



1

WA-2165-2023

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

&

HON'BLE SHRI JUSTICE PRANAY VERMA

ON THE 25th OF APRIL, 2025WRIT APPEAL No. 2165 of 2023*KAMLABAI**Versus**RAJENDRA SINGH AND OTHERS*

.....
Appearance:

Shri Rishiraj Trivedi - Advocate for the petitioner.

Shri Sameer Anant Athawale - Advocate for the respondent No.1.

Shri Shrey Raj Saxena - Dy.A.G for the respondent/State.

.....

ORDER

Per. Justice Vijay Kumar Shukla

The present intra Court appeal is filed challenging the order dated 26/10/2023 passed by learned Single Judge in W.P No.26668/2022 by which the petition filed by the appellant against the order dated 20/10/2022 passed by the specified officer rejecting the application of the petitioner for dismissal of election petition under Rule 8 of M.P Panchayat(Election Petition, Corrupt Practices and Disqualification for Membership) Rules, 1995 (hereinafter referred as "Rules, 1995") for non compliance of mandatory provisions of Rules 3, 4 & 7 of Rules, 1995.

2. The appellant and the respondent Nos.1-3 contested a Panchayat Election for the post of Sarpanch from ward No.2 of village panchayat,



Bhanwrasa, Tehsil Jeeran, District Neemuch held on 25/6/2022. The result was declared on 14/7/2022 in which the appellant was elected as Sarpanch. The respondent No.1 (Rajendra Singh s/o Govind Singh) filed an election petition before the specified officer cum Sub Divisional Officer, sub Division Neemuch on 17/8/2022 challenging the election of the petitioner and sought cancellation of her election on the ground of corrupt practice. On 17/8/2022, the sub Divisional Officer took the cognizance of the petition and notices were issued to the appellant and other respondents. On 30/8/2022 and 7/9/2022 parties appeared before the specified officer. The appellant filed an application on 7/9/2022 under Rule 8 of the Rules, 1995 alleging that there is non-compliance of mandatory provisions of Rule 3 & Rule 7 of the Rules, 1995 and sought dismissal of the election petition on the ground that election petition was neither presented by the election petitioner nor his counsel. Therefore, there is violation of Rule 3 of the Rules, 1995 and the election petition was liable to be dismissed under Rule 8 of the Rules, 1995. The aforesaid objection was opposed by the respondent No.1/election petitioner submitting that the election petitioner was present at the time of presentation of election petition and the same was presented by Advocate Shri Mahesh Patidar who was authorised by him for executing a vakalatnama. During the course of arguments before the writ Court and also before this Court, counsel for the respondent No.1/election petitioner vehemently argued that petitioner was very present at the time of presentation of the election petition although he was not called upon to sign the order-sheet by the specified officer. Thus, there is no violation of Rule 3 of the Rules, 1995. Another objection



regarding non-compliance of Rule 7 of the Rules, 1995 was also raised alleging that at the time of presentation of the election petition, the security was not deposited.

3. In regard to non-compliance of Rule 7 in respect of deposit of security at the time of presentation of the election petition, it is argued that the security amount of Rs.500/- was deposited vide receipt No.35 on 8/8/2022 and the same was enclosed alongwith the election petition filed on 17/8/2022. Thus, there was compliance of Rule 7 of the Rules, 1995.

4. In order to appreciate, the rival submissions, it is apposite to quote the relevant Rules. The Rule 3, 7 & 8 for ready reference are quoted as under:

3. Presentation of election petition.-(1) An election Petition shall be presented to the specified Officer during the office hours by the person making the petition, or by a person authorised in writing in this behalf by the person making the petition.

(2) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

7. Deposit of security -At the time of presentation of an election petition, the petitioner shall deposit with the specified officer a sum of Rs. five Hundred as security. Where the election of more than one candidate is called in question, a separate deposit of an equivalent amount shall be required in respect of each such returned candidates.

8. Procedure on receiving petition. - If the provisions of rule 3 or rule 4 or rule 7 have not been complied with, the petition, shall be dismissed by the specified officers.

Provided that the petition shall not be dismissed under this rule without giving the petitioner an opportunity of



being heard.

5. We consider it appropriate to decide first the objection regarding deposit of security at the time of presentation of the election petition. It is contended that the security was not deposited at the time of presentation of election petition as per Rule 7 of Rule 1995. Counsel of the petitioner has placed reliance on the judgment passed by the Division Bench in the case of *Sarla Tripathi vs. Kaushilya Devi and Ors.* reported in *2004 (2) JLJ 263*. In *Sarla Tripathi* (supra) it has been held that if the election petition is not accompanied with the security deposit, such an election petition cannot be entertained and is liable to be dismissed.

6. Upon perusal of the record, we find that in the present case the security amount was deposited on 8/8/2022 and the election petition was presented on 12/8/2022 alongwith the receipt of security. In the case of Sarla Tripathi (supra) the security was deposited, after the presentation of the election petition and election petition was not accompanied with the deposit of security and, therefore, it was held that there is non-compliance of provisions of Rule 7 and, therefore, it was dismissed under Rule 8 of Rule, 1995. The said judgment is distinguishable as in the present case, the security was already deposited prior to presentation of the election petition and the election petition was accompanied with the receipt of deposit. The contention of learned counsel for the appellant that the expression “at the time of presentation of election petition” means that the deposit has to be made at the time of presentation of election petition, cannot be accepted. The deposit of security is mandatory under Rule 7 either at the time of the presentation of



the election petition or prior to the filing of the election petition but the election petition has to be presented alongwith the receipt of the security deposit but the security cannot be deposited after the presentation of the election petition. The expression “at the time of presentation” has been interpreted by one of us brother Justice Pranay Verma sitting in single Bench in the case of *Rajesh Kumar vs. Manakchand and Ors. (W.P No.9247/2024)* .

Para 9 of the said judgment is reproduced as under:-

9. However, neither in the Rules nor in any judgment has any prohibition been made that such deposit of security amount cannot be made prior to the presentation of the election petition. The mandatory requirement is that the election Tribunal would have jurisdiction to entertain an election petition only when on the date of its presentation the security amount has been deposited. The expression 'at the time of presentation of the election petition' has hence necessarily to be construed as either at the time of presentation or at any time prior to it. What is mandated is the deposit having been made when the election petition is presented. To hold that the security deposit has to be made only along with the presentation of election petition and cannot be made prior to such presentation would be violative of true import and spirit of Rule 7.

7. In view of the aforesaid, the objection of the appellant regarding non-compliance of Rule 7 cannot be accepted. In the present case, election petition was accompanied with the security deposit therefore the said objection has been rightly rejected by the specified officer and single judge.

8. To appreciate the objection regarding presentation of election petition in violation of Rule 3 of Rules 1995, we called for the original record of the election petition. Upon perusal of the original record and the ordersheet, it was noticed that in the ordersheet dated 17/8/2022, the date on



which the election petition is said to be presented before the specified officer, it is clearly mentioned that the election petition was presented on behalf of respondent No.1 Rajendra Singh s/o Govind Singh resident of Palsoda, Tehsil Jeeran, District Neemuch by Advocate Shri Mahesh Patidar alongwith an affidavit. The case was registered. Notices were issued and the next dated was fixed on 30/8/2022. The ordersheet dated 17/8/2022 is reproduced as under:

आवेदक / याचिकाकर्ता राजेन्द्रसिंह पिता गोविंदसिंह निवासी पालसोडा तहसील जीरन जिला-नीमच की ओर से अधिवक्ता श्री महेश पाटीदार द्वारा एक याचिका अंतर्गत धारा 122 म.प्र. राज अधिनियम एवं नियम 3.21 व 23 म.प्र.पचायत (निर्वाचन अर्जिया भ्रष्टाचार और सदस्यता के लिए निरहता) नियम 1995 के तहत मय शपथ पत्र के प्रस्तुत की गई है। अवलोकन किया गया।
-प्रकरण पंजीबद्ध किया जावे।
-अनावेदक / प्रत्यर्थीगण को तलब किया जावे।
-प्रकरण आगामी नियत पेशी पर प्रस्तुत किया जावे। पेशी दिनांक 30/08/2022

अनुविभागीय अधिकारी
उपखण्ड-नीमच

9. The said order sheet does not mention that it was presented by the election petitioner or the election petitioner was present at the time of presentation of the election petition. The order-sheet clearly records that the election petition was presented on behalf of the respondent No.1/election petitioner by Advocate Shri Mahesh Patidar. The order sheet also does not bear the signature of the election petitioner. Considering, the submission of the learned counsel for the respondent that the election petitioner was present at the time of presentation of the election petition before the Sub-Divisional Officer but he was not called upon to sign the ordersheet by the specified



officer, the learned Single Judge had also presumed the compliance of Rule 3 of Rules, 1995, accepting the aforesaid contention. In para 14 of the order, he held that at the time of presentation of the election petition, the specified officer has examined the election petition and directed for issuance of notice, therefore, it is presumed that the specified officer had satisfied himself about the compliance of these Rules and thereafter directed for issuance of notice. In para 15 he further held that ordersheet shows that the election petition was presented by the petitioner through his counsel. Therefore, it cannot be presumed that the election petitioner was not present there because neither signature of the counsel nor of the petitioner were there in the ordersheet. The ordersheet is written by the specified officer and signed. If he has not called upon the petitioner or his counsel to sign the ordersheet, the petitioner cannot be held responsible for the non-compliance. Therefore, presumption is liable to be drawn that the petitioner was present there at the time of presentation of the election petition. It would be apposite to refer 14 & 15 of the order of the learned Single Judge:-

14. In the present case, at the time of presentation of the election petition, the Specified Officer has examined the election petition and directed for issuance of notice. Therefore, it is presumed that the Specified Officer has satisfied himself about the compliance of these three Rules; and thereafter, directed for issuance of notice.

15. The order sheet shows that the election petition was presented by the petitioner through his counsel. Therefore, it cannot be presumed that the petitioner was not present there, because neither signatures of counsel nor the petitioner were there in the order sheet. The order sheet is written by the Specified Officer as well signed; and it was in the hands of the Specified Officer, if he has not called upon the petitioner or his counsel to sign the order sheet, the petitioner cannot be held



responsible for this non-compliance. Therefore, presumption is liable to be drawn that the petitioner was present there at the time of presentation of the election petition. Therefore, the Court recorded its satisfaction about the compliance; and thereafter, issued notices. Now, once notice has been issued under Rule 9 of the Rules, therefore, the election petition is liable to be decided on merit, unless it is withdrawn under Rule 13 or abated under Rule 14 of the Rules.

10. It is established law that the provisions of a statute and the Rules relating to that of election petition are to be strictly complied for deciding an election petition. There cannot be any presumption or assumption in regard to the compliance of the mandatory provisions. In a recent judgment in the case of *Dharmin Bai Kashyap vs. Babli Sahu & Ors.* reported in 2023 (10) SCC 461, the Apex Court in para 17 held that "there is hardly any need to reiterate the trite position of law that when it comes to the interpretation of statutory provisions relating to election law, jurisprudence as the subject mandates the strict construction of the provisions". It is pertinent to mention here that the provisions of Rule 3, 6, 7 & 8 of Rules, 1995 are akin to the provisions of Section 81 of the Representation of the People Act. In the case of *Kana Mandal vs. State of M.P.*, 2010 (2) MPLJ 468, this Court held that an election petition which is not filed in conformity with the compliance of Rule 3, 6 & 7 of the Rules, 1995 has to be dismissed under the provisions of Rule 8 of the Rules, 1995. In the case of *Rakesh vs. Returning Officer Panchayat Nirvachan* reported in 2012 (4) MPLJ 458, the Court dismissed the election petition on the ground of non-compliance of Rule 3 as requisite copies of the election petition were neither filed nor they were signed. Thus, it is trite law that if there is non-compliance of the mandatory provisions of



Rule 3,6 & 7 of the Rules, 1995, the Election Tribunal has no option but to dismiss the petition. There cannot be any assumptions, presumptions etc. in a case of violation of mandatory provisions of election petition Rules. The principle of no prejudice also does not apply. Apart from that there is no reason to disbelieve an order passed in the Court proceedings. In the case of *State of Maharastra vs. Ramdas Shrinivas Nayak and Anr.* reported in 1982 (2) SCC 463, the Apex Court held that the statement of fact regarding proceedings in Court, recorded in the judgment of a court is conclusive and not open to be contradicted in appeal denying making of such statement. Only the Court recording the statement itself competent to rectify the error if approached without delay. However, the plea that the statement was made under wrong appreciation of law may in rare case be allowed by appellate Court in the interest of justice. In the light of the aforesaid backdrop of the law, the issues involved in the present case are to be considered. The first objection raised by the appellant before the specified officer in the election petition was non-compliance of Rule 3 regarding presentation of election petition and the other objection was relating to non deposit of security amount at the time of presentation of an election petition.

11. In regard to non-compliance of Rule 3, a specific objection was raised that election petition was not presented by the election petitioner or by a person authorised in writing in this behalf by the person making the petition. The reply to the said application by the respondent No.1/election petitioner was that he was present before the specified officer at the time of presentation of the election petition and the same was presented by an



Advocate. From the ordersheet dated 17/8/2022, it is evident that the presence of the election petitioner is neither recorded in the ordersheet nor his signature is there. The specified officer has recorded that the election petition on behalf of the election petitioner was presented by Advocate, Shri Mahesh Patidar. From the record we found that in the election petition and in vakalatnama no date is mentioned. Vakalatnama is general and there is no specific authorization in his favour to present election petition. Further we noticed that on the next date i.e 30/8/2022, the specified officer recorded the presence of the election petitioner and also of the respondent Nos.1&2 and noted that notice to the respondent No.3 was not served and the same was directed to be sent afresh. He also recorded, the oral objection of the respondent No.1. On 7/9/2022, 19/9/2022 and 26/9/2022 he recorded the presence of the election petitioner. There was no reason for the specified officer to record that election petition was presented on his behalf by Advocate Shri Mahesh Patidar. He recorded his presence in the subsequent ordersheets. If the election petitioner was present, therefore, the contention of the learned counsel for the respondent No.1/election petitioner cannot be accepted that he was present at the time of presentation of the election petition. Therefore, the presumptions drawn by the learned Single Judge regarding presence of the election petitioner at the time of presentation of election petition is patently contrary to the record. Further, in a case of non-compliance of mandatory provisions, in filing of election petition, there cannot be any presumption as the aforesaid Rules are to be strictly construed and complied with, they cannot be construed liberally and relaxed. The



learned single Judge further erred while holding that since the case was registered, therefore, it is presumed the specified officer had recorded his satisfaction about the compliance of Rule 3 of Rules, 1995 and, therefore, the objection raised after notice by the appellant cannot be considered. As per the scheme of the Madhya Pradesh Panchayat Raj avam Gram Swaraj Adhiniyam, 1993 and the Rules framed therein of election petition, it is pellucid that after receiving the notice, an objection can be raised under Rule 8 for non-compliance of provisions of Rule 3, Rule 4, Rule 7 and the proviso requires that the election petition shall not be dismissed under Rule 8 without giving the election petitioner an opportunity of being heard. If the reasoning given by the learned single Judge that since the election petition has been registered, therefore, the provisions have to be treated to be complied with is accepted, it would be contrary to provision of Rule 8 and the same would redundant Rule 8 taking away the right of a notice to raise objections regarding the non-compliance of the mandatory provisions in regard to filing of the election petition. In this regard, our view gets fortified by the view taken by co-ordinate Bench in W.A No.208/2024 (Narayan Gir vs. Dashrath and Ors) on similar facts. The relevant para 7 is reproduced as under:

07. From the aforesaid, it is clear that the election petition was presented through the counsel. The order-sheet does not even bear signature of the election petitioner which results in non-compliance of the Rules. On this ground alone and relying on the judgment cited hereinabove, the learned Single Judge was right in coming to the conclusion that the order-sheet has been signed by the Sub Divisional Officer, but neither by the petitioner nor by his counsel. It was the duty of the Sub Divisional Officer to obtain the signature either of petitioner or his counsel, who presented the petition.



Therefore, presuming that that the election petitioner was present on the said date has allowed the writ petition. By no stretch of imagination, it can be said to be compliance of Rules 3, 7 & 8 of the Rules of 1995. Therefore, the order passed by the learned Single Judge deserves to be set aside.

12. Thus, it is held that the election petitioner was not present at the time of presentation of election petition.

13. The next question relates to second part of Rule 3 that whether the presentation of election petition by an Advocate is a valid presentation or not ?

14. The language of sub Rule 1 of Rule 3 is axiomatic that an election petition shall be presented to the specified officer during the office hours by a person making the petition or by a person authorized in writing in this behalf by the person making the petition. The word "Advocate" is not used in Rule 3 of Rules, 1995. Certainly, an Advocate cannot be held to be the person authorized in writing in his behalf. Thus, there has to be specific authorization in favour of an advocate to present an election petition. We have seen the vakalatnama filed in the present case on behalf of the election petitioner and upon perusal of the said vakalatnama, we found that the vakalatnama contains no specific authorization for presenting an election petition. In the judgment passed by the co-ordinate Bench in the case of *Rani Agrawal vs. Ajay Kumar Pathak* reported in *AIR 2017 MP 130*, it was held that the election petition presented by an Advocate without specific authorization in his favour to file the election petition is not in conformity with Rule 3 of the Rules. The same has been held to be non-compliance of the mandatory provisions of Rule 3 of the Rules and, therefore, petition is



liable to be dismissed. The similar view has been taken in the case of *Tara vs. Dabla* reported in *2002 (3) MPLJ 591*, the Court held that presentation by an Advocate under Vakalatnama which did not specifically authorize him to present the election petition, the said presentation of election petition is improper, invalid and liable to be dismissed. In the light of the aforesaid it is held that the presentation of election petition by Advocate without specific authorization in that behalf is not valid presentation.

15. In view of the aforesaid discussion and the case law discussed hereinabove, the writ appeal is allowed. The order passed by learned single judge is set aside. The election petition filed by the respondent No.1 is dismissed for non-compliance of Rule 3 of Rules, 1995.

No order as to cost.

(VIJAY KUMAR SHUKLA)
JUDGE

(PRANAY VERMA)
JUDGE

PK