

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

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

WRIT PETITION No. 23051 of 2023

NIHAL SINGH

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Ajay Singh Rathore - Advocate for the petitioner.

Shri K.S. Tomar – Govt. Advocate for the respondents/State.

Shri Lokendra Singh Tomar – Advocate for the respondent
No.6.

Reserved on	:	07/04/2025
Delivered on	:	17/04/2025

*This petition having been heard and reserved for orders, coming on for pronouncement this day, the **Hon'ble Shri Justice Milind Ramesh Phadke** pronounced/passed the following:*

ORDER

The present petition under Article 226 of the Constitution of India is in the nature of writ of quo-warranto challenging the very election of present respondent No.6 as a Sarpanch of Gram Panchayat Manpur, Tehsil Joura, District Morena, on account of respondent no.6 incurring disqualifications to hold the office of the Sarpanch as

prescribed under Section 36(1) (a)(ii) of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993, as while contesting the election he had falsely stated that no case was pending against him, nor he had been convicted in any case, whereas, a criminal case bearing number 480/2008 was registered against respondent number 6 in the Court of Judicial Magistrate First Class, Jaura, which was decided on 07.08.2015.

2. Short facts leading to the controversy are that in the year, 2022 an election to the post of Sarpanch of Gram Panchayat Manpur, Tehsil Jaura, District Morena took place, in which respondent no.6 contested the election, however, while submitting his form he did not disclose the fact that a criminal case being registered against him, nor he had been convicted in any case, whereas, a criminal case bearing number 480/2008 was tried against him in the Court of Judicial Magistrate First Class, Jaura, which was decided on 07.08.2015, wherein he was convicted and sentenced to undergo 02 years of incarceration.

3. Against the said judgment of conviction a Criminal Appeal No.194/2015 was preferred before the Additional Sessions Judge, Jaura, which was dismissed vide order dated 17.02.2023. Thereafter, Respondent number 6 had filed a Revision Petition bearing number

1504/2023 before this Court against the order of the Appellate Court, which was also dismissed by this Court vide order dated 26.06.2023. In the midst, an application dated 05.06.2023 was submitted by the petitioner to the Respondents mentioning that respondent No.6 is disqualified for the post of Sarpanch, as he has concealed this fact in his affidavit. However, no order or action has been taken on the application submitted by the Petitioner till date. It is further submitted that Respondent No. 6, while absconding, continued to hold the position of Sarpanch and thus, is causing financial losses.

4. Since the respondent no.6 was convicted as aforesaid under the provisions of Section 36(1)(a)(ii) of the Adhiniyam, 1993 he was disqualified to be appointed/elected for the post of Sarpanch which is a public post/office and his nomination was liable to be rejected on the ground of said disqualification. This fact was suppressed while filling up the nomination form, declaration form as well as in the affidavit and such concealment/suppression had resulted in an illegal result as he was disqualified and had no right to contest the elections and hold the post.

5. Alleging the said election/appointment of respondent no.6 on the post of Sarpanch in violation of statutory provisions as he had no

right to contest the election and to be elected as a Sarpanch, his very appointment/election is challenged under the present writ petition.

ARGUMENTS

6. Learned counsel for the petitioner while placing reliance in the matter of ***Suresh Choudhary vs Atarlal Verma And Ors reported in 2006 (3) MPLJ 506***, had argued before this Court that a writ of quo-warranto can be issued to declare a Member of Panchayat disqualified to continue in the post to which he had been elected by suppressing the factum of disqualification as he had played fraud on the statute and, therefore, is not entitled to hold the office as he was not eligible to contest the elections and the present writ petition would be maintainable and as such a person cannot be allowed to participate in the proceedings of 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.

7. Further while placing reliance in the matter of ***Virendra Tyagi v. State of M.P and Ors. reported in 2011(1) MPLJ 245***, it is argued that a writ of quo-warranto can be issued by the Court when a person in a public office has been appointed in violation of statutory provisions and since the respondent therein i.e. Sarpanch was sentenced and

convicted, the election of said person on the post of Sarpanch was set aside.

8. Further while placing reliance on a Division Bench decision of this Court in the matter of *Shiv Singh Rawat vs State Of Madhya Pradesh And Ors reported in 2008(2) MPLJ 573*, it had been argued that the citizens in the democratic set up should not be compelled to suffer criminalization on the ground that they are helpless and a convict cannot be allowed to occupy an elected post where a statute clearly prohibits.

9. Learned counsel has also placed reliance in the matter of *Bhagwan Das Choukse vs. State of MP reported in 2016(4) MPLJ 559*, wherein in similar circumstances it was held by the Coordinate Bench of this Court that mere release of a person on bail will not mean that he has undergone sentence and has been released, therefore, it was held that the said person is not entitled to contest the election, but as he has already contested the election and was elected as President of Janpad Panchayat in view of the settled legal position, he ceased to continue to hold the said post.

10. Lastly, while placing reliance on a Division Bench decision of this Court in the matter of the petitioner himself listed as *Nihal Singh*

Gurjar vs. The State of M.P and Ors passed in W.A. No.414/2024 dated 07.08.2024, it was argued that relying upon the decision of ***Suresh Choudhary (supra)***, the Division Bench has held that writ of quo-warranto against the petitioner in such matters is maintainable, where he was not eligible to contest the election.

11. Learned counsel has referred to Rule 31(a) of M.P. Panchayat Nirvachan Niyam, 1995, which prescribes the eligibility for a candidate to be appointed on the post of Sarpanch and as per those provisions, a candidate is required to submit declaration in the prescribed form along with nomination papers including information about criminal cases pending/decided against him and as per Section 36(1)A(ii) of Adhiniyam, 1993 a person would be in-eligible to be an office bearer of Panchayat, if he had been sentenced to imprisonment for not less than six months, which was required to be submitted in the declaration along with the nomination which was suppressed by the respondent no.6, as if would have been supplied his nomination form at the very threshold would have been thrown out/rejected, but since the aforesaid fact was not brought to the knowledge to the election authorities, the conviction of the respondent no.6, went un-noticed. Thus, in a way respondent no.6 had not only suppressed the material

fact, but had played fraud and is holding a public office which in the light of the judgments as referred above could be interfered with and while issuing a writ of quo-warranto, his election could be declared as void and for that the petitioner is not required to challenge the appointment/election of respondent no.6 by way of election petition. On the basis of the aforesaid arguments, it was submitted that the respondent no.6 is illegally holding the office of Sarpanch which by issuing a writ of quo-warranto could be set right and he be removed from the post of Sarpanch as disqualified/in-eligible incumbent.

12. On the other hand, learned counsel for the respondent No.6 had raised a preliminary issue and while placing reliance in the matter of *Jaspal Singh Arora vs. State of M.P and Ors reported in 1998(9) SCC 594*, had argued that an election could not be called in question except by an election petition as provided under that Act. It was further held that the bar to interference by courts in electoral matters contained in Article 243-ZG of the Constitution was apparently overlooked by the High Court in allowing the writ petition. Apart from the bar under Article 243- ZG on settled principles interference under Article 226 of the Constitution for the purpose of setting aside election to a municipality was not called for because of the statutory provision

for election petition.

13. Learned counsel further referring to decision of the Apex Court in the matter of *Bholanath Mukherjee and Ors vs. Ramkrishna Mission Vivekananda Centenary College and Ors reported in 2011(5) SCC 464*, had argued that the petitioner had not prayed for issuance of a writ of quo warranto before this Court as the relief claimed in the petition is for setting aside of the election of respondent no.6 on the post of Sarpanch, Gram Panchayat Manpur, Tehsild Jaura District Morena and when the very relief is not akin to writ of quo-warranto, the present petition is not maintainable and the only remedy available to the petitioner is to approach by way of an election petition.

14. Learned counsel while placing reliance on Article 243 (o) of the Constitution has argued that notwithstanding anything contained in the said Article 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 and as there is a constitutional bar to challenge any election to a Panchayat, the present petition is not maintainable. Further as per Section 122 of Adhiniyam, 1993, an election under the Panchayat Act

shall be called in question only by a petition presented in the prescribed manner to the authority as specified therein and when the statute itself has created a forum for challenging the election, the present writ under Article 226 of the Constitution of India is not maintainable.

15. Learned counsel to bolster his submissions has also placed reliance in the matter of *Kurapati Maria Das vs. Dr. Ambedkar Seva Samajan and Ors reported in 2009(7) SCC 387* and has argued that the writ of quo-warranto could have been prayed for only on invalidation or quashing of the election of the respondent no.6 and that was possible only by way of an election petition and the writ petition of the present nature is not tenable though apparently the writ petition has been couched in a safe language and it has been represented as if it is for the purpose of a writ of quo warranto.

16. It was on the basis of the aforesaid arguments contended that the present petition being devoid of any merits be dismissed.

17. Heard the counsels for the parties and perused the record.

DISCUSSIONS AND CONCLUSION

18. This Court while dwelling upon the merits of the matter, deems

it expedient to deal with the preliminary objection raised by the learned counsel for the respondent no.6 that of maintainability of present writ petition on account of availability of remedy of election petition as provided under Section 122 of Adhiniyam, 1993.

19. In this regard, it is profitable to quote the judgment of the Apex Court in the matter of **N. Kannadasan vs. Ajoy Khose and Ors reported in 2009(7) SCC 1**, which is as under:-

“129. The respondents herein filed the writ petitions inter alia for issuance of a writ of quo warranto. A writ of quo warranto can be issued when the holder of a public office has been appointed in violation of constitutional or statutory provisions.

130. Section 16 of the Act lays down the qualifications inter alia for appointment of the Chairman of the State Commission. Clause (a) of Sub-section (1) of Section 16 provides that the candidate must be "is" or "has" been a Judge". The proviso appended thereto, however, mandates consultation by the State Government with the Chief Justice of the High Court concerned.

131. Concededly, judicial review for the purpose of issuance of writ of quo warranto in a case of this nature would lie: (A) in the event the holder of a public office was not eligible for appointment. (B) processual machinery relating to consultation was not fully complied. The writ of quo warranto proceedings affords a judicial remedy by which any person who holds an independent substantive public office is called upon to show by what right he holds the same so that his title to it may be duly determined and in the event it is found that the holder has no title he would be directed to be removed from the said office by a judicial order. The proceedings not only give a weapon to control the executive from making appointments to public office against law but also tend to protect the public from being deprived of public office to which it has a right. It is indisputably a high prerogative writ which was reserved for the use of the Crown. The width and ambit of the writ, however, in the course of practice, have widened and it is permissible to pray for issuance of a writ in the nature of quo warranto.

132. In *Corpus Juris Secundum* [74 C.J.S. *Quo Warranto* 14], "*Quo Warranto*" is defined as under: *Quo warranto*, or a proceeding in the nature thereof, is a proper and appropriate remedy to test the right or title to an office, and to remove or oust an incumbent. It is prosecuted by the State against a person who unlawfully usurps, intrudes, or holds a public office. The relator must establish that the office is being unlawfully held and exercised by the respondent, and that relator is entitled to the office.

133. In *Law Lexicon* by J.J.S. Wharton, Esq., 1987, "*Quo Warranto*" has been defined as under: *QUO WARRANTO*, a writ issuable out of the Queen's Bench, in the nature of a writ of right, for the Crown, against him who claims or usurps nature of a writ of right, for the Crown, against him who claims or usurps any office, franchise, or liberty, to enquire by what authority he supports his claim, in order to determine the right. It lies also in case of non-user, or long neglect of a franchise, or misuser or abuse of it; being a writ commanding the defendant to show by what warrant he exercises such a franchise having never had any grant of it, or having forfeited it by neglect or abuse.

134. Indisputably, a writ of *quo warranto* can be issued *inter alia* when the appointment is contrary to the statutory rules as has been held by this Court in *High Court of Gujarat v. Gujarat Kishan mazdoor Panchayat* and *R.K. Jain v. Union of India*. (See also *Mor Modern Coop. Transport Society Ltd. v. Govt of Haryana*.) In *Duyodhan Sahu (Dr.) v. Jitendra Kumar Mishra*, this Court has stated that it is not for the court to embark upon an investigation of its own to ascertain the qualification of the person concerned. (See also *Arun Singh v. State of Bihar*) We may further more notice that while examining if a person holds a public office under valid authority or not, the court is not concerned with technical grounds of delay or motive behind the challenge, since it is necessary to prevent continuance of usurpation of office or perpetuation of an illegality. [See *Kashinath G. Jalmi (Dr.) v. Speaker*]

135. Issuance of a writ of *quo warranto* is a discretionary remedy. Authority of a person to hold a high public office can be questioned *inter alia* in the event an appointment is violative of any statutory provisions. There concededly exists a distinction in regard to issuance of a writ of *quo warranto* and issuance of a writ of *certiorari*. The scope and ambit of these two writs are different and distinct. Whereas a writ of *quo warranto* can be issued on a limited ground, the considerations for issuance of a writ of *certiorari* are wholly different."

20. From the aforesaid enunciation it is clear that a writ of quo-warranto can be issued by the Court when a person in a public office has been appointed in violation of statutory provisions and the authority of a person to hold a high public office can be questioned inter alia in the event an appointment is violative of constitutional or statutory provisions. An election in a democratic policy has its sacrosanctity, but respondent no.6 has endeavoured to create a concavity in the same. Such a thing in a democratic set up is not permissible and since respondent No. 6 was not eligible to contest the election even, the fact is absolutely clear and does not require any inquiry, he is not entitled to hold the office and his continuance cannot be accepted, therefore, in such cases writ petition would be maintainable as such a person could not have been allowed to participate in proceedings of Panchayat as Member and a writ of quo-warranto, therefore, would be maintainable.

21. That apart, in the case of respondent No.6 himself, Writ Appellate Court while disposing of the W.A. No.414/2024, preferred by him, whereby the matter was remanded, it was held that the writ petition be treated as of quo warranto, which was later concurred in R.P. No.495/2025 dated 02.04.2025, thus, this aspect is not required to

be further adjudicated.

22. Now it is required to be seen whether respondent no.6 has entailed himself disqualification as provided under Section 36(1)(a)(ii) of the Adhiniyam, 1993, as by suppressing material fact, he is holding the post of Sarpanch which is a public office.

23. In this regard, this Court deems it proper to appreciate the provisions of M.P. Panchayat Nirvachan Niyam, 1995 which under Rule 31(a) prescribes the mode in which information is to be provided by a candidate to be appointed on the post of Sarpanch. It is provided therein that a candidate shall submit a declaration in a prescribed form along with nomination paper including information about criminal cases pending/decided against him. For reference the relevant provisions of Rule 31(a) reads as under:

“31-A Information of criminal record, properties, liabilities and educational qualifications etc. of candidates: (1) Every candidate for the post of Panch shall submit a declaration in a form as prescribed by 14 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, his/her number of living children and information about whether he/she is an encroacher on Government Land. (2) Every candidate for the post of Sarpanch, 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/her assets and liabilities and that of his/her spouse and dependents, the number of his/her living

children and whether he/she is an encroacher on Government Land. The affidavit shall be sworn before competent Notary, 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 Officer. Its copy shall be made available to any citizen on demand on payment of prescribed fee.”

24. Further, Section 36 of Adhiniyam, 1993 prescribes disqualification for being an office-bearer of Panchayat. The relevant portion of Section 36 read as under:

“36. Disqualification for being office bearer of Panchayat: (1) No person shall be eligible to be an office bearer of Panchayat who- (a) has, either, before or after the commencement of this Act been convicted: (i) of an offence under the Protection of Civil Rights Act, 1955 or under any law in connection with the use, consumption or sale of narcotics or any law corresponding thereto in force in any part of the State, unless a period of five years or such lesser period as the State Government may allow in any particular case has elapsed since his conviction; or (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.

25. As per the aforesaid Section 36(1)(a)(ii) of Adhiniyam, 1993, a person shall be ineligible to be an office-bearer of the Panchayat, if he had been sentenced to imprisonment for 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. In the present case respondent no.6 was convicted and has been sentenced to

undergo jail sentence of 02 years and admittedly, he had not undergone the entire period of sentence of 02 years and had been released thereafter, rather he had preferred appeal against conviction and after its dismissal a criminal revision before this Court, which as per record, in absence of any rebuttal, had also been dismissed for want of prosecution (though as per the order dated 02.04.2025 passed in R.P. No.495/2025 placed before this Court on board, preferred at the instance of respondent No.6, himself, said revision pending on the period of maintainability, since he had not surrendered before filing of the revision), thus, goes to show respondent No.6 had incurred disqualification as per Section 36(1)(a)(ii) of the Adhiniyam, 1993, therefore, was not eligible to contest the election held in the year, 2022.

26. Ex consequents, it is clear that the respondent No.6 had firstly suppressed his conviction at the time of submission of his nomination form as was required under Rule 31(a) of the Niyam, 1995 which was a disqualification as per Section 36(1)(a)(ii) of the Adhiniyam, 1993 and if that disqualification would have surfaced earlier, respondent no.6 would not have been allowed to contest the election even, therefore, this Court has no hesitation to hold respondent no.6 to be

disqualified to hold the office of Sarpanch of Gram Panchayat, Manpur. Thus, the petition stands allowed and by issuing a writ of quo-warranto, the election of respondent no.6 for the post of Sarpanch, Manpur is hereby set aside and it is declared that the respondent no.6 is not entitled to hold post of Sarpanch of Gram Panchayat, Manpur.

27. So far as the judgment cited by learned counsel are concerned, in the matter of **Jashpal Singh Arora (supra)** the challenge was made by a defeated candidate to the election of returned candidate by filing a writ under Article 226 of the Constitution of India. From the facts of the aforesaid case it is not revealed as on what grounds the challenge was made and in that context the Hon'ble Apex Court has observed that since there is availability of alternative remedy of filing election petition since there is a bar under Article 243 (z)(g), the petition under Article 226 of the Constitution of India is held to be not maintainable.

28. The judgment in the matter of **Bholanath Mukherjee and Ors (supra)** cited by learned counsel dealt with an appointment of Principal and Honorary Vice-Principal of the college and later on was amended to challenge the election of respondent no.3 therein to the post of Principal on the ground that his appointment was invalid since he was not possessing requisite qualifications and teaching experience.

The writ Court had declared the appointment of respondent no.3 therein, as Principal to be invalid which was over-turned by the Division Bench and it was held that his appointment was not invalid and the Apex Court without going into the aspect whether a writ of quo-warranto would lie or not since the appellants therein stood retired and the issue left was purely academic, did not interfere in the matter as by that time the respondent no.3 therein had acquired experience of 16 years i.e. more than the requisite experience required for the said post. The facts of the said cases are altogether different from the facts of the present case and the analogy laid therein is in consequence of the facts of those cases which cannot be said to be applicable to the present case. Apart from that no analogy has been laid down except for observing that since no writ of quo-warranto has been asked for, therefore, at that stage there was no point in going into as to whether a writ of quo-warranto would lie or not.

29. Accordingly, the present petition is hereby **allowed and disposed of in the aforesaid terms.**

Certified copy as per rules.

(MILIND RAMESH PHADKE)
JUDGE