

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

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 26th OF JUNE, 2023

WRIT PETITION No. 1550 of 2023

BETWEEN:-

**REMSINGH S/O SHRI SHANKAR, AGED
ABOUT 60 YEARS, OCCUPATION:
AGRICULTURE VILLAGE BORWAL, TEHSIL
JHIRNIYA DISTRICT KHARGONE (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI MANURAJ SINGH, ADVOCATE)

AND

- 1. SUB DIVISIONAL OFFICER (REVENUE)
BHIKANGAON, DISTRICT KHARGONE
(MADHYA PRADESH)**
- 2. KAILASH KIRADE S/O SHRI RAMSINGH,
AGED ABOUT 48 YEARS, OCCUPATION:
LABOR VILLAGE BORWAL, TEHSIL
JHIRNIYA, DISTRICT KHARGONE
(MADHYA PRADESH)**
- 3. DEPUTY RETURNING OFFICER TEHSIL
OFFICE JHIRNIA TEHSIL JHIRNIYA,
DISTRICT KHARGONE (MADHYA
PRADESH)**

.....RESPONDENTS

***(BY SHRI SHALABH SHARMA, P.L. FOR RESPONDENT NOS.1 AND 3
AND SHRI PRADYUMNA KIBE, ADVOCATE FOR RESPONDENT No.2)***

.....
This petition coming on for admission this day, the court

passed the following:

ORDER

Heard finally, with the consent of the parties.

2] This petition has been filed by the petitioner under Article 226 of the Constitution of India against the order dated 13.01.2023, passed by respondent No.1/Sub-Divisional Officer (Revenue) in an Election Petition filed by the respondent No.2. The petitioner is the returned candidate, who was elected as Sarpanch from Gram Panchayat Borwal, Tehsil Jhirniyam, District Khargone (M.P.)

3] In brief, the facts of the case are that against the election of the petitioner, an election petition was filed by the respondent No.2/Kailash Kirade on 21.07.2022. After the petitioner was served in the said election petition, an application under Order 7 Rule 11 of the CPC was filed by him contending that the petition is liable to be dismissed as it does not conform to the procedure as prescribed under Rule 3 and 4 of M.P. Panchayat (Election Petitions, Corrupt Practices & Disqualification from Membership) Rules, 1995 (in short 'Rules of 1995'). The petitioner's primary contention was that the petition has not been signed by the election petitioner and also that the necessary party as provided under Rule 4 has not been made a party. A reply to the aforesaid application was also filed by the respondent No.2, however, subsequently, the respondent No.2 also filed an application under Order 6 Rule 17 of CPC for signing the election petition and another, under Order 1 Rule 10 of CPC for impleading the party.

4] The petitioner's contention is that the learned Member of the

Tribunal instead of deciding the petitioner's application filed under Order 7 Rule 11 of CPC, has decided the aforesaid two applications filed by the election petitioner/respondent No.2, one under Order 6 Rule 17 and the other, under Order 1 Rule 10 of CPC and the record of election has also been called.

5] Counsel for the petitioner has submitted that the learned Member of the Tribunal has allowed the election petitioner to cure the defects whereas, the objection raised by the petitioner has not been decided. In support of his submissions, Shri Manuraj Singh, counsel appearing for the petitioner has relied upon decisions rendered by this Court in the case of **Amol Singh Vs Hamir Singh** passed in **W.P. No.1690 of 1995 dated 25.01.1996** reported as **1996(1) M.P.W.N. 187**, **Satya Narayan S/o Onkarlalji Patidar Vs. Additional Commissioner, Ujjain and others** reported as **2008(1) M.P.L.J. 505**, **Baijulal Verma Vs. Additional Collector, Chhindwara** reported as **2009(4) M.P.L.J. 548**, **Rakesh S/o Narayanlalji Vs. Returning Officer Panchayat Nirvachan** reported as **2012(4) M.P.L.J. 458**.

6] On the other hand, counsel appearing for the respondent No.2 has relied upon a decision rendered by the Co-ordinate Bench of this Court in the case of **Akbar Kha Vs. Prithviraj** reported as **2017(4) M.P.L.J. 575**, in which this Court has held that once an election petition is admitted, same cannot be dismissed later on for non-compliance of Rules 3, 4 and 7 and it is held that compliance of Rules 3, 4 and 7 is to be seen before admission of the election petition.

7] Counsel for the respondent No.2 has also submitted that the

present petition itself is also not maintainable as remedy of revision is also available to the petitioner. In support of his submissions he has relied upon the decisions rendered in the case of **Omkar Lal Asatkar Vs. Sub-Divisional Officer (Revenue), Lanji, Dist. Balaghat and others** reported as **2001(1) M.P.L.J. 52**; **T. Phungzathang Vs. Hangkhanlian and Others** reported as **(2001) 8 SCC 358**; **Smt. Premlata Jaiwal Vs. State of M.P. and others** reported as **2003 A I H C 2442**; **Mohammad Isha Vs. Vasudeo** reported as **2008(1) M.P.L.J. 547** .

8] In rebuttal, counsel for the petitioner has also relied upon a subsequent decision of this Court in the case of **Vishnu Singh Vs. State of M.P.** reported as **2018(3) M.P.L.J. 671**, in which this Court has held that objection by the petitioner to the maintainability of the election petition on the ground of non-compliance of Rule 3(1) and (2), has to be decided by the Tribunal before proceeding ahead to adjudicate upon the issue involving factual disputes. Counsel for the petitioner has also relied upon the decision rendered in the case of **Divisiya W/o Naresh Paraste Vs. Shanta W/o Narayan Singh Pusham and others** reported as **2011(2) M.P.L.J. 701**, wherein the Co-ordinate Bench of this Court has also held that if an application is filed for non-compliance of Rule 3, 4 or 7, the prescribed authority has no choice but to decide the application. Thus, it is submitted that the application filed by the petitioner ought to have been decided by the Tribunal before proceeding further and the application was very much maintainable.

9] In rebuttal regarding the maintainability of the writ petition, counsel for the petitioner has also submitted that the application filed by the petitioner under order 7 rule 11 of CPC has not yet even been decided and there is no question of filing a civil revision against the aforesaid order as the petition is basically against the order passed on an application filed under Order 6 Rule 17 and Order 1 Rule 10 of CPC.

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

11] From the record, it is apparent that so far as the maintainability of this petition is concerned, considering the fact that the application filed by the petitioner under Order 7 Rule 11 of CPC has still not been decided, the remedy of civil revision in such circumstances would not be available to the petitioner.

12] So far as the observations made by the co-ordinate Bench of this court in the case of **Akbar Kha (Supra)** are concerned in which it is held that once an election petition is admitted, same cannot be dismissed later on for non-compliance of Rules 3, 4 and 7 as the compliance of Rules 3, 4 and 7 is to be seen before admission of the election petition, it is found that in the case of **Akbar Kha (Supra)**, this Court has made only a passing reference to the decisions relied upon by the counsel for the respondent in that case, viz., in the case of **Rakesh Vs. Returning Officer** reported as **2012(4) M.P.L.J. 458** and **Uday Singh Vs. Himmat Singh and Others** reported as **1998(2) M.P.L.J. Note 28** and it is also found that this Court has not reflected upon the earlier decisions rendered by this Court as have been dealt

with by the subsequent Bench in the case of *Vishnu Singh (Supra)*. Whereas, the decision rendered earlier by the co-ordinate Bench in the case of *Divisiya (Supra)* would be binding on this Court if it was not distinguished in the subsequent decision, and in such circumstances, it is held that the decision rendered by this Court in the case of *Akbar Kha (Supra)* has no binding precedence and the decision in the case of *Divisiya (supra)* would govern the field.

13] As a result, this court is of the considered opinion that it was incumbent upon the Tribunal to decide the petitioner's application filed under Order 7 Rule 11 of CPC before proceeding further in the matter. Resultantly, **the impugned order dated 13.01.2023 is hereby set aside** and the matter is remanded back to the Tribunal for consideration of the application filed by the petitioner under Order 7 Rule 11 CPC. Only after the aforesaid application is decided, Tribunal can proceed further in accordance with law.

14] It is made clear that this Court has not reflected upon the merits of the case.

15] With the aforesaid, the petition stands **disposed of**.

(SUBODH ABHYANKAR)
JUDGE