

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 20th OF JUNE, 2022

WRIT PETITION No. 12982 of 2022

Between:-

**SMT. SHAMABAI W/O SURESH DHANAGAR ,
AGED ABOUT 36 YEARS, OCCUPATION:
HOUSEWIFE VILLAGE BAMANI POS
JALINER TEHSIL MANASA (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI SANDEEP MEHTA, ADVOCATE)

AND

**1. PANCHAYAT AND RURAL DEVELOPMENT
DEPARTMENT THROUGH PRINCIPAL
SECRETARY VALLABH BHAWAN BHOPAL
(MADHYA PRADESH)**

**2. STATE ELECTION COMMISSION THROUGH
CHIEF ELECTION COMMISSIONER BHOPAL
NIRWACHAN BHAWAN 58 ARERA HILLS
BHOPAL (MADHYA PRADESH)**

**3. RETURNING OFFICER (PANCHAYAT)
NEEMUCH COLLECTOR OFFICE (MADHYA
PRADESH)**

**4. ASSISTANT RETURNING OFFICER
(PANCHAYAT) NEEMUCH COLLECTOR
OFFICE (MADHYA PRADESH)**

**5. RADHA W/O DINESH PARIHAR VILLAGE
HANSPUR TAHSIL MANASA (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI PRADUMAN KIBE, G.A.)

**(BY SHRI KAMAL AIREN, ADVOCATE FOR RESPONDENT NOS.2, 3
AND 4.)**

(BY SHRI MUDIT MAHESHWARI, ADVOCATE FOR RESPONDENT NO.5)

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

ORDER

Heard finally with the consent of the parties.

2. This petition has been filed under Article 226 of the Constitution of India challenging order dated 07.06.2022 passed by the Returning Officer (Panchayat), Neemuch whereby petitioner's election nomination Form for the post of Member Zila Panchayat, Neemuch has been rejected on the basis of blank left entry in the Form.

3. Petitioner's case is that the election of Panchayat for the State of Madhya Pradesh has been declared by the State Election Commission and thus the election of Gram Panchayat, Manasa, District – Neemuch has also been declared. After the notification of election, petitioner submitted her Form for contesting in the election of Member Zila Gram Panchayat., however, the aforesaid Form was opposed by the respondent No.5 by filing the objection on 07.06.2022, before the Returning Officer on the ground of false information furnished by the petitioner as also the incomplete affidavit filed by the petitioner. Aforesaid objection of the respondent No.5 was replied to by the petitioner and the objection has been decided by the Returning Officer vide impugned order dated 06.02.2022, holding that in Clause 2.10 of para 9 of the Form submitted by the petitioner, which was in respect of sales tax, she has left the columns blank.

4. The case of the petitioner is that leaving the aforesaid entry blank was a genuine human error and ought to have been allowed to be rectified by the Returning Officer by informing the petitioner in writing, which is also the mandate of the guidelines issued by the Election Commission in this behalf, filed as Annexure P/5.

5. In support of his contention, counsel has also relied upon a decision rendered by the Division Bench of this Court of Gwalior Bench in the case of **Pradhuman Verma Vs. State of M.P. and others** reported as **2017 SCC Online MP 2305** wherein this Court has held that a writ petition under Article 226 of the Constitution of India would be maintainable and judicial review of decisions of statutory bodies such as in a case of *mala fide* or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law is permissible.

6. Counsel has also relied upon a decision rendered by the Hon'ble Supreme Court in the case of **Election Commission of India Through Secretary Vs. Ashok Kumar and others** reported as **(2000) 8 SCC 216** as also a decision rendered by the Supreme Court in the case of **Dravida Munnetra Kazhagam (DMK) Vs. Secretary, Governer's Secretariat and others** reported as **(2020) 6 SCC 548** para 14.

7. Counsel has submitted that the petitioner is not seeking any stay or restrain order in respect of the election, but only wants that she should also be allowed to participate in this election as her nomination Form has been canceled without application of mind, in breach of the

guidelines issued by the Election Commission as also the Panchayat Rules.

8. Counsel for the Election Commission, on the other hand, has vehemently opposed the prayer. A reply has also been filed. It is submitted that no case for interference is made out as the petition has been filed against the rejection of nomination Form, which can only be challenged by way of an election petition as provided under Rule 21 of M.P. Panchayat Nirvachan Niyam (Election Petitions, Corrupt Practice and Disqualification for Membership) Rules, 1995.

9. In support of his contention, Shri Kamal Airen has also relied upon a decision rendered by the Division Bench of this Court in the case of **State Election Commission Vs. Ras Bihari Raghuvanshi** reported as **AIR 1995 MP 245** as also a latest decision in the case of **Kallo Adiwasi (Smt.) Vs. The State Election Commission M.P., Bhopal and others** reported as **2016 (1) J LJ 236** wherein this Court has held in no uncertain terms that a writ petition against wrongful rejection of nomination paper is not maintainable and the only remedy is by way of election petition.

10. Heard counsel for the parties and perused the record.

11. From the record, so far as the maintainability of the petition is concerned, this Court finds that there are various judgments, for and against the issue regarding maintainability of a writ petition against order passed by a Returning Officer in the process of election and although the Division Bench of this Court in the case of **Kallo Adiwasi (Smt.) (supra)** was categorical in holding that the petition is

not maintainable by referring to Section 122 of the M.P. Panchayat Raj Adhiniyam, 1993, however, the aforesaid decision has also been considered by the Division Bench of this Court in the case of **Pradhuman Verma (supra)** but a close scrutiny of **Pradhuman Verma (supra)** reveals that although there is a reference of the decision rendered by the Division Bench of this Court in the case of **Kallo Adiwasi (Smt.) (supra)**, but there is no discussion whether the aforesaid decision has been distinguished specifically, however, it is still held that the petition is maintainable and it has been held in para 18 as under:-

“18. For convenience and ready reference, this Court in terms of the law laid down by the Apex Court delineates below the limited grounds available to High Court under [Article 226](#) to exercise the power of judicial review to interfere in election matters, as follows :-

(i) Judicial review is permissible where the same does not retard, interrupt, protract or stall the election proceedings.

(ii) The power of judicial review can be exercised to correct, smoothen, remove obstacles to preserve the vital piece of evidence which may be destroyed due to elapse of time and to further the process of election.

(iii) The power of judicial review can be exercised when the process of election is so vitiated that it becomes abhorrent to the fundamentals of democracy and is a farce which if allowed to continue and allowed to be challenged by the time consuming process of election petition would shake the confidence of people in democracy.”

12. However, the controversy regarding the maintainability of the writ petition in election matters appears to have settled by the Supreme Court in its relatively recent decision in the case of **Dravida**

Munnetra Kazhagam (DMK) (supra), in para 14 of which it has been held as under:-

“14. The contention of the respondents that the present proceedings amount to “calling in question an election” and hence not being maintainable in view of the express constitutional embargos of Articles 243-O and 243-ZG does not impress us for the present proceedings are only to further the expeditious completion of prerequisites of a fair election. Hence, the following ratio of a coordinate Bench in Election Commission of India v. Ashok Kumar and Others [2000 (8) SCC 216] squarely applies to the present case:

“32.(2) Any decision sought and rendered will not amount to “calling in question an election” if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body been shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.”
(emphasis supplied)

13. In view of the aforesaid dictum of the Hon'ble Supreme Court, it is apparent that the proceedings which can be questioned on the touch stone of fairness and justice and on the ground of *mala fide* or arbitrary exercise of powers being made out or the authority has acted

in breach of law, and that too to further completion of a fair election, to subserve the progress of the election and facilitates the completion of the election, can be assailed in a writ petition which would be maintainable.

14. Now coming to the issue raised by the petitioner in the present case, regarding rejection of her nomination paper, only on account of one line of it being left blank, is concerned, this Court finds that even in the reply the respondents has relied upon a circular dated 28.10.2016, para 2 of which is relevant, reads as under:-

“2. इस संबंध में निम्नलिखित निर्देश दिए जाते हैं:-

(1) जिला पंचायत के सदस्य/जनपद प्रचायत के सदस्य/ग्राम पंचायत के सरपंच पद का प्रत्येक अभ्यर्थी अपने नाम निर्देशन पत्र के साथ एक शपथ पत्र एवं उसके साथ ही एक सार पत्र प्रस्तुत करेगा। इनमें उसकी आस्तियों, दायित्वों, शैक्षणिक योग्यताओं एवं आपराधिक पृष्ठभूमि (यदि ऐसी अवस्था हो) आदि की जानकारी दी जावेगी। इस तरह प्रस्तुत किये जाने वाले शपथ पत्र एवं शपथ पत्र के सार पत्र के प्ररूप इस आदेश के अनुलग्नक के अनुसार होगा।

(2) अभ्यर्थी द्वारा शपथ पत्र एवं उसके सार पत्र के प्रत्येक कॉलम में प्रतिष्ठि की जायेगी। यदि किसी कॉलम की जानकारी निरंक है, तो उस कॉलम में “निरंक” शब्द अंकित करना आवश्यक होगा। अभ्यर्थी द्वारा किसी भी वांछित प्रविष्टि को रिक्त नहीं छोड़ा जाना चाहिए। रिटर्निंग ऑफिसर को यह जाँच करनी होगी कि नाम निर्देशन पत्र के साथ दाखिल करते समय शपथ पत्र एवं उसके सार पत्र के सभी कॉलम भरे गए हैं या नहीं। यदि नहीं, तो रिटर्निंग ऑफिसर द्वारा अभ्यर्थी को रिक्त कॉलम को भरने के लिए तत्समय अवगत कराया जायेगा। अवगत कराने के पश्चात भी यदि कोई अभ्यर्थी इन्हें भरने में असफल रहता है, तो नाम निर्देशन पत्र की जाँच/संवीक्षा के समय रिटर्निंग ऑफिसर द्वारा नाम निर्देशन पत्र खारिज किया जायेगा।”

(emphasis supplied)

15. Admittedly, in the present case the objections were filed by the respondent No.5. A reply to which was also filed by the petitioner and

the Returning Officer has simply decided the said objection holding that certain columns of the Nomination Form were left blanks. Thus, instead of giving the petitioner an opportunity to cure the defects, the Returning Officer has very conveniently rejected her nomination paper, which in the considered opinion of this Court is not only runs contrary to the guidelines issued by the Election Commission, but in the light of the aforesaid guidelines, it also appears that the rejection of nomination paper of the petitioner was in arbitrary exercise of powers vested in the Returning Officer to deprive the petitioner to contest the election. In the circumstances, it cannot also be said that the rejection of nomination paper was on such a complicated ground, the recourse against which can only be taken in an election petition.

16. In view of the same, the impugned order dated 07.06.2022 cannot be sustained and is hereby quashed and the Returning Officer is directed to allow the petitioner to cure the defect within three days time and proceed further as per the election programme.

17. With the aforesaid, present petition stands allowed and disposed of.

C. c. as per rules.

(SUBODH ABHYANKAR)
JUDGE