

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

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 30th OF JANUARY, 2024

WRIT PETITION No. 26326 of 2022

BETWEEN:-

**MAYARAM BARBE S/O SHRI ONKAR BARBE, AGED ABOUT 56 YEARS,
OCCUPATION: FARMER AND PANCH OF GRAM PANCHAYAT ATAR
SAMBHA PERMANENT ADDRESS HOUSE NO.118, GRAM ATAR SAMBHA,
TEHSIL PATI, DISTRICT BARWANI (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI PRAVIN ALUNE, ADVOCATE.)

AND

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

**STATE ELECTION COMMISSION THROUGH CHIEF ELECTION
2. OFFICER, NIRVACHA BHAWAN, 58 ARERA HILLS, MADHYA PRADESH
(MADHYA PRADESH)**

**COLLECTOR AND DISTRICT ELECTION OFFICER (LOCAL
3. ELECTION) OFFICE OF DISTRICT COLLECTOR, BARWANI, DISTRICT
BARWANI (MADHYA PRADESH)**

**4. SUB DIVISIONAL OFFICER (REVENUE), OFFICE OF SUB DIVISIONAL
OFFICER, BARWANI, DISTRICT BARWANI (MADHYA PRADESH)**

**SHRI YASHPAL MUJALDA TEHSIL PATI AND THE RETURNING
5. OFFICER OFFICE OF TEHSILDAR TEHSIL PATI, DISTRICT BARWANI
(MADHYA PRADESH)**

**SHRI YOGESH THAKUR, ADMINISTRATOR NATIONAL RURAL
LIVELIHOOD PROJECT AND 4 PRESIDING OFFICER, GRAM
6. PANCHAYAT ATAR SAMBHA, TEHSIL PATI, DISTRICT BARWANI
(MADHYA PRADESH)**

**SANGEETA W/O MAYARAM OCCUPATION: UP SARPANCH, GRAM
7. PANCHAYAT ATAR SAMBHA GRAM ATAR SAMBHA, TEHSIL PATI,
DISTRICT BARWANI (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI TARUN KUSHWAH, GOVERNMENT ADVOCATE.)

**RESPONDENT NO.7 BY SHRI VIJAY SHARMA, ADVOCATE.
RESPONDENT NO.2 BY SHRI KAMAL NAYAN AIREN, ADVOCATE.)**

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

ORDER

The petitioner has filed the present petition challenging the order dated 27.09.2022 whereby respondent No.7 has been declared Upsarpanch by drawing a lot.

Facts of the case in short are as under:

02. The petitioner and respondent No.7 are two elected panch Gram Panchayat Atar Sambha, Tehsil Pati, District Barwani held in the year 2022. In the said election, 20 Panch were declared elected thereafter, Upsarpanch was notified by appointing respondent No.6 as Presiding Officer for conducting the election.

03. In compliance of the order dated 26.07.2022 the respondent No.6 called a meeting of all the Panch for the election of Sarpanch on 26.07.2022. The present petitioner and respondent No.7 contested for the post of Upsarpanch by submitting a nomination paper. All the Panch casted their votes thereafter, the counting was started under Sub-Rule 6 of Rule 16 of M.P. Panchayat (Upsarpanch President and Vice President) Nirvachan Niyam, 1995 (for short "Nirvachan Niyam, 1995"). After the counting of the vote, one vote was rejected, 9 votes were found in favour of respondent No.7 and 10 votes were found in favour of present petitioner and thereafter, certificate under Rule 17 was issued by electing the petitioner to the post of Gram Panchayat Atar Sambha.

04. The Sarpanch and 10 Panch submitted a joint representation to the Commissioner that the Upsarpanch has been wrongly declared elected, he is not of his choice thereafter, an election petition was filed,

summons was issued to the petitioner, he appeared and submitted a reply. The Prescribed Authority called the ballots and counted in presence of petitioner and respondent No.7. In one vote which was counted in favour of the petitioner, the complete mark of round seal was not embossed, therefore, the same has also been rejected, which has resulted in a tie between petitioner and respondent No.7. Since both of them secured 9 – 9 votes hence, two slips were prepared and kept in the empty box and a woman was called to elect by way of draw, luckily respondent No.7 has won and accordingly she has been declared elected as Upsarpanch. Hence, this petition before this Court.

05. After notice, only Election Commission has filed the reply. All the respondents have agreed that all the votes be called before this Court for examination by this Court and the sole issue involved in this petition be decided.

06. Today, Government Advocate has produced all 20 votes before this Court. So far as the rejection of one vote by the Returning Officer is concerned, for which the petitioner has no objection. The only one vote which has been rejected by the Prescribed Authority is the vote in which a spot of blue ink is embossed in front of the name of the petitioner. As per opinion of the Prescribed Authority, mark by a seal of round arrow is not there, therefore, the said vote is liable to be rejected which has resulted in 9 – 9 vote in favour of the petitioner and respondent No.7.

07. Learned counsel for the petitioner submits that the reasons for rejection of ballot paper for declaring invalid are provided in Sub-Rule 6(ii) of Rule 16 of Nirvachan Niyam, 1995 which says that a ballot paper shall be invalid only on 5 reasons which are mentioned i.e. 'a' to 'e' and none of the reasons are available in this case to reject the vote casted in favour of the petitioner.

08. The Rule 16 of Nirvachan Niyam, 1995 provides the manner of

recording votes, counting of votes and declaration of result. Rule 16 is reproduced below:

16. Manner of recording votes, counting of votes and declaration of result.-(1) The Presiding Officer shall provide ballot box for the election of these seats. Such ballot box shall be of such design that the ballot paper can be inserted there in but cannot be withdrawn therefrom without the box being unlocked and the seal being broken. (2) The Presiding Officer shall immediately before the voting starts show the empty box to such members as may be present in the meeting so that they may be satisfied that it is empty and shall then secure and seal the box in such manner that the slit in the box for insertion of ballot paper therein remains open and shall also allow the candidates to affix their own seals in-the space in the box meant therefor if they so desire. (3) The Presiding Officer shall cause the ballot paper to be prepared in the Form F

(4) Every Panchas or Member, as case may be, wishing to vote shall be provided with a ballot paper. The Presiding Officer shall put his signature on the ballot paper before supply, so as to indicate its authenticity. The voter shall then proceed to the place set apart for voting 2 [and put the mark by a seal of rounded arrow given by the Presiding Officer] on the ballot paper against the name of the candidate for whom he wishes to vote. He shall then fold the ballot paper so as to maintain secrecy and insert the same in the ballot box placed in the view of the presiding officer.

(5)(i) If the Presiding Officer is satisfied that owing to, illiteracy, blindness or other physical infirmity, a voter is unable to record his vote, the presiding officer shall permit him to take a S[companion who is the nearest family member of the Voter], who is not less than eighteen years in age to record the vote of the member on his behalf and in accordance with his wishes: Provided that before any. person is permitted to act as companion. of any member under this rule the person shall be required to declare in form IV-A that he will keep secret the vote recorded by him on behalf of voter and that he has not already acted as companion of any member:

[Provided further that the voter shall not avail the advantage of illiteracy if he has the certificate of literacy and the body disability shall be such that he could not vote, if the voter is handicapped then it is necessary to produce the certificate of handicap.]

(ii) Presiding Officer shall keep a record in Form IV-B of all cases under this rule.

(6)(i) Immediately after the voting is over, the Presiding Officer shall open the ballot box, take out the ballot papers therefrom, count them and record the number thereof in a statement.

(ii) A ballot paper shall be invalid-

(a) if it bears the signature of member or contains any word or any visible representation by which he can be identified; or

(b) if marks are placed thereon against more than one candidates: or

(c) if the mark is so placed thereon as to make it doubtful for which candidate the vote was intended to be given: or

(d) if no mark is placed thereon; or

- (e) if it does not bear the signature of Presiding Officer.
- (7)(i) The Presiding Officer shall declare the candidate who secure the largest number of votes to be duly elected in Form V.
- (ii) In case of equality, the election shall be decided by lot to be draw by the presiding officer and the candidate on whom lot falls shall be declared to have been duly elected.

09. Rule 4 of the said Rules says that every Panch and member as the case may be wishing to vote shall be provided with the ballot paper. The Presiding Officer shall put his signature on the ballot paper. The voter shall thereupon proceed to place said part for voting and put **the mark by seal of a rounded arrow** given by the Presiding Officer on a ballot paper against the name of the candidate for whom he wishes to vote. Sub-Rule 6(ii)(b) says that if no mark is placed thereon, therefore, the word “mark” means “a mark by seal of a round arrow” given by the Presiding Officer in one ballot paper, therefore, in front of the name of the petitioner complete mark was there which has been rejected.

10. As per Sub-Rule 4, the Panch or member is required to put a mark by seal of round arrow given by the Presiding Officer. The Presiding Officer examine the ballot papers under Rule 6(i) & (ii) and after examination of ballot papers, the Presiding Officer was satisfied that there is a mark by seal of a round arrow in front of the name of petitioner though it is not a completely rounded arrow but there is a mark in front of the name of this petitioner because there was no other material to put any mark apart from seal in the ballot paper. The attempt was made by the Panch to put mark in front of the name of the petitioner in ballot paper but it was not completely embossed, hence the petitioner is entitled for benefit of doubt.

11. The Presiding Officer who was present throughout voting and counting was satisfied that this mark was put by a seal of round arrow given by him, therefore, once the Presiding Officer has recorded his satisfaction in election petition then that should not be overturned by the

Prescribed Authority in an election petition.

12. It is correct that in Sub-Rule 6(ii) of Rule 16 of Nirvachan Niyam, 1995 the ballot paper shall be invalid if it bears the signature of a member or any word visible to identify him or mark are placed therein against more than one candidate, the mark is so placed as to make it doubtful, if no mark is placed and if does not bear the signature of the Presiding Officer. None of the conditions are fulfilling to reject this one crucial vote in favour of the petitioner.

13. In view of the above, this Writ Petition is **allowed**. The impugned order dated 27.09.2022 is set aside. The election of the petitioner to the post of Vice President Gram Panchayat is hereby restored.

No order as to cost.

(VIVEK RUSIA)
JUDGE

Divyansh