

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

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 4th OF JANUARY, 2024

WRIT PETITION No. 17844 of 2022

BETWEEN:-

RAJALBAI W/O SHRI RAMESHCHANDRA MALVIYA, AGED ABOUT 50 YEARS, OCCUPATION: HOUSEWIFE VILLAGE BHARED, TEHSIL NARSINGHGARH (MADHYA PRADESH)

.....PETITIONER

(SHRI MANISH KUMAR VIJAYWARGIYA, LEARNED COUNSEL FOR THE PETITIONER.)

AND

- PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT THROUGH**
- 1. PRINCIPAL SECRETARY MANTRALAYA VALLABH BHAWAN BHOPAL, M.P. (MADHYA PRADESH)**
 - M.P. STATE ELECTION COMMISSION THROUGH COMMISSIONER**
 - 2. NIRVACHAN BHAWAN 58, ARERA HILLS BHOPAL (MADHYA PRADESH)**
 - 3. COLLECTOR AND DISTRICT ELECTION OFFICER DISTRICT RAJGARH (MADHYA PRADESH)**
 - 4. SUB DIVISION ELECTION OFFICER SUB DIVISION NARSINGHGARH DISTRICT RAJGARH (MADHYA PRADESH)**
 - 5. RETURNING ELECTION OFFICER PANCHAYAT ELECTION TEHSIL NARSINGHGARH, DISTRICT RAJGARH (MADHYA PRADESH)**
 - 6. ANITA D/O BHAWARLAL W/O TEJMAL, AGED ABOUT 30 YEARS, SARKANDIYA TEHSIL EKLERI DISTRICT JHALAWAD, RAJASTHAN (RAJASTHAN)**
 - 7. CHHAMA W/O SIDDHNATH, AGED ABOUT 50 YEARS, VILLAGE BHILKHEDA TEHSIL PACHORE DISTRICT RAJGARH (MADHYA PRADESH)**
 - 8. KALA W/O RAJESH, AGED ABOUT 35 YEARS, VILLAGE BHILKHEDA TEHSIL PACHORE DISTRICT RAJGARH (MADHYA PRADESH)**
 - 9. LALTA W/O GAURILAL, AGED ABOUT 42 YEARS, VILLAGE BHILKHEDA TEHSIL PACHORE DISTRICT RAJGARH (MADHYA PRADESH)**

PRADESH)

- PREMBAI W/O NARAYAN SINGH, AGED ABOUT 45 YEARS, VILLAGE**
10. BHILKHEDA TEHSIL PACHORE DISTRICT RAJGARH (MADHYA
PRADESH)
- SHIV KALA W/O NARAYAN SINGH, AGED ABOUT 40 YEARS,**
11. VILLAGE BHILKHEDA TEHSIL PACHORE DISTRICT RAJGARH
(MADHYA PRADESH)
- TINA BAI W/O SHYAM, AGED ABOUT 30 YEARS, VILLAGE**
12. BHILKHEDA TEHSIL PACHORE DISTRICT RAJGARH (MADHYA
PRADESH)
- VINITA W/O SATYANARAYAN RUHELA, AGED ABOUT 28 YEARS,**
13. VILLAGE BHARD TEHSIL PACHORE (MADHYA PRADESH)
- SATYANARAYAN RUHELA S/O BADRILAL RUHELA, AGED ABOUT 35**
14. YEARS, VILLAGE BHARED TEHSIL PACHORE (MADHYA PRADESH)

.....RESPONDENTS

(SHRI KUSHAL GOYAL, LEARNED DY. ADVOCATE GENERAL FOR THE
RESPONDENT/STATE.)

(SHRI KAMAL NAYAN AIREN, LEARNED COUNSEL FOR RESPONDENTS
NO. 2 TO 5.)

(SHRI VISHAL LASHKARI, LEARNED COUNSEL FOR THE RESPONDENT
NO.6.)

(SHRI ANENDRA SINGH PARIHAR, LEARNED COUNSEL FOR THE
RESPONDENT NO. 12.)

(SHRI UTKARSH JOSHI, LEARNED COUNSEL FOR THE RESPONDENTS
NO. 13 AND 14.)

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

ORDER

1. The petitioner has filed the present petition challenging the election of respondent No.13 to the post of Surpanch of Gram Panchayat Bhilkheda Vikas Khand, Narsinghgarh, District Rajgarh.
2. The petitioner and respondents No. 7, 8, 9, 10, 11, 12 and 13 contested the election of Sarpanch of the Gram Panchayat Bhilkheda held on 8.7.2022. The result was declared on 14.7.2022 and notified by the Returning Officer by which Smt. Anita w/o Shri Satyanarayan was

declared as elected by securing 591 votes and the present petitioner secured 359 votes.

3. The petitioner instead of challenging the election of Smt. Anita w/o Shri Satyanarayan Sarpanch of the Gram Panchayat by way of the election petition, has filed the present petition on the ground that respondent No.6 – Anita Bhawarlal W/o. Tejmal was the first wife of respondent No.14 – Satyanarayan. They were separated 15 years back and she was shifted to Jhalawad, Rajasthan and performed a second marriage with Shri Tejmal. However, her name continued in the voter list of Gram Panchayat. According to the petitioner, the petitioner Satyanarayan performed second marriage with Vinita i.e. respondent No.13 who contested the election of Gram Panchayat by impersonating Smt. Anita w/o Shri Satyanarayan /respondent No.6 . It is further submitted that the post of Sarpanch of Gram Panchayat Bhilkheda was reserved for Scheduled Tribe (ST) women. Vinita is 'Ruhela' by caste which comes under Other Backward Classes (OBC) in the State of Madhya Pradesh.

4. It is also alleged in this Writ Petition that the name of the first wife Smt. Anita w/o Shri Tejmal is continuing on the voter list of Village Bhared at Serial No. 1063 till today as “Anita W/o. Satyanaran”, hence respondent No.13 – Smt. Vinita by using the false caste certificate and her name in the voter list contested the election of Sarpanch in the name of Smt. Anita w/o Shri Satyanarayan and won. She forged the voter-ID of Smt. Anita w/o Shri Satyanarayan by affixing her photo. It is further submitted that Anita is an illiterate lady who used to put her thumb impression, but Vinita being a literate lady, puts her signature. It is also submitted that respondent No.13 never cast her vote in the election in question as her name is not on the voter-list. Therefore, as Smt. Vinita w/o

Shri Satyanarayan/ respondent No.13 has won the election by way of fraud, hence the same is liable to be declared as null and void. It is also prayed that respondents No.1 to 3 be directed to prosecute respondents No.13 and 14 for such forgery and cheating. It is further submitted that Anita is an illiterate lady who used to put her thumb impression, but Vinita being a literate lady, puts her signature. It is also submitted that respondent No.13 never cast her vote in the election in question as her name is not on the voter-list.

5. After notice, respondents No.2 to 5 / M.P. State election commission filed their reply raising preliminary objection about the maintainability of this petition for want of remedy of the Election Petition under the provisions of section 122 of the M.P. Panchayat Raj Adhiniyam,1993, the M.P. Panchayat Nirvachan Niyam,1995 and the Panchayat (Election Petitions, Corrupt Practice and Disqualification for Membership) Rules, 1995. Along with the reply, respondents No.2 to 5 have filed notification of declaration of election program, and nomination forms submitted by all the candidates.

6. Initially, respondents No.13 and 14 tried to avoid service of notice in this petition, therefore, vide order dated 10.10.2023 this court directed the Collector, Rajgarh to conduct an inquiry regarding the allegation levelled by the petitioner and submit the report. In compliance of the said direction, the Collector directed the Sub Divisional Officer (SDO) to conduct an inquiry and submit the report. The SDO, Narsingharh submitted the report to the effect that, Anita W/o. Satyanaran got elected as Surpanch of the Gram Panchayat Bhilkheda. The actual caste of Anita is 'Korku' which is notified as ST at Serial No. 27 and for that, a certificate has been issued by the SDO. In Samagra ID dated 10.7.2022, the name of Smt. Binita was

recorded but on 13.7.2023 it was changed to Anita aged about 32 years. The Inquiry Report further revealed that the elected candidate Anita W/o. Satyanarayan got amended the Adhaar Card 5 times. Her Adhaar No. is 8935-4513-7584. Initially, it was in the name of Vinita. Thereafter, it was updated to bio-matric, mobile number and photo. Again it was demographically updated on 24.12.2020. On 16.6.2022 the name was changed from Vinita to Anita and on 5.9.2022 the date of birth was changed from 4.8.1995 to 1.1.1990. The voter-list was also checked and according to the Sub Divisional Officer , in the voter-list for local election prepared in the year 2018 and the voter-ID at Polling Booth No. 160, Ward No. 13, House No. 8, the name of voter is written as Anita W/o. Satyanarayan aged 28 years. In the voter-list of 2020 at Serial No. 992, the name of Anita W/o. Satyanarayan aged 30 years, House No.8 is recorded. In the voter-list of 2022, the name of Anita W/o. Satyanarayan aged 32 years House No.8 is mentioned at Serial No. 1063. In the Assembly election, area 160 again the house number, and name of the voter is found to be Vinita in place of Anita W/o. Satyanarayan. According to the learned Govt. Advocate, this report is against respondent No.13 and in favour of the petitioner.

7. Finally Respondents No.13 and 14 have also filed their reply denying each and every allegation made in the writ petition. According to them, it is correct that earlier Satyanarayan was married with respondent No.6 – Anita D/o. Bhawarlal, but the said marriage was ended with mutual consent long back and thereafter respondent No.14 performed the marriage with **Anita @ Vinita D/o. Devilal Korku**. Out of the said wedlock, she gave birth to Archana on 2.9.2014 and Roshan on 15.6.2016. In their birth certificates, the mother's name is written as Anita. Therefore, in some

documents the name is written as Vinita and in some documents it is written as Anita and she is known by both names in the Village. Respondents No.13 and 14 have filed copies of Adhaar Card, updated Samagra ID, Bank Pass-book, etc. in the name of respondent No.13 – Anita. They, therefore, prayed for dismissal of the writ petition.

After having heard the learned counsel for the parties at length, I have perused the material available on record.

8. The allegations levelled by the petitioner against respondents No.13 and 14 seem to be that the name of the first wife of Satyanarayan is Anita D/o. Bhawarlal which is continuing in the voter-list and the said name has been used by the second wife of Satyanarayan i.e. Vintia. As the nomination papers, the election was contested by Smt. Anita w/e Satyanarayan as per record filed by the Election Commission. Annexure P/5 is the Pamphlet circulated during the election and below the photograph of Vinita the name is written as Smt. Anita is written and an appeal was made to cast the vote in her favour. As per the report submitted by the SDO, in the voter-list for the year 2018, 2020 and 2022, the voter's name is written as Anita W/o. Satyanarayan r/o House No.8 and on the basis of these voter-lists Anita contested the election in question and was declared elected. Respondent No.3 present in the court with Stayanarayan admitted her photo in the election pamphlet.

9. Respondent No.6 has filed an affidavit in this petition admitting that she got separated from Satyanarayan and performed the second marriage with Tejmal and she never came to Village Bhared to contest the election. She has specifically deposed that the alleged complaint filed as Annexure P/8 was neither filled by her nor did she put her thumb impression. She has annexed the photocopy of her Adhaar Card in which the Adhaar number is

4838-5529-2541. Hence respondent No.6 did not contest the election of Sarpanch. The Adhaar number of Vinita w/o Stayanarayan is 8935-4513-7584, which is different from Adhaar of respondent No.6 . Therefore, any entries which were changed as per the report of SDO were in the Adhaar Card of respondent No.13 and not in the Adhaar Card of respondent No.6. Hence, the report of the SDO is not against respondent No.13. In her affidavit, respondent No.6 has also disclosed her name and electoral number in Rjasthan where she is living since last 15 years.

10. Respondents No.13-14 have filed a copy of Pass-book of the Bank Account in Narmada Jhabua Gramin Bank which is in the name of Anita W/o. Satyanarayan which is respondent No.13 in the present petition. Samagra Portal ID is also filed in which the name of Anita aged 33 years with two children is written. The most important document is the birth certificate of two children of respondents No.13& 14 issued on 19.11.2015 and 17.1.2018 in which the mother's name is written as Anita i.e. respondent No.13 herein. Therefore, respondents No.13 and 14 are right in saying that respondent No.13 is known in the Village as **Vinita and Anita** and there was no impersonation and misrepresentation in the Gram Panchayat election .

9. The Gram Panchayat Bhilkheda comprises of two villages viz. Bhilkheda and Bhared have a population of not more than 3000. In the election, total 1558 votes were cast. In two villages, it would be very difficult to misguide voters as they know as to who is the wife of respondent No.14 – Satyanarayan. It is not possible that respondent No.13 who is Vinita and contested the election in the name of Anita using Voter-ID of Voter number of respondent No.6. Respondent No.13 has been living in the Village Bhared since last more than 14 years, gave birth to two

children and their birth were registered under the Birth and Register Act. The birth-certificates show the name of respondent No.13 as the mother of both the children and wife of Satyanarayan. Therefore, respondent No.13 is known by both names. She belongs to ST as per a certificate dated 14.7.2022 issued by the SDO. Her name is also reflected in Adhaar Card No. 8935-4513-7584 as Anita W/o. Satyanarayan with her photograph. At the time of submission of the election form in the election in question, no objection was raised by the petitioner and other voters that respondent No.13 is Vinita and not Anita. All the objections came when the petitioner lost the election and respondent No.13 won the election by a huge margin. In view of the above, this petition is misconceived.

11. So far as the maintainability of this petition is concerned, in view of the law laid down in the case of *Suresh Choudhary V/s. Atarlal Verma : 2006 (3) MPLJ 506*, the Writ Petition in the nature of *quo warranto* would have been maintainable if facts were not disputed by the respondents. Therefore the the Election Petition was the appropriate remedy available to the petitioner to challenge the election of Sarpanch of Gram Panchayat.

Accordingly, this petition is dismissed, however, with no order as to costs.

(VIVEK RUSIA)
JUDGE

Alok/-