

IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

WRIT PETITION No. 12380 of 2023

BETWEEN:-

**RABINDRA KUMAR UPADHYAY S/O LATE
SHRI BARELAL, AGED ABOUT 45 YEARS,
OCCUPATION: SARPANCH R/O SIKRI
JAGIR JANPAD PANCHAYAT LAHAR
TEHSIL MIHONA, DISTRICT BHIND
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI GAURAV MISHRA - ADVOCATE)

AND

**1. THE SUB-DIVISIONAL OFFICER
(REVENUE) LAHAR, DISTRICT BHIND
(MADHYA PRADESH)**

**2. AKHILESH SHARMA S/O SHRI
RAMESHCHANDRA SHARMA, AGED
ABOUT 41 YEARS, R/O- VILLAGE SIKRI
JAGIR, JANPAD PANCHAYAT LAHAR,
TEHSIL MIHONA, DISTRICT BHIND
(MADHYA PRADESH)**

.....RESPONDENTS

***(BY SHRI M.S. JADOUN – GOVERNMENT ADVOCATE FOR RESPONDENT
NO.1/STATE)***

(BY SHRI SANKALP SHARMA – ADVOCATE FOR RESPONDENT NO.2)

Reserved on : 20/07/2023
Pronounced on : 22 /11/2023

This petition coming on for hearing this day, the court passed the following:

ORDER

With consent heard finally.

1. The present petition under Article 226/227 of the Constitution of India has been preferred by the petitioner taking exception to the order dated 17.05.2023 passed by the Court of Sub-Divisional Officer (SDO), Lahar, District Bhind, whereby an application under Order 7 Rule 11 of the CPC filed by the petitioner as respondent/returned candidate in election petition, which is being preferred by the respondent No.2 has been rejected.
2. Precisely stated facts of the case are that the petitioner and respondent No.2 participated in the election for the post of Sarpanch in Gram Panchayat Sikri Jagir, Tahsil Lahar, District Bhind. In the said election, respondent No.2 obtained 407 votes whereas petitioner obtained 425 votes. Consequently petitioner declared as elected/returned candidate by Annexure P/2. Thereafter, election petition under Section 122 of the M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 (hereinafter

referred as 'Act of 1993') was filed at the instance of respondent No.2 with certain allegations in respect of improper conduct of counting process.

3. Notice was issued on 10.08.2022 and petitioner appeared before the Court of SDO, Lahar, Bhind. He moved an application under Order VII Rule 11 of the CPC seeking rejection of the election petition as according to him, election petition was not duly supported by the affidavit. Sub-Divisional Officer heard the rival contentions and dismissed the application so preferred. Therefore, this petition has been filed.
4. It is the submission of learned counsel for the petitioner that the election petition in respect of Panchayat is being governed by the M.P. Panchayat (Nirwachan) Niyam, 1995 (hereinafter referred as 'Nirwachan Niyam, 1995') and the M.P. Panchayat (Election Petitions, Corrupt Practices and Disqualification of Membership), Rules 1995 (hereinafter referred as 'Election Petitions' Rules 1995'). As per Rule 5 of the Election Petitions Rules 1995, contents of petition shall incorporate the signature of the petitioner and verification of the contents of statements of all material facts and particulars would be in manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings. Counsel referred the Order VI Rule 15 of the CPC and submitted that verification of pleadings has to be in accordance with the Clause 4 of said Sub-Rule 15 where it has been prescribed that person verifying the pleadings shall also furnish an affidavit in

support of his pleadings. Here, in the present case, affidavit has been filed but it has been sworn before the Oath's Commissioner and not before the Judicial Magistrate First Class or Notary. Oath's Commissioner is not the appropriate authority before whom election petitioner could have sworn the affidavit because of the effect of Rule 5 of the Commissioner of Oath's Rules, 1976 (hereinafter referred as 'Oath's Rules, 1976').

5. According to the learned counsel for the petitioner, as per Rule 5, the Commissioner of Oaths shall have power to verify affidavits to be used in Courts by administering oaths and affirmations. While referring the Rule 2 (b) where definition of 'Court' has been defined, learned counsel stressed over the point that 'Court' means only civil court under superintendence of the High Court. Here, Court of SDO is not a civil court as per the definition given in the Oath's Rules, 1976, therefore, affidavit sworn before Oath's Commissioner cannot be treated to be an affidavit for the purpose of election petition. This was the compliance which is mandatory in nature and therefore, any omission or deficiency renders the case vulnerable.
6. For creating a distinction between the civil courts and revenue courts, learned counsel for the petitioner referred Sections 3 and 5 of the CPC and submits that for the purpose of CPC, district courts is sub-ordinate to the High Courts and as per Section 5, revenue courts cannot act as civil courts because they are different than civil courts.

7. Learned counsel for the petitioner tracked the law developed in this regard right from the judgment rendered by the Apex Court in the case of **Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and others** reported in **AIR 1964 SCC 1545** and submits that concept of affidavit in election petition falling under Representation of the People Act, 1951 was considered (hereinafter referred as 'Act of 1951'). Defect in affidavit was found to be curable defect. He further referred para 5 (page 844) of the judgment rendered by the Apex Court in the case of **M. Kamalam Vs. Dr. V.A. Syed Mohammed** reported in **(1978) 2 SCC 659**, wherein Apex Court has held that affidavit is an integral part of the election petition. Thereafter, counsel referred the para 28 of the judgment rendered by the Apex Court in the case of **F.A. Sapa and others Vs. Singora and others** reported in **(1991) 3 SCC 375** to bring home the legal position that inclusion of affidavit as integral part and its strict compliance.
8. Learned counsel for the petitioner relied upon the judgment rendered by the Apex Court in the case of **Rameshwar Dayal Arale Vs. Munna Singh Bhadoria** reported in **AIR 1992 MP 163** and in para 6 referred the objective of affidavit and referred the rule of mischief to avoid vague pleadings. He also referred the judgment passed by the Division Bench of Bombay High Court as reported in the case of **Shrikrushna Sadashiv Dhamankar Vs. The Nasik Merchants Co-operative Bank Ltd. and others** reported in **AIR 1990 Bombay 90** to bring home the legal

position that mandatory nature of affidavit and fatal consequence of non-compliance. According to him, in absence of any affidavit, election petition deserves dismissal.

9. Spree of reliance over the judgments continued when the counsel for the petitioner referred the judgment rendered by the Apex Court in the case of **Ravinder Singh Vs. Janmeja Singh and others** reported in **(2000) 8 SCC 191**, wherein in absence of any affidavit in the prescribed form in support of the allegations of corrupt practices and particulars, election petition was dismissed. He further referred para 52 of the judgment rendered by the Apex Court in the case of **G.M. Siddeshwar Vs. Prasanna Kumar** reported in **(2013) 4 SCC 776** and submitted that because of non-compliance of the provisions of Section 83 of the Representation of the People Act, 1951, election petition may be dismissed at the threshold.
10. He further referred paras 12 to 15 of the judgment rendered by the Apex Court in the case of **Shashi Bhushan Bajpai Vs. Madhavrao Scindia** reported in **AIR 1998 MP 31** and submitted that while referring the facts of the said case, submitted that though Deputy Registrar of High Court was competent to act as Oaths Commissioner for execution of affidavit to be sworn before him but for the purpose of election petition as per the Act of 1951, form 25 and Rule 94(A) of the Conduct of Election Rules, 1961, Deputy Registrar was not the appropriate authority. Therefore, hon'ble Supreme Court found the affidavit sworn before the

Deputy Registrar, without jurisdiction and it was declared to be fatal defect in election petition.

11. He also referred the judgment rendered by the Apex Court in the case of **Sanjay Gurjar Vs. Dushyant Singh and others** reported in **AIR 2008 (NOC) 2032 (Rajasthan)** to submit that in absence of the affidavit in the election petition, defect was found to be fatal. He further relied upon the judgment dated 20.01.2023 passed by Allahabad High Court in the case of **Lokendra Singh Vs. State of U.P. and others (Writ Petition No.39558/2022)**. Although matter pertained to Panchayat Election wherein it has been held that in absence of any affidavit verifying the pleadings under the Panchayat Rules of Uttar Pradesh election petition can be dismissed.
12. Last but not the least, learned counsel for the petitioner submits that impugned order indicates that instead of allowing the petitioner to lead evidence while framing issues, authority concerned has directed the petitioner and respondent to advance arguments. In absence of issues being framed and evidence being led, election petition cannot be decided.
13. *Per contra*, learned counsel for the respondent No.2 matched the vehemence and submitted that Rule 5 of the Oath's Rules 1976 provides jurisdiction of Commissioner of Oath's and the said authority has the power to verify the affidavits to be used in courts by administering oaths and affirmations. First, he referred definition of 'court' as defined in Rule 2 (b) of the Oath's Rules,

1976 where 'court' means only civil court under superintendence of the High Court and thereafter referred the definition of court as defined in Section 3 of the Indian Evidence Act, 1872, wherein court includes all Judges, Magistrates and all Persons, except Arbitrator, legally authorized to take evidence and submitted that definition as prescribed in Evidence Act includes all persons who are legally authorized to take evidence. Here, SDO being court acts as an Election Tribunal to decide the election petition and is authorized to take evidence as per Rule 11 of the Election Petitions Rules, 1995, therefore, he is the court as per the Evidence Act.

14. Since Rule 2(b) of the Oath's Rules, 1976 does not define civil court therefore meaning has to be borrowed from the Evidence Act and even in common parlance, civil courts are those courts where procedure is regulated by CPC. Therefore, any narrower interpretation of "Court", ousting the court of SDO as Election Tribunal would lead to absurdity, therefore, wider interpretation is to be given. Again he referred Rule 2(b) and submits that civil courts under superintendence of the High Court means any court or authority legally authorized to take evidence under superintendence of High Court and court of SDO as Election Court or the Tribunal, as the case may be, is working under superintendence of the High Court under Article 226/227 of the Constitution. Therefore, definition as provided in Rule 2(b) does not oust the jurisdiction of the SDO from the definition of the

court and once SDO is a court then as per Rule 5 of the Oath's Rules, 1976, affidavit can be used in the court of SDO if Oath Commissioner had administered oaths and affirmations.

15. In support of his submission, learned counsel for the respondent No.2 referred the Division Bench of this Court in the case **Bhagwati Prasad Singhal Vs. State of M.P. and others** reported in **2005 (3) JLJ 166** and referred the terms and judicial proceedings as discussed in para 3 of the said judgment to bring home the position that judicial proceeding is that proceeding in the courts of which evidence is or may be legally taken on oath and therefore, Oaths Commissioner may administer the oaths and affirmations in respect of any affidavit to be used in any judicial proceedings before any court to which Code of Civil Procedure applies.
16. He also relied upon judgment of Apex Court in the case of the State of **M.P. and others Vs. Anshuman Shukla** reported in **(2008) 7 SCC 487** to submit that the test which must be fulfilled before the said authority to treat it as court is three folds:-
- (a) *the dispute which is to be decided by him must be in the nature of a civil suit;*
 - (b) *the procedure for determination of such dispute must be judicial procedure; and*
 - (c) *the decision must be a binding nature.*
17. On the strength of said judgments, it is the submission of the learned counsel for the respondent No.2 that by applying this test

and while considering Rule 11 of the Election Petitions Rules, 1995 it is luculently clear that SDO is to be treated as court and therefore, affidavits sworn before the Oath's Commissioner would be a valid affidavit.

18. Learned counsel for the respondent No.2 also referred the dichotomy between the Act of 1951 *vis-a-vis* Election Petitions Rules, 1995 and submitted that Act of 1951 and rules framed thereunder as per Rules, 1961, Rule 94 (A) specifically provides for filing of affidavits to be sworn by Judicial Magistrate First Class, Notary and Oaths Commissioner and it has to be in form 25 whereas no such prescription is provided in Election Petitions Rules, 1995, therefore, affidavit sworn before Oaths Commissioner is not to be construed so stringently as provided in Act of 1951 and Rules of 1961.
19. It is further submitted that judgments relied upon by the counsel for the petitioner move in different factual realm because those judgments are in respect of election petitions based upon corrupt practices and therefore, pleadings of corrupt practices are to be supported by affidavits in specific manner so as to keep the purity of election and election laws intact and person who alleges should come out with specific pleadings rather than vague one. Earlier application under Order 7 Rule 11 of the CPC preferred by the petitioner on the ground of corrupt practices has already been dismissed but the said order has not been challenged, therefore, attained finality.

20. This time, application under Order 7 Rule 11 of the CPC is based upon the contention about affidavit sworn before the Oaths Commissioner. Therefore, arguments are to be seen in light of that particular ground raised in the application. He further relied upon the Rule 8 of the Election Petitions Rules, 1995 and submitted that non-compliance of provisions of Rule 3, 4 and 7 entails dismissal but the Rule 8 nowhere provides that non-compliance of Rule 5 would entail dismissal. Therefore, if the contentions of the petitioner are accepted then it would be amounting to incorporation of Rule 5 into Rule 8 and same is not permissible. He further referred the Rule 31-A(2) of the Nirwahan Niyam, 1995 and submitted that affidavit can be sworn before the competent Notary, Magistrate and Oath Commissioner.
21. Counsel further submitted that no prayer has been made by the petitioner in the petition regarding framing of issues and leading evidence. Therefore, he prayed for dismissal of this petition. Counsel for respondent/State also supported the impugned order.
22. Heard the learned counsel for the parties at length and perused the documents appended thereto.
23. In the instant case argument of the counsel for petitioner is that affidavit of respondent No.2 which has been filed in support of election petition, has been verified by Oaths' Commissioner, therefore, because of Rule 5 and 2(b) of Rules, 1976 said verification is not legal and it is not curable. Therefore, this

argument is to be examined first. Section 2 of Oath's Rules, 1976 provides definitions.

Rule 2 (b) defines Court which reads as under:-

“2. Definitions.- In these rules, unless the context otherwise requires.-

(b) 'Court' means only civil court under superintendence of the High Court.”

24. Rule 5 deals in respect of jurisdiction which reads as under:-

“5. Jurisdiction of Commissioner of Oaths.- The Commissioner of Oaths shall have power to verify affidavits to be used in courts by administering oaths and affirmations.”

25. Rule 2(b) defines “Court” as “Civil Court”, therefore, one has to go to the very definition of Commissioner of Oaths as provided in the Rules, 1976 for better understanding of the subject. The said definition is provided in Rule 2 (d) which throws important light on the subject. Rule 2(d) reads as under:-

2(d) 'Commissioner of Oaths' means person other than Civil Courts or Magistrates authorized under section 139 (a) C.P.C. or under section 297 Cr.P.C. or any other court generally or specially empowered under section 139(c), C.P.C. to administer oath to the deponent.

26. Definition of Commissioner of Oaths clarifies the position that it excludes Civil Courts or Magistrates authorized under Section 139 (a) of C.P.C. or under Section 297 of Cr.P.C., but it includes Officer appointed by any other court which the State Government has generally or specially empowered in this behalf and that Officer

may administer the oath to the deponent. Said definition impliedly includes Officer/other person as provided in section 139(b) of C.P.C. beside section 139 (c) of C.P.C.

27. Similarly, it includes Commissioner of Oaths as appointed by the High Court/Court of Session as per Section 297(b) of Cr.P.C. Therefore, Code of Civil Procedure and Code of Criminal Procedure both recognized Commissioner of Oaths as a Competent Person to administer oath/affirmation to the deponent.
28. As per Rule 11 of Election Petition Rules, 1995, power/procedure of the specified Officer is prescribed. It is elaborately realized upon procedure prescribed under Code of Civil Procedure. Rule 11 is reproduced for ready reference as under:-

“11. Procedure before the specified officer and his powers.-

(1) Subject to the provisions of these rules, every election petition shall be enquired into by the specified officer as nearly, as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits:

Provided that it shall have only be necessary for the specified officer to make a memorandum of the substance of the evidence of any witness examined by him.

(2) The specified officer, shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908. when trying a suit in respect of the following matters :-

- (a) discovery and inspection;
- (b) enforcing the attendance of witnesses, and requiring the deposit of their expenses;
- (c) compelling the production of document;

- (d) examination of witnesses on oath;
- (e) reception of evidence taken on affidavit; and
- (f) issuing commission for examination of witnesses and summoning and examining *suo motu* any person whose evidence, appears to him to be material.”

29. When the specified Officer (SDO in present case) has powers to examine witnesses and incidental powers under Code of Civil Procedure, then he exercises the power of Civil Court for all practical purposes.
30. Now coming back to understand the meaning of the terms Civil Court, Section 3 of the Indian Evidence Act can be referred to which defines “Court”, as all persons except Arbitrators legally authorized to take evidence are categorized as “Court”. Now combined reading of the provisions under Oaths Rules, Evidence Act, Code of Civil Procedure, Code of Criminal Procedure and Election Petitions Rules, 1995 clarify the definition of Court on two counts; first, it clarifies that any person who has been authorized to take evidence is a “Court” in the eyes of law. Secondly, when the Election Petitions Rules, 1995 gives the power to the competent officer to record or receive evidence and all powers which were vested in a Court under Code of Civil Procedure then the law relating to the Evidence Act would automatically become applicable and thus, it would be mandatory that the proceedings must satisfy the condition of Section 3 of the

Evidence Act. Procedure as referred in Rule 11 of Election Petitions Rules, 1995 can only be ensured when Code of Civil Procedure/Evidence Act is made applicable.

31. Since Code of Civil Procedure is being applicable to the election proceedings as per Rule 11, therefore, it makes the proceedings like civil suit. Therefore, the Revenue Officer once vested with powers to conduct the proceedings under the Election Petitions Rules, 1995 as specified Officer then it acquires the status of a Civil Court or Election Tribunal.
32. Apex Court has laid down test of qualification being a “Court” in the judgment passed in the case of **State of M.P. and others Vs. Anshuman Shukla** reported in **(2008) 7 SCC 487** and relevant discussion needs reiteration to bring clarity in discussion:-

17. It is trite law that provisions of the [Limitation Act, 1963](#) shall apply to a Court. It has no application in regard to a Tribunal or persona designata. There exists a distinction between a Court and the Tribunal. The very fact that the authorities under the Act are empowered to examine witnesses after administering oath to them clearly shows that they are 'Court' within the meaning of the [Evidence Act](#). It is relevant to refer to the definition of 'Court' as contained in [Section 3](#) of the Indian Evidence Act which reads as follows:-

3.Interpretation clause.-

“Court”- 'Court' includes all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence.

18. The Tribunal has been confirmed (sic conferred with) various powers. There, therefore, in our opinion, cannot be any doubt whatsoever that the

authorities under the Act are also “courts” within the meaning of the provisions of the [Indian Evidence Act](#).

19. The definition of “courts” under the [Indian Evidence Act](#) is not exhaustive (See [The Empress vs. Ashootosh Chuckerbutty and others](#): ILR (4) Cal. (15) 483 (FB). Although the said definition is for the purpose of the said Act alone, all authorities must be held to be courts within the meaning of the said provision who are legally authorised to take evidence. The word 'court' under the said Act has come up for consideration at different times under the different statutes.

20. The Commissioner who has been authorised to take evidence of the witnesses has been held to be a court (See: [Jyoti Narayan vs. Brijnandan Sinha](#): AIR 1954 Patna 289). The Rent Controller has been held to be a court (See: [G. Bulliswamy vs. Smt. C. Annapurna](#): AIR 1976 Andhra Pradesh 270. **The Election Tribunals have been held to be courts** (See: [Prem Chand vs. Sri O.P. Trivedi and others](#) : AIR 1967 All. L.J. 5 at page 7). Coroners before whom evidence can be adduced have been held to be courts (See: [Tanajirao Martinrao Kadambande vs. H.J. Chinoy](#): 71 Bombay Law Reporter 732.

21. In [Brijnandan Sinha vs. Jyoti Narain](#): AIR 1956 SC 66, it has been held that any Tribunal or authority whose decision is final and binding between the parties is a court. In the said decision, the Supreme Court, while deciding a case under Court of Enquiry Act held that a court of enquiry is not a court as its decision is neither final nor binding upon the parties.

22. In [Virindar Kumar Satyawadi vs. State of Punjab](#): AIR 1956 SC 153, the Supreme Court has made a broad distinction of (sic between) a court and quasi judicial Tribunal.

23. In the [Sitamathi Central Co-operative Bank Ltd. vs. Thakur Jugal Kishore Sinha](#): AIR 1965 Pat 227, a Division Bench of the Patna High Court has held that Assistant Registrars appointed under the Bihar and [Orissa Cooperative Societies Act](#) to be courts. In the said decision, this Court has held that, when

a question arises as to whether the authority constituted under a particular Act exercising judicial or quasi judicial power is a court or not, then the following tests must be fulfilled before the said authority can be termed as a court : (AIR P.232, para 9)

"9. (i) the dispute (which is to be decided by him) must be in the nature of a civil suit :

(ii) the procedure for determination of such dispute must be judicial procedure ; and

(iii) the decision must be a binding one.

The aforementioned judgment has been affirmed by the Supreme Court in the case of [Thakur Jugal Kishore Sinha vs. Sitamarhi Central Coop. Bank Ltd.](#) : AIR 1967 SC 1494"

33. Incidentally, judgment passed by Division Bench of this Court in the case of **Bhagwati Prasad Singhal Vs. State of M.P.**, reported in **2005 (3) JLJ 166** also delve into such issues. The relevant paragraphs of the said judgment are reads as under:-

4. The Parliament also enacted the Oaths Act, 1969 to consolidate and amend the law relating to judicial oaths and for certain other purposes. Section 3 relates to Power to administer oaths and the said section is extracted below:

"3. Power to Administer Oaths - (1) The following Courts and persons shall have power to administer, by themselves, or subject to the provisions of Sub-section (2) of Section 6, by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties imposed or in exercise of the powers conferred upon them by law, namely:

(a) all Courts and persons having by law or consent of parties authority to receive evidence;

(b) the commanding officer of any military, naval, or air force station or ship occupied by the Armed Forces of the Union, provided that the oath or affirmation is administered within the limits of the station.

(2) Without prejudice to the powers conferred by Sub-section (1) or by or under any other law for the time being in force, any Court, Judge, Magistrate or person may administer oaths and affirmations for the purpose of affidavits, if empowered in this behalf-

(a) by the High Court, in respect of affidavits for the purpose of judicial proceeding; or

(b) by the State Government in respect of other affidavits.

The term "judicial proceeding" is not defined in the Oaths Act. The general meaning of the said terms is "a proceeding in Court". The term is defined in Section 2(i) of Code of Criminal Procedure as follows:

"Judicial Proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath.

The settled meaning of the term is "a proceeding the purpose of which is the ascertainment of some right or liability." The proceeding is criminal if the object is to ascertain the liability of the person accused. The proceeding is civil, if the object is to ascertain some right or status, or the right of one party and the liability of the other to some form of relief. In that sense, proceedings before any Tribunal (Administrative Tribunals, Debt Recovery Tribunals etc.) which has the power to summon any person and examine him on oath and receive evidence by affidavits, will be judicial proceedings.

5. Sub-section (1) of Section 3 empowers all Courts to administer oaths and affirmations in discharge of the duties imposed or in exercise of power conferred upon them by law. Sub-section (1) does not confer any power on Judges or Magistrates to administer oaths or affirmation in respect of affidavits which are not intended to be used in judicial proceedings. Sub-section (2) of Section 3, however, authorizes the empowerment of any Court,

Judge, Magistrate or person to administer oaths and affirmations for the purpose of affidavits by two authorities, that is, by the High Court in respect of affidavits for the purpose of judicial proceedings, and by the State Government in respect of other affidavits. Therefore, no Judge or Magistrate can claim power u/s 3 to administer oath or affirmation in respect of affidavits to be used for purposes other than judicial proceedings, unless specifically empowered by the State Government.

6. The Petitioner had made a specific averment that State Government has not issued any order u/s 3(2)(b) empowering Judges or Magistrates to administer oath/affirmation (for the purposes of affidavits not meant to be used in judicial proceedings). The Respondents have not controverted this statement. In fact, by order dated 11.9.1990, this Court directed the Respondents to clarify whether any order had been made u/s 3(2)(b). Though no return is filed, we are informed by the learned Deputy Advocate General that the State Government has not made any order u/s 3(2)(b) of Oaths Act empowering any Court, Judge or Magistrate to administer oath or affirmation in regard to affidavits for purposes other than judicial proceedings. The Petitioner's contention thus, deserves to be accepted.

7. We may resultantly summarize the position as follows:-

(a) A Judge or Magistrate or an Oath Commissioner may administer oath or affirmation in respect of any affidavit to be used in any judicial proceedings, that is, any proceeding before any Court to which CPC or Code of Criminal Procedure is made applicable or any proceeding before any Tribunal which is empowered to receive evidence on oath.

(b) A Notary Public may administer oath or affirmation in regard to all affidavits, that is, not only to the affidavits in respect of which oath or affirmation can be administered by a Judge, Magistrate or Oath Commissioner, but also affidavits which are to be used for purposes other than Court/Judicial proceedings.

(c) An Executive Magistrate can administer oath or affirmation in respect of affidavits to be used in any criminal proceedings or any proceedings before the High Court.

(d) In regard to any affidavit which is to be used for purpose other than judicial/Court proceedings, oath or affirmation can be administered by a Notary Public. It can also be administered by any person if empowered by the State Government u/s 3(2) of the Oaths Act, 1969. At present no person is empowered u/s 3(2) of the Oaths Act.

34. Thus, in cumulative analysis, it can be logically inferred that Oath Commissioner can verify the affirmations of deponent (of affidavit) in election petition before S.D.O.

35. Another aspect which strengthened the case of respondent No.2 is the provisions as contained in Rule 8 of Election Petitions Rules, 1995. It provides result of non-compliance of certain formalities. Rule 8 is reproduced for ready reference as under:-

"8. Procedure on receiving petition.- If the provisions of rule 3 or rule 4 or rule 7 have not been complied with, the petition, shall be dismissed by the specified officers:

Provided that the petition shall not be dismissed under this rule without giving the petitioner an opportunity of being heard."

36. **Rule 3** provides presentation of election petition to be presented during office hours by the person making the petition or by person authorized in writing in this behalf and shall be accompanied by as many copies thereof as they are respondents under the signature of petitioner to be a true copy of the petition. **Rule 4** provides for declaration regarding joining of necessary parties and **Rule 7** provides for deposit of security. In other words, non-

compliance of **Rule 3, 4 and 7** is fatal but **Rule 8** nowhere attaches any fatality in respect of non-compliance of **Rule 5**. Verification as pleaded by the present petition finds place in **Rule 5**. Same is also reproduced for ready reference as under :-

“5. Contents of the petition.- An election petition shall-

(a) contain a concise statement of all material facts on which the petitioner relies;

(b) set forth with sufficient particulars, the grounds on which the election is called in question;

(c) be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (V of 1908), for the verification of pleadings.”

37. Contents of the petition in which verification of pleadings by Oaths Commissioner is either, not at all a defect or is a curable defect as per Election Petitions Rules, 1995 itself. Therefore, very provision also supports the contentions of respondent No.2.

38. The submissions of petitioner while relying upon the various judgments, the assertion was that if affidavit does not comply the mandatory provisions then it is fatal in nature, call for stringent application and therefore, according to learned counsel for the petitioner, said non-compliance is fatal in nature. However, the Representation of People Act, 1951 and the Conduct of Elections Rules, 1961 in terms of Rule 94A, a specific requirement has been laid down by the statutes itself that call for the affidavit to be sworn and affirmed by only three authorities. Rule 94A of Rules, 1961 is reproduced for ready reference:-

“94A. Form of affidavit to be filed with election petition.-

The affidavit referred to in the proviso to sub-section (1) of section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25.”

39. The rule clearly states the mandatory condition both in terms of affirmation and form. In contra-distinction to the Act of 1951/Rules1961, the Election Petitions Rules, 1995 neither provides for any specific form nor requirement of affirmation of affidavit by a specified authority and as a result thereof, the judgments relied by the petitioner move in different factual and legal realm and cannot be applied *mutatis-mutandis* in the present set of facts.
40. In fact, Rule 31-A of the Madhya Pradesh Panchayat Nirvachan Niyam, 1995 provides that affidavit shall be sworn before Notary, Competent Magistrate or Commissioner of Oath's. Rule 31-A reads as under:-

“31-A. Personal information of the candidate.- (1) Every candidate for the post of Panch shall submit a declaration in a form as prescribed by the State Election Commission along with nomination paper which shall include information about his educational qualification, criminal cases pending/decided, his/her assets and liabilities and that of his/her spouse and dependents, information about whether he/she is an encrocher on Government Land, any dues payable to the Madhya Pradesh State Electricity Board or its successor companies any dues of time barred loan any primary agriculture credit cooperative Society and about existence of flush latrine in his/her residential premises.

*(2) Every candidate for the post of Sarpanch Gram Panchayat member of Janpad Panchayat and Zila Panchayat shall submit an affidavit, in a form as prescribed by the State Election Commission along with nomination paper which shall include information about educational qualifications, criminal cases pending/decided, his assets and liabilities and that of his spouse and dependents, whether he is an encroacher on government Land, any dues payable to the Madhya Pradesh State Electricity Board or its successor companies, any dues of time bared loan to any primary agriculture credit cooperative Society and about existence of flush latrine in his/her residential premises. **The affidavit shall be sworn before Notary, competent Magistrate or Oath Commissioner.***

(3) A copy of affidavit/declaration of candidates for the post of Panch, Sarpanch, Member of Janpad panchayat and Zila Panchayat shall be exhibited on the notice board in the office of the Returning Office. Its copy shall be made available to any citizen on demand on payment of prescribed fee.”

41. Once the relevant statutory rules provide for such mechanism then ignoring the said mechanism while borrowing mechanism from other statutes would cause injustice to the very spirit of concept of “Local Self Government and 73th and 74th Constitutional Amendments.
42. However, judgments cited by the counsel for petitioner can be clubbed into Two categories:
- (A) Judgments those out rightly state that defects in affidavit are curable defects. The following judgments are the ones,

which clearly state that the defect in any verification or affidavit is actual a curable defect that does not call for dismissal as sought by the petitioner.

(i) F.A. Sapa and others Vs. Singora and others, (1991) 3 SCC 375

(ii) G.M. Siddheshwar Vs. Prasann Kumar, (2013 (4) SSC 776)

(iii) Murarka Radhe Shyam Ramkumar Vs. Roop Singh Rathore and others, AIR 1964 SC 1545.

(B) Some judgments state that the affidavit must be in a specified format and contained the mandatory details. These affidavits are the ones which are to be filed in compliance of the requirements of allegation of corrupt practice under the Act of 1951. The following judgments are more specifically on corrupt practices and specific requirement of Rule 94A read with Form 25. In those judgments also, Court has stated that the affidavit is a part of the election petition i.e. integral part and in total non-compliance, the court has stated the option of dismissal of petition.

(i) Ravindra Singh Vs. Janmijay Singh and others, (2000) 8 SCC 191

(ii) Shashi Bhushan Bajpai Vs. Madhavrao Scindia, AIR 1998 MP31

(iii) M. Kamalam Vs. V.A. Saiyad Md., AIR 1978 SC 846

(iv) Shrikrushna Sadashiv Dhamankar Vs. The Nasik Merchants Cooperative Bank Ltd. and others, AIR 1990 BOM 90

43. Keeping in view the provisions of Act, 1951/Rules, 1961 in juxtaposition to the Panchayat Nirvachan Niyam and Election Petitions Rules, 1995, legislative intent does not permit to incorporate Rule 5 of the Election Petitions Rules, 1995 into the Rule 8 of the Rules. Same is not permissible on the ground of strict interpretation of election laws. **(See: Jagannath Vs. Jaswant Singh and others, AIR 54 SC 210 and Gangaram Bendil Vs. Rashmi Parihar and others, AIR 1987 MP 208).**
44. Therefore, on the basis of discussion made above, it is held that Sub-Divisional Officer has rightly rejected the application under Order VII Rule 11 of the C.P.C. preferred by the petitioner. Oaths Commissioner has verified the pleadings and administered the oath and did not cause any illegality so far as election petition filed by the respondent No.2 is concerned.
45. Another ground raised by the petitioner in the petition is that without framing issues and leading evidence, Sub-Divisional Officer has placed the petition for final hearing, appears to be a valid ground. Once Rule 11 of Election Petitions Rules, 1995 provides a specified procedure to be followed by the Sub-Divisional Officer as specified Officer then he is entrusted with not only the trust of the parties but also the Democratic Aspirations of the candidates. They are not only litigants but are

participants of the democratic process as contesting candidates. Their submissions are to be adjudged on the *linchpin* of procedure prescribed in Rule 11 of the Rules. [See.: **Ramesh Chandra Bhilala Vs. Bashri and others, 2010 (4) MPLJ 563, Smt. Rashmi Vs. Smt. Bharti (W.P. No.27091/2022), Richa Vs. Smt. Suhila Singh (W.P. No.8388/2023), Prema Bai Vs. Sunita Bai (W.P. No.6141/2015)**]

46. Therefore, it is bounden duty of Sub-Divisional Officer to call witnesses and take evidence if the parties to the *lis* pray for the same. Therefore, parties are at liberty to lead their evidence in accordance with law.
47. *Resultantly*, in the considered opinion of this court, after due discussion, no case is made out for interference. Sub-Divisional Officer has rightly passed the impugned order. Petition *sans* merits and is hereby **dismissed** but with the above-mentioned observations in preceding paragraphs.
48. Before parting, this court records its appreciation for the valuable assistance given by counsel for petitioner Shri Gaurav Mishra, Advocate and counsel for the respondent No.2 Shri Sankalp Sharma, Advocate by way of extensive and intense arguments with synopsis.

(ANAND PATHAK)
JUDGE