

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

BEFORE

**HON'BLE SHRI JUSTICE ANAND PATHAK
&
HON'BLE SHRI JUSTICE HIRDESH**

WRIT APPEAL NO. 1871 of 2024

SMT. SAPNA DEVI

Vs.

SMT. RACHNA AND OTHERS

APPEARANCE:

Shri N.K. Gupta – Senior Advocate with Shri S.D. Singh and Dharmendra Dwivedi – Advocates for the appellant.

Shri MPS Raghuvanshi – Senior Advocate with Shri S.K. Shrivastava – Advocate for respondent No.1.

Shri Vivek Khedkar – Additional Advocate General for respondent No.2/State.

JUDGMENT

{Delivered on 16th the day of June, 2025}

Per: Justice Anand Pathak

1. The present appeal under Section 2 (1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 is preferred by the appellant being crestfallen by the order dated 23-04-2024 passed by learned Single Judge in Writ Petition No.6756 of 2023 whereby the writ petition filed by the appellant (as petitioner in writ petition) got dismissed.
2. Precisely stated facts of the case are that petitioner as well as respondents No.1 and 3 contested the elections for the post of Sarpanch, Gram Panchayat Virgawan Rani, Janpad Panchayat Ater District Bhind held on 01-07-2022. Result of the election was

declared on 14-07-2022 whereby petitioner was declared as a returned candidate.

3. It appears that respondent No.1 being aggrieved by the election of petitioner filed the election petition seeking recounting of the votes in the polling booth 218, 219, 220 and 221. Said election petition was contested by the present petitioner on the ground of non compliance of rules, 3,4 and 7 of the M.P. Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (hereinafter referred as “the Rules of 1995”).
4. It appears that election petition was admitted by the Presiding Officer vide order dated 20-09-2022 and notices were issued without deciding the application under Order I Rule 10 of CPC filed by respondent No.1, earlier, nor objections filed by the petitioner were taken into consideration with respect to the inherent defects in the election petition. During pendency of election petition, application under Order I Rule 10 of CPC filed by respondent No.1 was allowed by the Specified Officer/SDO vide order dated 06-10-2022 and respondent No.3 was directed to be made party in the election petition.
5. Aggrieved by the order dated 20-09-2022, petitioner filed one Miscellaneous Petition No.4610/2022 before learned Single Bench and vide order dated 06-12-2022 said petition was disposed of with a direction to the petitioner to raise all the grounds before Specified Officer. Thereafter, petitioner preferred another application under Section 151 of CPC along with detailed objections on 23-12-2022 but said objections were dismissed vide order dated 28-12-2022 and matter was directed to be listed on 30-12-2022 for final

hearing.

6. Aggrieved by the order dated 28-12-2022, petitioner again preferred one miscellaneous petition No.6462/2022 before learned Single Bench which was dismissed vide order dated 20-02-2023. Allegations of alleged non compliance of rule 4 of the Rules of 1995 at the instance of petitioner, were rejected.
7. Thereafter, petitioner sought time to file reply but denied by the prescribed officer enabling petitioner to file miscellaneous petition No.243/2023 which was allowed vide order dated 20-02-2023 and Specified Officer was directed to allow the petitioner to file reply and contest the election petition. Thereafter, final order was passed on 15-03-2023 and election of present petitioner was set aside and recounting of the votes was ordered. Pursuant to which, recounting was done on 24-03-2023. Meanwhile, petitioner preferred the present writ petition (W.P.No.6756/2023) on 20-03-2023 and interim order was passed on 24-03-2023. Meanwhile result was declared because interim order could reach Specified Officer bit belatedly. By the said recounting, respondent No.1 was declared elected by one vote. Thereafter, present petition was dismissed by learned Writ Court, therefore, petitioner is before this Court.
8. It is the submission of learned counsel for the petitioner that non compliance of rules 3,4 and 7 of Rules of 1995 is apparent and writ large. Specified Officer erred in ignoring the said aspect and caused illegality. According to him, objections filed by the present petitioner were not considered in correct perspective by the SDO and caused illegality. There was no occasion for recounting to be done. He relied upon the judgments in the case of **Tara Vs. Dabla**

alias Lalita & Other, 2002 (3) MPLJ 591, Urmila Devi Vs. Returning Officer (Panchayat) & Others, 2008 (4) MPHT 410, Ganesh Ram Gayari Vs. Bagdiram & others, (2013) 2 MPLJ 447 and Smt. Anita vs Sakhi & Others, (2016) 3 MPLJ 437.

9. *Per contra*, learned counsel for respondent No.1 submits that compliance was duly made by respondent No.1 while filing the election petition. Said election petition was presented before the Specified Officer by an authorized person/duly appointed Advocate by way of Vakalatnama. Therefore, compliance was made because the said Advocate was authorized by the election petitioner (respondent No.1 herein) to submit election petition. All copies were duly given but since petitioner refused to accept the notice, therefore, impliedly notice was accepted and he did not raise any objection during pendency of election petition when appeared many a times.
10. Later on, the objection is raised that too after election petition being admitted by the Presiding Officer, thus it has no validity. Respondent No.1 challenged the election of petitioner and therefore, other candidates were not required to be impleaded as party respondents. Therefore, no illegality has been caused.
11. It is further submitted that the security amount has been deposited within one month of filing of election petition because election petition was filed on 21-07-2022 whereas security amount was deposited on 08-08-2022, that is within thirty days. Thus, defect was made good and a sum of Rs.500/- as security was deposited through challan. He relied upon the judgment of Apex Court in the case of **Ravi Thakur Vs. Shivshankar Patel and others, AIR**

1997 MP 136.

12. Another point raised by learned counsel for respondent No.1 is that after order of recounting, process of recounting was done and respondent No.1 stood elected as Sarpanch on 24-03-2023 declaring returned candidate by one vote. Therefore, substantial compliance has been made and substantial justice has been done because respondent No.1 who deserves to be elected got elected ultimately. Thus, no case for interference is made out. He relied upon the judgments of Apex Court as well as this Court in the case of **Satyadhan Ghosal and others Vs. Devranjan Devi, AIR 1960 SC 941, Shankara Cooperative Housing Society Limited Vs. M. Prabhakar and others, (2011) 5 SCC 607, Shiv Chander More Vs. Lieutenant Governor and others, (2014) 11 SCC 744, Superintending Engineer (O&M) P.P.K.V.V.C. Vs. National Steel and Agro Industries Limited and others, 2020 (3) MPLJ 211, Inderjit Singh Sodhi Vs. Chairman, Punjab State Electricity Board and others, (2021) 1 SCC 198, Ramavtar Budhouwa Vs. Smt. Susheela Singh and others, 2007 (1) JLJ 54 (Para 24), Ramrati Vs. Sub Divisional Officer Sidhi and others, 2005 (3) JLJ 48 (Para 9 & 10), Gadde Venkateshwara Rao Vs. Government of Andhra Pradesh and others, AIR 1966 SC 828, Mohd. Swalleh and others Vs. Third Additional District Judge Merrut and others, AIR 1988 SC 94, Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and others, (1999) 8 SCC 16 and Roshan Deen Vs. Preetilal, (2002) 1 SCC 100.**
13. Heard learned counsel for the parties and perused the documents appended thereto.

14. This is a case where petitioner is taking exception to the order of recounting of votes whereby SDO conducted recounting of votes and declared respondent No.1 as returned candidate. Pleadings and submissions of election petitioner (respondent No.1) indicates that the elections result were declared on 14-07-2012 and election petition was filed on 21-07-2022. The security deposit has been made on 08-08-2022, therefore, it was filed within one month of result of election as well as one month of filing election petition. Similarly, only necessary party was impleaded as party and since respondent No.1 sought election of present petitioner to be declared as void, therefore, she has been impleaded as party respondent in the election petition. Therefore, compliance of rule 4 of the Rules of 1995 was made.
15. Since election petition was presented by a duly engaged Advocate, therefore, authority found the election petition to be properly presented as per rule 3 of the Rules of 1995. All copies were found to be duly attested by the election petitioner. The order dated 20-09-2022 is placed for ready reference:

"प्रकरण ग्राहिता के बिन्दु पर आदेशार्थ प्रस्तुत

प्रकरण के साथ संलग्न वरिष्ठ न्यायालय की रोलिंग/दस्तावेज एवं पत्रावली का गहन अध्ययन किया विद्वान अधिवक्ता के तर्कों पर मनन किया।

- निर्वाचन अर्जी म० प्र० पंचायत राज अधिनियम 1993 नियम 1995 के तहत ग्राम पंचायत विरगंवा रानी के सरपंच पद के निर्वाचन के विरुद्ध प्रस्तुत की गई है।

-म० प्र० त्रि - स्तरीय निर्वाचन 2022 की परिणाम की घोषणा दिनांक 14/07/2022 को की गयी है, निर्वाचन अर्जी अर्जीदार रचना पत्नी महेश कुमार अधिकृत अधिवक्ता द्वारा अन्दर अवधि 30 दिवस में दिनांक

21/07/2022 को प्रस्तुत की गयी है।

- निर्वाचन अर्जी में हितबद्ध व्यक्ति को पक्षकार बनाया गया है, जितने पक्षकार बनाये गये हैं, उतनी सत्यापित प्रतियां अर्जी की अतिरिक्त प्रस्तुत की गयी हैं, अर्जीदार द्वारा प्रतिभूति राशि 500/- रुपये चालन द्वारा बैंक SBI HEAD Number 0070-60-800-0000 (Other Receipts) में दिनांक 08/08/2022 को जमा की गयी है, अर्थात् नियम 3, 4, व 7 का पालन किया गया।"

16. Even otherwise the moot question now comes before this Court is the order dated 15-03-2024 and 24-03-2024 when order for recounting was made and respondent No.1 was declared as returned candidate. She was declared returned candidate because in recounting she won by one vote. Earlier allegation of election petitioner (present respondent No.1) was that some dead persons were also included as voters in the whole election process. That aspect assumes importance because in recounting alleged irregularities were corrected/covered up. Therefore, substantial justice has been done, hence scope of interference in writ jurisdiction constricts.
17. One aspect deserves consideration is that even if for a moment submissions of petitioner are accepted (although it is only for discussion purpose) even then position is that respondent No.1 is declared returned candidate that too after recounting of votes and therefore, won by single vote. That recounting is done in just and fair manner and no motive is alleged or attached to the said process. Therefore, if any interference is caused at this stage, then it would amount to reversal of democratic process and perpetuation of illegality. Petitioner cannot be permitted to gain the benefit of

procedure by way of revival of illegality. That practice is deprecated by the Apex Court.

18. In democratic setup recounting and then winning election by one vote is laudable concept. By recounting earlier mistake if any committed, then the same is rectified. If whole process is initiated *de novo*, then it would revive the illegality by which petitioner was elected by one vote illegally.
19. When learned Writ Court considered the facts and circumstances of the case holistically and then passed a reasoned order then scope of interference in writ appellate jurisdiction constricts. Even if this Court causes interference and pass any order then the said may serve the Law but certainly not the Justice. Therefore, in the conspectus of facts and circumstances of the case, interference would amount to entrance in the realm of subjectivity and losing objectivity.
20. In cumulative analysis, no case for interference is made out once learned Writ Court given its finding in specific terms as well as on the basis of substantial justice meted out. The appeal sans merits and is hereby dismissed. The order passed by learned Writ Court is affirmed.
21. *Resultantly*, appeal stands **dismissed**.

Anil*

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE