

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. 13057 of 2022

Between:-

**KRISHNA BAI W/O DINESH KUMAR PATIDAR
, AGED ABOUT 35 YEARS, VILLAGE KOTADA
BUJURG TEHSIL GAROTH (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI SAMEER ATHAWALE, ADVOCATE)

AND

- THE STATE OF MADHYA PRADESH**
- 1. PRINCIPAL SECRETARY VALLABH BHAWAN
DISTRICT BHOPAL (MADHYA PRADESH)**
 - 2. COLLECTOR AND DISTRICT ELECTION
OFFICER MANDSAUR (MADHYA PRADESH)**
 - 3. RETURNING OFFICER, PANCHAYAT
ELECTIONS VILLAGE KOTADA BUJURG,
TEHSIL GAROTH (MADHYA PRADESH)**
 - 4. MADHYA PRADESH STATE ELECTION
COMMISSION THROUGH CHIEF ELECTION
OFFICER NIRVACHAN BHAWAN, BHOPAL
(MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI PRADYUMNA KIBE, G.A.)

(BY SHRI KAMAL AIREN, ADVOCATE FOR RESPONDENT NO.4)

*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 Village Kotada Bujurg, Tehsil Garoth, District Mandsaur whereby the petitioner's Nomination Form for the unreserved woman post of Sarpanch for Gram Panchayat Kotada Bujurg, Janpad Panchayat Garoth on the ground that the no dues certificate in respect of the electricity bill was not of the petitioner as the electricity bill is in the name of the husband of the petitioner and the no dues certificate has been issued by the electricity company in the name of the petitioner's husband Dinesh Kumar Patidar. It is submitted that it was only a technical objection which ought to have been allowed to be cured by the Returning officer.

3. Counsel for the petitioner has submitted that the petition has been filed also on the ground that initially the petitioner's nomination form was accepted by the Returning Officer, which is apparent from the document Annexure P/4 wherein the Returning Officer has clearly stated that the Form of the petitioner being in accordance with law is accepted on 07.06.2022, however, the aforesaid Form has been rejected on the same day holding that the no dues certificate is not in the name of the petitioner. The aforesaid rejection of Nomination form after accepting is not permissible under any law. Counsel has submitted that none of the Rules or Guidelines prescribed by the Election Commission provides for cancellation of Nomination Form

once it is accepted and even otherwise Sub-section (4) of Section 35 of The Madhya Pradesh Panchayat Nirvachan Niyam, 1995 provides that the Returning Officer shall not reject any nomination paper on the ground of mere clerical or printing error or any defect which is not of a substantial character. Counsel has also relied upon Rule 34 of the said Niyam and submitted that the petitioner being a rustic woman was not aware of the technicalities of the nomination paper and even on the Gram Panchayat Board, in the list of the requisite documents sought from a candidate, it was simply stated that a document relating to no dues of electricity bill shall also be produced and thus, as the petitioner has no electricity connection in her name and the electricity bill is issued in the name of petitioner's husband, the electricity company has given no dues certificate in the name of petitioner's husband. It is submitted that even that defect was curable in nature even according to the reply filed by the respondent/Election Commission. Thus, it is submitted that looking to the Rules of Nirvachan Niyam, 1995 the petitioner ought to have been allowed to cure the defect.

4. Counsel for the Election Commission, on the other hand, has vehemently opposed the prayer. A reply has been filed. It is submitted that no case for interference is made out as it was clearly provided that as per the Guidelines issued on 27.05.2022 the no dues certificate ought to have been obtained in respect of the candidate only. It is also submitted that 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.

5. 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.

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

7. 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 Adhinyam, 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.”

8. 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)

9. 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.

10. On due consideration of submissions, perusal of the documents filed on record, it is found that the aforesaid objection of the aforesaid error committed by the petitioner in submitting her nomination Form

can be said to be technical in nature or a defect which is not of a substantial character for which an opportunity to cure the same ought to have been given by the Returning Officer as provided Sub-Section (4) of Section 35 of The Madhya Pradesh Panchayat Nirvachan Niyam, 1995, which reads as under:-

“The Returning Officer shall not reject any nomination paper on the ground of mere clerical or printing error or any defect which is not of a substantial character.”

(emphasis supplied)

11. Thus, in the light of the aforesaid mandate of law, the Returning Officer was obliged to ask the petitioner to cure the defect, which was technical in nature, however, instead of giving an opportunity to the petitioner to cure the defect, the nomination form which was once accepted, has been rejected immediately. Thus, without going into the mandate whether the Returning Officer had the authority to review and cancel the nomination form once accepted, this Court finds it expedient to quash the impugned order dated 07.06.2022, and directs the Returning Officer to allow the petitioner to cure the defect within three days time and proceed further as per the election programme.

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

C. c. as per rules.

(SUBODH ABHYANKAR)
JUDGE