

HIGH COURT OF MADHYA PRADESH BENCH AT

GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE HIRDESH

ON 28TH APRIL, 2025

WRIT APPEAL NO. 1261 OF 2025

NIHAL SINGH S/O SHRI BADAN SINGH GURJAR

VS.

THE STATE OF M.P. AND OTHERS

Appearances:-

Shri Sanjay Kumar Bahirani – Advocate for the appellant.

*Shri Ankur Mody – Additional Advocate General for respondents
No.1 to 5/ State.*

Shri Ajay Kumar Rathore – Advocate for respondent No.6.

JUDGMENT

Per. Justice Anand Pathak,

1. This writ appeal under Section 2(1) of the Madhya Pradesh Uchcha Nyalaya (Khand Nyaypeeth Ko Appeal) Adhiniym, 2005 is filed against the order dated 17/04/2025 passed in Writ Petition No.23051/2023 by the learned Single Judge whereby writ petition

preferred by respondent No.6 (petitioner in writ petition) was allowed and writ of *Quo Warranto* was issued against the present appellant (respondent No.6 in the writ petition) as Sarpanch of Gram Panchayat Manpur, Tehsil Joura, District-Morena on the account of 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 (hereinafter referred as Adhiniyam, 1993).

2. Facts of the case in short are that appellant submitted nomination form for election on the post of Sarpanch of Gram Panchayat Manpur, Tehsil Joura, District-Morena in the year 2022, but while submitting the nomination, he did not disclose the fact that he was convicted under Section 325/149 and sentenced for 02 years' RI with fine of Rs.500/- and Section 147 of IPC and sentenced for 06 months' Simple Imprisonment with fine of Rs.500/- with default stipulations respectively vide judgment dated 07/08/2015 passed in Criminal Case No.480/2008 by the JMFC, Joura. The same was affirmed by the Appellate Court vide judgment dated 17/02/2023 passed in Criminal Appeal No.194/2015 by IIIrd Additional Sessions Judge, Joura, District-Morena (M.P.). Against the same, Criminal Revision was preferred before this Court vide Cr.R. No.1504/2023, but same was dismissed for want of prosecution vide order dated 26/06/2023.

3. Initially, writ petition No.23051/2023 was filed by respondent No.6 seeking direction for consideration of his representation which was disposed of vide order dated 17/01/2024 with direction to consider the representation of the petitioner (respondent No.6 herein). Against the same, writ appeal No.414/2024 was preferred by the present appellant and vide order dated 07/08/2024, the same was allowed and order dated 17/01/2024 was set aside and Writ Petition No. 23051/2023 was directed to be restored and listed as a writ of *quo-warranto*. Against the said order, Review Petition No.495/2025 was preferred by present appellant but vide order dated 02/04/2025, the same was dismissed. Thereafter, Writ Petition No.23051/2023 preferred at the instance of respondent No.6 was allowed vide order dated 17/04/2023, hence, appellant is before this Court in writ appeal.

4. Since appellant was convicted for the aforesaid offence, therefore, under the provisions of Section 36(1)(a)(ii) of the Adhiniyam, 1993, he was liable to be disqualified to be appointed/elected for the post of Sarpanch, which is a public post and his nomination was liable to be rejected as in view of the aforesaid provision, appellant had no right to contest the election.

5. By concealing the said fact, appellant contested the election and was elected as Sarpanch of Gram Panchayat Manpur, therefore, writ petition was preferred by respondent No.6 (petitioner in writ

petition), which was allowed by the learned Writ Court and the appointment of present appellant (respondent No.6 in the writ petition) was held invalid because of possessing disqualification in view of the aforesaid provisions.

6. It is the submission of learned counsel for the appellant that writ of *Quo Warranto* is not maintainable in the given set of facts and petitioner (respondent No.6) had the remedy of Election Petition under Section 122 of Adhiniyam, 1993 and M.P. Panchayat Nirvachan Niyam, 1995 (hereinafter referred as Niyam, 1995).

7. Learned counsel for the respondent No.6 opposed the prayer and submits that the learned Writ Court rightly dealt with the issue and in view of Rule 31(a) of the Niyam, 1995, found appointment of appellant as invalid and passed the impugned order, which needs no interference. Learned counsel also relied upon the judgments of this Court in the case of **Shiv Singh Rawat Vs. State of M.P. and Others, 2008(2) MPLJ 573, Virendra Tyagi Vs. State of M.P. and Others, 2011(1) MPLJ 245 and Suresh Choudhary Vs. Atarlal Verma 2006 (3) MPLJ 506.**

8. Learned counsel for the respondents/ State also opposed the prayer supporting the impugned order and prayed for dismissal of the writ appeal.

9. Heard the learned counsel for the parties and perused the documents appended with the petition.

10. The core question involved in the present case is that whether Election Petition is the proper remedy or Writ Petition under Article 226 of the Constitution of India for issuance of writ of *Quo Warranto* is maintainable or not.

11. Rule 31-A of Niyam, 1995 is reproduced as under:-

“ 31-A. Information of criminal record, properties, liabilities and educational qualifications etc. of candidates. [Inserted by M.P. Notification No. F-1-3-2004-XXII P-2, dated 20-9-2004.]

(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, 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."

12. In the present case, at the time of submitting nomination form, appellant suppressed the fact that he was convicted for the offence under Section 325/149 and sentenced for 02 years with fine of Rs.500/- and Section 147 of IPC and sentenced for 06 month Simple Imprisonment with fine of Rs.500/- with default stipulations respectively vide judgment dated 07/08/2015 passed in Criminal Case No.480/2008 by the JMFC, Jaura. The same was affirmed by the Appellate Court and revision against the same was also dismissed. Therefore, mandatory requirement as stipulated under Rule 31-A of the Niyam, 1995 has not been complied with in the present case.

13. Disqualification of Office Bearers of Panchayat is provided in Section 36 (a)(i)(ii) of the Adhiniyam, 1993 and for ready reference the same is reproduced 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 offense under the Protection of Civil Rights Act, 1955 (No. 22 of 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 offense 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; or”.

14. As per the aforesaid provision, a person shall be ineligible to be an officer-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, appellant is sentenced and convicted under Section 325/149 and sentenced for 02 years with fine of Rs.500/- and Section 147 of IPC and sentenced for 06 month Simple Imprisonment with fine of Rs.500/- with default stipulations respectively. This aspect has been dealt with in detail by the Hon'ble Apex Court in the case of **Central Electricity Supply Utility of Odish Vs. Dhobei Sahoo and Others, AIR 2014 SC 246**, wherein, it has been held that issuance of *Writ of Quo Warranto* is permissible only if person holding public posts lacks eligibility or appointment *dehors* rules. The said law has been reiterated by this Court in the cases of **Suresh Choudhary (supra)**, **Shiv Singh Rawat (supra)** and **Virendra Tyagi (supra)**.

15. Considering the submissions advanced and in view of the settled law as discussed above, it appears that no case for interference is made out. Writ Petition under Article 226 of the Constitution of India is very well maintainable for issuance of *Quo Warranto* in the present set of facts, therefore, the impugned order was rightly passed by the learned Writ Court considering all these aspects. Hence, the impugned order dated 17/04/2025 passed in Writ Petition No.23051/2023 is hereby affirmed.

16. Consequently, the writ appeal stands *dismissed*.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE