

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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 05TH OF AUGUST, 2022

WRIT PETITION No.17682 of 2022

Between:-

**SHALINI AGARWAL W/O SHRI
NISHANT AGARWAL, AGED 29
YEARS, OCCUPATION- SOCIAL
WORKER, RESIDENT OF GALI
NO.6 SHIV COLONY, WARD NO.23,
DABRA, DISTRICT GWALIOR
(MADHYA PRADESH)**

.....PETITIONER

***(BY SHRI J.P. MISHRA WITH SHRI GAURAV MISHRA –
ADVOCATES)***

AND

- 1. STATE OF MADHYA PRADESH,
THROUGH THE PRINCIPAL
SECRETARY, DEPARTMENT OF
URBAN ADMINISTRATION AND
DEVELOPMENT, VALLABH
BHAWAN, BHOPAL (MADHYA
PRADESH).**
- 2. NAGAR PALIKA PRISHAD, DABRA
THROUGH CHIEF MUNICIPAL
OFFICER.**
- 3. SUB-DIVISIONAL OFFICER CUM
RETURNING OFFICER, TEHSIL**

DABRA, DISTRICT GWALIOR
(MADHYA PRADESH).

4. MADHYA PRADESH STATE
ELECTION COMMISSION,
THROUGH ITS SECRETARY
BHOPAL (MADHYA PRADESH).
5. SMT. MEERA RAJORIYA, W/O SHRI
KAMLESH RAJORIYA, RESIDENT
OF SHIV COLONY, GALI NO.4,
DABRA, DISTRICT GWALIOR
(MADHYA PRADESH).

.....RESPONDENTS

*(SHRI A.K. NIRANKARI – GOVERNMENT ADVOCATE FOR
THE STATE)*

*(SHRI MPS RAGHUVANSHI – SENIOR ADVOCATE WITH
SHRI DS RAGHUVANSHI – ADVOCATE FOR RESPONDENT
NO.2)*

*This application coming on for hearing this day, the Court passed
the following:*

ORDER

This petition under Article 226 of the Constitution of India has
been filed seeking the following reliefs:-

- (1) That, the respondent no.5 be restrained from
holding the office of councilor of ward no.23,
Nagar Palika Parishad Dabra for not complying
the basic requisites as required to contest the
election of councilors.
- (2) That, the entire election process for the post of
councilors of Ward No.23 Nagar Palika Parishad
Dabra be set aside.
- (3) That, Any other order or suitable writ order or
direction in favour of the petitioner may kindly
be passed in the interest of justice.

(4) The cost of the petition may kindly be allowed to the petitioners.

2. It is submitted by the counsel for the petitioner that although the respondent no.5 was not eligible to contest the election of the Counsellor from Ward No.23, Nagar Palika Parishad Dabra, District Gwalior, but in spite of that she was permitted to contest the election and now she has been elected.

3. It is submitted that alongwith her nomination paper the respondent no.5 had filed a copy of the No Objection Certificate issued by the Municipal Council, Dabra. An objection was raised to the effect that the No Objection Certificate submitted by the respondent no.5 is a forged document and there are dues outstanding against the husband of the respondent no.5 and the same have not been deposited, still by order dated 21/6/2022 the petitioner's objection was rejected and the nomination paper of respondent no.5 was accepted. Since the respondent no.5 was disqualified for contesting the election, therefore, this petition in the nature of *quo warranto* is maintainable. To buttress his contentions, the counsel for the petitioner has relied upon the judgments passed by the Supreme Court in the case of **K. Venkatachalam Vs. A. Swamickan and Another** reported in (1999) 4 SCC 526, **Rajendar Singh Vs. N.K. Shejwalker and Others** reported in AIR 1971 MP 248 and **Satyarath Prakash Agrawal Vs. State of M.P. and others** reported in 2009 (I) MPJR 212.

4. *Per contra*, the petition is vehemently opposed by the counsel for the State as well as the respondent no.2. It is submitted that whether the No Objection Certificate filed by the respondent no.5 was a forged document or not, is a disputed question which cannot be decided by

exercising power under Article 226 of the Constitution of India. The petitioner has an efficacious remedy of filing an Election Petition, which shall be decided after recording of evidence. It is further submitted that this Court in the case of **Smt. Choti Bai Vs. Madhya Pradesh State Election Commission and others (Writ Petition No.17293/2022)** by order dated 28/7/2022 has already rejected the petition with liberty to the petitioners therein to file an Election Petition.

5. Heard learned counsel for the parties.

6. The solitary objection of the petitioner is that since certain dues are outstanding against the husband of respondent no.5, therefore, her nomination was wrongly accepted. Improper acceptance of nomination paper is one of the ground of Election Petition. It is true that a writ of *quo warranto* is also maintainable, but the controversy involved in the present case necessarily involves complex disputed question of fact. Whether No Objection Certificate filed by the respondent no.5 alongwith her nomination paper was a forged document or not, can be decided only after recording of evidence. Thus, under these circumstances, this Court is of the considered opinion that where the petitioner has an efficacious remedy of filing an Election Petition, which shall be decided on the basis of evidence, no useful purpose would be served by entertaining this petition.

7. Accordingly, this petition is **dismissed**. However, liberty is granted that if the petitioner so desires, she can file an Election Petition.

(G.S. AHLUWALIA)
JUDGE

Arun*