub-section, a person whose name has been entered in the electoral roll shall not cease to be an elector.

7. “The Apex Court in the case of **Chief Election Commissioner & Others vs. Jan Chaukidar (Peoples Watch) & Others reported in 2013 (7) SCC 507** has held that “a right to vote is a statutory right, the Law gives it, the Law takes it away. Persons convicted of crime are kept away from elections to the Legislature, whether to State Legislature or Parliament, and all other public elections. Persons in the lawful custody of the Police also will not be voters. The Law temporarily takes away the power of such persons to go anywhere near the election scene. To vote is a statutory right. It is privilege to vote, which privilege may be taken away. In that case, the elector would not be qualified, even if his name is on the electoral rolls. The name is not struck off, but the qualification to be an elector and the privilege to vote when in the lawful custody of the police is taken away”.

8. This question has been considered by the Apex Court in Paras-8 and 10 in the case of Anukul Chandra Pradhan (supra),

which reads as under :-

8. *There are other reasons justifying this classification. It is well known that for the conduct of free, fair and orderly elections, there is need to deploy considerable police force. Permitting every person in prison also to vote would require the deployment of a much large police force and much greater security arrangements in the conduct of elections. Apart from the resource crunch, the other constraints relating to availability of more police forces and infrastructure*

facilities are additional factors to justify the restrictions imposed by sub-section (5) of Section 62. A person, who is in prison, as a result of his own conduct and is, therefore, deprived of his liberty during the period of his imprisonment cannot claim equal freedom of movement, speech and expression with the others who are not in prison. The classification of persons in and out of prison separately is reasonable. Restriction on voting of a person in prison results automatically from his confinement as a logical consequence of imprisonment. A person not subjected to such a restriction is free to vote or not to vote depending on whether he wants to go to vote or not; even he may choose not to go and cast his vote. In view of the restriction on movement of a prisoner, he cannot claim that he should be provided the facility to go and vote. Moreover, if the object is to keep persons with criminal background away from the election scene, a provision imposing a restriction on a prisoner to vote cannot be called unreasonable.

10. In view of the settled law on the point, it must be held that the right to vote is subject to the limitations imposed by the statute which can be exercised only in the manner provided by the statute; and that the challenge to any provision in the statute prescribing the nature of right to elect cannot be made with reference to a fundamental right in the Constitution. The very basis of challenge to the validity of sub-section (5) of Section 62 of the Act is, therefore, not available and this petition must fail.

9. For these reasons, we are of the view that under-trial prisoner – Mahesh would not have been permitted to cast his vote by order dated 08.01.2015. We direct the learned Trial Court to be cautious in future in passing such type of order, without examining the relevant provisions of the Act of 1951 and law settled on the subject/law laid by the Apex Court.

10. With the aforesaid, this writ petition stands disposed of.

(P. K. Jaiswal)
Judge

(J. K. Jain)
Judge

रिट याचिका क्र. 769/2015

उच्च न्यायालय मध्यप्रदेश

बैच ग्वालियर

मान. न्यायामूर्ति श्री रोहित आर्य, न्यायाधीश

श्रीमती रानी

बनाम

म.प्र. शासन एवं अन्य

भारतीय संविधान अनुच्छेद 226 : 2014-15 के दौरान पंचायतों के निर्वाचन में ग्राम बड़गांव जिला दतिया के सरपंच पद के निर्वाचन के लिए याचिकाकर्ता द्वारा प्रस्तुत नामांकन पत्र को रिटर्निंग ऑफिसर द्वारा दिनांक 08.01.2015 को खारिज किये जाने के विरुद्ध याचिका।

प्रकरण के तथ्य : सरपंच ग्राम पंचायत बड़गांव जिला दतिया का पद अनुसूचित जाति के लिए आरक्षित था। इस पद हेतु याचिकाकर्ता ने नामांकन पत्र प्रस्तुत किया एवं जिला जालोन (उ.प्र.) का जाति प्रमाण पत्र प्रस्तुत किया, जिसमें उसकी जाति धोबी अंकित है, जो उक्त जिले में अनुसूचित जाति मान्य है। जिला दतिया (म.प्र.) में धोबी जाति को 'अन्य पिछड़ा वर्ग' के अन्तर्गत मान्य किया गया है। अतः रिटर्निंग ऑफिसर ने उसका नामांकन पत्र दिनांक 08.01.2015 को निरस्त कर दिया। इस आदेश के विरुद्ध यह याचिका प्रस्तुत की गयी है।

न्यायालय का आदेश : चूंकि निर्वाचन प्रक्रिया प्रारंभ हो चुकी है, भारतीय संविधान के अनुच्छेद 243-ओ एवं सर्वोच्च न्यायालय के कई निर्णयों को देखते हुए न्यायालय ने हस्तक्षेप करने से इंकार किया। तथापि प्रस्तुत किये गये तर्कों के संदर्भ में यह माना गया कि उत्तरप्रदेश के जिला जालोन के सक्षम अधिकारी द्वारा 'धोबी' जाति को अनुसूचित जाति के प्रमाण पत्र के आधार पर मध्यप्रदेश के जिले दतिया में अनुसूचित जाति नहीं माना जा सकता, जहां इस जाति को 'अन्य पिछड़ा वर्ग' के अधीन मान्य किया गया है। अतः रिटर्निंग ऑफिसर द्वारा कोई त्रुटि नहीं की गयी है एवं याचिका निरस्त की गयी।

IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR
Class of Case...W.P. No. 769/2015

Smt. Rani
Versus
State of M.P. and Others

O R D E R
09.02.2015

Shri Raja Sharma, Advocate for Petitioner.

Smt. Ami Prabal, Advocate for respondents/Election Commission.

In this writ petition the petitioner has sought the relief of setting aside Annexure P/1 dated 8.1.2015 rejecting the nomination form of the petitioner for election to the post of Sarpanch, Village Bargaon, District Datia, with the further relief permission to contest the election.

It is submitted that the returning officer has improperly rejected the nomination form. It is further submitted that petitioner belongs to Dhobi caste and the same is of Scheduled Caste category as reflected from the caste certificate issued from District Jalon (UP), hence, the aforesaid seat of Sarpanch being reserved for Scheduled Caste, Petitioner's nomination could not have been rejected.

Smt. Prabal, learned counsel for respondents/Election Commission, raised a preliminary issue that the instant writ petition challenging rejection of nomination paper is misconceived as the election process has already commenced and there is an alternative, efficacious, statutory remedy of filing election petition under section 122 of the Panchayat Raj Adhiniyam, 1993 and the grounds raised in this petition are available to the petitioner, as contemplated under Rule 21(1) (c) of the Madhya Pradesh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (hereinafter referred to as the Rules of 1995). She relies upon Article 243-0 of the Constitution of India and following the judgements in Hansraj Singh and others vs. State of M.P. and others, 2013 (1) MPLJ 370 and an order dated 29.01.2015 in Writ Petition No. 8123/2014. Article 243-0 of the Constitution of India reads as under :-

"2430. Bar to interference by courts in electoral matters -

Notwithstanding anything in this Constitution-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under article 243K, shall not be called in question in any court ;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any Law made by the legislature of a State".

Learned counsel for the petitioner relies upon following judgements and submits that this Writ Petition is maintainable and rejection of nomination form was illegal :

1. AIR 1999 SC 1723, K. Venkatachalam v. A. Swamickan and another.
2. (1994) 6 SCC 241, Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and Others.
3. (1996) 3 SCC 545, Valsamma Paul (Mrs.) Versus Cochin University and Others.

4. (2000) 2 SCC 20, Union of India and others vs. Dudh Nath Prasad.

5. (2005) 2 SCC 244, Sobha Hymavathi Devi vs. Setti Gangadhara Swamy and others.

Agreeing with the principle laid down by the Hon'ble Supreme Court and reiterated in the aforesaid Judgement in the case of Hansraj Singh (supra) and order dated 29/1/2015 in Writ Petition No. 8123/2014 passed by this Court, this Court is of the view that the instant writ petition is not maintainable. Objection as regards non-maintainability is upheld. However, counsel has argued as regards impugned order and, therefore, the same is addressed accordingly.

The facts of the first case viz. K. Venkatachalam (supra) are quite distinguishable. In that case the Hon'ble Apex Court had considered the scope of jurisdiction of the High Court under Article 226 of the Constitution of India in the context of Articles 191 and 193 of the Constitution, which provides for disqualification of membership and penalty for sitting and voting when disqualified and held that the High Court can exercise jurisdiction and declare that the election was illegal inasmuch as elector does not possess basic Constitutional and Statutory qualification. In such circumstances the bar of Article 329 will not come in to play. The facts were also distinguishable as in that case challenge was made to election of the returned candidate therein on the ground that since he was not elector in the electoral role for Assembly constituency for general election and he had filed his nomination on affidavit impersonating himself for another person of same name in the electoral role. He lacked the basic qualification under clause (c) of Article 173 of the Constitution of India read with section 5 of the Representation of People Act, 1951 which mandate that a person to be elected has to be elector of that constituency. In the aforesaid factual background the aforesaid proposition was laid down.

In the instant case admittedly nomination paper has been rejected on the ground that petitioner though Dhobi by caste, is not scheduled caste in Datia (M.P.) and falls in the category of O.B.C., therefore, can not be permitted to contest the election of Sarpanch from a constituency reserved for Scheduled Caste. There is a specific provision under rule 21 (1) (c) of the Rules of 1995, which provides grounds for election petition if petitioner finds that his nomination has been improperly rejected after election is over. Hence, the aforesaid judgement is of no assistance to the petitioner and the reliance upon it is based on misconceived appreciation of principle of law laid down in that Judgement.

The second judgement is popularly known as Kumari Madhuri Patil's case wherein after detailed discussion the Hon'ble Supreme Court in para 13 has laid down as regards procedure for scrutiny of social status certificates which is being adhered to by states by constituting a high power scrutiny committee. The same Committee is also existence in M.P. This judgement is also of no assistance to the petitioner as subject matter does not relate to scrutiny of social status certificates i.e. whether issued by competent authority to the genuine person or not.

Third judgement viz. Valsamma Paul (supra) is also of no assistance to the petitioner as the said judgement is for the proposition that person who was belonging to forward caste and had march of advantageous life, but was transplanted in backward class by adoption or marriage or conversion, did not become eligible to the benefit of reservation either under Article 15(4) or 16(4), as the case may be. Acquisition of status of Scheduled Caste etc. by voluntary mobility in to these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution. In that case recognition of the appellant as a member of the Latin Catholics was held to be not relevant for the purpose of entitlement of reservation under Article 16(4) for the reason that she had an opportunity of forward class and had advantageous class and after becoming major, married to a Latin Catholic; and so is held not entitled to reservation to the Latin Catholic, a backward class.

The facts and proposition of law laid down in the fourth case viz. Dudh Nath (supra) are also distinguishable and are of no assistance to the petitioner. In this case issue was whether the Scheduled

Caste certificate produced by a person could be accepted as valid for the purpose of appointment to a Central Government's service in the background of the fact that the person and his grandparents belong to Nuniya caste, which was Scheduled Caste in the State of West Bengal, but not in the State of Bihar. Respondent's parents were living in District Howrah continuously for more than 30 years before the respondent joined service in the office of the Comptroller and Auditor General of India. Parents before coming to West Bengal were living in Siwan District in the State of Bihar where they also owned some property. Respondent had born in that District, he had schooling and graduated from a college of Bihar. He initially joined service in Customs House, Calcutta (West Bengal) and while working there, he obtained an SC certificate from the Sub-Divisional Officer, Howrah on 16.7.1995. He applied to UPSC as an SC candidate. He also indicated that his parents were ordinarily residing in District Howrah (West Bengal). On requisite enquiry, UPSC found the candidature of the respondent as of SC belonging to Nuniya caste in West Bengal and confirmed the status as such for 1996 examination. The respondent/applicant qualified the test and was appointed against the reserved vacancy as a SC candidate in the year 1968. As per the instructions issued by the UPSC, candidate claiming to be SC or ST was required to submit a certificate from the competent authority of the district on which his parents ordinarily reside. There was a note in the form which clarified that the expression 'ordinarily reside' will have the same meaning as in Section 20 of the Representation of the People Act, 1950, and held that as per the instructions, respondent was entitled to have SC certificate from District Howrah and the authority concerned was competent to issue such certificate because the respondent's parents were residing there for more than 30 years. The mere fact that the respondent for the purpose of education stayed in State of Bihar and also graduated from a college in that state, would not affect status of his parents as residents of West Bengal and they could be treated as ordinarily residents of District Howrah. Therefore, while serving in West Bengal respondent had no option, but to obtain certificate from Howrah District as he could not deviate from the instructions issued by the UPSC.

In the fifth case viz. Sobha Hymavathi Devi (supra) the facts of the case were to the effect that a woman of forward caste on marriage to man from Scheduled Tribe was held not entitled to be given the facility of reservation given to the backward community, therefore, whether it be reservation under Articles 15(4) or 16(4) or 330 or 332, the said reservation would be only beneficial to those who belong to a Scheduled Caste or Scheduled Tribe and not those who claim to acquire the status by marriage. The Supreme Court relied upon the judgement in (1996) 3 SCC 545.

As such all the five judgements are of altogether different factual background wherein proposition of laws laid down in the facts and circumstances of the case are of no assistance to the petitioner.

This Court has perused the impugned order and ground of rejection of nomination paper shown therein. There is no doubt that Dhobi caste in Datia (MP) is of OBC and not SC category. The seat of Sarpanch is reserved for SC category. Merely because the Caste certificate is issued to the petitioner from Jalon (UP) showing here of Dhobi caste belonging to SC will not make her entitled to contest the election of Sarpanch from a reserved constituency for SC category. The returning officer under the circumstances has acted in accordance with law. In this case the question involved is not as to whether the petitioner belongs to Dhobi caste or not or the certificate issued to her is validly issued or not for the purpose of enquiry etc., but the issue is as to whether a person belonging to Dhobi caste can be treated as SC for the reserved seat of Sarpanch election in Datia (MP) where Dhobi caste is recognized only as OBC.

Therefore, in the opinion of this Court, the returning officer did not commit any error of law or fact while rejecting the nomination paper of petitioner. Accordingly, Writ Petition is totally misconceived and hereby dismissed.

(Rohit Arya)
Judge

रिट याचिका क्र. 7876/2014

उच्च न्यायालय मध्यप्रदेश

बैंच ग्वालियर

मान. न्यायामूर्ति श्री रोहित आर्य, न्यायाधीश

प्रहलाद सिंह रघुवंशी

बनाम

म.प्र. शासन एवं अन्य

भारतीय संविधान अनुच्छेद 226 : उत्तरवादी क्र. 2 कलेक्टर विदिशा के आदेश दिनांक 07.11.2014 द्वारा अध्यक्ष, जनपद पंचायत बासोदा का पद ओ.बी.सी. महिला वर्ग के लिए आरक्षित किये जाने के विरुद्ध याचिका।

प्रकरण के तथ्य : म.प्र. पंचायत (उप सरपंच, अध्यक्ष एवं उपाध्यक्ष) निर्वाचन नियम 1995 के प्रावधानों के अनुसार जिले के भीतर जनपद पंचायत के अध्यक्ष पद का अनुसूचित जाति, अनुसूचित जनजाति या अन्य पिछड़ा वर्ग तथा महिलाओं के लिए आरक्षण विहित अधिकारी (कलेक्टर) द्वारा किया जाता है। तदनुसार आदेश दिनांक 07.11.2014 द्वारा कलेक्टर विदिशा ने जनपद पंचायत बासोदा का अध्यक्ष पद अन्य पिछड़ा वर्ग की महिला के लिए आरक्षित किया। दिनांक 15.12.2014 को राज्य निर्वाचन आयोग ने निर्वाचन कार्यक्रम की घोषणा की। दिनांक 15.12.2014 को ही याचिकाकर्ता द्वारा उत्तरवादी क्र. 2 को उक्त आदेश दिनांक 07.11.2014 को इस आधार पर चुनौती दी गयी कि उक्त आरक्षण नियमों के विपरीत किया जाने से निरस्त किये जाने योग्य है।

न्यायालय का आदेश : सर्वोच्च न्यायालय के पूर्ववर्ती कई आदेशों का संदर्भ देते हुए यह व्यवस्था दी गई कि निर्वाचन प्रक्रिया को प्रारंभ हो जाने के फलस्वरूप अब न्यायालय द्वारा कोई हस्तक्षेप नहीं किया जा सकता। इसके साथ ही न्यायालय ने उठाये गये तर्कों के संदर्भ में पाया कि उक्त नियमों के संदर्भ में कलेक्टर द्वारा की गयी आरक्षण की कार्यवाही में कोई त्रुटि नहीं हुई है। अतः याचिका खारिज की गयी।

**IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR**

Class of Case...W.P. No. 7876/2014

Prahlad Singh Raghuvanshi

Versus

State of M.P., & ors

Shri Vivek Jain, Advocate for petitioner.

Shri R.P. Rathi, Government Advocate for the respondents No.1 and 2/State.

Shri R.D. Jain, Sr. Advocate with Shri Sangam Jain, Advocate for the respondent No.3

Shri A.K. Nirankari, Advocate for the intervenor

O R D E R

(12.03.2015)

Rohit Arya, J

By this petition under Article 226 of the Constitution of India, petitioner has put to challenge an order dated 07/11/2014 (Anexure P/1) passed by the respondent No.2/Collector, District Vidisha whereby reserved the post of President, Janpad Panchayat, Basoda for OBC – Woman category. It is alleged that provision as contained under rule 3(6) of the Madhya Pradesh Panchayat (Up-sarpanch, President and Vice President) Nirvachan Niyam, 1995 has been violated. It is contended that as per the aforesaid provision, the seat reserved in the previous election shall not be included in the drawing lots for reservation of a particular category till all remaining Panchayats are not exhausted. In the instant election, the post of President, Janpad Panchayat, Basoda constituency has been reserved for OBC woman category again which according to counsel is contrary to rule 3(6) of the Madhya Pradesh Panchayat (Up-sarpanch, President and Vice President) Nirvachan Niyam, 1995 (hereinafter referred to 1995 Rules). Besides, it is further contended that instead of drawing lot from among all Janpad Panchayats, lot was drawn only from and out of two Janpad Panchayats, Vidisha and Basoda. It is also contrary to rule 3(6) of the 1995 Rules.

2. Per contra, learned senior counsel appearing on behalf of the respondents' raised preliminary objection as regards maintainability of writ petition on the ground that the impugned notification was passed on 07/11/2014 whereas the present writ petition has been filed by the petitioner on 15/12/2014. Besides, election programme had already set in motion and notified on 15/12/2014. Therefore, in the light of the provisions as contained under Article 243-O of the Constitution of India, no interference is warranted and the remedy lies only by way of election petition under the provisions of the Madhya Pradesh Panchayat Raj Adhiniyam, 1993 and the Rules framed thereunder. Besides, learned senior counsel further submits that there are seven Janpad panchayats, namely; Vidisha, Basoda (Ganj Basoda), Kurwai, Sironj, Gyaspur and Nateran in the district Vidisha. In the year 1994, Vidisha & Basoda, year 1999 Kurwai & Sironj, year 2004 Gyaspur & Nateran and in the year 2009 Basoda and Sironj have been reserved for OBC category.

3. With reference to the aforesaid details, State's counsel submits that for the first time in the year 1994, Janpad Panchayat Basoda was reserved for OBC category and thereafter by rotation, all the aforesaid Janpad Panchayats have been reserved for OBC category and each subsequent draw of lots, Panchayats already reserved for OBC category were excluded. In the election for the year 2014, one Janpad Panchayat was remained to be reserved for OBC, namely; Nateran and the same was reserved for OBC category. As out of the seven Janpad Panchayats, two were required to be reserved for OBC category, the same was done by drawing lot between Vidisha and Basoda as for the first time in the year 1994, Basoda and Vidisha were earmarked for OBC category. Accordingly, Basoda was reserved for OBC (Woman) category. It is submitted that there is no illegality in the matter of reserving Basoda for OBC category and the provision of rule 3(6) of the 1995 Rules; a regulatory measure has all along been followed for reservation of seats for the OBC category by rotation.

4. Counsel for the respondents No.1 and 2 further contended that the scope of interference in the matter of election under Article 226 of the Constitution of India has consistently been held by the Hon'ble Apex Court is circumscribed by self-imposed limitations, moreso, when the election machinery has been set in motion by issuance of election notification. It is further contended that the matters relating to constitution of Panchayats, composition of Panchayats, delimitation of Panchayats, allotment of seats, reservation of seats and conduct of elections are essentially for the Government to decide *albeit* with due regard and observance of the relevant Act enacted under the provisions of Articles 243B, 243C, 243D and 243K respectively and it is not for the Court how to control and regulate the manner in which the same would be done. Besides, it is submitted that there is a specific bar against interference by Courts in electoral matters as provided under Article 243O and Article 329(b) of the Constitution of India. Learned counsel refers to judgement of the Hon'ble Apex Court in the case of **State of U.P., and others Vs. Pradhan Sangh Kshetra Samiti and others, 1995 Supp (2) SCC 305 = AIR 1995 SC 1512**. Para No.44 and 45 are relevant which reads as under:

“44. It is for the Government to decide in what manner the panchayat areas and the constituencies in each panchayat area will be delimited. It is not for the court to dictate the manner in which the same would be done. So long as the panchayat areas and the constituencies are delimited in conformity with the constitutional provisions or without committing a breach thereof, the courts cannot interfere with the same. We may, in this connection, refer to a decision of this Court in *The Hingir-Rampur Coal Co, Ltd. and Others v. The State of Orissa and Others* [(1961) 2 SCR 537]. In this case, the petitioner mine owners, had among others, challenged the method prescribed by the legislature for recovering the cess under the Orissa Mining Areas Development Fund Act, 1952 on the ground that it was unconstitutional. The majority of the Bench held that the method is a matter of convenience and, though relevant, has to be tested in the light of other relevant circumstances. It is not permissible to challenge the vires of a statute solely on the ground that the method adopted for the recovery of the impost can and generally is adopted in levying a duty of excise.

45. What is more objectionable in the approach of the High Court is that although clause (a) of Article 243-O of the Constitution enacts a bar on the interference by the courts in electoral matters including the questioning of the validity of any law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made or purported to be made under Article 243-K and the election to any panchayat, the High Court has gone into the question of the validity of the delimitation of the constituencies and also the allotment of seats to them. We may, in this connection, refer to a decision of this Court in *Meghraj Kothari v. Delimitation Commission & Ors.* [(1967) 1 SCR 400]. In that case, a notification of the Delimitation Commission whereby a city which had been a general constituency was notified as reserved for the Scheduled Castes. This was challenged on the ground that the petitioner had a right to be a candidate for Parliament from the said constituency which had been taken away. This

Court held that the impugned notification was a law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made under Article 327 of the Constitution, and that an examination of sections 8 and 9 of the Delimitation Commission Act showed that the matters therein dealt with were not subject to the scrutiny of any court of law. There was a very good reason for such a provision because if the orders made under sections 8 and 9 were not to be treated as final, the result would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from court to court. Although an order under Section 8 or 9 of the Delimitation Commission Act and published under Section 10 [1] of that Act is not part of an Act of Parliament, its effect is the same. Section 10 [4] of that Act puts such an order in the same position as a law made by the Parliament itself which could only be made by it under Article 327. If we read Articles 243-C, 243-K and 243-O in place of Article 327 and sections 2 [kk], 11-F and 12-BB of the Act in place of Sections 8 and 9 of the Delimitation Act, 1950, it will be obvious that neither the delimitation of the panchayat area nor of the con- constituencies in the said areas and the allotments of seats to the constituencies could have been challenged or the Court could have entertained such challenge except on the ground that before the delimitation, no objections were invited and no hearing was given. Even this challenge could not have been entertained after the notification for holding the elections was issued. The High Court not only entertained the challenge but has also gone into the merits of the alleged grievances although the challenge was made after the notification for the election was issued on 31st August, 1994”

With the aforesaid submissions, it is contended that no interference is warranted in the instant writ petition and the same deserves to be dismissed.

5. Learned senior counsel appearing for the respondent No.3/State Election Commission supported the stand of the State's counsel and adopted the counter-affidavit filed by the respondents No.1 and 2/State.

6. Intervention has also been filed vide I.A.No.1479/15 by one of the contesting candidates, namely; Smt. Anjali Yadav w/o Manoj Yadav and submitted that the instant writ petition has been filed after elections were notified. Hence, the process of election was started and thereafter nominations have been filed. Therefore, at this stage, no interference is warranted in the matter of election in the light of Article 243O of the Constitution of India. Counsel for the intervenor adopted the counter-affidavit filed by the respondents No.1 and 2/State.

7. Heard counsel for the parties.

8. There is no dispute between the parties that the election has been notified on 15/12/2014. Challenge to the notification for reservation dated 07/11/2014 (Annexure P/1) is made by filing instant writ petition on 15/12/2014.

9. Before adverting to the contentions advanced by respective parties, it is considered apposite to refer to decisions of the Hon'ble Apex Court in the context of Article 329(b) of the Constitution of India as in the opinion of this Court, the ratio of decisions in the context thereof also have full application as regards scope of judicial review under Article 226 of the Constitution of India in the context of panchayat elections.

“243-O. Bar to interference by courts in election matters.- Notwithstanding anything in this Constitution-

(a)

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any Law made by the Legislature of a State.

329. Notwithstanding anything in this Constitution ..

(a)

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.”

10. In catena of decisions, a comprehensive detailed and authoritative pronouncement of law has been laid down by Hon'ble Apex Court explaining the object, ambit, scope, limit and extent of jurisdiction of High Court under Article 226 of the Constitution of India in the matter of election in the light of Article 329(b) of the Constitution of India.

11. Three judges Bench in the case of **Election Commission of India through Secretary Vs. Ashok Kumar and others, (2000) 8 SCC 216**, the Hon'ble Apex Court has addressed upon the issue as regards jurisdiction of the High Court to entertain writ petition under Article 226 of the Constitution of India and issue of interim direction after commencement of election process in the context of Article 329 of the Constitution of India. The term “election” as occurring in Article 329 of the Constitution of India has been held to mean and include the entire process from the issue of the notification under section 14 of the Representation of People Act, 1951 to the declaration of result under section 66 of the said Act.

12. True, it is that power of judicial review is part of a basic structure of the Constitution of India; concept no more in issue but the scope of interference under Article 226 of the Constitution of India in the light of the embargo envisaged by Article 329 of the Constitution of India is well addressed by the Hon'ble Apex Court in the case of **N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency, AIR 1952 SC 64** and reiterated in subsequent judgement in the case of **Mohinder Singh Gill Vs. Chief Election Commissioner, (1978) 1 SCC 405**. The provision as contained in Article 329 of the Constitution of India was described by the Constitution of India on two principles; (1) the peremptory urgency of prompt engineering of the whole election process without intermediate interruptions by way of legal proceedings challenging the steps and stages in between the commencement and the conclusion; (2) the provision for special jurisdiction which can be invoked by an aggrieved party at the end of the election excludes other form, the right and remedy being creatures of statutes and controlled by the Constitution of India. In **Mohinder Singh Gill's** case, the authoritative meaning of Article 329 of the Constitution of India has been further reiterated as follows:

(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election"; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the "election" and enable the person effected to call it in question, they should be brought so before a special tribunal by means of an election petition being and not be made the subject of a dispute before any court while the election is in progress."

The same principle was reiterated by the Hon'ble Apex Court in the case of **Boddula Krishnaiah and another vs. State Election Commissioner, A.P., and others, 1996(3) SCC 416**.

13. There is no cavil of doubt that aforesaid principles squarely applies to Panchayat elections as

well. For that reason alone, as a matter of fact, no interference is warranted in this writ petition. The remedy of filing an election petition is very much available to a party seeking to challenge the election of the declared/returned candidate under section 122 of the Adhiniyam, 1993 read with the Madhya Pradesh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995.

14. Therefore, in the light of constitutional limitation coupled with the fact that the impugned notification was issued on 07/11/2014 and the election programme announced and notified on 15/12/2014 and thereafter, the present writ petition has been filed on 15/12/2014, in the opinion of this Court, at this stage no interference is warranted under Article 226 of the Constitution of India.

15. However, as submissions have been advanced with reference rule 3(6) of the Nirvachan Niyam, 1995, it is considered apposite to deal with the same.

16. Provision for reservation of seats for the Scheduled Castes and Scheduled Tribes are made in the light of Article 243D of the Constitution of India and the Legislature of the State under Article 243D(6) of the Constitution of India is empowered for making provision of reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

17. Relevant for the purpose of this writ petition is rule 3(6) of the Nirvachan Niyam, 1995 and for ready reference, the same is reproduced below:

“3. Determination of reserved seats of Chair Person of Panchayat.-

(1)

(2)

(3)

(4)

(5)

(6) In subsequent general election, the Panchayats previously reserved shall be excluded from drawing lots, for that particular category till all such Panchayats are not exhausted”

18. A careful reading of the aforesaid provision suggests; (i) that all the Panchayats have to be reserved for particular category by rotation;

(ii) if Panchayat/Panchayats is/are reserved for OBC in a given election such Panchayat/Panchayats shall be excluded from drawing lots for a particular category (OBC) and (iii) **till** all remaining Panchayats are not reserved for OBC

(Emphasis supplied)

19. Therefore, the provision contemplates reservation of all Panchayats by rotation and unless all Panchayats are reserved for OBC by rotation, Panchayat already reserved for OBC should not be included in drawing of lots. After all Panchayats are reserved for OBC, as a matter of fact, the regulatory measure under rule 3(6) of the 1995 Rules is exhausted in strict sense and no further drawing of lots amongst the Panchayats is necessary though respondent/State shall ensure that all the Panchayats are reserved for OBC in a fair manner bearing in mind the object as contained under rule 3(6) of the 1995 Rules.

20. In the instant case, there is no dispute that all the Panchayats by rotation have been reserved for OBC category except Nateran which has been reserved for OBC in the instant election. Therefore, the decision of the respondent/State with reference to the reservation made in the year 1994 for the first time, regulating the reservation by drawing lots between those two Panchayats; Basoda, and Vidisha and regard being had to concept of rotation; a regulatory measure, reserved Basoda constituency for

OBC woman category, in the opinion of this Court, cannot be said to be arbitrary or in violation of rule 3(6) of the 1995 Rules for the reasons stated hereinabove.

21. That apart, there is no allegation of any mala fides or collateral purpose with oblique motive is attributed in the matter of reservation of seats. After finalization of reservation of seat for OBC as early as on 07/11/2014, the elections were notified on 15/12/2014 and thereafter election process has started.

22. In the facts and circumstances of the case, writ petition sans merit and is hereby dismissed.

(Rohit Arya)

Judge

12-03-215

रिट याचिका क्र. 1474/2015
उच्च न्यायालय मध्यप्रदेश, जबलपुर

मान. न्यायमूर्ति श्री एस.के. गंगोले, न्यायाधीश

अजय दत्त मिश्रा
बनाम
म.प्र. शासन एवं अन्य

भारतीय संविधान अनुच्छेद 226 : म.प्र. राज्य निर्वाचन आयोग के आदेश दिनांक 21.01.2015, जिसके द्वारा याचिकाकर्ता को 7 साल के सश्रम कारावास की सजा होने के आधार पर सरपंच, ग्राम पंचायत का चुनाव लड़ने से निर्हित किया गया है, को निरस्त करने के लिए याचिका।

प्रकरण के तथ्य : याचिकाकर्ता को आपराधिक प्रकरण क्र. 84/2004 में धारा 148, 307/149 भा.द.वि. के अन्तर्गत दोषी पाया गया था एवं उसे 7 वर्ष के सक्षम कारावास की सजा दी गयी थी। अतः म.प्र. पंचायत राज एवं ग्राम स्वराज अधिनियम 1993 की धारा 36 के अनुसार वह चुनाव लड़ने के लिए अनर्हित है। इसी आधार पर राज्य निर्वाचन आयोग द्वारा प्रस्तावित आदेश जारी किया गया। याचिका में यह तर्क उठाया गया कि उक्त प्रकरण में सजा होने के आदेश से 7 वर्ष की अवधि पूरी हो चुकी है, अतः याचिकाकर्ता चुनाव लड़ने की पात्रता रखता है।

न्यायालय का आदेश : प्रकरण जिसमें याचिकाकर्ता को उक्त सजा दी गई है, के विरुद्ध उच्च न्यायालय में अपील लंबित है एवं सजा निलम्बित करते हुए याचिकाकर्ता को जमानत पर रिहा किया गया है। इस प्रकार याचिकाकर्ता ने न तो निर्धारित सजा को भोगा है और न ही उसे दोषमुक्त किया गया है। ऐसी स्थिति में प्रस्तावित आदेश कानून के अनुसार है एवं याचिकाकर्ता को चुनाव लड़ने की पात्रता नहीं है।

IN THE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR
W. P. No.1474/2015

Ajay Datta Mishra
Versus
State of M.P. and others

O R D E R
(11.02.2015)

Shri P. N. Dubey, learned counsel for the petitioner.

Shri S. S. Bisen, learned G. A. for the respondent/ State.

Shri Vijay Tiwari, Advocate appeared on behalf of Shri Sidharth Seth, learned counsel for respondent No.2.

Shri Alok Bagrecha, learned counsel for the respondent No.5.

This petition has been filed against order dated 21.1.2015 (Ann. P.1). The Election Commission has rejected the nomination paper of the petitioner on the ground that the petitioner was not eligible to contest the election to the post of Sarpanch of the Gram Panchayat because he was convicted and awarded a sentence of seven years RI in a case for commission of offence under Section 148, 307/149 in Case No.84/2004.

Learned counsel for the petitioner has submitted that the Election Commission has no power and authority to reject the nomination paper of the petitioner. In support of the contention, he relied on a decision of the Division Bench of this Court in the matter of State Election Commission Vs. Ras Bihar Raghuwanshi and other, **AIR 1995 MP 245**. He further submitted that from the date of judgement of conviction seven years have been passed, hence disqualification incurred by the petitioner has been cured.

Learned counsel appeared on behalf of respondent No.5 on advance notice has submitted that the order passed by the authority is in accordance with law.

Learned Government Advocate and counsel for respondent No.2 have also advanced the same arguments.

Section 36 (1) of M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam 1993 prescribes the disqualification for being office bearer of Panchayat. The relevant provision of Section 36 (1) reads as under:

“(ii) of any other offence and had been sentenced to imprisonment for not less than six months, unless a period of five years or such less period as the State Government may allow in any particular case has elapsed since his release.”

From Section 36 (1) (a) (ii) it is clear that if a person has been convicted to imprisonment for not less than six months, he is disqualified for being office bearer of Panchayat. However, it can be allowed

after a period of five years since his release.

In the present case the petitioner has been convicted and awarded a sentence of seven years. Appeal is pending before this court. Sentence awarded to the appellant has been suspended by this court and he is on bail.

The appellant has neither undergone entire sentence nor he has been exonerated by the trial Court in appeal. In these circumstances, in my opinion the order passed by the authority is in accordance with law. When the petitioner has no legal right to contest the election, in my opinion this Court cannot entertain petition filed by the petitioner under Section 226 of Constitution of India. Hence, it is dismissed.

(S. K. Gangele)

Judge

रिट याचिका क्र. 05/2015

उच्च न्यायालय मध्यप्रदेश

बैच ग्वालियर

मान. न्यायमूर्ति श्री शील नागू, न्यायाधीश

सुरेन्द्र सिंह एवं 6 अन्य

बनाम

म.प्र. शासन एवं 3 अन्य

भारतीय संविधान अनुच्छेद 226 : दिनांक 31.01.2014 एवं 26.03.2014 को तैयार जिला मुरैना की विधान सभा की मतदाता सूची में नाम होते हुए ग्राम पंचायत बड़ा तहसील जौरा की दिसम्बर 2014 में बनाई मतदाता सूची में नाम न होने एवं आवेदन करने पर भी कोई कार्यवाही न होने पर याचिका दायर।

प्रकरण के तथ्य : याचिकाकर्ताओं के नाम जनवरी/मार्च 2014 में तैयार विधानसभा की मतदाता सूची में थे। किन्तु पंचायतों के निर्वाचन के लिए दिसम्बर 2014 में तैयार की गयी मतदाता सूची में उनके नाम नहीं थे। इस संबंध में एस.डी.ओ. जौरा के निर्देश होने पर भी उनके नाम मतदाता सूची में शामिल नहीं हुए। अतः याचिका दायर की गयी। उत्तरवादियों का तर्क था कि मतदाता सूची के प्रकाशन पर म.प्र. पंचायत निर्वाचन नियम 1993 के नियम 11 के अनुसार याचिकाकर्ताओं द्वारा कोई आपत्ति पेश नहीं की गयी। इसी बीच चूंकि नामांकन पत्र प्रस्तुत करने की अंतिम तारीख 07.01.2015 निकल चुकी है, नियम 15 एवं 15क (2) के प्रतिबंध को देखते हुए मतदाता सूची में कोई संशोधन नहीं किया जा सकता।

न्यायालय का आदेश : चूंकि याचिकाकर्ताओं ने नियम 11 के अनुसार कोई आपत्ति यथासमय पेश नहीं की, जिसका उन्हें अधिकार था, इस याचिका के माध्यम से वे न्याय पाने की पात्रता नहीं रखते। अतः याचिका खारिज की गयी।

HIGH COURT OF MADHYA PRADESH

Class of Case...W.P. No. 05/2015

ORDER SHEET (CONTINUATION)

Surendrs Singh Gurjar and Ors

Versus

M.P. State Election

O R D E R

Commission and Ors.

(03.02.2015)

Shri Arvind Dudawat Advocate for petitioner.

Shri Praveen Newaskar Dy. Govt., Advocate for respondent no. 1/State.

Smt. Ami Prabal, Advocate for respondent Election Commission.

This writ petition filed under Article 226/227 of the Constitution of India prays for the following reliefs:-

1. Issuing a Writ of Mandamus or any other suitable Writ or Order or Direction for inclusion of the names of such persons whose names are included and mentioned in Photo Electoral Roll-2014 (Supplementary) from S. No. 1088 to 1110 of List No. 1 and S. No. 1113 to 1188 of List No. 2 as mentioned in inquiry report dated 27.12. 2014 (Annexure P-7) and also the names of such registered voters of Electoral Roll (Annexure P-8) who have been shown as deleted, forthwith and also to permit them to cast their votes in the forthcoming general election of Gram Panchayat.

2. Passing any other order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

3. Costs of the petition may also be awarded to the petitioner.

2. Learned counsel for the rival parties are heard on the question of admission.

3. The principal grievance of the petitioner is that despite the names of the subsequently added petitioners finding place in the voter list dated 31.1. 2014 and 26.3. 2014 prepared for the assembly elections, their names have been wrongly deleted/ not included from the Electoral Rolls of Gram Panchayat Barah prepared in December 2014. It is further contended by learned counsel for the petitioners that despite Deputy Election Officer vide Annexure P-5 dated 17.12.2014 informing the SDO Jaura about the said wrongful deletion with direction to do the needful, no consequential remedial action of including the name of petitioners in the voter list of Gram Panchayat, Jaura has been done.

4. Learned counsel alleges violation of Sec. 5 of Panchayat Raj Adhiniyam 1993 (1993 Adhiniyam for brevity) which confers right upon every person whose name find place in the Legislative Assembly Electoral Rolls, to be included in the Electoral Roll prepared for panchayat elections of the same area. Learned counsel for the petitioners further alleges that the mandatory statutory provision contained in Sec. 5 has been breached. It is further contended by learned counsel for the petitioner that despite filing

of application contained in Annexure P-9 seeking reasons for wrongful deletion of their names from the Gram Panchayat voter list, the same has not invoked any response.

5. Per contra learned counsel for the respondent Commission contends that no objection has been made under Rule 11 of M.P. Nirvachan Niyam 1995 (1995 Niyam for brevity) of wrongful deletion or wrongful non-inclusion of the name of these subsequently added petitioners. Learned counsel for the Commission further contends that the last date for filing of nomination was 7.1. 2015 as contained in the notification issued u/S. 28 of the 1995 Niyam and therefore the bar in Proviso to Rule 15 and in Rule 15-A (2) of 1995 Niyam has come into operation. It is also contended by the Commission that the said Panchayat Elections are at advanced stage and therefore no interference is permissible in view of the constitutional bar contained in Article 243 (O). It is further contended that the petitioners have alternate remedy of preferring Election Petition after completion of election process. Reliance is placed on the decision of this court in the case of **Bhushan Ramlal Kashyap v. SDO Janjgir and Ors. reported in 1998 (2) MPLJ 710 and Hukum Singh Rajput v. Collector, Panna reported in 2002 (1) MPLJ 233.**

6. Having heard the learned counsel for the petitioner, this court is of the considered view that this petition deserves to be rejected for the reasons mentioned infra.

7. Initially on being faced by the objection posed by this court and also the respondent Commission that the petitioner has no personal grievance as he is not resident of the Gram Panchayat concerned, amendment was sought and allowed and therefore carried out by impleading six residents of the Gram Panchayat in question whose names have not been included in the Gram Panchayat Voter List.

8. The most glaring fact which comes to light in the present case is that none of the subsequently added petitioners have preferred objection under Rule 11 of 1995 Niyam against alleged wrongful non-inclusion of their names or wrongful deletion of their names from the Gram Panchayat Voter List. Not having done so, the petitioners have not exercised their right bestowed upon them in the 1995 Niyam.

9. Reliance is placed by the petitioner on Annexures P-4 and P-5 which is of no avail to the petitioners. Annexures P-4 and P-5 merely discloses that some internal correspondence took place between the officials deputed for election duty whereby some directions to the SDO was issued to look into the matter in regard to claim for wrongful deletion/non-inclusion of the name of the petitioner from the Gram Panchayat Voter List. Thus representations or directions do not absolve the petitioners from their statutory obligation to avail the remedy available under Rule 11 of 1995 Niyam by filing statutory objections. It is undisputed fact that the petitioners have not made any statutory objections under Rule 11 of the 1995 Niyam. Thus the newly added petitioners cannot avail any advantage of any direction passed by way of internal correspondence between the authorities deputed with elections duty.

10. The petitioners can seek remedy herein only when they establish that they discharged the obligation cast upon them by the statute. The obligation of preferring objection against wrongful deletion/non inclusion of their names in the Gram Panchayat Voter List has admittedly not being discharged by the petitioners. Thus, the petitioners cannot seek any remedy by invoking the power of judicial review of this court having failed to discharge their said obligation by availing the remedy under Rule 11 and 12 (5) of 1995 Niyam.

11. Learned counsel for the petitioner has placed reliance on the decision in the case of **Chief Commissioner, Ajmer v. Rahdey Shyam Dani** reported in **AIR 1957 SC 304 (para 12)** to contend that voter list is the essence of every elections. Further reliance is placed on the decision in the case of **Bir Bajrang Kumar v. State of Bihar** reported in **AIR 1987 SC 1345**. Reliance is also placed on

a recent decision of single bench of this court passed in W.P. No. 7371/14 (Dhanno Bai Parihar v.State of M.P.) which has been affirmed by the Division Bench by dismissal of WA. 23/15 on 30.1. 2015.

12. The above said verdict rendered by the Apex Court do not apply to the instant case which is being dismissed on the ground of failure of the petitioners to discharge their statutory obligations of preferring objections under Rule 11 of 1995 Niyam. Moreover the decision in the the case **Dhanno Bai Parihar (supra)** is of no avail to the petitioner as in that case this court interfered despite the last date of making nomination having expired due to the fact that despite the petitioner therein having discharged his statutory obligations of duly availing the remedy u/r 11/12 (5) of 1995 Niyam was prevented from enjoying the fruits due to the inaction of the statutory authority by failing to decide the appeal.

13. In view of the above, there is no scope for interference in the matter.

14. Consequently this writ petition deserves to be and is therefore rejected sans cost.

(Sheel Nagu)

Judge

रिट याचिका क्र. 22/2015
उच्च न्यायालय मध्यप्रदेश, जबलपुर

मान. न्यायमूर्ति श्री राजेन्द्र मेनन, न्यायाधीश
मान. न्यायमूर्ति श्री एस. के. गंगेले, न्यायाधीश

अरूण यादव

बनाम

म.प्र. राज्य निर्वाचन आयोग एवं म.प्र. शासन

भारतीय संविधान अनुच्छेद 226 : 2014-15 के दौरान पंचायतों के आम निर्वाचन की अधिसूचनाओं के अनुसार घोषित निर्वाचन कार्यक्रम के अंतर्गत मतगणना के दिनांक में परिवर्तन हेतु याचिका।

प्रकरण के तथ्य : मध्यप्रदेश में पंचायतों के सामान्य निर्वाचन हेतु म.प्र. राज्य निर्वाचन आयोग द्वारा दिनांक 15.12.2014, 20.12.2014 एवं 24.12.2014 को अधिसूचनाएँ जारी कर 3 चरणों में निर्वाचन कराने का निर्णय लिया गया। याचिकाकर्ता द्वारा दिनांक 19.12.2014 को एक अभ्यावेदन प्रस्तुत किये जाने पर आयोग ने कथित दोषों का परिभार्जन करते हुए संशोधित अधिसूचना जारी की, जिसमें यह व्यवस्था की गयी कि दिनांक 13.01.2015 को होने वाले चुनावों में मतगणना दिनांक 16.01.2015 को होगी, किन्तु परिणामों की घोषणा 25.02.2015 को की जायेगी। याचिका में यह तर्क उठाया गया कि दिनांक 16.01.2015 को मतगणना होने से सभी को परिणामों की अनौपचारिक रूप से जानकारी हो जावेगी और इस कारण बाद के चरण में होने वाला मतदान प्रभावित होगा। अतः सभी चरणों के चुनाव सम्पन्न होने के बाद ही मतगणना करायी जाय। राज्य निर्वाचन आयोग ने प्रशासनिक कठनाइयों को दृष्टिगत रखते हुए चुनाव कार्यक्रम में परिवर्तन करने में असमर्थता व्यक्त की।

न्यायालय का आदेश : पूर्व उदाहरणों एवं प्रशासनिक कठनाइयों को दृष्टिगत रखते हुए न्यायालय ने राज्य निर्वाचन आयोग के कार्यक्रम में कोई भी हस्तक्षेप करने से इंकार किया एवं याचिका खारिज की।

**IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT JABALPUR**

Class of Case...W.P. No. 22/2015

Arun Yadav
Versus
MP Rajya Nirvachan Ayog and Another

Writ Petition No : 673 of 2015

Anurag Modi
Versus
MP State Election Commission

Writ Petition No : 816 of 2015

Neeraj Singh Thakur
Versus
State of MP and others

**Present : Hon'ble Shri Justice Rajendra Menon.
Hon'ble Shri Justice S.K. Gangele.**

Shri Mrigendra Singh, Senior Advocate, with Shri
Ajay Gupta, Shri Hitendra Singh, Shri Raghvendra
Kumar, Shri Rajeev Mishra & Shri Shekhar Sharma,
Counsel for the petitioner.

Shri P.K. Kaurav with Shri Sidharth Seth, Counsel
For the State Election Commission.

Shri Swapnil Ganguly, Government Advocate,
for the respondent.

Whether approved for reporting: Yes / No.

**O R D E R
(19.01.2015)**

Per : Rajendra Menon, J:-

As common questions are involved in these three petitions are with regard to conducting elections to the Panchayats, all these petitions are being heard analogously. For the sake of convenience, pleadings and documents available in the record of Writ Petition No. 22/2015 are being referred to in this order.

2. Challenging the Notifications – Annexures P/1, P/3 and P/4 dated 15.12.2014, 20.12.2014 and 24.12.2014, issued by the MP State Election Commission in the matter of conducting elections to the Gram Panchayat, Janpad Panchayat and Zila Panchayat in the State of Madhya Pradesh in three phases, on various dates as are indicated therein, all these writ petitions have been filed.

3. During the course of hearing of the matter, the only grievance pointed out by learned counsel for the petitioners were with regard to counting of votes for the elections to the Zila Panchayat that has been held on 13.1.2015. It is the case of the petitioners that initially the elections to the Panchayats in the State of Madhya Pradesh was notified by the State Election Commission on 15.12.2014, and a three phase election programme vide Annexure P/1 was notified. It is stated that the manner in which the election programme has been notified indicates that polling for electing members of the Janpad Panchayat and the Zila Panchayat of a single District are not being completed in a single phase. It is being spread over in two or three different phases. It is stated that the petitioners, including the petitioner in Writ Petition No. 22/2015, who happens to be the State President of a political party namely – MP Congress Committee, objected to the manner in which the election was to be conducted in these phases and submitted a representation on 19.12.2014 vide Annexure P/2. Accordingly, an amended notification – Annexure P/3 was issued on 20.12.2014, curing various defects that were pointed out by the petitioners. Subsequently, another notification – Annexure P/4 has been issued on 24.12.2014, again making certain further amendments in the election process to be held.

4. However, inspite of the amended notification issued, the only grievance of the petitioners now are that for the elections to the Janpad Panchayat and the Zila Panchayat that have been held on 13.1.2015, counting of votes is to take place on 16.1.2015, but the results will not be declared. The results will be declared only on 25.2.2015. They do not have any objection with regard to postponing declaration of results, but their only objection is even if the counting of votes is held on 16.1.2015, the secrecy of the elections would be disturbed. The counting agents and others persons of the media, who would be present at the time of counting, will know as to who is elected as member of the Janpad Panchayat and thereby the elections to be held subsequently to the Zila Panchayat and the Janpad Panchayat, particularly to the Zila Panchayat would be adversely effected. It is stated that by phasing the elections in the manner done for the same District in different phases, an adverse affect would be caused on the election. Accordingly, contending that even counting of the votes for elections already held should be postponed and should be undertaken after all the polling is held after the third and final phase, these petitions have been filed under Article 226 of the Constitution.

5. In all the petitions, the only adverse affect due to the impugned process as is indicated here in above, is pointed out by contending that if the counting of votes for the elections already held with regard to election of Janpad Members and Zila Panchayat Members are undertaken before completing the second and third phase of polling for the same Janpad Panchayat and the Zila Panchayat, this would adversely influence the voters in the next phase of polling for electing the remaining Members of the same Janpad Panchayat or the Zila Panchayat.

6. Placing reliance on a judgement of the Supreme Court in the case of **D.K. Thakur Vs. Union of India, Writ Petition (C) No.207/2014**, it is stated that when the Supreme Court has prohibited publication of exit poll and opinion poll before all the polling in an election is completed, then even counting of votes polled for the elections if permitted would have the same effect as declaration of results or atleast knowing of the results by various persons and this be prohibited.

7. Keeping in view the urgency of the matter, the case was taken up for hearing on 15.1.2015 and on preliminary hearing, this court found that the Election Commission should be granted an opportunity to point out the administrative difficulties, if any, in the matter of postponing even counting of the votes till conclusion of all the phases of the election. Accordingly, a detailed affidavit indicating various administrative difficulties has been filed by the office of the Election Commission. Even though learned counsel for the petitioners tried to say that they should be granted some time to give their counter-affidavit, for the present we are of the considered view that looking to the urgency of the matter and the legal question with regard to jurisdiction of this Court to interfere in the matter at this stage, the same is not required. That apart, the Election Commission had agreed that counting of votes will not be undertaken on 16.1.2015 till hearing is held today, and as counting of votes is withheld on such undertaking given, it is necessary to consider the various aspects of the matter and take a decision as to whether the petitions should be entertained or not? As during the course of hearing serious objections were raised by Shri P.K. Kaurav to the maintainability of this petition itself, once the process of election has commenced. Accordingly, we propose to deal with the matter.

8. A serious preliminary objection has been raised by the respondents to say that this writ petitions under Article 226 of the Constitution of India, is not maintainable for the present. Placing reliance on the following judgements : **NP Ponnuswami Vs. Returning Officer, Namakkal Officer, AIR 1952 SC 64; Election Commission Vs. Shivaji and others, (1988) 1 SCC 277; Anugrah Narain Singh and another Vs. State of UP and others, (1996) 6 SCC 303; Election Commission Vs. Ashok Kumar and others, (2000) 8 SCC 216; Manda Jaganath Vs. K.S. Rathnam (2004) 7 SCC 492; Kishansing Tomar Vs. Municipal Corporation of the City of Ahmedabad and others, (2006) 8 SCC 352; and, Karnataka State Election Commission Vs. H.C. Yateesh Kumar and others, (2006) 9 SCC 181**, and by taking us through in detail the principle of law laid down in the cases of **NP Ponnuswami** (supra), **Anugrah Narain Singh** (supra) and **Ashok Kumar** (supra) so also certain observations made in the case of **Kishansing Tomar** (supra) and the Bombay High Court in the case of **Moreswar Ghaisas Vs. State of Maharashtra, (2009) 5 Bom CR 889**, Shri P.K. Kaurav argued that at this stage when the election process has already commenced, interference into the matter cannot be made by this Court, and the petitions itself are not maintainable. Learned counsel took us through various observations made by the Supreme Court in the judgements as relied upon by him hereinabove, in support of his contentions.

9. On the contrary Shri Mrigendra Singh, Senior Advocate, and Shir Ajay Gupta alongwith him and other counsel referred to the principle and the observations made by the Supreme Court in paragraph 32 of the judgement in the case of **Ashok Kumar** (supra), to rebut the contentions and say that in the facts and circumstances of the case and the nature of dispute involved in the matter, the writ petitions are maintainable.

10. That apart, in the detailed affidavit filed, the office of the State Election Commission has tried to indicate various administrative reasons and practical problems which according to them are around sufficient enough to demonstrate administrative difficulties, which should be taken note of for the purpose of considering the questions of interference with the election at this stage.

11. Before advertng to consider various question that have been posed before us, the moot question which warrants consideration by us for the present is as to whether the extra-ordinary jurisdiction available with the High Court under Article 226 of the Constitution should be exercised at this stage when the election process has already commenced and the first phase of polling has already been held on 13.1.2015 and the second and third phase of elections are now scheduled to be held on 31.1.2015 and 19.2.2015. The question is should the High Court interfere into the matter at this stage.

12. To answer the aforesaid question, it is necessary for us to go through the principle of law laid

down by the Supreme Court in various cases. For the first time, the question of interfering into an election matter once the process of election has been set into motion was considered by a Constitution Bench at Hon'ble Supreme way back in the year 1952, in the case of **N.P. Ponnuswami** (supra) and the Constitution Bench of the Supreme Court in the aforesaid case has laid down the principle that once the process of election has been set into motion, the High Court under Article 226 of Constitution should not interfere.

13. It has been held by the Supreme Court in the aforesaid case that the scheme contemplated under Part XV of the Constitution and the Statutory Act is to the effect that if the complaint made has the effect of vitiating and election the same should be taken up at an appropriate stage in an appropriate manner before a Special Tribunal and should not be brought up at an intermediate stage before any Court. It has been held by the Supreme Court that this is the meaning of the Scheme under the Constitution and any other meaning ascribed to the words appearing under Article 329 of the Constitution, particularly the word 'election' would lead to anomalies which the Constitution would not have contemplated. This includes disputes relating to pre-polling stages also. It has been held by the Supreme Court that having regard to the important functions which the Legislature has to perform in democratic countries, it has always been recognized as a matter of first importance that elections should be conducted as early as possible according to the time schedule and all controversial matters and disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted. It has been observed by the Supreme Court in the aforesaid case that even if there are any ground relating to non-compliance with the provisions or the constitution on which validity of the election process could be questioned, the persons interested in questioning the election has to wait till the election is over and institute an election petition.

14. This judgement of the Supreme Court was subsequently followed and the same principle reiterated in the case of **Shivaji** (supra). In the case of **Anugrah Narain Singh** (supra), again the same principle has been reiterated and in paragraph 11, after considering the provisions of Article 243-ZG of the Constitution pertaining to staying an election to the Municipal Corporation which is para materia to the provision as contained in the Constitution pertaining to Panchayat Election i.e... Article 243-O. In paragraph 12, it has been held that once the process of election has been set into motion, the Court should not intervene to stop election in the mid way. The question was again considered in various other cases and finally, in the case of **Ashok Kumar** (supra) a detailed consideration has been made with regard to the power to be exercised by the Court and the principle laid down in the case of **Ashok Kumar** (supra) is also to the effect that in the field of election jurisprudence, ignoring the law laid down in various cases interference by the Courts is prohibited. In paragraph 32 of the said judgement, the general principles have been summarized in the following manner:

“32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows there from in view of the analysis made by us hereinabove:

- (1) If an election, (the terms election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.
- (2) Any decision sought and rendered will not amount to “calling in question an election” if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

- (3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.
- (4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.
- (5) “The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.”

15. Subsequently, the same principle has been followed and reiterated by the Supreme Court recently in cases of **Ashok Shankarrao Chavan Vs. Madhavrao Kinhalkar and others, (2014) 7 SCC 99; Ajay Maken Vs. Adesh Kumar Gupta and another, (2013) 3 SCC 489; and, Harnek Singh Vs. Charanjit Singh and others, (2005) 8 SCC 383**. A combined reading of all these judgments go to show that settled principle of law is to the effect that a High Court exercising jurisdiction under Article 226 should be slow in interfering in election matters.

16. If the principle of law laid down in the aforesaid cases is applied in the facts and circumstances of the present case, we have no iota of doubt that once the election process has been put into motion and part of the election process has been completed, interference by us is not called for.

17. Shri Mrigendra Singh, learned Senior Advocate, and Shri Ajay Gupta invited our attention to Rule 77(c)(3) of the MP Panchayat Nirvachan Niyam, 1995 and tried to make out a case to say that by detaching the ‘detachable memory module’ from the control unit even before declaration of the result, the provisions of sub-rule (3) of Rule 77(c) is being violated and as a statutory violation is writ large, the counting of votes be stayed.

18. We are of the considered view that on such ground we cannot stay the election process or the counting process for the simple reason that under the MP Panchayats (Election Petitions, Corrupt Practices and Disqualification of Membership) Rules, 1995, conduct of an election by non-compliance of the Act or the Rules framed thereunder is a ground to declare the election as void by the Election Tribunal in an Election Petition under Section 122 of the MP Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993. That being so, this ground is available to be taken in an election petition and, therefore, on such consideration we are not inclined to interfere into the matter.

19. During the course of hearing Shri Ajay Gupta, learned counsel for the petitioner, inviting our attention to the principle laid down by the Supreme Court in paragraph 32(3) of the judgement rendered in the case of **Ashok Kumar** (supra) tried to emphasize that by procuring some additional electronic machines, the problem could be resolved and by adopting an arbitrary method, the State Election Commission is refusing to do so. He argued that in view of principles as indicated in paragraph 32(3), this Court can issue directions to take steps for procuring additional electronic voting machine and then

proceed with the election as prayed for by the petitioners.

20. We have considered this aspect of the matter in the backdrop of various administrative exigencies pointed out by the counsel for the Commission, various technical aspects are involved in the matter and we do not have the expertise to go into all these aspects of the matter and come to an evitable conclusion that this is possible. That apart, we have to take note of one exonerating circumstances which was brought on record and it is that the Higher Secondary and High School Certificate Examination are to commence in the State of Madhya Pradesh from 2nd March, 2015. It is said that if the elections are postponed and if the dates are required to be changed for making further arrangement, the entire schedule for examination would be adversely effected as the election process and various aspects connected with the election are being undertaken in various premises of the school throughout the State of Madhya Pradesh. In view of all this, at this stage we do not deem it appropriate to exercise our discretion in the matter as prayed for by Shri Ajay Gupta.

21. Once we have come to the conclusion that at this stage interference into the matter in a writ petition is not permissible, it is not necessary for us to go into various factual aspects of the matter which were highlighted before us at the time of hearing to say that there are various administrative difficulties in conducting the election and the petitioners tried to refute the aforesaid.

22. However, we may take note of one fact which has some bearing on the matter and that is in the elections to the Panchayats held in the State of Madhya Pradesh in the years 1994, 1995, 2004 and 2009, similar process of election was conducted and nothing is brought to our notice on the basis of which it can be held that due to conduct of the election by the process as impugned in this writ petition, any prejudice or illegality was committed in the last 20 years when the elections were held following the same process.

23. Even though Shri Mrigendra Singh, learned Senior Advocate, tried to emphasize that during the last 20 years whenever elections were held even though in three phases, but for one Zila Panchayat, elections were held in one phase and there was no distribution of election into different phases in the particular Zila Panchayat. However, Shri P.K. Kaurav appearing for the Election Commission has produced a chart before us with regard to the elections held in the year 2009-10, wherein it is seen that in various districts in the State of MP, elections even for the same Zila Panchayat have been held in three or four phases. For example, in the Elections to the Zila Panchayat Morena, held in the year 2009-10, elections were held in three phases. Similar statement with regard to various other Districts have been produced to say that in various Zila Panchayats in the year 2009-10 also and even much prior to that held from the year 1994, elections have been held in three to four phase and the petitioners have been unable to demonstrate before us as to what prejudice or illegalities were committed or caused in holding the election in different phases during the last 20 years.

24. That being so, after taking note of the totality of the circumstances, particularly the legal principle of law as is detailed here in above, we see no reason to interfere into the matter at this stage, when the election process has already commenced and the first phase of voting has already been concluded.

25. Accordingly, finding no ground to interfere into the matter at this interlocutory stage, when the election process has already commenced, all these petitions are dismissed

(RAJENDRA MENON)
JUDGE

(S.K. GANGELE)
JUDGE

रिट याचिका क्र. 18381/2014
उच्च न्यायालय मध्यप्रदेश, जबलपुर

मान. न्यायमूर्ति श्री ए.एम. खानविल्कर, मुख्य न्यायाधीश
मान. न्यायमूर्ति श्री के.के. त्रिवेदी, न्यायाधीश

चिन्तामनी सिंह

बनाम

म.प्र. शासन एवं 6 अन्य

भारतीय संविधान अनुच्छेद 226 : जनपद पंचायत गंगेऊ के अंतर्गत ग्राम पंचायत सेन्दाहा में किये गये आरक्षण के विरुद्ध याचिका।

प्रकरण के तथ्य : म.प्र. पंचायत राज एवं ग्राम स्वराज अधिनियम 1993 की धारा 17 के अंतर्गत कलेक्टर द्वारा उक्त ग्राम पंचायत सेन्दाहा में पंचों एवं सरपंच के लिए आरक्षण किया गया। सम्पूर्ण जनपद पंचायत गंगेऊ के लिए किये गये आरक्षण के सम्बन्ध में बिना कोई आपत्ति उठाये केवल उक्त ग्राम पंचायत के आरक्षण को चुनौती दी गयी।

न्यायालय का आदेश : सम्पूर्ण जनपद पंचायत के लिए किये गये आरक्षण को बिना चुनौती दिए केवल एक पंचायत के आरक्षण के लिए चुनौती नहीं दी जा सकती। इसके अलावा उक्त अधिनियम की धारा 91 के अंतर्गत कलेक्टर के आदेश के विरुद्ध अपील। रिवीजन प्रस्तुत करने के विकल्प का उपयोग पहिले किया जाना चाहिए। अतः याचिका खारिज की गयी।

**IN THE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR**

Class of Case...W.P. No. 18381/2014 (PIL)

Chintamani Singh
Versus
State of M.P. and others

**O R D E R
(12.12.2014)**

Shri Siddharth Singh, Advocate for the petitioner.
Shri P.K. Kaurav, Additional Advocate General for the respondents/State.
Shri Siddharth Seth, Advocate for the M.P. State Election Commission.
Heard counsel for the parties.

In this petition the challenge is to the reservation specified in respect of Gram Panchayat Sendaha in Janpad Panchayat, Gangeo. As held in companion cases [**in W.P. No.17253/2014 (Sadashiv Gadhekar v. State of M.P. and others)**], in absence of challenge to the Notification providing for reservation for the entire Janpad Panchayat the relief sought cannot be entertained. For, setting aside of reservation of one Gram Panchayat may affect the ratio of reservation of the entire Janpad Panchayat under the same Notification.

To oppose the preliminary objection regarding maintainability of the petition taken by the counsel for the State, reliance is placed on the decision of the Full Bench of this Court in **Chandrabhan Singh vs. State of M.P. and others** – 2001(2) MPHT 242 (FB). That decision takes the view that election petition can be filed after issuance of notification. For, cause of action to file election petition arises only after issuance of notification and more so because the relief will be directed against the returned candidate. There can be no quarrel with the proposition that writ petition to question the action preceding the notification to commence election process, the bar does not operate. But, as aforesaid the challenge to reservation in respect of one Gram Panchayat as against the process for the entire Janpad Panchayat cannot be countenanced. Further, the ground to challenge the election because of non-compliance of provisions of the Act and the Rules is available against the returned candidate. It is for that reason, in companion cases this Court has observed that, it will be open to the writ petitioner to pursue remedy of election petition/dispute after the conclusion of the impending election process.

In any case, this argument does not deal with the preliminary objection taken by the State and which has been accepted by us today in companion cases about availability of remedy by way of appeal under Section 91 of the Adhiniyam read with Rule 3 of the M.P. Panchayat (Appeal and Revision) Rules, 1995 against the decision of the Collector providing for reservation, being an order passed by the Collector in exercise of powers referable to the provisions of the M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 read with M.P. Panchayat Nirvachan Rules, 1995.

With reference to that preliminary objection, the argument of the petitioner, is that, Section 91 of the Adhiniyam is attracted only in respect of proceedings and orders of the Panchayat; and that the expression “other Authorities” occurring in Section 91 must be read in that context. Even this submission

does not commend to us. It is founded on complete misreading of Section 91. Section 91, in our opinion, envisages that remedy of appeal or revision is provided against the order or proceedings of a Panchayat as much as against the orders passed by “other Authorities under the Act” in exercise of powers under the Adhiniyam. The two are independent and mutually exclusive. This position is reinforced, on a bare reading of Rule 3 of the Appeal and Revision Rules of 1995. For, the said Rules segregate the orders passed by “other Authorities” such as Sub Divisional Officer, Collector and Commissioner and remedy of appeal against their decisions is provided before the superior Authority as per Rule 3 (a) to (c). Whereas, the remedy of appeal against the order of the Panchayat is before the specified Authority as given in the Table as per Rule 3 (d), which is ascribable to the first part of Section 91 (1) of the Adhiniyam.

Counsel for the petitioner then contended that the impugned order passed by the Collector, is not an order under the Adhiniyam as such. This argument clearly overlooks the statutory provision regarding the mechanism to be followed for providing reservation and the duty cast on the Collector to determine the reservation before the notification is issued by the State Election Commission to ignite the election process. Inasmuch as, Section 17 of the Adhiniyam, 1993 deals with the election of Sarpanch and Upsarpanch and for reservation of seats for Scheduled Caste and Scheduled Tribe in the Gram Panchayat within the block. In the same manner, Section 25 provides for the mechanism to be followed for election of President and Vice President of Janpad Panchayat and reservation for the Scheduled Caste and Scheduled Tribe in the District. This provisions if read with Rules 6 and 7 of the M.P.Panchayat Nirvachan Rules, 1995 which have been framed in exercise of powers conferred under Section 95 (1) read with Section 43 of the Adhiniyam, 1993, are a self-contained code regarding the reservation of seats to be done by the prescribed Authority. A priori, the impugned order of the Collector in the matter of reservation of seats during the impending elections, nevertheless, is an order passed under the Adhiniyam - for the purposes of Section 91 of the said Adhiniyam. Therefore, the said order is amenable to remedy of appeal and revision.

Taking any view of the matter, therefore, we find no reason to depart from the view taken in the companion cases for disposing of the writ petition with liberty to the concerned petitioner to take recourse to other appropriate remedy as may be permissible in law. All questions will have to be decided by the Competent Authority without being influenced by the observations made in the present order with regard to the merits of the controversy.

Disposed of accordingly.

(A.M. Khanwilkar)

Chief Justice

(K.K. Trivedi)

Judge

रिट याचिका क्र. 1294/2015

उच्च न्यायालय मध्यप्रदेश

बैच ग्वालियर

मान. न्यायमूर्ति श्री सुजाय पाल, न्यायाधीश

श्रीमती कमला देवी एवं दामोदर शर्मा

बनाम

राज्य निर्वाचन आयोग एवं 2 अन्य

भारतीय संविधान अनुच्छेद 226 : पंचायत चुनावों के दौरान मतदान केन्द्र क्र. 25 ग्राम अंधोरा तहसील सबलगढ़ जिला मुरैना में दिनांक 28.02.2015 को पुनर्मतदान कराने के राज्य निर्वाचन आयोग के आदेश के विरुद्ध याचिका।

प्रकरण के तथ्य : 2015 में आयोजित पंचायतों के आम चुनाव में याचिकाकर्ता ने जनपद पंचायत सबलगढ़ से जनपद पंचायत के सदस्य पद के लिए निर्वाचन में भाग लिया था। दिनांक 25.02.2015 को नियत मतगणना के दौरान यह पाया गया कि मतदान केन्द्र क्रमांक 25 अंधोरा में ईवीएम में पड़े मतों की संख्या 541 निकली जबकि अभिलेख के अनुसार उक्त ग्राम की मतदाता सूची में कुल मतदाता 529 दर्ज है एवं उनमें से केवल 483 ने मतदान किया था। घटना के तथ्यों से अवगत होने के बाद राज्य निर्वाचन आयोग ने नियम 72 (I)(बी) के अन्तर्गत उक्त मतदान केन्द्र में दिनांक 28.02.2015 को पुनर्मतदान एवं दिनांक 01.03.2015 को पुनर्मतगणना का कार्यक्रम निश्चित किया। इसके विरुद्ध प्रस्तुत इस याचिका में मुख्य तर्क यह दिया गया कि चूंकि याचिकाकर्ता एवं उत्तरवादी को अभी तक प्राप्त मतों में इतना अधिक अन्तर है कि इस मतदान केन्द्र की गणना का उस पर कोई प्रभाव नहीं पड़ेगा, पुनर्मदान आवश्यक है।

न्यायालय का आदेश : चूंकि चुनाव प्रक्रिया गतिशील है, उक्त आदेश में कोई हस्तक्षेप आवश्यक नहीं है। प्रभावित पक्षकार चुनाव याचिका में अपना पक्ष रख सकते हैं।

**IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR**

Class of Case...W.P. No. 1294/2015

Smt. Kamla Devi and another
Versus
The State Election Commission & others

**O R D E R
(27.02.2015)**

Shri Jitendra Sharma, Advocate for the petitioner.

Ms. Ami Prabal, Advocate for the respondent No. 1 on advance copy.

Heard on admission.

This petition filed under Article 226 of the Constitution is directed against the notice, Annexure P-1, whereby the date of re-poll in Polling Station No. 25, Anghora, Tehsil Sabalgarh, District Morena is intimated as 28th February, 2015 and recounting on 1st March, 2015.

Assailing this order, it is contended by the petitioners that the petitioners have secured more votes than complainant Smt. Neeta Rawat. It is contended that the margin of victory of petitioners was so high that question of recounting does not arise. It is contended that the complainant is cousin daughter-in-law of sitting MLA of ruling party and, therefore, re-polling and recount is directed by the Returning Officer. It is further submitted that the Returning Officer has no authority, competence and jurisdiction to direct re-poll in view of rule 72 of Madhya Pradesh Panchayat Nirvachan Niyam, 1995 (for brevity, "Niyam"). It is submitted that it is only the Election Commission, which can direct re-poll. Lastly, it is submitted that after polling and counting of the votes re-polling is impermissible.

Ms. Ami Prabal, after obtaining instructions, submits that the re-poll and recounting is not ordered by the Returning Officer. It is ordered by Election Commission after following due process and Niyam of 1995. It is submitted that the said order of Election Commission was issued on 26th February, 2015. It is further submitted that in view of rule 72 of Niyam, the Election Commission is empowered to direct re-poll. Lastly, she submits that the petitioners have an alternative remedy to assail the re-poll and recount in an election petition in the event they lose in the election.

I have heard learned counsel for the parties and perused the record.

As per the instructions of learned counsel for the respondents, re-poll is ordered by the Competent Authority, i.e., Election Commission. Thus, merely because consequential notice is issued by Returning Officer, re-poll cannot be set aside. Rule 72 (1)(b) of Niyam makes it clear that in the event of any error or irregularity in procedure which vitiates the poll at a particular polling station, the re-poll can be ordered.

During the course of argument, Ms. Ami Prabal apprised the Court that total number of voters in Polling Station No. 25 are 529, out of which 483 came to cast their votes. However, total votes found in the EVM were 541. She submitted that aforesaid facts make it clear that number of votes cast are

much more than the total numbers of voters available. Thus, in order to secure the purity, transparency and fairness in the poll, the re-poll was directed. In my view, Rule 72 (1)(b) permits the Election Commission to direct re-poll. The basic purpose to direct re-poll is to ensure purity in election and this power can be exercised even if counting had taken place in the earlier poll. In the peculiar facts of this case, the number of votes cast in the concerned polling station are much more than the number of actual voters. This discrepancy can be seen only when counting had taken place. I am unable to hold that after counting re-poll cannot be directed.

Apart from this, at his stage when re-poll is scheduled tomorrow, I am not inclined to interfere in this petition. Rule 21 of Madhya Pradesh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995, makes it clear that non-compliance of provisions of the act or Rules can be a ground to challenge and seek declaration of Election to be void. The petitioners if aggrieved by re-poll and recounting have statutory remedy under Panchayat Raj Avam Gram Sqwaraj Adhiniyam and the aforesaid Rules.

In view of the availability of the remedy and in view of statement of Ms. Ami Prabal that re-poll and recount is ordered by Election Commission, I am not inclined to interfere in this petition. The writ petition is disposed of by reserving liberty to the petitioners to avail the remedy under the Act and Rules, if required.

It is made clear that no finding in this order will come in the way of petitioners in the event they file election petition. The Election Tribunal will decide the matter on its own merits.

Petition stands disposed of.

(Sujoy Paul)
Judge

रिट याचिका क्र. 3504/2014
उच्च न्यायालय मध्यप्रदेश, जबलपुर

मान. न्यायमूर्ति श्री संजय यादव, न्यायाधीश

अनुरत सिंह लोधी

बनाम

म.प्र. शासन एवं अन्य

भारतीय संविधान अनुच्छेद 226- जिला पंचायत सागर के अध्यक्ष पद के निर्वाचन के लिए कलेक्टर सागर द्वारा आदेश दिनांक 22.02.2014 द्वारा आहूत बैठक के विरुद्ध याचिका।

प्रकरण के तथ्य : सागर जिला पंचायत के वार्ड क्र. 24 से निर्वाचित सदस्य जिला पंचायत का अध्यक्ष भी निर्वाचित हुआ। तत्पश्चात् उसके विधायक निर्वाचित हो जाने पर उक्त सदस्य का पद रिक्त हो गया जिसे भरने के लिए राज्य निर्वाचन आयोग ने दिनांक 18.02.2014 को आदेश जारी किए। इसी बीच चूंकि अध्यक्ष का पद भी रिक्त हो गया था, कलेक्टर ने आदेश दिनांक 22.02.2014 को उक्त पद के निर्वाचन हेतु जिला पंचायत सदस्यों की बैठक आहूत की। याचिकाकर्ता ने इस तर्क के आधार पर याचिका प्रस्तुत की कि सदस्य के पद को भरने के लिए आयोग का आदेश दिनांक 18.02.2014 एवं अध्यक्ष को भरने के लिए कलेक्टर का आदेश दिनांक 22.02.2014 परस्पर विरोधी है। सभी सदस्यों का निर्वाचन होने के बाद ही अध्यक्ष का निर्वाचन किया जाना चाहिए।

न्यायालय का आदेश : कलेक्टर सागर का प्रश्नास्पद आदेश म.प्र. पंचायत राज एवं ग्राम स्वराज अधिनियम 1993 की धारा 29(4) के प्रावधानों के अनुकूल है। अतः याचिका खारिज की गयी।

IN THE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR
Class of Case...W.P. No. 3504/2014

O R D E R
(28.02.2014)

Shri Rameshwar Singh, learned counsel for the petitioner.

Shri Siddharth Seth, learned counsel for the Election

Commission on advance notice.

Heard on admission.

Orders-dated 18.2.2014 and 22.2.2014 are being called in
question vide this petition under Article 226 of the Constitution of India.

By order-dated 18.2.2014, Madhya Pradesh State Election Commission, Bhopal called upon the Collector and District Election Officer (Local Election) Districts Dindori and Sagar to conduct election of 'Members' of Zila Panchayat which have fallen vacant as per M.P. Panchayat (Upsarpanch, President and Vice President) Nirvachan Niyam, 1995. Whereas, by order-dated 22.2.2014, District Election Officer convened a meeting for election of President of Zila Panchayat Sagar.

Contentions of the petitioner that unless members are elected, quorum will not be complete and that President has to be elected by the members of the Zila Panchayat. It is, accordingly, urged that notifications dated 18.2.2014 and 22.2.2014 are self-contradictory.

Contention that, President cannot be elected unless vacancies of Members are filled in, when tested on the anvil of first proviso appended to sub-section (4) of Section 29 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (for short 'Adhiniyam, 1993'), falls apart.

Sub-section (4) of Section 29 of Adhiniyam, 1993 stipulates that "If any constituency fails to elect a member, fresh election proceedings shall be commenced in such constituency within six months to fill the seat". Whereas, first proviso appended to sub-section (4) of S.29 stipulates that "Provided that further proceedings of election of President and Vice-President of Zila Panchayat shall not be stayed pending the election of a member in accordance with this sub-section".

In the case at hand, as borne out from the pleadings that Member of Ward No.24 was also a Chair Person of Zila Panchayat Sagar, consequently, contested the election of Member of Legislative Assembly of Banda Constituency and got elected, resulted in vacancy of Chair Person as well as Member of Zila Panchayat Sagar. That, in order to fill in the said post of Member, Madhya Pradesh State Election Commission, Bhopal, vide order-dated 31.1.2014, directed Collector and District Election Officer to conduct election. Simultaneously, since post of President/Chair Person had also fallen vacant, District Election Officer proceeded to elect President/Chair Person which, in the considered opinion of this Court, is being in consonance with the first proviso appended to sub-section (4) of Section 29 of Adhiniyam, 1993.

At this stage, it is also informed by learned counsel appearing on behalf of Election Commission that already President/Chair Person has been elected on the post and is being notified.

In view whereof, since there is no substance in the petition, the petition fails and is dismissed. However, there shall be no order as to costs.

(SANJAY YADAV)
JUDGE

रिट याचिका क्र. 348/2015

उच्च न्यायालय मध्यप्रदेश

मान. न्यायमूर्ति श्री शील नागू, न्यायाधीश

डॉ. दिलीप कुमार एवं अन्य

बनाम

म.प्र. शासन एवं अन्य

भारतीय संविधान अनुच्छेद 226 : याचिकाकर्ताओं ने, जो कि उच्च शिक्षा विभाग के अंतर्गत प्राध्यापक/सहायक प्राध्यापक हैं, स्थानीय संस्थाओं के चुनावों में तहसीलदारों के अधीन निर्वाचन कर्तव्य पर नियुक्त किये जाने के आदेश के विरुद्ध याचिका।

प्रकरण के तथ्य : स्थानीय संस्थाओं के आम निर्वाचन 2014-15 के दौरान पूर्व की तरह उच्च शिक्षा विभाग में कार्यरत प्राध्यापकों/सहायक प्राध्यापकों की भी पीठासीन अधिकारी एवं मतदान अधिकारी के रूप में नियुक्ति की गयी। अपने क्षेत्रान्तर्गत मतदान केन्द्रों पर निर्विघ्न रूप से मतदान सम्पन्न हो इसकी जिम्मेवारी तहसीलदार एवं अन्य कनिष्ठ प्रशासकीय अधिकारियों को सौंपी जाती है। याचिकाकर्ताओं ने इस आधार पर याचिका लगाई कि उनका वेतन एवं पद तहसीलदार से काफी ऊंचा है, अतः उन्हें तहसीलदार के नियंत्रण के अधीन निर्वाचन कर्तव्य पर पदस्थ नहीं किया जा सकता।

न्यायालय का आदेश : निर्वाचन प्रक्रिया के चलने के दौरान पीठासीन एवं अन्य मतदान अधिकारियों के नियुक्ति के मामलों में कोई हस्तक्षेप नहीं किया जा सकता। भारतीय संविधान के अनुच्छेद 51 के प्रावधानों के अनुसार राष्ट्रीय सेवा में भागीदार होना प्रत्येक भारतीय का मूलभूत कर्तव्य है। याचिका खारिज की गयी।

W.P.No.348/2015

Dr. Dilip Kumar & Others
Vs.
State of MP & Others

O R D E R
(22.01.2015)

Shri D.P. Singh, Advocate for petitioners.
Smt. Sangeeta Pachauri, Government Advocate for respondents/State.

1. I.A. No. 318/15 seeking exemption from filing additional court fees is considered and allowed for reasons mentioned therein. Petitioners are permitted to prosecute this petition jointly.

2. This petition under Article 226 of the Constitution of India has been jointly filed by 49 petitioners, who hold the post of Professor/Assistant Professor and are working under the Higher Education Department in the State of Madhya Pradesh.

3. Short but significant question that arises in this petition is as follows :-

“Whether the petitioners being Professor/Assistant Professor, who are enjoying the Pay Bands IV & III, can be deputed to discharge election duty under the Tahsildar, who enjoys comparatively much less pay scale, status and rank”

Consequential question that further arises out of the abovesaid seminal question is as follows :-

“If the above question is answered in negative, then why, and if the question is answered in affirmative, then to what relief, the petitioners are entitled to in the present situation where the process of election has reached an advanced stage where the last date of withdrawal of nomination is over and the polling is to be held on 05.02.2015.”

4. Learned counsel for petitioners in support of his contention has relied upon the instruction SL. No.28 of the respondent/Election Commission (Annexure C-P/5), which lays down certain principles to be followed while assigning the election duty, which in sum and substance emphasis that while assigning election duty, care should be taken of not deputing employee/officer of higher pay scale, rank and status under an employee/officer enjoying comparatively lower pay scale, rank and status. For convenience, relevant extract of the instructions are reproduced below:-

1. Adequate care should be taken by the District Election Officers in calling for names of officials from different government departments (both Central and State), PSUs, Banks, other institutions etc. The scale of pay, rank and status of officials to be requisitioned need to be set out in the requisition order itself for which the Chief Electoral Officer should set a uniform criteria for the State as a whole. Considering the varying scales of pay and rank prevailing in different organizations, an upper benchmark set by the Chief Electoral Officer would be most appropriate to avoid confusion and litigation. By way of illustration, in Group A category of employees, a level upto and including a certain rank needs to be prescribed instead of calling for Group-A employees;

2. In drawing up the seniority list of officials required for election duty, the District Election Officer should take into account at the outset the pay, rank and status of the officials nominated and

classify them accordingly for purposes of randomization for which detailed institutions are available. A Presiding Officer should be of higher scale/grade/rank in comparison to all Polling Officers appointed in his group.

3. In determining the rank and status of officials drawn from different pools with different pay scales the relative position of the official in his cadre/organisation may be taken into account and not merely the pay scale. By way of illustration, if a Group-D employee from any pool, even if drawing a higher scale should not be assigned duties of a Presiding Officer or Polling Officer.

5. The reliance is further placed on various orders passed by this Court contained in Annexure P/4, whereby while taking note of the Instructions issued by the Election Commission and the judicial orders passed earlier, this Court has issued direction for strict compliance of the said direction of the Commission.

6. The abovesaid instructions issued by the Election Commission are in exercise of its statutory powers under the Representative of People Act. Similar powers are vested in the State Election Commission when it holds Panchayat Elections. The sum and substance of these instructions is that officers of superior rank, status and pay scale are not deputed in election duty under officers of comparatively lower rank, status and pay scale to avoid heart burning and to achieve unhindered and smooth conduction and conclusion of the election process, which lies at the bedrock of the democratic system of governance existing in our country.

7. If an employee/officer is deputed for election duty under another employee/officer, who is inferior in rank, status and pay scale to the officer deputed, then the only grievance that may arise is that of heart burning, discontentment, discomfiture and humiliation. This kind of a posting can never lead to any adverse effect upon the service conditions of superior employee/officer.

8. Admittedly, the Service Jurisprudence recognizes the right of civil post holder not to be posted under another civil post holder enjoying lesser rank, status and pay scale. The object behind this protection available to civil post holder is to maintain the hierarchy of rank, status and pay scale in a particular service and to avoid a civil post holder enjoying junior rank, status and pay scale writing CR of a civil post holder enjoying superior rank, status and pay scale.

9. This very protection, which is available to a civil post holder in his normal service tenure can very well be borrowed and applied while testing an order of deputation of employees/officers for election duty, which is normally never more than a few weeks.

10. The said protection even in election duty is necessary to be followed so as to avoid heart burning and eventuality of an officer of inferior rank, status and pay scale recommending disciplinary action against an officer/employee of superior rank, status and pay scale in regard to some misconduct committed during discharge of election duty.

11. Having held so, this Court is now required to address the question as to whether in the given facts and circumstances of the advanced stage of process of election, is it advisable to grant any relief to the petitioners at this stage.

12. The process of three tier Panchayat elections in State of Madhya Pradesh was triggered by the issuance of the notification under Rule 28 of the M.P. Panchayat Nirwahan Niyam, 1995 on publication of the election programme on 15.12.2014. The polling for area in question is now said to be scheduled for 05.02.2015.

13. As such, at this advanced stage if interference is made and any relief is granted to the petitioners, then that will lead to disrupting and delaying the process of Panchayat election.

14. The petitioners after being deputed to election duty vide Annexure P/1 dated 26.12.2014 have undergone the requisite training on 04.10.2015 for discharging their duties as Presiding Officers/

Polling Officers-I and Polling Officers-II. The Chart annexed with Annexure P/1 further discloses that care has been taken by the Commission to depute only male Professor/Assistant Professor for the election duty.

15. In case this Court exercises power of judicial review to interference in the matter at this stage, the process of election shall come to a standstill and shall be postponed by a few weeks requiring new set of employees/officers to be deputed, who shall then be required to undergo training afresh to enable the stalled process of election to restart. Thus, this Court refrains from interference as it will lead to disruption and stalling the election process at this late stage.

16. Learned counsel for petitioners has relied upon the interim order passed by the learned Single Judge on 09.10.2015 in W.P.No. 57/2015, whereby the orders directing election duties to teachers and Assistant Professors have been stayed till the next date of hearing. A perusal of the said interim order passed by the Indore Bench on 09.10.2015 reflects that it is based upon the decision of a Division Bench in the case of **Dr. Ranjeet Singh v. Bharat Nirvachan Aayog & Others (WP No.1536/2004)**. The said decision of the Division Bench in the case of Dr. Ranjeet Singh has declined interference despite finding that Professor and Class-I Officer were deputed as Presiding Officers under Tahsildar/Naib-Tahsildar, who were working as Returning Officers, on the ground that the process of election has commenced. The relevant extract of this decision in the case of Dr. Ranjeet Singh v. Bharat Nirvachan Aayog & Others (WP No.1536/2004), which is reproduced in the interim order dated 09.01.2015 in WP No.57/2015 by the learned Single Judge at Indore Bench of this Court, is again reproduced hereinbelow for ready reference and convenience :-

“The solution is not to assign Principals and Professors and other Class-I Officers to work as Presiding Officers in constituencies where Tahsildars/Naib Tahsildars are appointed as Returning Officers, but issue of appropriate directions by the State Election Commission. However, as the election process for Panchayat elections has already commenced, we do not want to issue any instructions now, which may affect the conduct of such elections.

11. We, therefore, dispose of the petition with liberty to the petitioner to give an appropriate representation to the State Election Commission to ensure that in regard to Municipal and Panchayat elections, Class-I Officers are not assigned to work as Presiding Officers in constituencies where the Class II or Class III officers have been appointed as Returning Officers. We are sure that State Election Commission will consider the matter and issue appropriate instructions. With this observation, the petition is disposed of. The deposit of Rs.2,000/- paid by the petitioner is directed to be returned to the petitioner.”

17. Before parting this Court would like to remind the petitioners, who are Professors and Assistant Professors that rendering service in the process of election cannot merely be categorized as rendering service against a civil post, but is for achieving a much more sacrosanct object. Elections are the foundation of democracy in our country, which are required to be conducted periodically so that the people at large can have their representation and say in the process of governance at different levels. This process is not only important but cardinal for the very existence and sustenance of democracy. Democracy has been globally recognized as the best form of governance. Thus for a civil post holder to render services to ensure effective and smooth conduction and conclusion of the process of election is more important and sacrosanct than merely discharging his duties on the civil post in normal course.

18. Article 51A (d) of the Constitution of India provides that it shall be the duty of every citizen of India to render national service when called upon to do so. Participating and contributing in the effectual and unhindered conduction and completion of election process is akin to rendering national service. For convenience and ready reference, the provision of Article 51A

(d) of the Constitution of India is reproduced below :-

“51A. Fundamental duties – It shall be the duty of every citizen of India -

(d) to defend the country and render national service when called upon to do so.”

19. In this view of the matter, the petitioners ought to rise above parochial thinking of heart burning arising out of their posting in election process under an officer of junior rank, status and pay scale and discharge their election duty by treating it to be national service.

20. This Court has no manner of doubt that the importance of the process of election being national service can be understood best by the petitioners, who are experts in the field of education in their capacity as Assistant Professors and Professors in their respective subjects.

21. In view of the above, this Court declines interference in this petition which is dismissed in *limine*.

(Sheel Nagu)
Judge

रिट याचिका क्र. 8971/2010
उच्च न्यायालय मध्यप्रदेश, ग्वालियर

मान. न्यायमूर्ति श्री आर.एस. झा, न्यायाधीश

कमलेश नट

बनाम

आयुक्त राजस्व संभाग शहडोल

भारतीय संविधान अनुच्छेद 226 : जिला पंचायत शहडोल के अध्यक्ष के निर्वाचन के विरुद्ध प्रस्तुत निर्वाचन याचिका के सम्बन्ध में प्रस्तुत आपति के निरस्तीकरण आदेश दिनांक 28.06.2010 के विरुद्ध याचिका।

प्रकरण के तथ्य : याचिकाकर्ता जिला पंचायत शहडोल की निर्वाचित अध्यक्ष है। उत्तरवादी क्र. 3 ने म.प्र. पंचायत राज एवं ग्राम स्वराज अधिनियम 1993 की धारा 122 के अन्तर्गत निर्वाचन न्यायाधिकरण/आयुक्त राजस्व संभाग शहडोल के समक्ष निर्वाचन याचिका दायर की। याचिकाकर्ता ने आपति की कि याचिका उसके द्वारा विधिवत दायर नहीं की गयी है। निर्वाचन न्यायाधिकरण के आदेश दिनांक 28.06.2010 द्वारा यह आपति निरस्त की गयी।

न्यायालय का आदेश : मध्यप्रदेश पंचायत (निर्वाचन अर्जियां, भ्रष्टाचार और सदस्यता के लिए निरर्हता) नियम 1995 के नियम 3 के अनुसार चूंकि निर्वाचन याचिका प्रस्तुत नहीं की गयी थी। निर्वाचन न्यायाधिकरण का आदेश 28.06.2016 विधि के प्रावधानों के विपरीत है। अतः उसे खारिज किया गया एवं प्रस्तुत याचिका स्वीकार की गयी।

**IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR**

Hon'ble Shri Justice R.S. Jha

Class of Case...W.P. No. 8971/2010

2013 (1) MPWN 6

Kamlesh Nut

Versus

Commissioner, Revenue Division, Shahdol

O R D E R

(06.09.2012)

1. The petitioner has filed this petition being aggrieved by order dated 28.06.2010 passed by the Commissioner, Revenue Division, Shahdol and Election Tribunal in Election Petition Case No.36/Election Petition/ 2009-10.

2. The brief facts, leading to the filing of the present petition, are that the petitioner is the elected President of the Zila Panchayat, Shahdol. The respondent no.3, being aggrieved by the election of the petitioner, filed a election petition under the provisions of Section 122 of the M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as 'the Adhiniyam') and Rule 8 of M.P. Panchayat (Election Petitions Corrupt Practices and Disqualification for Membership) Rules, 1995 (hereinafter referred to as 'the Rules') before the Election Tribunal/Commissioner, Revenue Division, Shahdol.

3. The petitioner filed a preliminary objections as to the maintainability of the election petition on the ground that the election petition had not been filed by the respondent no.3 herself but had been filed by her advocate who was not specifically authorized to do so and that the copies of the election petition filed by the respondent no.3 did not contain a specific attestation to the effect that they were true copies of the election petition. It was urged that in view of the aforesaid, the election petition, filed by respondent no.3, did not comply with the mandatory requirement of Rule 3 of the Rules and was, therefore, required to be dismissed under Rule 8 and 21 of the Rules. The aforesaid objections of the petitioner has been rejected by the Election Tribunal by the impugned order dated 28.6.2010 being aggrieved by which the petitioner has filed the present petition.

4. It is submitted by the learned counsel for the petitioner that Rule 3 of the Rules provides that the election petition has to be filed and presented by the election petitioner herself or through a person specially authorized by her to do so but in the instant case the election petition was filed by the respondent no.3 through her advocate without any specific or special authorization as required by the Rules but was filed along with a general and usual Vakalatnama which did not authorize him to file the election petition and, therefore, there is no compliance of the mandatory provisions of Rule 3 of the Rules, as has been held by this Court in the case of *Suman Santosh Kumar Patel vs. Bhanwati Mahesh Pratap Patel and another*, [1999(1) MPLJ 88], *Tara vs. Dabla alias Lalita and others*, [2002(2) Vidhi Bhasvar 157=2002(2) MPHT 554], and *Kana Mandal (Smt.) vs. State of M.P. and others*, [2010 (III) MPWN 47=2010(3) MPHT 278].

5. It is further submitted that in view of the decision of this Court rendered in the case of *Baijural*

Verma vs. Additional Collector, Chhindwara and others, [2010 (1) MPHT 477], in the absence of the requisite attestation, the petition filed by the respondent no.3 deserves to be dismissed. It is urged that the aforesaid aspect has not properly been considered by the Election Tribunal and, therefore, the impugned order deserves to be set aside.

6. The petitioner has also brought on record the fact that the respondent no.3 had previously filed another election petition under the same Rules, however, section 36 of the Adhiniyam was also mentioned in the said election petition which was dismissed by the same Election Tribunal by order dated 19.2.2010 by clearly holding that the election petition under section 36 of the Adhiniyam was not maintainable and also in view of non-compliance of the mandatory provisions of Rules 3, 4 & 7 of the Rules, but the Tribunal totally ignoring the aforesaid has entertained the second petition filed by respondent No.3 which is contrary to law.

7. The learned counsel for the respondent No.3, *per contra*, submits that the election petitioner respondent no.3 was herself present alongwith her counsel on 24.2.2010 for presenting the petition before the prescribed authority and, therefore, in view of the decision of the Supreme Court rendered in the case of *Sheodan Singh vs. Mohan Lal Gautam*, [AIR 1969 SC 1024], wherein while interpreting the provisions of section 81 of the Representation of the People Act, 1951, which is not *pari materia* to Rule 3 of the Rules, has held that presence of the petitioner at the time of presentation would amount to proper presentation and, therefore, no fault can be found with the impugned order passed by the Election Tribunal. The learned counsel for the respondent No.3 further submits that mere omission to mention the words “attested true copy” in the copies of the election petition would not entail dismissal of the election petition as has been held by this Court in the case of *Mrs. Indira Singh vs. Mrs. Anjana Sharma and others* [2007(2)], Vidhi Bhasvar 169=2006(4) MPHT 152]. Relying on the aforesaid decision of the Supreme Court as well as of this Court, it is submitted by the learned counsel for the respondent No.3 that the order passed by the Tribunal is in conformity with law as it does not suffer from any infirmity or illegality and does not warrant any interference by this Court.

8. I have heard the learned counsel for the parties at length. From a perusal of the documents filed by the petitioner along with the petition as well as the submission of the learned counsel for the parties, it is apparent that the election petition, filed by the respondent No.3, was in fact prepared on 23.2.2010 and was thereafter presented and filed on 25.2.2010 as is evident from the first page of the copy of the election petition filed by the petitioner alongwith the petition as Annexure P-4 and the order sheet of the Election Tribunal, Annexure P-5. This fact is also clear from the endorsement made by the officer, who has received the election petition, on the front page of the election petition wherein he has clearly stated the date as 25.2.2010. The order sheet dated 25.2.2010, Annexure P-5, also indicates that the election petition was in fact presented by one Shri D. P. Tiwari, Advocate on behalf of respondent No.3.

9. The respondent No.3, in the reply to the objections filed by the petitioner before the Election Tribunal, copy of which has been filed along with the petition as Annexure P-7, has clearly stated that the election petition was infact presented on 24.2.2010 by the advocate alongwith whom the election petitioner respondent No.3 was present and was taken up for hearing on 25.2.2010. However, the contention of the respondent No.3 is apparently incorrect in view of the order sheet dated 25.2.2010, Annexure P-5, read in juxtaposition with the front page of the election petition, Annexure P-4, which clearly establishes that the election petition was in fact filed on 25.2.2010 and not on 24.2.2010 as stated by the respondent No.3 in her reply to the objections filed by the petitioner.

10. Admittedly, there is no averment or assertion on the part of the respondent No.3 that she was present along with her advocate on 25.2.2010 and, therefore, the absence of the respondent No.3 on 25.2.2010 is undisputed. From a perusal of the impugned order dated 28.6.2010 it is further clear that the Election Tribunal, while deciding the petitioner's objections, has totally overlooked this factual aspect

namely that the election petitioner respondent No.3 was not present alongwith her advocate on 25.2.2010 and, therefore, was not present when the election petition was actually filed on 25.2.2010.

11. I am also of the considered opinion that the reasoning given by the election tribunal for holding that the election petition was properly presented and for rejecting the petitioner's objections to the effect that as the election petition and the documents had been signed by the election petitioner respondent no.3 herself and had been filed by her advocate, therefore, it was properly presented is apparently contrary to the provisions of rules 3 & 8 of the Rules as well as the decision of this Court rendered in the case of *Suman Santosh Kumar Patel* (supra); *Tara* (supra) and *Kana Mandal (Smt.)* (supra), wherein it has specifically been held that the election petition has to be filed by the election petitioner herself/himself or by a person specifically authorized in that behalf and that a general Vakalatnama which does not specifically authorize the advocate to present the election petition does not amount to compliance of the provisions of rule 3(2) of the rules.

12. Here it would be appropriate to state that the reliance placed by the learned counsel for respondent No.3 on the decision of the Supreme Court in the case of *Sheodan Singh* (supra), is also misplaced and misconceived as the factual situation and matrix obtaining in the present petition is not identical or similar to the factual matrix obtaining in the matter before the Supreme Court inasmuch as while it was an established fact in the case of *Sheodan Singh* (supra), that the election petitioner was present at the time of presentation of the election petition, in the instant case there is no averment and in fact it is an undenied fact that the petitioner was not present along with her advocate on 25.2.2010 on the date the election petition was presented, on the contrary the assertion regarding the presence of the election petitioner respondent No.3 alongwith her advocate which has been specifically mentioned by her in her reply to the objections filed by the petitioner, Annexure P-7, is that she was present on 24.2.2010 and not 25.2.2010.

13. In view of the aforesaid discussion and the decisions of this Court, I am of the considered opinion that the impugned order dated 28.6.2010 deserves to be set aside on this count alone. As I propose to set aside the impugned order on this count alone, I do not think it necessary to advert to the other issues raised by the petitioner in the present petition.

14. In view of the aforesaid discussion, I am of the considered opinion that as the petition, filed by the election petitioner respondent No.3, was not presented by her in accordance with the requirement of rule 3 of the Rules by presenting it herself or through an authorized advocate, therefore, it was required to be rejected and dismissed in view of the provisions of rules 3, 8 and 21 of the Rules.

15. I am also of the considered opinion that in view of the facts, as discussed above, the impugned order passed by the Election Tribunal dated 28.6.2010 being contrary to law suffers from the aforementioned infirmity and illegality, and therefore deserves to be and is hereby set aside. It is, accordingly, held that the election petition, filed by respondent No.3, stands dismissed and the petition filed by the petitioner stands allowed.

16. The petition, filed by the petitioner, stands allowed. There shall be no order as to the costs.

Anil Dwivedi for petitioner; R.L. Ariha for respondent No. 1

रिट याचिका क्र. 4097/2015

उच्च न्यायालय मध्यप्रदेश

बैंच इन्दौर

मान. न्यायमूर्ति श्री एस.सी. शर्मा

श्रीमती सुब्रीगई पत्नी माचरिया भिलाला

बनाम

म.प्र. शासन एवं 6 अन्य

एवं

रिट याचिका क्र. 6732/2015

दूले सिंह आत्मज गोकुलसिंह

बनाम

म.प्र. राज्य निर्वाचन आयोग और 3 अन्य

भारतीय संविधान अनुच्छेद 226- याचिका में कहा गया है कि अनुविभागीय अधिकारी भीकनगांव (पीठासीन अधिकारी निर्वाचन याचिका) ने बिना मुद्दे निर्धारित किये एवं साक्ष्य लिए याचिकाकर्ता द्वारा प्रस्तुत निर्वाचन याचिका को खारिज कर दिया है, अतः उक्त आदेश निरस्त किया जाय।

प्रकरण के तथ्य : पंचायत निर्वाचन में असफल रहने पर याचिकाकर्ता ने म.प्र. पंचायत राज एवं ग्राम स्वराज अधिनियम 1993 सहित यथित म.प्र. पंचायत (निर्वाचन अर्जियाँ, भ्रष्टाचार और सदस्यता के लिए निरर्हता) नियम 1995 के अंतर्गत अनुविभागीय अधिकारी भीकनगाँव के समक्ष निर्वाचन याचिका प्रस्तुत की। बिना मुद्दे तय किये या कोई साक्ष्य लिए निर्वाचन याचिका अत्यन्त यांत्रिक तरीके से खारिज कर दी गयी।

न्यायालय का आदेश : बिना मुद्दे- निर्धारित एवं पक्षकारों को साक्ष्य प्रस्तुत करने का मौका दिये प्रश्नास्पद आदेश पारित करना विधि के प्रतिकूल है। अतः प्रश्नास्पद आदेश निरस्त करते हुए, प्रकरण अनुविभागीय अधिकारी को प्रत्यावर्तित किया गया।

**IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE**

S.B.:- Hon'ble Mr. S.C. Sharma, J
W.P. No.4097/2015

Smt. Subrigai W/o Bhachriya Bhilala
Versus
State of Madhya Pradesh & Six Others

WRIT PETITION No. 4099 / 2015

Smt. Naajyibai W/o Banwari Bhil
Versus
State of Madhya Pradesh & Four Others
And

WRIT PETITION No. 6732 / 2015

Dule Singh S/o Gokul Singh
Versus
M.P. State Election Commission
And Three Others

O R D E R
(26.02.2016)

Regard being had to the similitude in the controversy involved in the present cases, the writ petitions were analogously heard and by a common order, they are being disposed of by this Court. Facts of Writ Petition No. 4097/2015 are narrated hereunder.

The petitioner before this Court has filed this present writ petition being aggrieved by the order passed by the Sub Divisional Officer, Bhikangaon in respect of election petition preferred by the petitioner. The Presiding Officer has dismissed the election petition summarily without framing the issues and without recording the evidence in the matter.

Learned counsel for the petitioner has placed reliance upon the judgement delivered by this Court in the case of Ramesh Chandra Bhilala Vs. Bashir reported in **2011 (2) MPWN Note 12 and his** contention is that in the light of the aforesaid judgement, the order passed by the Sub Divisional Officer, deserves to be set aside.

This Court has carefully gone through the impugned order and after hearing learned counsel for the parties is of the opinion that the Sub Divisional Officer, has certainly not followed the prescribed procedure, as prescribed under the M.P. Panchayat Ram Evam Gram Swaraj Adhiniyam, 1955 read with The M. P. Panchayat Election Petitions Corrupt Practice and Disqualification from Membership Rules, 1995.

No issues were framed, no evidence was adduced and the election petition has been dismissed in

a most mechanical manner. There were specific averments in respect of corrupt practice, there were specific averments in respect of improper counting of votes and without permitting the petitioner to adduce the evidence and without framing of issues, election petition has been dismissed in a mechanical manner. This Court is of the considered opinion that the impugned order has been passed without permitting the parties to lead evidence and is bad in law. Accordingly it is hereby quashed.

This Court has taken a similar view in W. P. No. 6752 / 2015 (Balu s/o Bhaanji Bheel Vs. State of M.P., decided on 08/01/2016).

Resultantly, the matter is remanded back to the Sub Divisional Officer, (Election Tribunal) to decide afresh after framing the issues and to grant the parties an opportunity to lead evidence. The parties are directed to appear before the Sub Divisional Officer, on **01/03/2016**.

IN W.P.No. 6732/2015 (Dulesingh Vs. M.P. State Election Commission), the impugned order dated 30/04/2015 is set aside. The parties are directed to appear before the Sub Divisional Officer, Khilchipur on 01/03/2016.

(S. C. SHARMA)
J U D G E

रिट याचिका क्र. 235/2010
उच्च न्यायालय मध्यप्रदेश
खण्डपीठ इंदौर

मान. न्यायमूर्ति श्री पी.के. जायसवाल
मान. न्यायमूर्ति श्री मूलचन्द गर्ग

नन्दूबाई पत्नि रामसिंह
बनाम
सचिव राज्य निर्वाचन आयोग एवं अन्य

भारतीय संविधान अनुच्छेद 226: म.प्र. पंचायत राज एवं ग्राम स्वराज अधिनियम 1993 एवं म.प्र. पंचायत निर्वाचन नियम 1995 के प्रावधानों के अनुसार जनपद पंचायत जीरा के वार्ड सदस्य के निर्वाचन में नामांकन पत्रों की संवीक्षा में कोई आपत्ति नहीं की गयी। मतगणना पूर्ण होने पर परिणाम घोषित किये जाने के पूर्व नामांकन पत्र की वैधता को चुनौती दी गयी, जो रिटर्निंग ऑफिसर ने मान्य की एवं चुनाव शून्य घोषित कर दिया। इस आदेश के विरुद्ध याचिका एकल पीठ द्वारा निरस्त की गयी। इस आदेश के विरुद्ध यह अपील है।

प्रकरण के तथ्य : याचिकाकर्ता ने जनपद पंचायत जीरा के वार्ड क्रमांक 16 से आदिवासी महिला के लिए आरक्षित सीट से चुनाव हेतु नामांकन पत्र भरा। आपत्ति के अभाव में उसे मंजूर किया गया एवं उसने चुनाव में अधिकतम मत पाये। परिणाम घोषणा के पूर्व उत्तरवादी क्र. 05 ने आपत्ति उठाई कि याचिकाकर्ता का सही नाम लीलाबाई है एवं उसका नाम मतदाता सूची में नहीं है। उसने मृतक नन्दूबाई के नाम से चुनाव लड़ा है, जिसका नाम मतदाता सूची में नहीं है। अतः नामांकन पत्र ही अवैध है, अतः चुनाव शून्य घोषित किया जाय। रिटर्निंग ऑफिसर ने आवश्यक जांच करने पर शिकायत सही पायी एवं उक्त वार्ड में चुनाव को शून्य घोषित कर दिया। इस आदेश के विरुद्ध रिट याचिका प्रस्तुत की गयी जिसमें एकल न्यायाधीश ने यह कहकर मामले का निपटारा किया कि प्रकरण में तथ्य विवादग्रस्त हैं एवं उनका निराकरण चुनाव याचिका दायर किये जाने पर ही किया जा सकता है। इसी आदेश के विरुद्ध यह रिट अपील याचिकाकर्ता ने दायर की है।

युगल पीठ का आदेश : डी.बी. ने अपने आदेश में माना कि एक बार निर्वाचन प्रक्रिया के आरंभ हो जाने के बाद चुनाव प्रक्रिया से संबंधित कोई भी कार्य नहीं रोका जा सकता। असन्तुष्ट व्यक्ति म.प्र. पंचायत राज एवं ग्राम स्वराज अधिनियम 1993 की धारा 122 के अंतर्गत चुनाव याचिका दायर कर अनुतोष पा सकता है। रिटर्निंग ऑफिसर ने मतगणना की स्टेज पर नामांकन संबंधी आपत्ति स्वीकार करने एवं चुनाव को शून्य घोषित करने में त्रुटि की है एवं अधिनियम एवं उसके अंतर्गत बनाये गये नियमों के प्रतिकूल कार्य किया है। अतः उक्त आदेश निरस्त करते हुए चुनाव परिणाम घोषित करने के निर्देश दिये। यह भी स्पष्ट किया गया कि रिटर्निंग ऑफिसर के उक्त आदेश के निरस्त होने के फलस्वरूप याचिकाकर्ता को सभी परिणामी लाभ मिलेंगे।

संदर्भित केस लॉ : राज्य निर्वाचन आयोग बनाम रास बिहारी रघुवंशी-AIR 1995 मध्यप्रदेश 245

**IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE**

**D.B.:- Hon'ble Justice Shri P.K. Jaiswal &
Hon'ble Justice Shri Mool Chand Garg
WRIT APPEAL No. 235/2010**

Nandubai W/o Rai Singh

Versus

Secretary, M.P. State Election Commission, Bhopal & Others

Shri M.A. Bohra, Advocate for the appellant.

Shri Sushil Jain, Advocate for respondent No. 1.

Shri Chandra Shekhar Ujjainia, Panel Lawyer for respondents No. 2 to 4.

None for respondent No. 5.

O R D E R

Per P.K. JAISWAL, J :-

This intra Court appeal has been filed by the petitioner in writ petition No. 6655/2010, under Section 2 (1) of Madhya Pradesh Uchcha Nyayalay (*Khandpeeth Ko Appeal*) Adhiniyam, 2005, whereby learned Single Judge has held that whether the petitioner is wife of Raisingh or she is Leelabai projecting herself as Nandubai is purely disputed question of facts and these factual disputes cannot be decided in the writ petition and dismissed the writ petition with liberty to prefer an election petition, as per the provisions of M.P. Panchayat Raj Adhiniyam, 1993 read with M.P. Panchayat Nirvachan Niyam, 1995.

2. Brief facts of the case are that the petitioner submitted her form for election for the post of member of ward No. 16 of Janpat Panchayat, Jirapur. Ward No. 16 was reserved for Schedule Tribe women (Mahila) candidate. Total 15 persons including the appellant submitted their applications. After scrutiny 13 nomination papers were declared as valid. The election was held under the provisions of M.P. Panchayat Nirvachan Niyam, 1995. The scrutiny of the nomination papers were held under Section 35 of Madhya Pradesh Nirvachan Niyam, 1995 (for short 'Nirvachan Niyam'). Her nomination paper was accepted by returning officer and at the time of scrutiny of nomination paper, no objection was raised regarding the identity of the appellant (petitioner).

3. The scheme of Article 243-O (b) of the Constitution of India read in the light of Rule 35 (6) of Nirvachan Niyam, the decision of the returning officer shall be final subject to review by the Election Tribunal in duly filed election petition. The order passed by the Returning Officer accepting nomination paper is not susceptible to review to any other stage or by any authority other than Election Tribunal. It is also significant to note that the rules do not provide any appeal to the Commission or revision *suo moto* or otherwise to the Commission against the order of Returning Officer. These circumstances make it clear that whatever be the amplitude of power vested in the commission under Article 243 K and Section 42 of the Act, it does not take in the power upsetting the final decision arrived at by the Returning officer accepting or rejecting the nomination paper. As per sub-rules 8 of Rule 35 of Nirvachan Niyam once a nomination paper is accepted and included in the list prepared under sub-rule (8), its acceptance cannot be set at naught by the Returning Officer.

4. At the time of acceptance of nomination paper no objection was raised by the respondent No.

5. The election was held on the schedule date by the Returning Officer. After election counting of votes is conducted. The appellant secured 601 votes whereas respondent No. 5 Santoshibai wife of Radheyshyam Balai, secured 403 votes only. She immediately after election but before the declaration of result by the Returning Officer raised an objection on 5.2.2010 that name of the appellant was erroneously included in the voter list whereas her real name is Leelabai and she is wife of Raisingh. It is also stated that the first wife of Raisingh had expired on 16.7.1996 in an accident and compensation was also paid by the Collector in respect of first wife. The name of first wife was Nandubai. The appellant has submitted a nomination form by showing herself as Nandubai whereas she is Leelabai and prayed that election be declared as void under Section 21 (1) (c) of M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993. The office of collector-cum-District Returning Officer of District Rajgarh, vide letter dated 09.3.2010 directed the Returning Officer of Janpad Panchayat, Jirapur that as per letter received from M.P. State Election Commission, Bhopal dated 21.2.2010, no interference by the State Commission is required and directed to deal with it at your end and decide the objection. The Returning Officer, after holding an enquiry came to the conclusion that Nandubai died on 16.7.1996 and after her death a sum of Rs. 10,000/- was paid by the Collector as compensation. It is stated that in the BPL Rashan Card Form, name of wife of Raisingh is mentioned as Leelabai. As per voter list name of Leelabai did not find place. She filled her nomination paper for ward No. 16 of Janpad Panchayat, Jirapur as Nandubai and also filed her affidavit showing her name as Nandubai and due to the aforesaid, at the time of scrutiny her nominatin form was not rejected. At the time of declaration of result due to complaint filed by the respondent No. 5 Santoshibai, the matter was examined and on the basis of the fact finding enquiry election of appellant was declared as void by order dated 16.4.2010, (Annexure P/12). Relevant part of the order reads as under :-

“चूँकि मतदाता सूची में लीलाबाई का नाम नहीं है इसीलिये लीलाबाई ने नंदूबाई के नाम से जनपद सदस्य का नाम निर्देशन पत्र भरा तथा शपथ-पत्र भी नंदूबाई के नाम से लगाया। इसी डर के मारे यह अपने को नंदूबाई बताती रही ताकि फार्म निरस्त न हो। परिणाम तैयार होने पर शिकायत हुई परिणाम रोका गया तथ्यात्मक जांच उपरान्त जनपद अध्यक्ष एवं उपाध्यक्ष के चुनाव के समय भी मतदान से वंचित रखा गया। रिकॉर्ड अवलोकन से यह पाया गया कि मृतक नंदूबाई के स्थान पर लीलाबाई द्वारा चुनाव लड़ा गया जो कि पूर्णतः अपने आप में शून्य है।”

अतः म.प्र. पंचायत राज अधिनियम 1993 की धारा 21 की कंडिका ग के अनुसार लीलाबाई द्वारा जो चुनाव जनपद पंचायत जीरापुर के वार्ड क्रमांक 16 से लड़ा गया है कंडिका ग के अनुसार शून्य घोषित किया जाता है।”

On the basis of the report of Returning Officer of Janpad Panchayat, her election was declared illegal & void and the same was communicated to the Secretary, Election Panchayat Commission.

5. It is this action, which is impugned in the writ petition on the ground that once the scrutiny form was accepted and no objection was raised by the respondent No. 5 or any other candidate, thereafter, election was held and she received highest vote, her election cannot be declared as void by the Returning Officer and she could not have been deprived to participate in the process of election and the order passed by the Returning Officer is contrary to the provisions of M.P. Panchayat Raj Adhiniyam, 1993 read with Nirvachan Niyam.

6. The respondents No. 1, 2, 3 & 4 filed their reply and it has been stated that election for the post of members of Janpad Panchayat has already taken place and in case the petitioner has been deprived to contest the election, the remedy available to her is to file an Election Petition and the writ petition filed by the appellant is not maintainable and prayed for its dismissal.

7. The learned Single Judge disposed of the writ petition by holding that a disputed questions of fact of fact are involved in the petition. Relevant part of the order dated 28.6.2010 passed in writ petition reads as under :-

"In the present case, purely disputed question of facts are involved, whether the petitioner

is wife of Rai Singh or whether she is Leelabai projecting herself as Nandubai. All these factual disputes cannot be decided in the present writ petition and this Court is of the considered opinion that the petitioner certainly is at liberty to prefer an election petition, as per provisions of Madhya Pradesh Panchayat Raj Adhiniyam, 1993 read with Election Rules, 1995, ventilating her grievances before the appropriate authority."

8. Rule 21 of M.P. Panchayat Nirvachan Niyam (Election Petitions, Corrupt Practice and Disqualification for Membership) Rules 1995 (MP) provides the ground for declaring election to be void. Sub-rule of the same reads as under :-

"21. Grounds for declaring election to be void. - (1) Subject to the provisions of sub-rule (2) if the specified officer is of opinion

(a) that on the date of his election the returned candidate who was not qualified or was disqualified to be chosen to fill the seat under the Act; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination paper has been improperly rejected; or

(d) that the result of the election insofar as it concerns returned candidate has been materially affected -

(i) by the improper acceptance of any nomination; or

(ii) by a corrupt practice having been committed in the interest of the returned candidate by a person acting with the consent of the candidate or his agent; or

(iii) by the improper acceptance, refusal or rejection of any vote or the reception of any vote which is void; or

(iv) by any non-compliance with the provisions of the Act or of any rules or orders made thereunder, the specified officer shall declare the election of the returned candidate to be void.

(2) If in the opinion of the prescribed authority a returned candidate has been guilty by an agent of any corrupt practice, but the prescribed authority is satisfied-

(a) that no such corrupt practice was committed at the election by the candidate and every such corrupt practice was committed contrary to the instructions and without the consent of the candidate;

(b) that the candidate took all reasonable means for preventing the commission of corrupt practice at the election, and

(c) that in all other respect the election was free from any corrupt practice on the part of the candidate or any of his agent;

then he may decide that the election of the returned candidate is not void."

9. On perusal of the aforesaid provisions, it may be seen that improper rejection of the nomination papers has been made ground for declaring the election to be void. However, improper acceptance of nomination papers would be a ground only if the result is shown to have been materially affected.

10. It has been submitted by the learned counsel for the appellant that the learned Single Judge erred in holding that the remedy available with the appellant was to challenge the impugned order dated 16.4.2010 passed by the respondent No. 3 by filing an election petition before the prescribed authority and not by filing a writ petition before this Court. He submits that respondent No. 3 had no power and/or jurisdiction to decide the objection raised by the respondent No. 5 after conducting the entire election and also at the time of declaring the result of election of the appellant and granting certifying to that effect to the appellant and erred in entertaining the objection raised by the respondent No. 5 and

declaring the acceptance of nomination form and election of the appellant as void. It is also submitted that the respondent No. 5 after having lost in the said election from the appellant as she secured only 403 votes whereas appellant secured 601 votes she raised an objection with a motive, which is nothing but an after thought and inspite clear direction made by M.P. State Election Commission vide its communication dated 22.01.2010 to the District Election Officer contrary to the provisions of law entertained the objection and passed the order dated 16.04.2010. It is lastly submitted that once that the election was held and it came to the knowledge of the every one that appellant is going to be elected by huge margin no objection can be entertained at the stage of declaring the result of the election and if respondent No. 5 wants to challenges the said election she can challenge the same by filing election petition and no other remedy is provided under the M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 read with Nirvachan Niyam and prayed that the order of the learned Single Judge be set aside and order dated 16.4.2010 be quashed.

11. On the other hand, learned Panel Lawyer who is appearing for respondents No. 2 to 4 opposed the writ appeal and submits that appellant submitted her nomination paper in the name of dead person whereas her name was not found in the voter list. It is prayed that at the time of scrutiny of the nomination forms, this objection was not raised, but this is definitely materially affecting the election of members of Janpat Panchayat, Jirapur. Ward No. 16 and, therefore, learned Returing Officer has not committed any legal error in entertaining the objection and deciding the same under Rule 21 (1) (c) of the Rules of 1995 and prayed for dismissal of the writ appeal. It is submitted that whether appellant is Leelabai or Nandubai is a disputed question of facts and the same cannot be decided in the proceeding under Article 226 of the Constitution of India and, therefore learned writ Court has not committed any legal error in disposing of the writ petition with liberty to raise all these objection by filing an election petition under Section 122 of the M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 (for short the Adhiniyam) read with M.P. Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules 1995.

12. Section 122 of the Adhiniyam deals with election petition. It reads as under :-

“122. Election Petition. - (1) An election under this Act shall be called in question only by a petition presented in the prescribed manner :-

(i) in case of Gram Panchayat to the Sub-Divisional Officer (Revenue);

(ii) in case of Janpad Panchayat, to the Collector, and

(iii) in case of Zila Panchayat to the Divisional Commissioner and not otherwise.

(2) No such petition shall be admitted unless it is presented within thirty days from the date on which the election in question was notified.

(3) Such petition shall be enquired into or disposed of according to such procedures as may be prescribed.”

The 1995 Rules have been framed by the State Government in exercise of power conferred on it under Section 95(1) read with sub-sections (1) and (3) of section 122 of the Act. Rule 3 of the 1995 Rules provides for presentation of election petition. It reads as under :-

“3. Presentation of election petition. - (1) An election petition shall be presented to the Specified Officer during the office hours by the person making the petition, or by a person authorised in writing in this behalf by the person making the petition.

(2) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.”

Rule 4 of the 1995 Rules deals with the parties to the petition. It is relevant to reproduce the

same :

“4. Parties to the petition. - Where the petitioner in addition to claiming a declaration that the election, of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected he shall join as respondents to his petition all the contesting candidates at the election.”

Rule 5 provides what an election petition should contain and Rule 6 provides what reliefs may be claimed by the petitioner. Rule 21 stipulates the ground for declaring the election to be void.

13. The 1995 Nirvachan Niyam has been framed by the State Government in exercise of the power conferred on it under Section 95 (1) read with sub-section (1) & (3) of Section 122 of the Act. Rule 3 of the 1995 Nirvachan Niyam provide for presentation of election petition. Rule 4 of the 1995 Nirvachan Niyam deals with the parties to the petition. Rule 5 provides that an election petition should contain and Rule 6 provides what reliefs may be claimed by the petitioner. Rule 21 stipulates the ground for declaring the elction to be void.

14. The Division Bench of M.P. High Court in the case of ***State Election Commission, Bhopal v/s. Ras Bihari Raghuwanshi***, reported in **AIR 1995 Madhya Pradesh 245**, has hel that acceptance or rejection of nomination paper is susceptible to review only by Election Tribunal. The election commission has no jurisdiction to interfere with it. Para 17 and 20 are relevent of the said decision which reads as under

“17. In the present case, nomination papers of all but one of the candidates have been rejected on the ground that there are unauthorized over-writings in nomination papers. Election commission took the view that these over-writing were made by one of the Election Officers who tampered with the same. It was on this ground that the Election Commission interfered. It is true that Art. 243-K (1) of the Constitution and S.42 of the Act vest in the Commission, superintendence, direction and control of the preparation of electoral rolls for, and the conduct of election and R.17(3) of the Rules confers on the Commission power to issue such special or general orders or directions which may not be inconsistent with the provisions of the Act for fair and free elections. Rule 33(6) declares that the order accepting or rejecting the nomination paper passed by the Returning Officer shall be final. As observed in N.P. Ponnuswami’s case (AIR 1952 SC 64), the only significance which the rejection of a nomination paper has consists in the fact that it can be used as a ground to call the election in question. As in the case of Art. 329(b), so also in the case of Art. 243-O(b), it can be said that the provision is enacted to prescribe manner in which and the stage in which this ground and other grounds which may be raised in law to call the election in question could be raised. As observed in N.P. Ponnuswami’s case, by necessary implication, it follows from the language of the provision that these grounds cannot be urged in any other manner or at any other stage and before any other Court. The scheme of Art. 243-O(b) read in the light of R.33 (6) is that the decision of the Returning Officer shall be final, subject to review only by the Election Tribunal in a duly filed, Election Petition. The order passed by the Returning Officer accepting or rejecting the nomination paper is not susceptible to review at any other stage or by any authority other than Election Tribunal. It is significant to note that the rules do not provide an appeal to the Commission or revision suo motu or otherwise to the Commission against the order of the Returning Officer. These circumstances make it clear that whatever be the amplitude of the power vested in the commission under Act 243-K and Section 42 of the Act, it does not take in the power of up-setting the final decision arrived at by the Returning Officer accepting or rejecting the nomination paper. The Election Commission has no jurisdiction to interfere at that stage in that matter.

20. *The last argument advanced by the learned counsel for the appellants is based on Rule 17(3) of the Rules, according to which the Commission has power to issue special or general orders or directions not inconsistent with the provisions of the Act to ensure free and fair elections. Learned counsel contended that this power would take in the power to countermand elections on account of wrongful rejection of nomination papers. We have already indicated that the scheme of the provisions relevant for the purpose is to treat the decisions of the Returning Officer as final subject only to review by the Election Tribunal. The intervention of the Election Commission on account of wrongful rejection or acceptance of nomination papers would throw the entire election machinery out of gear and is against the scheme of the provisions. Learned counsel for the appellants tried to present a horrendous picture of large number of Returning Officers wrongfully rejecting or accepting nomination papers on account of political or other motives. An equally horrendous picture can be presented of the Election Commission unnecessarily interfering and upsetting the entire process of election. We think that either of the views is only an extreme view which cannot be taken cognizance by the Court. Illegal rejection or acceptance of nomination papers, even illegal rejection of nomination papers leading to the only one candidate being left in the field is capable of correction by the Election Tribunal, thereby safeguarding the legality and purity of election. Rule 17(3) of the Rules cannot be regarded as empowering the Commission to interface with the order passed by the Returning Officer accepting or rejecting the nomination papers. Wrongful acceptance or rejection of nomination paper is a ground which could be urged in Election Petition under the M.P. Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules. 1991.*

15. In the case at hand, nomination form of the appellant of the election petition was accepted by the Returning Officer. At the time of scrutiny no objection was raised by the respondent No. 5. Thereafter, election was held and in the election of Ward No. 16 of Janpad Panchayat, the appellant secured 601 votes. At the time of declaration of the result of election the respondent No. 5 raised an objection regarding improper acceptance of nomination papers of the appellant. In the instance case, the appellant has categorically stated that she had filed the documents to show that she was eligible to contest the election and the returning officer on that basis accepted her nomination form. It needs no special emphasis to state that at that time of scrutiny a candidate can satisfy the returning officer with regard to her eligibility. Quite apart from the above, there was no opposition with regard to her eligibility. Under these circumstances, we are of the considered view that once the nomination form of the appellant was accepted by the returning officer and election was held and in the said election she had secured more votes in comparison to the respondent No. 5, no objection can be raised at the time of declaration of the result of the appellant.

16. The respondent No. 5, if any way, aggrieved by the improper acceptance of the nomination form of the appellant, she can challenge the same by filing a proper election petition before the election tribunal.

17. In this case, as stated above, the appellant had been orally told that she had won and only result is to be declared and thereafter, a certificate is to be granted to the appellant. Once the election process started and voting is completed, the only remedy of aggrieved party is an election petition under Section 122. At this stage, respondent No. 5 could not have approached the Returning Officer. The only remedy, therefore available to the respondent No.5 was to file an election petition. The learned Returning Officer committed an error in accepting the objection and deciding the same in favour of the respondent No. 5. Her only remedy would be to file an election petition under Section 122. In such a case, the Court or the Tribunal is bound to consider the objection of the respondent No. 5 and where case is made out, it may direct for re-election or reject nomination form of the appellant depending

upon the evidence led by the parties. In the present case, there was obvious error in declaring the appellant as invalid.

18. The learned returning officer acted dehorse to the provision of the Adhiniyam, 1993 and the Rules framed thereunder and prior to declaration of the result of the appellant directed for facts finding enquiry and on the basis of said enquiry declared the election of appellant as void by order dated 16.04.2010 (Annexure P/12). Accordingly, we are inclined to quash the impugned order as well as the order passed by the writ Court and all subsequent proceedings and direct that the returning officer shall declare the result of the election of Word No. 16 of Janpad Panchayat, Jirapur and accordingly it is so directed.

19. Resultantly, the writ appeal is allowed. It is hereby made clear that the appellant shall reap all the consequences of the quashment of the order dated 16.4.2010 contained in the (Annexure P/12). There shall be no order as to costs.

(P.K. JAISWAL)

Judge

(MOOLCHAND GARG)

Judge

रिट याचिका क्र. 11540/2010

उच्च न्यायालय मध्यप्रदेश

खण्डपीठ इन्दौर

मान. न्यायमूर्ति एस.सी. शर्मा

बलराम कुमावत

बनाम

रिटनिंग आफिसर उज्जैन एवं सात अन्य

भारतीय संविधान अनुच्छेद 226- याचिकाकर्ता द्वारा रिटनिंग आफिसर के समक्ष प्रस्तुत निर्वाचन याचिका में पुनर्मतगणना का मुद्दा बनाये जाने पर भी इस संबंध में कोई निष्कर्ष निकाले बिना निर्वाचन याचिका खारिज करने के आदेश दिनांक 27-08-2010 के विरुद्ध याचिका।

प्रकरण के तथ्य : याचिकाकर्ता ने ग्राम पंचायत सियावरा तहसील घटिया जिला उज्जैन के सरपंच के चुनाव में भाग लिया था जिसमें उत्तरवादी संजय निर्वाचित घोषित हुआ। म.प्र.पंचायत राज एवं ग्राम स्वराज अधिनियम 1993 की धारा 122 के अंतर्गत चुनाव याचिका में अन्य बातों के अलावा मतदान केन्द्र 18 एवं 19 में पुनर्मतगणना का बिन्दु उठाया गया था एवं निर्वाचन न्यायाधिकरण ने निर्धारण हेतु बिनु क्र. सी में पुनर्मतगणना का मुद्दा स्वीकार भी किया था। किन्तु निर्वाचन न्यायाधिकरण ने केवल यह उल्लेख करते हुए कि रिटनिंग आफिसर ने पुनर्मतगणना की अर्जी पर विचार किया था, उस बिन्दु पर बिना कोई निष्कर्ष या निर्णय देते हुए आवेदन पत्र को आदेश दिनांक 27.08.2010 द्वारा खारिज कर दिया। इसी आदेश के विरुद्ध याचिका प्रस्तुत की गयी।

न्यायालय का आदेश : यह अविवादित है कि रिटनिंग आफिसर के समक्ष पुनर्मतगणना हेतु दो आवेदन पत्र प्रस्तुत हुए थे। उन पर क्या निर्णय हुआ, इसका कोई दस्तावेज अभिलेख में नहीं है। निर्वाचन न्यायाधिकरण ने इस बिन्दु को विशेष रूप से मुद्दा बनाया था। किन्तु इस पर कोई निष्कर्ष नहीं निकाला गया। अतः आदेश दिनांक 27.08.2010 निरस्त करते हुए प्रकरण इस निर्देश सहित प्रत्यावर्तित किया गया कि प्रत्येक बिन्दु पर साक्ष्य के आधार पर निष्कर्ष निकाला जाय एवं तदुपरांत प्रकरण का निराकरण किया जाय।

**IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE**

S.B.:- Hon'ble Mr. Justice S.C. Sharma, J

W.P. No.11540/2010

Balram Kumawat

Versus

The Returning Officer, Ujjain & Seven Others

O R D E R

(20.09.2011)

The petitioner before this Court has filed this present writ petition being aggrieved by the order dt. 27/8/2010 passed by the Election Tribunal in Election Petition No. 02/A-89 (21) / 2009 – 2010.

The contention of the petitioner is that he has participated in an election for the post of Sarpanch in respect of Gram Panchayat Sipawra, Tehsil Ghatia, Distt. Ujjain and respondent No.2 – Sanjay was declared as an elected candidate. Petitioner has further stated that an election petition was preferred u/ S. 122 of the MP Panchayat Raj Evem Gram Swaraj Adhiniyam, 1993 and issues were framed by the election Tribunal. Petitioner has drawn the attention of this court towards the issues framed by the election Tribunal and there is a specific issue ie., Issue No. C for recount of votes in respect of Polling Booth No. 18. The further contention of the petitioner is that applications were preferred after counting was over in respect of Polling Booth No. 18 and 19 on 21/1/10 (Annexure P/10 and P/11) and both the applications were received by the Returning Officer. Her contention is that her applications were not entertained by the Returning officer and a specific issue was framed by the Election Tribunal in the Election Petition preferred by the present petitioner, however, the election tribunal in a most mechanical manner has dismissed the election petition without deciding the issues framed by the Tribunal by holding that the applications of the petitioner for recount were considered by the Returning Officer. Learned counsel for the petitioner has drawn the attention of this court towards last paragraph of the order passed by the election Tribunal dt. 27/8/10 wherein it has been admitted by the Tribunal that objections were preferred in the matter of counting of votes and a request was also made for recounting of votes. The election Tribunal has observed that the objections were considered by the Returning Officer. The contention of the petitioner is that there is no material on record which establishes that the objections were considered at any point of time and without deciding the issues on merits, the election petition has been dismissed mechanically.

Learned counsel appearing for the respondent No.2 has vehemently argued before this court that the election Tribunal has rightly dismissed the election petition and the objections preferred by the petitioner were considered by the Returning Officer. He has also argued before this court that the applications preferred by the petitioner as contained in Annexure P/10 and P/11 dt. 21/1/10 were considered by the Returning Officer and the election Tribunal has rightly passed the impugned order. He has prayed for dismissal of the writ petition.

Learned Government Advocate has argued before this court that the election Tribunal has decided the election petition keeping in view the provisions of the Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 and the petitioner has submitted his applications in

respect of recount only after the counting was over and the applications were received by the Returning Officer at 8:20 pm and therefore the question of allowing the petition does not arise.

Heard learned counsel for the parties at length and perused the record.

In the present case, it is not disputed by the respondent State or by the private respondent that two applications were preferred by the present petitioner before the Returning Officer (Annexure P/ 10 and P/11) for recount of votes. Section 80 of the MP Panchayats Nirvachan Niyam, 1995 reads as under :

80. Recount of votes. (1) After an announcement has been made by the Returning officer or such other officer authorised by him of the total number of votes polled by each candidate under sub rule (2) of rule 77 a candidate or in his absence his election agent or his counting agent may apply in writing to the Returning Officer or such other authorised by him for a recount of all or any of the votes already counted, stating the grounds on which he demands such recount.

(2) on such an application being made the Returning Officer or such other officer authorised by him shall decide the matter and may allow the application in whole or in part or may reject it in toto if it appears to him to be frivolous or unreasonable.

(3) every decision of the Returning Officer or such other officer authorised by him, under sub rule (2) shall be in writing and contain the reasons therefor.

(4) if the Returning officer or such other officer authorised by him, decides under sub rule (2) to allow an application either in whole or in part he shall -

(a) count the ballot papers again in accordance with his decision;

(b) amend the result sheet to the extent necessary after such recount; and

(c) announce the amendment so made by him.

(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) the counted ballot papers shall be bundled and kept in the manner mentioned in sub rule (3) of rule 77.

(7) Result sheets in Form 16, 17, 18 and 19 for Panch, Sarpanch, Member of Janpad Panchayat and Member of Zila Panchayat respectively prepared by such other officers as are authorised by the Returning Officer, shall be submitted by them in separate envelopes to the Returning Officer for compilation and tabulation of votes polled by each candidate.

(8) The Returning Officer on receipt of result sheets under sub rule (7) shall enter of cause to be entered the total number of votes polled by each candidate contesting for a seat of Sarpanch, Member of Janpad Panchayat or Member of Zila Panchayat at each polling station of the concerned constituency in subsequent part or parts of Form 17, 18 and 19 respectively and complete and sign the result sheet.

There is no document on record to establish that the returning officer has considered the applications preferred by the present petitioner (election petitioner). Not only this, the Election Tribunal except for observing that it is reflected that the applications of the petitioner were considered, has not referred to

any evidence. (परिलक्षित होता है). A specific issue was framed by the Election Tribunal in respect of Booth No.18 and in respect of recount. However, the same has not been dealt with by the Election Tribunal by taking into account the, evidence adduced during the trial of the election petition. This Court is of the considered opinion that the matter deserves to be remanded back to the election Tribunal to decide the issues framed by the Election Tribunal by taking into account the evidence evidence recorded during the trial of the election petition. The election tribunal after appreciating the evidence and after arriving at a categoric finding in respect of the issues shall answer the issues as framed in the Election petition and shall pass a reasoned order in the matter.

Resultantly, the writ petition is allowed. Impugned order dt. 27/8/2010 is accordingly quashed. Petitioner as well as respondents are directed to appear before the Election Tribunal on 28/9/2011. The election Tribunal shall decide the election petition in accordance with law as expeditiously as possible, preferably within a period of 3 months from the date of receipt of certified copy of this order. With the aforesaid, this petition stands disposed of. No order as to costs.

(S. C. SHARMA)
J U D G E

रिट याचिका क्र. 3896/2016

उच्च न्यायालय मध्यप्रदेश

बैच इन्दौर

मान. न्यायमूर्ति श्री विवेक रूसिया, न्यायाधीश

श्री गजराज सिंह खीची

बनाम

म.प्र. राज्य निर्वाचन आयोग एवं एवं अन्य

भारतीय संविधान अनुच्छेद 226- याचिकाकर्ता के ग्राम पंचायत सतनखेड़ी, खिलचीपुर के सरपंच के पद पर निर्वाचित होने के उपरांत चुनाव याचिका में एस.डी.ओ. के आदेश दिनांक 30.05.2016 द्वारा उसके निर्वाचन को निरस्त करने के विरुद्ध याचिका।

प्रकरण के तथ्य : उत्तरवादी क्र. 3 दूल्हे सिंह को विनिर्दिष्ट अधिकारी एवं एस.डी.ओ. (रेवेन्यू) खिलचीपुर के आदेश दिनांक 07.09.2009 द्वारा म.प्र. पंचायत राज एवं ग्राम स्वराज अधिनियम 1993 की धारा 40 के अंतर्गत 6 वर्ष के लिए चुनाव लड़ने के लिए निरहित किया गया था। अपील में अपर कलेक्टर ने आदेश को निरस्त करते हुए पुनः प्रकरण एस.डी.ओ. को रिमाण्ड किया। इस आदेश से असंतुष्ट होकर उसने उच्च न्यायालय में रिट याचिका क्र. 445/2010 दायर की, जिसमें उसे कोई अंतरिम राहत नहीं दी गयी एवं याचिका लंबित रही। इसी बीच दिनांक 31.01.2015 तक नवीन निर्वाचन के लिए नामांकन बुलाये गये। याचिकाकर्ता के साथ उत्तरवादी क्र.3 ने भी नामांकन भरा। चूंकि उसका नामांकन स्वीकार किया गया, उत्तरवादी क्र.1 एवं 2 ने अपने नामांकन वापिस ले लिए। बाद में निरर्हता संबंधी जानकारी मिलने पर रिटर्निंग आफिसर ने उत्तरवादी क्र.3 का नामांकन निरस्त कर दिया। अतः याचिकाकर्ता बिना विरोध के सरपंच निर्वाचित घोषित हो गया। उत्तरवादी क्र. 3 ने चुनाव याचिका दायर की, जो इस आधार पर दिनांक 30.04.2015 को निरस्त हो गयी कि वह निरहित घोषित था। इसके विरुद्ध प्रस्तुत रिट याचिका क्र.6732/2015 में पारित आदेश दिनांक 26.02.2016 द्वारा आदेश दिनांक 30.04.2015 निरस्त किया गया एवं निर्देश दिये गये कि चुनाव याचिका पर मुद्दे तय कर निराकरण किया जाय। पुनः सुनवाई के बाद चुनाव याचिका मंजूर की गयी और याचिकाकर्ता का चुनाव इस आधार पर निरस्त किया गया कि नामांकन स्वीकार करे लेने के उपरांत उसे निरस्त करने का अधिकार रिटर्निंग आफिसर को नहीं है। इसी आदेश दिनांक 30.05.2016 के विरुद्ध यह दायर की गयी है।

न्यायालय का आदेश : उत्तरवादी क्र.3 की निरर्हता दिनांक 06.09.2015 तक होने से उसे जनवरी 2015 में नामांकन आवेदन पत्र पेश करने की पात्रता नहीं थी। पूर्व में स्वीकृत नामांकन पत्र को बाद में दिनांक 16.01.2015 को निरस्त किये जाने को रिट याचिका क्र. 448/2015 में चुनौती दी गयी। किन्तु बाद में उसे वापिस लेने के फलस्वरूप निरस्ती का आदेश अंतिम हो गया। चूंकि उत्तरवादी क्र.3 को दिनांक 06.09.2015 तक चुनाव लड़ने की पात्रता नहीं थी, आदेश दिनांक 30.05.2016 निरस्त किया गया एवं याचिकाकर्ता को सरपंच की हैसियत से काम करने देने के आदेश दिये गये।

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE
S.B: HON'BLE SHRI JUSTICE VIVEK RUSIA
W.P. No.3896/2016

Gajraj Singh Khichi
Versus
M.P. State Election Commission & Others

Shri Ajay Bagadiya, Advocate with Shri Gajendra Singh for the petitioner. Shri Govind Purohit,
Advocate for respondent No.1.
Shri Yogesh Mittal, G.A for the respondent No.2.
Shri Manoj Manav, Advocate for respondent No.3.

O R D E R
(Passed on 04.08.2016)

Petitioner has filed the present petition being aggrieved by the order dated 30.5.2016 passed by the S.D.O, Khilchipur by which election of the petitioner to the post of Sarpanch, Gram Panchayat, Satankhedi, Khilchipur has been set aside.

2. Facts of the case which are not disputed are as under. Vide order dated 7.9.2009 passed by the S.D.O (Revenue) and the Specified Officer, Khilchipur, respondent No.3 Dule Singh was debarred from contesting election for a period of six years in exercise of powers conferred under section 40 of the M.P Panchayat Raj Evan Gram Swaraj Adhiniya, 1955. Respondent No.3 challenged the said order before the Additional Collector in appeal in which vide order dated 25.09.2009 he has set aside the impugned order and remanded the case to the SDO, Khilchipur. Being dissatisfied by the said order respondent No.3 preferred writ petition No.445/2010 before this Court on 19.1.2015. In the said petition notices were issued to the respondents but no interim relief was granted meaning thereby the order of debarment of the respondent No.3 dated 7.9.2009 continued in operation.

3. Meanwhile elections of the Gram Panchayat were declared and nomination papers were invited up to 31.01.2015. Respondent No.3, petitioner and two others viz. Jasrath Singh and Mahendra Singh submitted their nomination forms. Vide order dated 8.1.2015 nomination forms were accepted and symbols were allotted. Since the filing of nomination form by respondent No.3 was accepted by the Returning Officer two other candidates i.e. Jasrath Singh and Mahendra Singh withdrew their nomination forms. Later on objection was submitted by the present petitioner that respondent No.3 is disqualified to contest the election of the Gram Panchayat and his nomination paper was wrongly accepted, the Returning Officer vide order dated 16.01.2015 rejected the nomination form of the respondent No.3. Being dissatisfied by the order dated 16.1.2015 respondent No.3 preferred a writ petition before this Court i.e. W.P.No.448/2015. Vide order dated 27.01.2015 the prayer for interim relief was rejected by this Court against which a writ appeal was filed i.e. W.A.No.57/2015 which was dismissed vide order dated 03.02.2015.

4. After dismissal of the writ appeal respondent No.3 withdrew the writ petition on 16.2.2015 with liberty to avail alternative remedy.

5. That Jasrath Singh and Mahendra Singh, who happens to be father and brother of respondent No.3 also filed a writ petition i.e. W.P.No.451/15. That writ petition was also dismissed with liberty to file an election petition vide order dated 27.01.2015.

6. That election has been held in which petitioner was elected as Sarpanch unopposed. In pursuant to the withdrawal of writ petition No.448/2015 respondent No.3 preferred election petition before the election Tribunal. The election Tribunal vide order dated 30.4.2015 dismissed the election petition on the ground that respondent No.3 was disqualified to contest election for a period of six years. Being dissatisfied with the order dated 30.4.2015 respondent No.3 preferred writ petition No.6732/15 before this Court.

7. That the writ petition No.6732/15 came up for arguments along with other writ petitions in which identical issues were involved. Vide order dated 26.2.2016 all the writ petitions were allowed and the order of election Tribunal were set aside on the ground that before dismissing the election petitions issues were not framed and the election petition can only be decided after framing issues and evidence thereof.

8. After passing the order dated 26.2.2016 election petition of respondent No.3 was restored by the SDO, Khilchipur. After notice to the respondents in the election petition i.e. present petitioner and Returning Officer, issues were framed whether nomination form of the election petitioner i.e. respondent No.3 was illegally rejected and if yes then the effect? In the election petition both the parties led their evidence on the basis of their pleading.

9. During the pendency of this election petition writ petition No.445/15 filed on 19.1.2015 by the respondent No.3 Dule Singh against the order dated 7.9.2009 (i.e. the order passed by the SDO in which he was debarred for a period of six years) came up for hearing and vide order dated 3.3.2016 petition was disposed of with an observation that the impugned order dated 7.9.2009 will not come in the way of the respondents in contesting election in future and the same shall not be a stigma for the petitioner. Before passing this order writ Court has observed that the period of six years of debarment is over and grant of permission to participate in the process of election which was scheduled in the year 2015 is also over.

10. That the election petition was finally heard by the SDO and vide order dated 30.5.2016 the election petition was allowed placing reliance over the order passed in the case of **Ranvir Singh vs. State of M.P and another** reported in AIR 1995 MP 271 The election Tribunal has set aside the election of petitioner on the ground that once the nomination paper of the candidate has been accepted same cannot be rejected by the Returning Officer. There is no provision in the election rules framed under the Panchayat Raj Adhiniyam to cancel the accepted nomination papers. Being aggrieved by the order dated 30.5.2016 present writ petition has been filed.

11. I have heard learned counsel for the parties.

12. Shri Bagadiya, learned counsel on behalf of the petitioner submits that once respondent No.3 has been debarred from contesting election vide order date 7.9.2009, therefore, he is not entitled to contest the election for six years i.e. up to 06.09.2015. The candidate who is disqualified under the provisions of the Panchayat Act and the Election Rules framed thereunder is not entitled for contesting the election. The Returning Officer who wrongly accepted the nomination papers initially due to suppression of facts and disqualified the respondent No.3 has a right to cancel the nomination papers if it is brought to the knowledge of the Returning Officer that the nomination form was wrongly accepted. The order debarring respondent No.3 for a period of six years has already been attained finality and at the time of submitting the nomination papers the said order was in operation, therefore, it would a futile exercise to permit respondent No.3 to contest election and later on setting aside the election on the ground of disqualification. Therefore, Returning Officer has not committed any illegality

in rejecting the nomination paper.

13. The election Tribunal vide order dated 30.5.2016 did not consider the disqualification part of the election petitioner i.e. respondent No.3 which was core issue before him. The order dated 3.3.2016 passed in W.P.no.445/2015 was given wrong interpretation. By this order respondent No.3 in the present petition was permitted to contest the future election but not in the election of 2015, therefore, impugned order is liable to be set aside.

14. Per contra Shri M.Manav on behalf of the respondent No.3 submitted that the election Tribunal after framing issues especially issue No.1 (a) “whether the nomination paper of the election petitioner was illegally rejected”. The only issue which was for adjudication before the election Tribunal and same was rightly considered and decided by the election Tribunal. Under the election rules there is no authority to the Returning officer to reject the nomination papers once it has been accepted because after acceptance of the nomination form he became functus officio and once the date of acceptance and rejection is over he cannot pass any order, therefore, election Tribunal has not committed illegality in passing the impugned order. In support of his contentions, he has placed reliance over the decisions of this Court in the case ***State Election Commission, M.P vs. Ras Bihari Raghuwanshi and others*** reported in 1995 JLJ 651 and in the case of ***Satish s/o Shivnarayan Rathore and another vs. State Election Commission, Bhopal*** reported in 2015 (3) MPLJ 405.

15. Counsel for respondent No.1 & 2 has also argued in support of the impugned order and prayed for dismissal of the writ petition.

16. That undisputedly respondent No.3 was debarred to contest the election for a period of six years from 07.09.2009 to 6.9.2015. This order was challenged at various stages and finally affirmed up to this Court in writ petition No.445/10. During the pendency of these proceedings before the S.D.O, Additional Collector, Additional Commissioner and the High Court there was no stay to the effect to disqualification of respondent No.3 to contest the election. During the pendency of these proceedings elections of various Panchayats were notified in the month of December, 2014 and as per the programme the date of submission of nomination was on 02.01.2015. As on 02.01.2015 respondent No.3 was not eligible to contest the election. Though his nomination paper was accepted by the Returning Officer on 8.1.2015 but later on vide order dated 16.01.2015 the same nomination paper was rejected. The rejection of nomination paper was challenged by the respondent No.3 by way of writ petition No.448/15 though he was having remedy under Rule 36 of the Election Rules of 1996. The said writ petition was withdrawn on 16.2.2015, therefore, the action of the respondents by which his nomination was rejected has attained finality. However, respondent No.3 sought liberty to avail remedy but he filed election petition on the ground that election of Sarpanch is materially affected due to rejection of nomination. Initially vide order dated 30.4.2015 his election petition was dismissed. Later on the said order was set aside by the High Court vide order dated 26.2.2016 on the ground that the election petitions are required to be decided after framing issues and on evidence. Accordingly the election petitions was restored and finally vide order dated 30.5.2016 the election petition was allowed. Before the order dated 30.05.2016 writ petition No.445/2010 came up for consideration in which petitioner has challenged the order dated 7.9.2009 by which he was disqualified to contest the election. The said writ petition was disposed of by passing the following order.

03.03.2016:

Parties through their counsel.

The petitioner before this Court is aggrieved by the order dated 07.09.2009 by which he was debarred from contesting election for a period of 6 years. He also prayed for grant of permission to participate in the process of election, which was scheduled in the year 2015.

So far as election in question is concerned, the same is already over and the period for which the petitioner was debarred has also been over.

Resultantly, the present petition stands disposed of with an observation that the impugned order will not come in the way of the petitioner for contesting the election in future and the same shall not be a stigma upon the petitioner.

(S.C.Sharma)

Judge

17. In writ petition No.445/2015 petitioner sought permission to participate in the process of election which was scheduled in the year 2015 but during the pendency of the writ petition the election was held and the respondent No.3 could not contest the election, therefore, this Court has observed that so far as the election (election of 2015) in question is concerned same was already over. Resultantly, the petition was disposed of with an observation that the impugned order i.e. 7.9.2009 will not come in the way of the petitioner for contesting the election in future. The word '**in future**' means after the present election of 2015, therefore, the effect of this order is that petitioner himself sought liberty to contest elections in future. At the relevant time of passing of the order dated 3.3.2016 his election petition was pending. The petitioner (i.e. respondent No.3) could have sought observation that the disqualification by virtue of the order dated 7.9.2009 should not come in the way of the pending election petition but respondent No.3 himself obtained an order that the present election i.e. the election of 2015 is over and sought liberty to contest the election in future because by that time the period of six years of disqualification would be over, therefore, in the considered opinion of this Court vide order dated 3.3.2016 petitioner has given up his right to contest the election of 2015. The election petition No.1/C144/2015-2016 is arising out of the election held in the year 2015 and admittedly at the time of election the disqualification was attached with respondent No.3. The election Tribunal ought to have framed the issue to this effect.

18. So far as the contention of the respondent No.3 is concerned that the only issue in the election petition was whether his nomination paper was illegally rejected. The elections under the Panchayat Act are the statutory elections. To contest such election there is eligibility conditions are provided under the Panchayat Act & Rules.

19. That under sub section (2) of section 40 of the Panchayat Raj Adhiniyam, 1993 a person who has been removed under sub-section (1) shall be ceased to be a member and shall also be disqualified for a period of six years to be elected, therefore, by virtue of sub section (2) of section 40 respondent No.3 was disqualified to contest the election which is an inherent disqualification of a candidate to contest the election. The scrutiny of nomination paper is provided under Rule 35 of the M.P. Panchayat Nirvachan Niyam, 1995. Under Rule 35 the Returning Officer is authorized to hold the scrutiny of the nomination paper on the appointed date. It is further provided that in case of any objection is raised by the Returning Officer or is made by any other person, the candidate may be allowed time to rebut it and the Returning Officer shall adjourn the date. Under sub rule (6) the Returning Officer is authorized to return the nomination paper and the said order is subject to the result of the revision under Rule 36. A complete procedure has been prescribed under Rule 36 to decide appeal against the rejection of nomination paper, therefore, at the relevant time respondent No.3 did not resort this remedy available under Rule 36 to challenge the order dated 16.1.2015 by which his nomination was rejected. The petitioner has directly filed the writ petition No.448/15 against the order dated 16.1.2015. The conduct of respondent No.3 was treated as active suppression and the fact about the disqualification at the time of submission of nomination paper. Respondent No.3 was not granted interim relief by writ Court and even writ appeal No.57/2015 was also dismissed. The judgement passed in the case of State Election Commission, M.P v. Ras Bihari Raghuwanshi and others reported in 1995 J.L.J

651 was considered in writ appeal and interim relief was denied, therefore, at the relevant stage respondent No.3 was not permitted to participate in the election by this Court because of the inherent disqualification by virtue of order dated 7.9.2009. This Court in the case of Suresh Choudhary vs. Atarlal Verma and others in W.P.No.823/2005 has held that the candidate who is disqualified is not entitled to contest the election, therefore, even if we hold that the nomination paper is once accepted cannot be rejected the respondent No.3 would not be entitled to contest election of 2015. In the case of Suresh Choudhary (supra) this Court has held in paragraphs-12, 13, 14 & 18 as under:

12. On a perusal of the aforesaid pronouncement of law it is perceivable that the learned Single Judge has found in that case that the respondent No.6 did not lack the basic qualification as provided to contest the election. In that backdrop the learned Single Judge distinguished the case of K.Venkatachalam (supra).

13. Presently, I shall refer with profit to the law laid down in the case of K.Venkatachalam (supra). In the aforesaid case the Apex Court was dealing with a case where the candidate had incurred the disqualification prior to the election and knew about it. Their Lordships came to hold that a writ petition under Article 226 for declaring that the candidate was not qualified for the Membership was maintainable. Their Lordships in Paragraphs 27 and 28 of the said decision expressed the view as under:

27. In view of the judgement of this Court in the case of Election Commission of India v. Saka Venkata Rao, it may be that action under Article 192 could not be taken as the disqualification which the appellant incurred was prior to his election. Various decisions of this Court which have been referred to by the appellant that jurisdiction of the High Court under Article 226 is barred challenging the election of a returned candidate and which we have noted above do not appear to apply to the case of the appellant now before us. Article 226 of the Constitution can be exercised when there is any act which is against any provision of law or violative of Constitutional provisions and when recourse cannot be had to the provisions of the Act for the appropriate relief. In circumstances like the present one, bar of Article 329(b) will not come into play when case falls under Articles 191 and 193 and whole of the election process is over. Consider the case where the person elected is not a citizen of India. Would the Court allow a foreign citizen to sit and vote in the legislative Assembly and not exercise jurisdiction under Article 226 of the Constitution?

28. We are, therefore, of the view that the High Court rightly exercised its jurisdiction in entertaining the writ petition under Article 226 of the Constitution and declared that the appellant was not entitled to sit in Tamil Nadu Legislature Assembly with consequent restraint order on him from functioning as a member of the Legislative Assembly. The net effect is that the appellant ceases to be a member of the Tamil Nadu Legislative Assembly. Period of Legislative Assembly is long since over. Otherwise we would have directed respondent No.2, who is Secretary to Tamil Nadu Legislative Assembly, to intimate the Election Commission that Lalgudi Assembly Constituency seat has fallen vacant and for the Election Commission to take necessary steps to hold fresh election from that Assembly Constituency. Normally in a case like the Election Commission should invariably be made a party.

14. In this context, I may fruitfully refer to the decision rendered in the case of Shaligram Shrivastava (supra), wherein in Paragraphs 10 and 16 it has been held as under:

10. At the time of security the Returning Officer is entitled to satisfy himself that a candidate is qualified and not disqualified. Sub-section (2) of Section 36 authorises him to hold an enquiry on his own motions, though summary in nature. The Returning Officer

furnished a proforma to the candidates to be filled on affidavit and filed on or before the date and time fixed for scrutiny of the nomination paper. Thereafter providing a proforma, eliciting necessary and relevant information in the light of Section 8 of the Act to enquire as to whether the person is qualified and not disqualified, is an act or function fully covered under Sub-section (2) of Section 36 of the Act. The Returning Officer is authorized to seek such information to be furnished at the time or before scrutiny. If the candidate fails to furnish such information and also absents himself at the time of the scrutiny of the nomination papers, is obviously avoiding a statutory enquiry being conducted by the Returning Officer under Sub-section (2) of Section 36 of the Act relating to his being not qualified or disqualified in the light of Section 8 of the Act. It is bound to result in defect of a substantial character in the nomination.

16. In the case in hand the candidate had failed to furnish such information as sought on the proforma given to him and had also failed to be present personally or through his representative at the time of scrutiny. The statutory duty/power of Returning Officer for holding proper scrutiny of nomination paper was rendered nugatory. No scrutiny of the nomination paper could be made under Section 36(2) of the Act in the light of Section 8 of the Act. It certainly rendered the nomination paper suffering from defect of substantial character and the Returning Officer was within his rights in rejecting the same.

18. If the aforesaid provision is read in proper perspective there remains no scintilla of doubt that the respondent No.1 had deliberately not mentioned the factum of disqualification. It is interesting to note that the respondent No.1 has chosen not to file counter affidavit. Other respondents have categorically and unequivocally stated that respondent No.1 was proceeded under Section 40 and was removed from the post and disqualification was attached. This was within the special knowledge of respondent No.1. Despite the same he chose not to disclose the said aspect. There cannot be any doubt that had the said fact been disclosed his nomination paper would not have been accepted. In the absence of any counter affidavit and submissions made by other respondents it is quite vivid that the respondent No.1 has played fraud on the statute. An election a democratic polity has its sacrosanctity, respondent No.1 has endeavoured to create a concavity in the same. Such a thing in a democratic set up is not permissible. He is not entitled to hold the office as he was not eligible to contest the election. A person who is not entitled to contest the election and the fact is absolutely tell-tale and clear as day like a shine on the sea-shore and does not require any inquiry, his continuance cannot be accepted. The writ petition would be maintainable as such a person cannot be allowed to participate in a proceeding of Jila Panchayat as a Member and his election has to be declared as illegal. Ergo, a writ of quo warranto would be maintainable and relief can be granted.

20. Respondent No.3 could not get any relief from this Court because at the relevant time of election he was disqualified to contest the election. By allowing the election petition or upholding the order would amount to permitting wrong in perpetuity by this Court.

21. That the wrong acceptance of the nomination paper of a candidate who was not qualified to contest the election materially affect the result of the election of the returned candidate. The Supreme Court in the case of **Shiv Charan Singh vs. Chandra Bhan Singh and others** reported in AIR 1988 SC 637 has held that the election of a returned candidate must be allowed to stand and the Court should not interfere with the same with speculation and conjecture. There is no possibility that

had the nomination paper of the respondent No.3 was accepted he would have been elected as a Sarpanch, therefore, mere rejection of nomination paper cannot be a ground to set aside the election.

22. In the impugned order the SDO has set aside the election on the ground that vide order dated 3.3.2016 the period of six years of disqualification was over in the year 2015 and the petitioner can be permitted to be participated in the election. That the SDO gave a wrong interpretation to the order dated 3.3.2016 of this Court. The disqualification and qualification to contest the election has to be seen when the election was held and not subsequent to that. In the election which was held in January, 2015 respondent No.3 was disqualified. Subsequently he can become qualify to contest the election. The election petition was in respect of the election held in the year 2015, therefore, the qualification and disqualification has to be seen when the election was held not by way of subsequent development. The election petition has been allowed only on the consideration that now the fresh election will be held in which respondent No.3 can contest the election.

23. In view of the above discussion, I find that the SDO has wrongly set aside the election of the petitioner, therefore, the impugned order dated 30.5.2016 is set aside. Petitioner is permitted to continue to work as Sarpanch.

(VIVEK RUSIA)
J U D G E

रिट याचिका क्र. 4865/2005

उच्च न्यायालय मध्यप्रदेश

बैच, इन्दौर

मान. न्यायमूर्ति श्री एस.के. सेठ, न्यायाधीश

श्रीमती उर्मिला देवी

बनाम

रिटनिंग ऑफिसर एवं 16 अन्य

भारतीय संविधान अनुच्छेद 226 : 2005 में सरपंच के निर्वाचन के विरुद्ध प्रस्तुत निर्वाचन याचिका को एस.डी.ओ. इन्दौर द्वारा निरस्त किये जाने के आदेश दिनांक 24.10.2005 के विरुद्ध याचिका।

प्रकरण के तथ्य : ग्राम पंचायत छोटा बगरदा तहसील एवं जिला इंदौर के सरपंच के लिए चुनाव 2005 में सम्पन्न हुए। अधिकतम मत पाने के आधार पर उत्तरवादी क्र. 2 को सरपंच निर्वाचित घोषित किया गया। इसके विरुद्ध निर्वाचन याचिका सक्षम अधिकारी एस.डी.ओ. इन्दौर के समक्ष दिनांक 07.03.2005 को याचिकाकर्ता के अधिवक्ता द्वारा प्रस्तुत की गयी। इस पर आपत्ति उठाई गयी कि निर्वाचन याचिका का प्रस्तुतीकरण म.प्र. पंचायत (निर्वाचन अर्जियां, भ्रष्टाचार और सदस्यता के लिए निरर्हता) नियम 1995 के नियम 3 के अनुसार विधिवत प्रस्तुत नहीं की गयी है। इससे सहमत होते हुए सक्षम अधिकारी ने आदेश दिनांक 24.10.2005 द्वारा निर्वाचन याचिका खारिज कर दी। इस आदेश के विरुद्ध यह याचिका प्रस्तुत की गयी है।

न्यायालय का आदेश : निर्वाचन याचिका सम्यक् रूप से प्रस्तुत नहीं किये जाने के आधार पर सक्षम अधिकारी द्वारा उसे निरस्त किये जाने में कोई त्रुटि नहीं हुई है। अतः याचिका खारिज की, गयी।

HIGH COURT OF MADHYA PRADESH, INDORE BENCH
SINGLE BENCH : NON. SHRI JUSTICE S.K. SETH

Writ Petition No. 4865/2005

Smt. Urmila Devi W/o. Jagdish Dixit.

Versues

The Returning Officer (Panchayat) & 16 Others.

O R D E R

(Passed on 09.04.2008)

Petitioner is aggrieved by order dated 24.10.2005 passed by S.D.O., Indore. By the order impugned, the election petition preferred by the petitioner against Respondent No.2 was ejected on the ground of limitation, lack of proper verification and improper presentation of the election petition.

2. It is not in dispute that election to the office of Surpanch, Gram Panchayat, Chhota Bangarda, Tehsil & District Indore, were held in 2005. In the said election, Respondent no.2 secured maximum votes, therefore, she was declared elected to the office of Surpanch. Said election was challenged in an election petition filed by the petitioner. The election petition was presented on 7.3.2005 by the counsel for the petitioner before the competent authority as is clear from the order-sheet filed along with this petition. After notice, the Returning Officer, Respondent No.1, herein, filed reply which was adopted by the Respondent No.2 as is evident from the order sheet recorded on 7.7.2005. An objection was taken with regard to maintainability of the election petition on the ground that presentation of the election petition was not proper and contrary to Rule 3 of **M.P. Panchayat (Election Petition, Corrupt Practices and Disqualification for Membership) Rules, 1995**. Relevant extract of Rule 3 of 1995 Rules reads as under :-

“3. **Presentation of election petition - (1)** An election petition shall be presented to the Prescribed Authority during the office hours by the person making the petition, or by a person authorised in writing in this behalf by the person making the petition within thirty days from the date on which the election or co-option in question was notified.

(2).....”

It is agreed between learned counsel for the parties that if the presentation of an election petition is held to be improper, then there is no need to go into the other questions of limitation and improper attestation of election petition.

3. Learned counsel for the petitioner submitted that Rule 3 of 1995 Rules are only directory in nature and a mere technical default should not entail dismissal of the election petition without trial.

4. Per contra, learned counsel for Respondent No.2 submitted that the provisions contained in Rule 3 of 1995 Rules are mandatory in nature and where requirement of provisions is not complied with, no decision on merit can be given by the Prescribed Authority.

5. After having heard rival submissions of learned counsel for the parties and going through the material available on record, we find force in the submission of learned counsel for Respondent No.2.

Rule 3 of 1995 Rules which is **pari materia** to Rule 3 of 1991 Rules. Rule 3 of 1991 Rules came up for consideration of this Court in the case of **Suman Santosh Kumar Patel V/s. Bhanwati Mahesh Pratap Patel : 1999 (1) M.P.L.H. 88**, in which, after examining various decisions of Supreme Court, it was held that if the requirement of Rule 3 regarding presentation is not fulfilled, then the election petition is liable to be dismissed. This Court did not accept the contention that by virtue of Vakalatnama a lawyer becomes a person authorised by the election petitioner to present the election petition. It was held that Vakaltnama does not authorise an Advocate in writing to present the election petition before the competent authority.

6. The presentation of election petition through a lawyer under the provisions of Representation of People Act, 1951 also came up for consideration before this Court in **Ramanlal Surajbhan Premy V/s. Shivpratap Singh and another : 1978 M.P.L.J. 399** and it was held therein that the presentation of a election petition u/s. 81 of the Act by the counsel is not a proper presentation and in that eventuality, the election petition is liable to be dismissed.

7. In view of the aforesaid settled legal position, the inevitable result is that the election petition preferred by the counsel on behalf of the petitioner was not properly presented and as such, it was liable to be dismissed and was rightly dismissed by the competent authority.

8. In view of the aforesaid, it is not necessary for this Court to go into other questions. In the result, writ petition fails and is hereby dismissed without any order as to costs.

(S.K. SETH)

Judge

रिट याचिका क्र. 17670/2015
उच्च न्यायालय मध्यप्रदेश, जबलपुर

मान. न्यायमूर्ति श्रीमती वन्दना कसरेकर, न्यायाधीश

लादसिंह
बनाम
सरजन सिंह एवं 4 अन्य

भारतीय संविधान अनुच्छेद 226 : उत्तरवादी क्र. 1 द्वारा प्रस्तुत निर्वाचन याचिका को स्वीकार करने के एस.डी.ओ. बैरसिया के आदेश दिनांक 06.10.2015 के विरुद्ध याचिका।

प्रकरण के तथ्य : याचिकाकर्ता ने बैरसिया जिला भोपाल की ग्राम पंचायत धूतखेड़ी पोस्ट मंगलगढ़ के सरपंच के निर्वाचन में अधिकतम मत 358 प्राप्त किये। अतः उसे निर्वाचित घोषित किया गया। उत्तरवादी क्र.1 जिसे 357 मत मिले थे, ने एस.डी.ओ. बैरसिया के यहां निर्वाचन याचिका दायर की। इस पर याचिकाकर्ता ने आपत्ति उठाई कि म.प्र. पंचायत (निर्वाचन अर्जियां, भ्रष्टाचार और सराया के निरहता) नियम 1995 के नियम 3(2), 7 एवं 8 का पालन नहीं हुआ है। उसने आदेश 7 नियम 11 सी.पी.सी. के अंतर्गत आवेदन भी दिया कि उक्त चूकों के कारण याचिका खारिज की जाय। किन्तु एस.डी.ओ. ने आदेश दिनांक 30.06.2015 द्वारा उसकी आपत्ति निरस्त करते हुए अन्य पक्षों का साक्ष्य लेकर निर्वाचन याचिका मंजूर करने, मतों की पुनर्मतगणना करने के आदेश दिनांक 06.10.2015 एवं दिनांक 08.10.2015 को पारित किये। इन्हीं आदेशों के विरुद्ध यह याचिका प्रस्तुत की गयी है।

न्यायालय का आदेश : उक्त नियमों के नियम 3(2), 7 एवं 8 के प्रावधान आदेशात्मक है, जिनका पालन किया जाना आवश्यक है। अतः एस.डी.ओ. के प्रश्नास्पद आदेश दिनांक 06.10.2015 एवं दिनांक 08.10.2015 निरस्त किये गये एवं एस.डी.ओ. को प्रकरण प्रत्यावर्तित किया गया।

HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR
Wrti Petition No. 17670/2015

Lad Singh
Versus
Sarjan Singh

O R D E R
(28.03.2016)

Shri Vishal Dhagat, learned counsel for the petitioner.

Shri K.C.Ghildayal and Shri Siddharth Seth, learned counsel for respondent No.5.

With consent of the parties, the matter is heard finally at motion stage.

The petitioner has filed this petition challenging the order dated 6.10.2015 passed by SDO-cum-Authorized Officer, Tehsil Berasiya District Bhopal by which Presiding Officer has allowed election petition filed by respondent No.1.

Brief facts case are that respondent No.1 has filed election petition before SDO Tehsil Berasiya, District Bhopal M.P. for canceling the election of the petitioner and declaring him Sarpanch in the said election. The petitioner got total 358 votes and respondent No.1 got 357 votes and petitioner was declared elected by one vote. Being aggrieved by election of the petitioner, respondent No.1 had filed an election petition. The petitioner has filed the reply to the said election petition and denied all allegations which were made in election petition. The petitioner has raised an objection that Rule 3(2), 7 and 8 of the election petition corrupt Practices and Disqualification for Membership Rules, 1995 (herein referred to as the Rules) has not been complied with. As respondent No.1 has not deposited security cost along with the petition, the petitioner has also filed an application under Order 7 Rule 11 of the CPC for dismissal of the election petition for non-compliance of mandatory provisions of the rule. The SDO vide its order dated 30.6.2015 dismissed the application filed by the petitioner. The Presiding Officer thereafter proceeded to record the evidence of both the parties and allowed the election petition vide order dated 6.10.2015 and 8.10.2015 and issued direction for recounting of the votes. Being aggrieved by the order, the petitioner has filed the present petition.

Respondent No.1 has filed their reply and submits that the order passed by Presiding Officer is in accordance with law and he denied that mandatory provisions for filing election petition were not complied with. He further submits that the petitioner has failed to point out any deficiency in not complying with the rules. He therefore, prays for dismissal of the petition.

Learned counsel appearing for respondent No.5 submits that the respondent No.5 is the formal party the matter is between the candidates and, therefore, he has no role to play in the matter.

I have heard learned counsel for the parties. From the perusal of the record I found that the petitioner has specifically taken an objection in the reply to the election petition that the mandatory provisions of the Rule 3(2), 7 and 8 of the Election Petition Rules have not been followed by the

respondent No.1 and the respondent No.1 has not deposited security cost as per Rule 7 of the Election Rules along with the Election Petition and, therefore, election petition itself, is not maintainable and it is liable to be dismissed. In spite of taking objection in the reply, the SDO has not considered this objection in the final order.

The Division Bench of this Court in the case of ***Sarla Tripathi(Smt.) Vs. Smt.Kaushilya Devi and Others, reported in 2004(2)JLJ 263*** has held that Rule 7 and 8 are mandatory provisions and security cost is required to be deposited at the time of presentation of election petition otherwise election petition is liable to be dismissed. In the present case the Presiding Officer has not at all considered this objection and passed the final order and, therefore, the matter deserves to be remanded back to the SDO to consider the objections raised by the petitioner.

In view of this petition is allowed. The impugned orders dated 6.10.2015 and 8.10.2015 are hereby set aside and the matter is remanded back to the Presiding Officer to consider and decide the petitioner's objection regarding non-compliance of the provisions of the Rule 7 and 8 of the Election Petition Rules and as per the law laid down in the judgment passed by Division Bench of this Court in case of ***Sarla Tripathi(Smt.)(supra)***. It is made clear that this Court has not expressed any opinion on merits of the case.

The SDO is directed to decide the matter and passed the order within a period of one month.

(Ms Vandana Kasrekar)

JUDGE

रिट याचिका क्र. 6563/2011
उच्च न्यायालय मध्यप्रदेश, जबलपुर

मान. न्यायमूर्ति श्री राजेन्द्र मेनन, न्यायाधीश

श्रीमती प्रेमबाई

बनाम

अनुविभागीय अधिकारी, बंडा एवं 6 अन्य

भारतीय संविधान अनुच्छेद 226 : सरपंच के निर्वाचन के विरुद्ध प्रस्तुत निर्वाचन याचिका को बिना मुद्दे निर्धारित किये आदेश दिनांक 28.03.2011 द्वारा उसके निराकरण के विरुद्ध याचिका।

प्रकरण के तथ्य : ग्राम पंचायत तारापोह जिला सागर के दिनांक 21.01.2010 को सम्पन्न चुनाव में याचिकाकर्ता सरपंच निर्वाचित हुआ था। उत्तरवादी क्र. 2 ने इसके विरुद्ध निर्वाचन याचिका दायर की, जो एस.डी.ओ. बंडा के आदेश दिनांक 28.03.2011 द्वारा मंजूर की गयी। इस आदेश के विरुद्ध यह याचिका इस आधार पर दायर की गयी कि एस.डी.ओ. ने बिना मुद्दे तय किये और बिना पक्षकारों को इनके सम्बन्ध में साक्ष्य प्रस्तुत करने के लिए समुचित मौका दिये निर्वाचन याचिका का निराकरण कर दिया है।

न्यायालय का आदेश : निर्वाचन याचिका का निराकरण बिना मुद्दे निर्धारित किये और इनके सम्बन्ध में अन्य पक्षों से साक्ष्य लिए, नहीं किया जा सकता। अतः याचिका स्वीकार की गयी एवं प्रकरण एस.डी.ओ. को प्रत्यावर्तित किया गया।

HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR
Wrti Petition No. 6563/2011

Prembai
Versus
S.D.O. Banda

O R D E R
(20.06.2011)

Shri Aseem Dixit, learned counsel for the petitioner.

Shri J.K. Jain, learned Dy. Adv. General for respondent no. 1

Shri Alok Vagrecha, learned counsel for respondent no. 2.

Shri Baghel, learned counsel for respondent no. 4, 5 and 6.

Challenging the order dated 28.03.2011 passed by the S.D.O. Banda, Distt. Sagar in the election petition filed pertaining to election of Sarpanch of Gram Panchayat Tarapoh in District Sagar, this writ petition has been filed.

Petitioner was elected as a Sarpanch to the panchayat in question in the election held on 21.01.10. Respondent no. 2 who had also contested the election challenged the same in the election petition filed under Section 122 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam and by the impugned order, the election petition has been allowed.

The main ground of challenge to the impugned order is that the election petition has been decided without framing of issues and without granting proper opportunity to the parties to lead the evidence on the issues framed.

Even though various grounds are raised in this writ petition and Shri Vagrecha, learned counsel for respondent no. 2 refutes the aforesaid but the fact remains that after taking note of the various judgements of the Supreme Court and by this Court in the case of **Kalke Prasad Vs. Rmajilal and others, 2002 (3) M.P.L.J. 121**, it is clear that the election petition cannot be decided without framing of issues and recording of evidence. It has been held that framing of issues is the mandatory requirement and the election petition cannot be decided without the same.

Keeping in view the facts and circumstances of the present case, it is clear that the election petition filed under Section 122 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam has been decided without framing of issues and on that ground alone, the impugned order is liable to be and is hereby quashed and the matter is remanded back to the election tribunal to decide the same in accordance with law.

Parties shall appear before the S.D.O. (Revenue) Banda, District Sagar, along with a certified copy of this order on 4th July, 2011 and on the same being done, the S.D.O. respondent no. 1 shall proceed to decide the election petition after framing of issues and after giving proper opportunity of leading evidence to the parties and finalize the petition within a reasonable time.

With the aforesaid, petition stands allowed and disposed of.

(Rajendra Menon)

Judge

रिट याचिका क्र. 2670/2012

उच्च न्यायालय मध्यप्रदेश

बैंच ग्वालियर

मान. न्यायमूर्ति श्री एस.के. गंगोले, न्यायाधीश

मान. न्यायमूर्ति श्री एस.के. पालो, न्यायाधीश

मानसिंह परसोदा

बनाम

म.प्र. राज्य निर्वाचन आयोग एवं अन्य

भारतीय संविधान अनुच्छेद 226- जिला पंचायत गुना के वार्ड क्र.1 से वार्ड सदस्य के लिए उत्तरवादी क्रमांक 3 के निर्वाचित होने के विरुद्ध प्रस्तुत चुनाव याचिका में पुनर्मतगणना के आदेश होने पर भी परिणाम घोषित न होने के विरुद्ध याचिका।

प्रकरण के तथ्य : जिला पंचायत गुना के वार्ड क्र. 1 से उत्तरवारी क्र. 3,113 वोट से वार्ड सदस्य के निर्वाचन में विजयी रहा। इसके विरुद्ध प्रस्तुत चुनाव याचिका में निर्वाचन न्यायधिकरण ने पुनर्मतगणना के आदेश दिया। किन्तु कलेक्टर एवं जिला निर्वाचन अधिकारी ने पाया कि 15 मतदान केन्द्रों के मतपत्र सीडन (सीपेज) के कारण क्षतिग्रस्त हो गये हैं। अतः इस संबंध में कलेक्टर द्वारा न्यायाधिकरण से मार्गदर्शन चाहा गया। पुनर्मतगणना का परिणाम न आने से याचिकाकर्ता ने याचिका दायर की जिसमें एकल न्यायाधीश ने मुख्य न्यायाधीश से मार्गदर्शन चाहा कि पुनर्मतगणना में यदि कुछ मतदान केन्द्रों के मतपत्र नष्ट हो जाते हैं तो पुनर्मतगणना कैसे की जाय। मुख्य न्यायाधीश ने अभिमत देने के लिए मामला युगल पीठ को सौंपा।

न्यायालय का आदेश : कुछ मतदान केन्द्रों के मतपत्र नष्ट हो जाने की स्थिति में इन केन्द्रों की पूर्व में हुई गणना को अंतिम माना जाय एवं केवल शेष मतदान केन्द्रों की पुनर्मतगणना की जाय एवं पूर्व मतगणना और इस गणना के आधार पर परिणाम की घोषणा की जाय।

IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR
Class of Case...W.P. No. 2670/2012

Mansingh Parsoda
Versus
Sachiv M.P. Rajya Nirvachan Aayog and others

O R D E R
(24.09.2014)

Shri B.S.Dhakad, Advocate for the petitioner.
Smt.Ami Prabal, Advocate for the respondents.

Heard.

Writ Court has made present reference before the Division Bench.

The petitioner contested the election of Ward Member of District Panchayat Guna from Ward No.1. Respondent No.3 was declared elected by a margin of 113 votes. The petitioner filed an election petition under the provisions of Madhya Pradesh Panchayat Raj Evam Gram Swaraj Adhiniyam 1993 (hereinafter referred to the 'Act of 1993'). The petitioner also prayed a relief of recounting. The authority vide order dt.9th August 2011 ordered recounting of votes. When recounting was carried out, the authority – Collector-District Election Officer Guna found that the ballot papers of polling centers No.43, 44, 45, 46, 47, 48, 50, 51, 54, 59, 60, 97, 276, 277, 278 and 279 total 16 were damaged due to seepage and it was not possible to recount them. Hence, the Collector sought the explanation from the authority that whether counting of earlier votes of those 16 polling centers be counted as it is or the votes of the polling centers be declared as zero (0) and thereafter the result of recounting be declared. When the result of recounting was not declared, the petitioner filed a writ petition before this court.

Learned Writ Court has formulated the following substantial question of law and referred the same to the Hon'ble Chief Justice with recommendation to refer the matter before the Larger Bench :

“If appropriate forum directs recounting of the votes and if it is found that the votes in certain polling stations are destroyed, what direction can be issued in this regard ?”

Thereafter, the Hon'ble Chief Justice referred the matter to the Division Bench to answer the aforesaid reference.

Rule 80 of the M.P.Panchayat Nirvachan Niyam, 1995 (hereinafter referred to the 'Rules of 1995') prescribes recount of votes. The relevant provision of this court is as under :-

“80. Recount of votes.-(1) After an announcement has been made by the Returning Officer or such other officer authorised by him, of the total number of votes polled by each candidate under sub-rule (2) of rule 77, a candidate or, in his absence, his election agent or his counting agent may apply in writing to the Returning Officer or such officer authorised by him, for a recount of all or any of the votes already counted, stating the grounds on which the demands such recount.

(2) On such an application being made the Returning Officer or such other officer authorised by him shall decide the matter and may allow the application in whole or in part or may reject it in toto if it appears to him to be frivolous or unreasonable.

(3) Every decision of the Returning Officer or such other officer authorised by him, under sub-rule (2) shall be in writing and contain the reasons therefore.

(4) If the Returning Officer or such other officer authorised by him, decides under sub-rule (2) to allow an application either in whole or in part, he shall-

- (a) count the ballot papers again in accordance with his decision;
- (b) amend the result sheet to the extent necessary after such recount; and
- (c) announce the amendment so made by him.

(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) The counted ballot papers shall be bundled and kept in the manner mentioned in sub-rule (3) of rule 77.”

In the rule, there is no provision that what would happen when it is not possible to recount certain votes due to destruction. However, Rule 72 of the Rules of 1995 prescribes fresh poll in case of destruction, tempering etc. of ballot boxes. The relevant provision is as under :-

“72. Fresh poll in case of destruction, tempering etc. of ballot boxes or due to procedural irregularity.”-(1) If at any election -

(a) any ballot box used at a polling station is unlawfully taken out of the custody of the Presiding Officer or the Returning Officer, or is accidentally or intentionally destroyed or lost or is damaged or tampered with to such an extent, that the result of the poll at that polling station cannot be ascertained, or

(b) any such error or irregularity in procedure as is likely to vitiate the poll is committed at a polling station. The Returning Officer shall forthwith report the matter to the Commission through the District Election Officer.

(2) The Commission shall on receipt of a report under sub-rule (1) and after taking all material circumstances into account, either -

(a) declare the poll at the polling station to be void, appoint a day and fix the hours, for taking a fresh poll at that polling station and direct the District Election Officer to notify the day so appointed and the hours so fixed in such manner as it may deem fit, or

(b) if satisfied that the result of a fresh poll at that polling station will not, in any way affect the result of the election or that the error or irregularity in procedure is not material, issue such directions to the District Election Officer as it may deem proper for the further conduct and completion of the election.”

From Rule 72 of the Rules of 1995, it is clear that the authority has power to declare the poll at

the polling stations, where it was found that there was tampering or destruction of ballot papers, to be void and order re-election, but the aforesaid provision would not be applicable in the present case. The counting has already been done. Rule 80 of the Rules of 1995 prescribes power of recounting of votes and also procedure. From the perusal of the aforesaid rule, it is clear that recounting of votes could only be done if the votes and ballot papers are in good condition. If the ballot papers or votes are destroyed or damaged, then certainly recounting of those ballot papers could not be done. In such circumstances, in our opinion, the earlier position in regard to counting of votes, which was before recounting, be treated as valid.

Hence, we answer the reference to the effect that if it is found that the votes or ballot papers in certain polling stations are destroyed, then recounting of those ballot papers and votes is not possible and the earlier counting be treated as final and the remaining votes and ballot papers, which could be recounted, be recounted accordingly and thereafter the result be declared on the basis of recounting of votes and earlier counting of votes of those ballot boxes or polling stations or ballot papers, which could not be recounted subsequently on the ground of damage or destruction.

We answer the reference accordingly. The matter be placed before the Writ Court for deciding the dispute on merits.

(S.K. Gangele)
Judge

(S.K.Palo)
Judge

W.P. 2670/2012

17.10.2014

Shri B.S. Dhakad, Advocate for the petitioner.

Mrs. Ami Prabal, Advocate for the respondent.

With the consent of parties, matter is finally heard.

Learned counsel for the parties jointly submits that question involved in this matter is decided by Division Bench by Order dated 24.09.2014. It is jointly prayed that in terms of said order, this petition may be disposed of.

The Division Bench opined as under :-

“Hence, we answer the reference to the effect that if it is found that the votes or ballot papers in certain polling stations are destroyed, then recounting of those ballot papers and votes is not possible and the earlier counting be treated as final and remaining votes and ballot papers, which could be recounted, be recounted accordingly and thereafter the result be declared on the basis of recounting of votes and earlier counting of votes of those ballot boxes or polling stations or ballot papers, which could not be recounted subsequently on the ground of damage or destruction.”

This petition is disposed of in terms of the order passed by the Division Bench.

Parties are directed to do the needful in accordance with the said direction.

(Sujoy Paul)
Judge

रिट अपील क्र. 1201/2006
उच्च न्यायालय मध्यप्रदेश, जबलपुर

मान. न्यायमूर्ति श्री दीपक मिश्रा, न्यायाधीश
मान. न्यायमूर्ति श्री एस.आर. वाधमरे, न्यायाधीश

बालकृष्ण प्रसार
बनाम
हरिशंकर एवं अन्य

भारतीय संविधान अनुच्छेद 226- के अंतर्गत प्रस्तुत याचिका क्रमांक 15983/2006 में एकल पीठ द्वारा पारित आदेश के विरुद्ध म.प्र. उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम 2005 की धारा 2 के अंतर्गत अपील।

प्रकरण के तथ्य : ग्राम पंचायत बेलसी तहसील बीना जिला सागर के सरपंच के निर्वाचन में अपीलकर्ता एवं उत्तरवादी को बराबर मत मिलने पर उत्तरवादी ने पुनर्मतगणना हेतु आवेदन दिया जो स्वीकार किया गया। पुनर्गणना में उत्तरवादी को 385 एवं अपीलकर्ता को 387 मत मिले। इस पर उत्तरवादी ने म.प्र. पंचायत राज एवं ग्राम स्वराज अधिनियम 1993 की धारा 122 के अंतर्गत निर्वाचन याचिका दायर की। उत्तरवादी ने निर्वाचन याचिका में गणना के दौरान हुई अनियमितताओं का उल्लेख किया एवं उसके समर्थन में साक्ष्य प्रस्तुत की। उसके द्वारा प्रस्तुत साक्ष्य से संतुष्ट होने पर निर्वाचन न्यायाधिकरण ने आदेश दिनांक 29.09.2006 द्वारा पुनर्मतगणना करने के आदेश दिये। इस आदेश के विरुद्ध अपीलकर्ता ने रिट याचिका क्र.15983/2006 दायर की जो एकल न्यायाधीश द्वारा खरिज की गयी। इस आदेश के विरुद्ध यह अपील खण्डपीठ के समक्ष की गयी।

न्यायालय का आदेश : प्रस्तुत तथ्यों, साक्ष्य एवं पूर्व उदाहरणों की विस्तार से व्याख्या करते हुए एकलपीठ ने निर्वाचन न्यायाधिकरण का आदेश उचित होना पाया गया एवं याचिका खारिज की गयी।

HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR
Wrti Petition No.1201/2006

Balkishar Prasar Appellant
Versus
Harishankar & Others Respondents

For the Appellant : Mr. Rajendra Tiwari, Senior Counsel and Mr. Amitabh Gupta, Advocate

For the respondent No.1: Mr. Mohd. Ali, Advocate

For the respondent No. 8: Mr. S.D. Tiwari, Government Advocate

Present : **Hon'ble Mr. Justice Dipak Mishra**
Hon'ble Justice Mr. S.R. Waghmare

O R D E R
(27.11.2007)

As Per Dipak Misra. J

In this appeal preferred under Section 2 of the MP Uchcha Nyaylyaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 the appellant has challenged the defensibility and substantiality of the order dated 6.11.2006 passed by the learned single Judge in Writ Petition No. 15983/2006.

2. The facts which are imperative to be stated are that the election for the post of Sarpanch, Gram Panchayat Betul, Tehsil Bina, Distt. Sagar was held on 23.01.2005 Counting took place on 28.01.2005. As asseverated, there were two polling centres, polling centre No. 74 and polling centre No. 75 On the first counting the petitioner apppellant secured 200 votes and the respondent No. 1 secured 241 votes in polling centre No. 74. In polling centre No. 75 the appellant secured 184 votes and respondent No. 1 secured 145 votes. Thus, both the candidates seured 886 votes each which resulted in a tie. At that juncture, the first respondent filed an application for recounting of votes. The said application was entertained and allowed. In recounting one vote which was rejected earlier was included in favour of the appellant in polling centre No. 74 and in polling centre No. 75 one vote counted in favour of the respondent No. 1 was rejected as invalid By virtue of this recounting the appellant received 387 votes and the repondent No.1 received 385 votes.

3. Being aggrieved by the aforesaid declaration of the election result the first respondent filed an election petition under Section 122 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as the 1993 Act) alleging various facts which related to the irregularities committed during counting and how the same has materially affected the election results. On behalf of the election petitioner, the first respondent herein, evidence was adduced to substantiate the assertions

made in the election petition. Being satisfied the election tribunal by order dated 29.9.2006 directed for recount of votes.

4. Being dissatisfied with the aforesaid order the appellant preferred. Writ Petition No. 15983/06 which has been dismissed in limine by the learned single Judge.

5. We have heard Mr. Rajendra Tiwari, learned senior counsel along with Mr. Amitabh Gupta for the appellant, Mr. Mohd. Ali, learned counsel for the respondent No.1 and Mr. S.D. Tiwari, learned Government Advocate for the State.

6. It is contended by Mr. Tiwari, learned senior counsel for the appellant that the learned single Judge has fallen into error by upholding the order passed by the election tribunal though the election petitioner had not pleaded how the recounting was necessitous. It is urged by him that in the absence of pleadings as regards the material facts, the tribunal could not have directed for recount as that tantamounts to roving and fishing inquiry but the learned single Judge did not appreciate the said facet and gave the stamp of approval to the order passed by the Prescribed Authority. The learned senior counsel has further contended that the reasonings ascribed by the tribunal are not cogent and germane inasmuch as it has recorded a finding that the discrepancy in the total number of the ballot papers is not due to anybody's willful conduct and that the appellant had no connection with the aforesaid discrepancy as alleged in the election petition. It is also propounded by him that while passing the order for recount the tribunal has not discussed the evidence on record and hence, the order of recount is not in consonance with the settled law relating to recount of votes. It is also urged by him that after the dismissal of the writ petition recount has taken place on 8.11.2006 behind the back of the appellant inasmuch as he was not informed the date of recount and thereby serious prejudice has been caused to him. It is further canvassed by the learned senior counsel for the appellant that the order of recount is not valid in law and its result cannot be taken into consideration as the order of recount cannot be appreciated from hind side. It is his further submission that at the time of recount the vote that was numbered same was counted by the Returning Officer and, therefore, the assertion of the election petitioner was deliberately incorrect. It is also urged by him that the assertion that more votes were counted than polled is neither false nor made in malafide manner inasmuch as the order of recount of the tribunal would clearly show that there was some mistake by the Returning Officer. It is further contended by him that apart from the assertion that more number of votes were counted, there were specific pleadings by the election petitioner with regard to determination of validity of ballot papers and the said allegations were specific in nature and, therefore, the order of recount and the fall out thereof cannot be found fault with. To buttress his submission he has commended us to certain decisions to which we shall refer later on.

7. The learned counsel for the respondents supporting the order passed by the learned single Judge contended that the learned single Judge has rightly held that the election tribunal had framed issues with regard to irregularities committed while recounting and had appreciated the evidence. It is also urged by him that the tribunal had held that in polling booths no. 74 and 75 total 874 votes were polled whereas counting for 876 votes was done by the Returning Officer. It is submitted by him that the learned single Judge has adverted to the reasonings given by the Sub-Divisional Officer and found them to be quite germane to the issue and accordingly the stamp of approval has given to the same by the learned single Judge.

8. Before we advert to the pleadings and the reasonings for directing recount of votes it is thought appropriate to refer to the citations commenced at the Bar.

9. In **D.P. Sharma Vs. Commissioner an Returning Officer, 1984 Supp. SCC 157** the Apex Court has laid down as follows :-

It is well established that in order to obtain recount to votes a proper foundation is required to be laid by the election petitioner indicating the precise material on the basis of which it could be urged by

him with some substance that there has been either improper reception of invalid votes in favour of the elected candidate or improper rejection of valid votes in favour of the defeated candidate or wrong counting of votes in favour the elected candidate had in reality been cast in favour of the defeated candidate.....”

10. In **Satyanarain Dudhani Vs. Uday Kumar Singh & others** 1993 SC 367 their Lordships have expressed the opinion as follows :-

“10.....It is settled proposition of law that the secrecy of the ballot papers cannot be permitted to be tinkered lightly. An order of recount cannot be granted as a matter of course. The secrecy of the ballot papers has to be maintained and only when the High Court is satisfied on the basis of material facts pleaded in the petition and supported by the contemporaneous evidence that the recount can be ordered.”

11. In **Vadivelu Vs. Sundaram and others.** (2000) 8 SCC 355 a three Judge Bench of the Apex Court after referring to the decisions rendered in the cases of Satyanarain Dudhani (supra), Jitendra Bahadur Singh Vs. Shri Krishna Behari. (1969) 2 SCC 433 D.P. Sharma (supra); P.K.K. Shamsudeen Vs. K.A.M. Mappillai Mohindern, (1989) 1 SCC 526; Ram Sewak Yadav Vs. Hussain Kamil Kidwai, AIR 1964 SC 1249; S. Raghbir Singh Gill Vs. S. Gurcharan Singh Tohra, 1980 Supp. SCC 53; R. Narayan Vs. S. Semmalai, (1980) 2 SCC 537 and M.R. Gopalkrishnan Vs. Thachady Prabhakaran, 1995 Supp. (2) SCC 101 expressed the view as under :-

“16. The result of the analysis of the above cases would show that this Court has consistently taken the view that re-count of votes could be ordered very rarely and on specific allegation in the pleadings in the election petition that illegality or irregularity was committed while counting. The petitioner who seeks re-count should allege and prove that there was improper acceptance of invalid votes or rejection of valid votes. It only the court is satisfied about the truthfulness of the above allegation, it can order recount of votes. Secrecy of ballot has always been considered sacrosanct in a democratic process of election and it cannot be disturbed lightly by bare allegations of illegality or irregularity in counting. But if it is proved that purity of elections has been tarnished and it has materially affected the result of the election whereby the defeated candidate is seriously prejudiced, the court can resort to re-count of votes under such circumstances to do justice between the parties.”

12. In **P.H. Pujar Vs. Kanthi Rajashekhar Kidiyappa and others.** (2002) 3 SCC 742, has been held as under :-

“..... The petitioner seeking re-count should allege and prove that there was improper acceptance of votes or improper rejection of valid votes. If only the court is satisfied about the truthfulness of the above allegation, it can order recount of votes. Secrecy of ballot has always been considered sacrosanct in a democratic process of election and it cannot be disturbed lightly by bare allegations of illegality or irregularity in counting.....”

13. In **Chandrika Yadav Vs. State of Bihar**, (2004) 6 SCC 331 = AIR 2004 SC 2036 the Apex Court had laid down the following norms :-

“20. It is well settled that an order of recounting of votes can be passed when the following conditions are fulfilled :

- (i) A prime facie case;
- (ii) Pleading of material facts stating irregularities in counting of votes;
- (iii) A roving and fishing inquiry shall not be made while directing recounting of votes and
- (iv) An objection to the said effect has been taken recourse to.”

“21... The requirement of maintaining the secrecy of ballot papers also be kept in view before a recounting can be directed. Narrow margin of votes between the returned candidate and the election

petition by itself would not be sufficient for issuing a direction for recounting.”

14. In **M. Chinnasamy Vs. K.C. Palanisamy and others**, AIR 2004 SC 541 the Apex reiterated the said principles in following terms :-

“28..... Inspection of ballot papers can be ordered when in the facts and circumstances obtaining in the case, the Tribunal finds it necessary to so direct in the interest of justice. Discovery and inspection of documents with which the Civil Court is invested with power under the Code of Civil Procedure when trying a suit may be applied but such an order would not be granted as a matter of course having regard to the insistence upon the secrecy of the ballot papers. Such an inspection may be ordered when two conditions are fulfilled :

(i) That the petition for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case; and

(ii) the tribunal is prime facie satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary....”

15. In **Tanaji Ramchandra Nimhan Vs. Swati Vinayak Nimhan and others**, AIR 2006 SC 1218 the Apex Court in paragraph 8 has opined thus :-

“8 This Court after referring to a number of prior decisions, has held in *Mahendra Pal v. Ram Dass Malanger and others* [(2002) 3 SCC 457] that an order of recounting cannot be made as a matter of course. Unless the election petition had laid the foundation and there was clinching evidence to support the case set up by the election petitioner, a recount normally could not be ordered.....”

16. The present factual material is to be tested on the anvil of the aforesaid enunciation of law. It is to be seen what has been pleaded in the election petition. It is averred in the election petition that during counting, 483 and 391 votes were cast in Polling Booths No. 74 and 75 respectively as such votes were received in the ballot boxes which were checked by the Presiding Officer. Thus, total votes counted by the Presiding Officer were 874. During such counting Harikishan, respondent No. 1 was leading by two votes. Thereafter the agent of the appellant had talked with some person for 15-20 minutes and after that there was a confidential meeting of the respondent No. 5 & 6 which continued for half an hour. The agent of the appellant gave an application for recount of votes and accordingly the Returning Officer announced for recounting. On recounting instead of 874 ballot papers, 876 ballot papers were found. The respondent No.1 objected to the recounting on the bedrock that there was total polling of 876 votes at Polling Booths No. 74 and 75. The Returning Officer immediately rejected the said objection. It is also averred that ballot paper No. 48272 was initially declared invalid since there was no stamp of any contesting candidate and, therefore, the Presiding Officer on the back side of said ballot paper noted the ground for rejection of said ballot paper under Rule 76(1) of *Nirvachan Niyam* by endorsing ‘Cha’ The Presiding Officer by putting the stamp of ‘Chashma’ on such invalid blank ballot paper took it into account for recounting and counted the said vote in favour of the appellant by showing that the votes polled in favour of the appellant as 201 at Polling Booth No. 74. Similarly for ballot paper no. 48201 in respect of Polling Booth No. 75 the Dy. Election Officer on the oral instructions of Presiding Officer rejected the said ballot paper which was polled in favour of respondent No.1. Thus, on recount, in Booth No. 74, 240 votes and in Polling Booth No. 15, 145 votes i.e. total 385 votes were polled in favour of the Harikishan, respondent No. 1 and in respect of the appellant 202 votes from Polling Booth No. 74 and 185 votes in Polling Booth No. 75 i.e. total 387 votes were recorded. Thus, two votes illegally counted in favour of the appellant.

17. The Tribunal after analyzing the pleadings and the evidence on record framed two issues, namely, whether on account of inclusion of name of the appellant in voters lists of two places the election was liable to be cancelled and whether during the counting of votes irregularities were commit-

ted. The Tribunal answered the first issue in favour of the appellant by observing that such an objection ought to have been taken before the Registration Officer inasmuch only the irregularities committed during the election process are taken note of by the Election Tribunal. As far as the second issue is concerned it has been held by the Election Tribunal that on a perusal of Exhibits - P-1, P-2, P-3 and P-8 it is perceptible that at Polling Booths No. 74 and 75 total votes 483 and 39 respectively have been cast and, therefore, mention of cast of total 876 votes in both the polling booths is doubtful. Thereafter, after referring to the other aspects the Election Tribunal directed for recount of votes.

18. It is submitted by Mr. Tiwari, learned senior counsel that no case for recount is made out and in fact, an effort has been made to create a fictitious cause of action to show that there were 874 votes whereas no one stated about the same before the Election Tribunal. It is also contended by him that the Election Tribunal has been misled in directing recount of votes and further the present appellant was not responsible for any discrepancy. Be it noted the learned senior counsel has placed heavy reliance on many a citations which we have referred to above. He has also heavily relied on the decision rendered in the case of **Janak Singh Vs. Ram Das Rai and others**, JT 2005 (2) SCC 249. The learned single Judge, as is manifest, distinguished the decision rendered in **Janak Singh (supra)** wherein the Apex Court has upheld the finding of the High Court which had declined to grant permission for recount on the foundation that no case for recounting was made out and the said conclusion was arrived at as there was no specific allegation before the Returning Officer. In the case at hand, it is demonstrable that the Prescribed Authority after appreciating the pleadings and the evidence on record has expressed an opinion that at Polling Booths No. 4 & 75 total 874 votes were cast whereas counting for 876 was done by the Returning Officer. The Tribunal has also appraised the documents, namely, Exhibits-P-1, P-2, P-3 and P-5 to come to the conclusion that 483 votes were polled at Polling Booth No. 74 and 391 at Polling Booth No. 75 i.e. total 874 votes. While 874 votes were polled in actuality, the counting reflected 876 votes. This irregularity was highlighted in the election petition as well as in the evidence brought on record and the election petitioner was defeated only by a margin of two votes, after recounting by the Returning Officer. In view of the aforesaid the Election Tribunal thought it appropriate to direct for recount of votes

Phool Chand Jain
NOTARY

रिट याचिका क्र. 18600/2011
उच्च न्यायालय मध्यप्रदेश, जबलपुर

मान. न्यायमूर्ति श्री आलोक अराधे, न्यायाधीश

नेतलाल पान्हे
बनाम
संतोष मात्रे एवं अन्य

भारतीय संविधान अनुच्छेद 226- सरपंच के पद पर उत्तरवादी क्र. 4 के निर्वाचित घोषित होने के विरुद्ध प्रस्तुत निर्वाचन याचिका में पारित आदेश दिनांक 20.10.2011 के विरुद्ध याचिका।

प्रकरण के तथ्य : सरपंच, ग्राम पंचायत नक्षी, जनपद पंचायत किरनापुर जिला बालाघाट के पद पर उत्तरवादी क्र.4 याचिकाकर्ता से 4 वोट अधिक पाने के कारण निर्वाचित घोषित हुआ। याचिकाकर्ता ने उसी दिन (18.01.2010) को मतदान केन्द्र 153 की पुनर्मतगणना हेतु आवेदन दिया जिस पर कोई निर्णय नहीं हुआ। धारा 122 के अंतर्गत प्रस्तुत निर्वाचन याचिका में निर्वाचन न्यायाधिकरण ने आदेश दिनांक 10.05.2010 द्वारा पुनर्मतगणना का आदेश दिया जिसके फलस्वरूप याचिकाकर्ता सरपंच निर्वाचित घोषित हुआ। इसके विरुद्ध प्रस्तुत रिट याचिका क्रमांक 6749/2010 में पारित आदेश दिनांक 26.04.2011 द्वारा निर्वाचन न्यायाधिकरण का आदेश दिनांक 10.05.2010 इस आधार पर निरस्त किया गया कि उसने निर्धारित प्रक्रिया के अनुसार बिना कोई साक्ष्य लिए आदेश पारित किया एवं प्रकरण उसे प्रत्यावर्तित किया गया। तत्पश्चात् निर्वाचन न्यायाधिकरण ने अन्य पक्षों का साक्ष्य आदि लेने के पश्चात् पाया कि पुनर्मतगणना का कोई आधार नहीं है एवं निर्वाचन याचिका आदेश दिनांक 20.10.2011 द्वारा खारिज कर दी। इसी आदेश के विरुद्ध यह याचिका दायर की गयी है।

न्यायालय का आदेश : न्यायाधिकरण के समक्ष प्रस्तुत साक्ष्य का विस्तार से परीक्षण के उपरान्त न्यायाधिकरण के प्रश्नास्पद आदेश में कोई त्रुटि होना नहीं पाया। पुनर्मतगणना के लिए आधार होना आवश्यक है। अतः याचिका खारिज की गयी।

HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR
S.B.:- Hon'ble Smt. Justice Alok Aradhe
Wrti Petition No. 18600/2011

Netlal Panche
Versus
Santosh Matre and others

O R D E R
(27.10.2014)

In this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the validity of the order dated 20.10.2011 passed by the Election Tribunal constituted under the provisions of Madhya Pradesh Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as the Act) by which the election petition preferred by the petitioner under section 122 of the Act, has been dismissed. In order to appreciate the petitioner's challenge to the impugned order, few facts need mention, which are stated infra.

2. The election for the post of Sarpanch for Gram Panchayat Nakshi, Janpad Panchayat Kirnapur, District Balaghat was notified in the year 2010. The petitioner as well as respondent Nos. 1 to 4 contested the election. The counting of the votes was held on 18.01.2010 and respondent No. 4 was declared elected, as he had secured four more votes than the petitioner. The petitioner made an application for re-count of the votes on 18.01.2010 to the Returning Officer of polling booth No. 153. However, no decision on the application submitted by the petitioner was taken.

3. The petitioner filed an election petition under section 122 of the Act. The Election Tribunal vide order dated 10.05.2010 directed re-count of the votes and declared the petitioner as elected on the post of Sarpanch. The aforesaid order was subject-matter of challenge in Writ Petition N. 6749/2010(s). A Bench of this Court vide order dated 26.04.2011 allowed the writ petition on the ground that the order passed by the Election Tribunal is procedurally ultra vires as much as, the Election Tribunal did not record the evidence of the parties before passing an order of re-count of votes. It was further held that the election was decided by the Tribunal in violation of Rule 11 of the Madhya Pradesh Nirwahan Niyam, 1995. Accordingly, the order dated 10.05.2010 passed by *the Election Tribunal was quashed and the matter* was remitted to the Election Tribunal to decide the election petition in accordance with law within a period of three months.

4. The Election Tribunal thereafter by order dated 20.10.2011 inter alia held that the petitioner had filed an application for re-count of votes in respect of Booth No. 153 which was accepted by the returning officer. Similarly, it was held that in booth No. 151 and 152, the polling took place peacefully and neither the candidates nor their agents raised any objection. The Election Tribunal also took into account the admission made by the petitioner in his cross-examination that he reached the polling booth No. 153 after the counting of the votes was concluded and the petitioner does not have any complaint against the returning officer. It was further found that the petitioner in his statement further admitted that in the application for re-count of votes, did not state that any irregularity was committed

during the counting of votes. The Election Tribunal also took into account the statement of the witnesses of the petitioner namely Suresh Kumar, Umesh Prasad and Suresh Prasad, while recording the finding that during the Polling, nobody had raised any objection. Thus, the Tribunal held that no case for ordering re-count of votes is made out. Accordingly, the election petition preferred by the petitioner was dismissed. In the aforesaid factual background, petitioner has approached this Court.

5. Learned senior counsel for the petitioner submitted that the petitioner submitted an application for re-count of votes which ought to have been considered by the returning officer. It was further submitted that in any case, is no prohibition under the Act, 1993 or under the Rules prohibiting court or the Tribunal to direct recount of votes. In support of the aforesaid submission, reliance has been placed on decision of Supreme Court in the case of Sohanlal vs. Babu Gandhi and others, 2003(2) MPLJ (S.C.) 215. It was further submitted that while deciding the election petition preferred by the petitioner, the Tribunal has taken into account extraneous matters. It was further submitted that even assuming that the petitioner had not raised any objection before the returning officer regard to irregularity in counting of votes, the non-raising of objection would not come in the way of the petitioner in filing the election petition under section 122 of the Act. In support of aforesaid submission, reference has been made to decision in the case of Fundi Bai vs. the Sub-Divisional Officer and Prescribed Authority (Revenue), 2012(3) MPLJ 261. While inviting the attention of this court to averments made in paragraphs 7 and 8 of the election petition, it was pointed out that there was sufficient material on record which the Tribunal ought to have taken into consideration while taking decision with regard to re-count of votes.

6. On the other hand, Mr. Shashank Shekhar, learned counsel for respondent No. 4 submitted that under Rule 80 of the Madhya Pradesh Nirwachan Niyam, 1995, the candidate, or in his absence, his election agent or his counting agent, is required to make an application stating the ground on which he demands re-count of votes. It is further submitted that in the application, no grounds were mentioned by the petitioner for making a demand for re-count of votes. It is further submitted that the Election Tribunal has taken into account the material available on record and has rightly come to the conclusion that no case for re-count of the votes in the facts and circumstances of the case is made out. It is further submitted that re-count of votes cannot be ordered as a matter of course and merely by making an allegation by a party. In support of his submission, learned counsel for respondents No. 4 has placed reliance on a Division Bench decisions of this Court in the case of Ganesh Ram Gayari vs. Bagdiram and others, 2013(2) MPLJ 447 and *Hanumant Singh vs. State of M.P. and others*, 2012(3) MPLJ 191. Mr. Sanjay Dwivedi, learned Government Advocate has supported the stand taken by Mr. Shashank Shekhar, learned counsel for respondent No.4.

7. Before dealing with the rival submissions made at the bar, I deem it appropriate to refer to the well settled legal position with regard to re-count of votes. When a petitioner seeks the relief of scrutiny and recount of ballot papers, the petitioner has to offer prima facie proof of errors in counting and if errors in counting are prima facie established, a recount can be ordered. See: *Ku. Sharadha Devi vs. Krishna Chandra Pant and others*, AIR 1982 SC 1569. In *P.K.K. Shamsudeen vs. K.A.M. Mappillai Mohindeen and others*, AIR 1989 SC 640, it has been held that justification for an order of recount of votes should be provided by the material placed by an election petitioner on the threshold before an order for recount is made. It has further been held that the reason for this salutary rule is that the preservation of the secrecy of the ballot is a sacrosanct principle which cannot be lightly or hastily broken unless there is prima facie genuine need for it. The right of a defeated candidate to assail the validity of an election result and seeking recounting of votes has to be subject to the basic principle that the secrecy of the ballot is sacrosanct in a democracy and hence unless the affected candidate is able to allege and substantiate in acceptable measure by means of evidence that a prima facie case of a high degree of probability existed for the recount of votes being ordered by the Election Tribunal in the

interest justice, a Tribunal or Court should not order the recount of votes.

8. Similarly, in *Shri Satyanarain Dudhiani vs. Uday Kumar Singh and others* AIR 1993 SC 367, it has been held that an order of recount cannot be granted as a matter of course and the secrecy of the ballot papers cannot be permitted to be tinkered lightly. In *Vadivelu vs. Sundaram and others*, (2000) 8 SCC 355, it has been once again reiterated that recount of votes can be ordered very rarely in the election petition and on the specific allegation in the election petition that illegality or irregularity was committed while counting. The petitioner who seeks recount should allege and prove that there was improper acceptance of invalid votes or improper rejection of valid votes. If the Court is satisfied about truthfulness of the allegation, it can order recount of votes. Similar view has been taken in the cases of *Chandrika Prasad Yadav vs. State of Bihar and others*, (2004) 6 SCC 331 and *Uday Chand vs. Surat Singh*, 2009 (1) SCC 170.

9. In the backdrop of aforesaid well settled legal position, facts of the case may be seen. In the instant case, in paragraphs 7 and 8 of the election petition, the petitioner has averred that in booth No. 153, 43 votes were illegally declared invalid whereas the same were valid votes in favour of the petitioner. It has further been stated that 43 votes in favour of the petitioner were neither declared invalid nor counted by the returning officer. The petitioner in paragraph 4 of his examination-in-chief has admitted that no irregularity took place at the time of polling in three polling booths. In paragraph 7, the petitioner has stated that 43 valid votes in favour of the petitioner were declared invalid and in paragraph 8, the petitioner has stated that 43 invalid votes were not counted. Similarly, the agent of the petitioner namely Manoharlal has stated that one Tulsi Sillare and the returning officer had declared the votes cast in favour of the petitioner as invalid. It was admitted by him in the cross-examination that no written complaint was made by him to the returning officer. It has also been admitted by him that in the affidavit filed on 5.02.2010, he has not stated that valid votes were declared invalid. Thus, if the averments made by the petitioner in paragraphs 6 and 7 of the election petition as well as his statement and statement of his agent is read, it is evident that petitioner has failed to substantiate the allegation with regard to irregularity in the counting of votes. The petitioner has failed to disclose any basis for the assumption that 43 valid votes in his favour were declared invalid by the returning officer. It is also relevant to mention here that on the date of polling itself, the petitioner had submitted an application (Ex.P/5) for recount of votes in which no grounds at all were disclosed, except by making bald allegation that there has been irregularity and illegality in the counting of votes. Thus, there is no material on record to order recount of votes. The petitioner has failed to make any specific allegation so as to enable this Court to order recount and has further failed to substantiate the averments made in the petition. The purity of election cannot be tarnished on the routine allegation and there cannot be any roving or fishing enquiry.

10. For the aforementioned reasons, I do not find any merit in the writ petition. Same fails and is hereby dismissed.

Petition dismissed.

रिट याचिका क्र. 89/2015
उच्च न्यायालय मध्यप्रदेश, जबलपुर

मान. न्यायमूर्ति श्री राजेन्द्र मेनन, न्यायाधीश

जयश्री चन्द्रपुरिया

बनाम

म.प्र. शासन एवं अन्य

भारतीय संविधान अनुच्छेद 226 : इस याचिका के माध्यम से याचिकाकर्ता ने ये निर्देश चाहे हैं कि ग्राम पंचायत गुड़ा जिला पन्ना में तब तक चुनाव न कराये जावे, जब तक वह सरपंच पद पर 5 वर्ष का कार्यकाल पूर्ण नहीं कर लेती।

प्रकरण के तथ्य : वर्ष 2010 के आम निर्वाचन में ग्राम पंचायत गुड़ा, जनपद पंचायत पवई जिला पन्ना के सरपंच का पद अनुसूचित जनजाति के लिए आरक्षित किया गया था, वहां निर्वाचन 6 माह बाद हुआ जिसमें याचिकाकर्ता सरपंच निर्वाचित घोषित हुई एवं इस आशय का प्रमाण पत्र उसे दिनांक 20.06.2010 को दिया गया। उत्तरवादी क्र. 2, राज्य निर्वाचन आयोग ने दिनांक 15.12.2014 को परिपत्र जारी किया कि जहां फरवरी 2010 के बाद चुनाव हुए थे, वहां अभी या फरवरी 2015 तक चुनाव न कराये जावे। याचिकाकर्ता का कथन है कि चूंकि वह सरपंच दिनांक 20.06.2010 को बनी थीं, उसे दिनांक 20.06.2015 तक कार्य करने दिया जाये। उक्त याचिका द्वारा उसने ऐसे निर्देश चाहे हैं।

न्यायालय का आदेश : ग्राम पंचायत गुड़ा का गठन फरवरी 2010 के काफी पहले हुआ था। चूंकि उस समय सरपंच पद का निर्वाचन नहीं हो सका था, याचिकाकर्ता का निर्वाचन उप चुनाव के दौरान दिनांक 22.06.2010 को हुआ था। चूंकि पंचायत के कार्यकाल की गणना पंचायत के प्रथम सम्मिलन से होती है, न कि सरपंच के निर्वाचन के दिनांक से, प्रस्तुत प्रकरण में दखल देने का कोई आधार नहीं है।

**HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR**

Wrti Petition No. 89/2015

Jayshri Chandrapuriya
Versus
State of M.P. & Other

**O R D E R
(19.02.2015)**

Shri Maneesh Soni, learned counsel for the petitioner.

Shri Siddharth Seth, learned counsel appears on instructions from respondent No. 2

It is the case of the petitioner who is an elected Sarpanch of Gram Panchayat, Gudha, Janpad Panchayat Pawai, Distt. Panna that she was elected as a Sarpanch of the Panchayat on 22.06.10 when the first meeting of the Panchayat was held and in view of the circular dated 15.12.14 issued by the State Election Commission and para 5 of the said circular indicating that an elected member of the Panchayat is entitled to complete the entire terms of 5 years to be calculated from the date the person was elected as Sarpanch, it is said that the general notification for constituting the Gram Panchayat w.e.f. February, 2010 will not apply in the case of the petitioner. It is said that petitioner was elected as a Sarpanch and assumed office of Sarpanch on 25.06.10. therefore petitioner was entitled to discharge the duties till she completes the terms of 5 years to be calculated w.e.f. 22.06.2010, i.e. the day she was elected.

Shri Siddharth Seth on instructions from the State Election Commission submits that notification for constitution of the Gram Panchayat Gudha was issued in January 2010. All the members were elected and the Gram Panchayats have been constituted much before February 2010 and therefore, the term of the Panchayat i.e. 5 years has to be calculated from this day. However, as post of Sarpanch of the Gram Panchayat was reserved for a member belonging to Scheduled Tribe community and as no nomination for election to the post of Sarpanch was received in the original election held in February, 2010 after constitution of the Gram Panchayat, a bye-election for election of Sarpanch was held in June, 2010 wherein the petitioner was elected.

Shri Siddharth Seth clarifies that the contention of the petitioner and the applicability of the circular dated 15.12.14 can be accepted only if the Gram Panchayat was itself constituted on 22.06.2010 but in present case, the entire Gram Panchayat was constituted in February, 2010. The elections were held prior to February, 2010, even for the post of Sarpanch of Gram Panchayat but due to non-availability of candidates belonging to the Scheduled Tribe community, a bye-election was notified and it is in the bye-election that petitioner was elected as a Sarpanch on 22.06.10. Accordingly, Shri Siddharth Seth clarifies on behalf of State Election Commission that petitioner was elected in the bye-election cannot have now any grievance and, therefore, he submits that petition is misconceived.

Having considered the contentions and on a perusal of the certificates produced by Shri Siddharth Seth, it is seen that the entire Gram Panchayat was constituted after the elections to the Gram Panchayat in the State of M.P. were held in the year 2009-10 and the Gram Panchayat was constituted much

before February, 2010. However, certain difficulties arose due to non-availability or submission of the nomination form by the candidates belonging to a particular category for the post of Sarpanch and, therefore, a bye-election was held. As petitioner was elected in a bye-election on 22.06.201, it cannot be said that Gram Panchayat itself was constituted on 22.06.10. Infact, the Gram Panchayat was constituted in February, 2010 and after 5 years as the election have been notified now, I see no reason to interfere into the matter.

Accordingly, finding the submissions made by the petitioner to be misconceived in the light of the facts that have come on record, this petition is dismissed.

(Rajendra Menon)

Judge

रिट याचिका क्र. 53/2013

उच्च न्यायालय मध्यप्रदेश

मान. न्यायमूर्ति श्री एस.के. गंगोले, न्यायाधीश

मान. न्यायमूर्ति श्री डी.के. पालीवाल, न्यायाधीश

भारतीय संविधान अनुच्छेद 226 : अपीलकर्ता को कारण बताओ नोटिस देते हुए म.प्र. पंचायत राज एवं ग्राम स्वराज अधिनियम 1993 की धारा 40 के अंतर्गत सरपंच के पद से हटाये जाने एवं उसके विरुद्ध प्रस्तुत अपील खारिज होने के आदेश के विरुद्ध याचिका ।

प्रकरण के तथ्य : अपीलकर्ता ग्राम पंचायत खामखेड़ा लशकरपुर तहसील विदिशा का सरपंच चुना गया था। दिनांक 24.07.2012 को म.प्र. पंचायत राज एवं ग्राम स्वराज अधिनियम 1993 की धारा 40 के अन्तर्गत प्राधिकारी एस.डी.ओ. ने उसे कारण बताओ नोटिस दिया कि उसे सरपंच के पद से क्यों न हटाया जाय। अपीलकर्ता ने आरोपों को अस्वीकार किया। तत्पश्चात् आदेश दिनांक 31.12.2012 द्वारा उसे सरपंच के पद से हटाया गया। इस आदेश के विरुद्ध कलेक्टर को गयी अपील खारिज की गयी। इसके विरुद्ध प्रस्तुत रिट याचिका इस आधार पर खारिज की गयी कि अधिनियम के प्रावधानों के अनुसार रिवीजन दायर किया जा सकता था। इसी आदेश के विरुद्ध यह अपील इस आधार पर प्रस्तुत की गयी है कि एस.डी.ओ. का आदेश 120 दिन के बाद पारित किया गया है।

न्यायालय का आदेश : उक्त धारा 40 के परन्तुक में आदेशात्मक प्रावधान है कि कारण बताओ नोटिस जारी करने के 90 दिन के भीतर अन्तिम आदेश पारित होना चाहिए। अतः एस.डी.ओ. का आदेश अधिकारिता से बाहर है। ऐसी स्थिति में याचिका स्वीकार किये जाने योग्य थी, भले ही वैकल्पिक उपाय उपलब्ध हो। अतः अपील स्वीकार की गयी एवं एस.डी.ओ. तथा कलेक्टर के आदेश निरस्त किये गये।

2013 (II) MPWN 28
S.K. Gangele and D.K. Paliwal, J.J.o
Santosh Raghuvanshi v. State of M.P.

Writ Appeal No. 53 of 2010 (G);

Decided on 08.04.2013.*

(1) Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 (M.P.) - S. 40(1)(c), Proviso -- *prescribed authority has no jurisdiction to pass order of removal of Sarpanch beyond period of 120 days --- proviso is mandatory in nature.* 2013(2) JLJ 84 relied on.

(Para 4 and 5)

(2) Constitution of India -- Art 226 -- for issuance of writ of certiorary -- alternative remedy *is no far.* 2013(2) JLJ 84 relied on.

(Para 6)

(1) पंचायत राज एवं ग्राम स्वराज अधिनियम, 1993 (म.प्र.) - धारा 40(1)(ग), परंतुक - विहित प्राधिकारी को सरपंच को हटाने का आदेश 120 दिवस की अवधि के पश्चात् पारित करने की आधिकारिता नहीं है - परंतुक आज्ञापक प्रकृति का है। 2013(2) जे एल जे 84 अवलंबित।

(पैरा 4 एवं 5)

(2) भारत का संविधान - अनु 226 - उत्प्रेषण रिट जारी करने के लिए - आनुकल्पिक उपचार वर्जन नहीं। 2013(2) जे एल जे 84 अवलंबित।

(पैरा 6)

O R D E R

1. This appeal has been filed by the appellant against the order dated 17.01.2013 passed in WP No. 281/2013.

2. The appellant was elected as Sarpanch of Gram Panchayat Khamkheda Lashkarpur of Tahsil Vidisha. On 24.07.2012, appropriate authority i.e. SDO issued a show cause notice to the appellant that why the appellant be not removed from the post of Sarpanch in accordance with the provisions of Section 40 contained in MP Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as the 'Adhiniyam of 1993'). The appellant submitted his reply and denied the allegations. Thereafter, the SDO passed an order on 31.12.2012 and removed the appellant from the post of Sarpanch. Against the aforesaid order, the appellant preferred an appeal, that has been rejected by the Collector. Thereafter, he filed a writ petition, which has been dismissed by the learned Single Judge on the ground that the appellant could have filed a revision under the provisions of Adhiniyam of 1993.

3. Learned counsel for the appellant has contended that the SDO passed an order of removal after a period of 120 days, hence, the order passed by the authority is without jurisdiction and power. For the aforesaid purpose, the learned counsel relied on the judgement of this Court in the case of *Dhanwanti v. State of MP* and others reported in 2013(2) JLJ 84, 2013(1) MPLJ 549.

4. This Court in the case of *Dhanwanti* (supra) has held that the prescribed authority has no

jurisdiction to pass order of removal of Sarpanch beyond the period of 120 days as mentioned in the proviso to section 40(1)(c) of the Adhiniyam of 1993. The aforesaid provision is under :-

“40. *Removal of office bearers of Panchayat* - (1) The State Government or the prescribed authority may after such enquiry as it may deem fit to make at any time, remove an office bearer-

(a) if he has been guilty of misconduct in the discharge of his duties; or

(b) if his continuance in office is undersirable in the interest of the public :

Provided that no person shall be removed unless he has been given an opportunity to show cause why he should not be removed from his office. NP provided further that the final order in the inquiry shall be passed within 90 days from the date of issue of show cause notice to the concerned office bearer and where the pending case is not decided within 90 days, the prescribed authority shall inform all facts to his next senior officer in writing and request extension of time for disposal of the inquiry but such extension of time shall not be more than 30 days.”

5. In accordance with the aforesaid section, the prescribed authority has no power to pass final order after a period of 90 days in regard to removal of the office bearers of the Panchyat, however, the period could further be extended for a period of 30 days if the next senior officer of the authority grants permission of extension of time for disposal of the inquiry. In the case of *Dhanwanti (supra)*, the Division Bench of this Court has held that the aforesaid proviso is mandatory in nature.

6. In this case, the show cause notice was issued on 24.07.2012 and the order was passed on 31.12.2012, after a period of 120 days. Hence, the order was without jurisdiction. When the order of removal of the appellant is without jurisdiction, then certainly the writ petition could be entertained even though there is alternative remedy available because for issuance of writ of certain alternative remedy is no bar. This point has already been considered in the case of *Dhanwanti (supra)*. The present case is squarely covered by the judgement as quoted above.

7. In this view of the matter, the appeal is allowed. The order passed by the writ Court and the orders dated 31.12.2012 passed by the SDO and dated 8.1.2013 passed by the Collector are hereby set aside. It is hereby clarified that the authorities are at liberty to take action against the Sarpanch, if it is required, in accordance with law. No. order as to costs.

Shivendra Singh and P.S. Raghuwanshi for appellant; MPS Raghuvanshi, Additional Advocate General for respondent/State; Amit Lahoti for intervener.

रिट याचिका क्र. 1368/2013
उच्च न्यायालय मध्यप्रदेश जबलपुर

मान. न्यायमूर्ति श्री एस.के. गंगोले, न्यायाधीश

श्रीमती मुन्नीदेवी

बनाम

म.प्र. शासन

भारतीय संविधान अनुच्छेद 226 : सरपंच के विरुद्ध अविश्वास प्रस्ताव पर विचार करने हेतु आहूत बैठक दिनांक 07.03.2013 के विरुद्ध याचिका।

प्रकरण के तथ्य : याचिकाकर्ता वर्ष 2009 में सरपंच निर्वाचित हुई थी। उसके विरुद्ध अविश्वास का प्रस्ताव 21 में से 13 पंचों द्वारा लाया गया जिस पर एस.डी.ओ. ने तहसीलदार भिण्ड को पीठासीन अधिकारी नियुक्त करते हुए बैठक के लिए दिनांक 09.11.2012 निर्धारित किया। इसके विरुद्ध कलेक्टर के यहां इस आधार पर अपील की गयी कि बैठक की सूचना 7 दिन पूर्व नहीं दी गयी। कलेक्टर ने अपने आदेश दिनांक 18.02.2013 द्वारा उक्त एस.डी.ओ. का आदेश निरस्त किया गया एवं बैठक के लिए नई तिथि निश्चित किये जाने के निर्देश दिये। तदनुसार आदेश दिनांक 23.02.2013 द्वारा बैठक के लिए दिनांक 07.03.2013 की तिथि निश्चित की गयी। इस आदेश के विरुद्ध यह याचिका इस आधार पर दायर की गयी कि म.प्र. पंचायत राज एवं ग्राम स्वराज अधिनियम 1993 की धारा 21(3) के अनुसार 6 माह के भीतर पुनः अविश्वास प्रस्ताव पर विचार नहीं किया जा सकता।

न्यायालय का आदेश : चूंकि पूर्व में आहूत बैठक में अविश्वास प्रस्ताव पर चर्चा नहीं हुई थी एवं उक्त बैठक दिनांक को निरस्त करते हुए बैठक की नई तिथि निश्चित की गयी है, अतः 6 माह का उक्त प्रतिबन्ध लागू नहीं होता। याचिका निरस्त की गयी।

S.K. Gangele, J.
Munni Devi (Smt.) v. State of M.P.
Writ Petition No. 1368 of 2013(G)
Decided on 7.3.2013*

O R D E R

1. The petitioner has filed petition against the order Annexure P/1 dated 18.2.2013 and Annexure P/2 dated 23.2.2013

2. The petitioner was elected as Sarpanch of the Gram Panchayat in the year 2009. No-confidence motion was moved against the petitioner before the Sub Divisional Officer. Out of total 21 members, 13 members supported the no-confidence motion and filed their affidavits. The Sub Divisional Officer appointed the Tahasildar, Bhind as Presiding Officer to preside over the meeting. The date of Meeting to consider the no-confidence motion was fixed as 9.11.2012. The aforesaid order was challenged before the Collector on the ground that in accordance with the Madhya Pradesh Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice President Ke Viruddh Avishwas Prastav) Niyam, 1994 (hereinafter referred to as 'the Rules of 1994') the notice was not issued before seven days. The Collector *vide* order dated 18.2.2013 set aside the order of fixing the date of meeting and remanded the case to the Sub Divisional Officer for convening another meeting. Thereafter, *vide* order dated 23.2.2013, the Sub Divisional Officer fixed the date of meeting as 7.3.2013.

3. Learned Senior counsel appearing on behalf of the petitioner has submitted that the order of Sub Divisional Officer fixing the date of meeting is against law, because in accordance with section 21(3) of M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as 'the Adhiniyam of 1993'), no no-confidence motion shall lie within a period of six months and the provisions of the Adhiniyam of 1993 have not been followed in fixing the date of meeting.

4. The arguments advanced by learned senior counsel that no no-confidence motion shall lie within a period of six months from earlier no-confidence motion in view of section 21(3) of the Adhiniyam of 1993 could not be accepted. The relevant section is as under :-

"21. (3) No-confidence motion shall not lie against the Sarpanch or Up-Sarpanch within a period of -

(i) [two and half year] from the date on which the Sarpanch or Up-Sarpanch enter their respective office;

(ii) six months preceding the date on which the term of office of the Sarpanch or Up-Sarpanch, as the case may be, expires;

(iii) [six months] from the date on which previous motion of no-confidence was rejected."

5. In accordance with the aforesaid section, if the previous motion of no-confidence was rejected, then within six months another no-confidence motion could not be considered. In the present case, no-confidence motion was not taken into consideration by the members of the Gram Panchayat, for which, the date was fixed by the Sub Divisional Officer and that order was quashed by the Collector exercising revisional power on the ground that seven days' time was not granted to the members of the Gram Panchayat for consideration of no-confidence motion in accordance with Rule 3(3) of the Rules of

1994.

6. The next ground of challenge is that when earlier motion was defeated, then second date of meeting could not be fixed. That, contention also could not be accepted, because when the date of convening the meeting in accordance with Rule 3(3) of the Rules of 1994 for consideration of no-confidence motion was held not to be proper, then subsequently, the Sub Divisional Officer has fixed the date of meeting as 7.3.2013 *vide* order dated 23.2.2013. The aforesaid order is in accordance with law and in accordance with the Rules of 1994.

7. In this view of the matter, in my opinion, there is no merit in this petition. It is hereby dismissed. No order as to costs.

K.N. Gupta with R.S. Dhakad for petitioner; Smt. Sangeeta Pachori, Deputy Government Advocate for respondents No. 1 to 3/State; Smt. Ami Prabal for respondent No. 4.



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