

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

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 25th OF APRIL, 2024

WRIT PETITION No. 8512 of 2023

BETWEEN:-

**KAMAL PATEL S/O SHRI BHAGWAN PATEL, AGE: 46 YEARS, OCCUPATION:
AGRICULTURIST, R/O: VILLAGE BARKHEDA, POST CHIDAWAD, TEHISL
TONKKHURD DISTRICT DEWAS (MADHYA PRADESH)**

.....PETITIONER

**(BY SHRI PRADIP KUMAR GUPTA – ADVOCATE ALONG WITH SHRI BHARAT YADAV
- ADVOCATE.)**

AND

- 1. THE STATE OF MADHYA PRADESH COLLECTOR DISTT. DEWAS (MADHYA
PRADESH)**
- 2. CHIEF ELECTION OFFICER COLLECTOR DISTRICT DEWAS (MADHYA
PRADESH)**
- 3. RETURNING ELECTION OFFICER (PANCHAYAT) SMT. RADHA MAHANT
TEHSIL TONKKHURD DIST DEWAS (MADHYA PRADESH)**
- 4. SHRI DHEERAJ SINGH S/O LAXMICHAND OCCUPATION: AGRICULTURIST
VILLAGE BARKHEDA, POST CHIDAWAD TEHSIL TONKHURD DISTRICT
DEWAS (MADHYA PRADESH)**
- 5. SUB DIVISIONAL OFFICER (REVENUE) SUB DIVISION SONKACHHA DIST.
DEWAS (MADHYA PRADESH)**
- 6. PRINCIPAL SECRETARY PANCHAYAT AND RURAL DEVELOPMENT
DEPARTMENT BHOPAL (MADHYA PRADESH)**

.....RESPONDENTS

**(RESPONDENTS NO.1, 2, 3 5 AND 6 – STATE OF MADHYA PRADESH BY SHRI TARUN
KUSHWAH – GOVERNMENT ADVOCATE APPEARING ON BEHALF OF ADVOCATE**

GENERAL.
RESPONDENT NO.4 BY SHRI SANJAY JAMINDAR – ADVOCATE.)

Heard and reserved on: 22.04.2024

Order passed on: 25.04.2024

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

ORDER

The petitioner has filed the present petition under Article 226 of the Constitution of India being aggrieved order dated 13.01.2023 (Annexure P/1) in Case No.01/A-89(21)/2022-23 passed by the Sub Divisional Officer (Revenue), Sub Division, Sonkatch, District Dewas (M.P.) as Specified Officer under Section 122 of Madhya Pradesh Panchayat Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as the Panchayat Act) directing recounting of the votes of all the Polling Centers of Gram Panchayat Barkheda, Tehsil Tonk Khurd, District Dewas (M.P.) within three days and sent report to the Court.

2. The facts of the case in short are, as under: -

2.1 The Petitioner (Kamal Singh S/o Bhagwan Patel), respondent No.4 (Dheeraj Singh S/o Laxmichandra), Rakesh Kumar S/o Hajarilal and Sohanlal S/o Ramcharan Patel contested the panchayat election for the post of Sarpanch of Gram Panchayat Barkheda, Tehsil Tonk Khurd, District Dewas (M.P.). Four

Polling Centers No.52, 53, 54 and 55 were established for the purpose of voting in the election.

2.2 The voters of Gram Panchayat casted the votes and on the same day i.e. 01.07.2022, they were counted; and Form No.17 under Rule 84 of Madhya Pradesh Panchayat Nirvachan Niyam, 1995 (herein after referred to as the Nirvachan Niyam) of all the Polling Centers were issued by the Returning Officer.

2.3 According to the petitioner in Polling Centre No.52, he secured 122 votes, Rakesh Kumar, secured 93 and 44 votes were rejected votes out of total votes casted 434. According to the petitioner, the Returning Officer prepared another Form No.17 in which he has been shown securing 93 votes and Rakesh Kumar securing 122 votes and thereafter, the final result was declared in Form No.21 on 14.07.2022 whereby Dheeraj Singh (respondent No.4) has been declared elected by securing 629 votes whereas he secured 615 votes. According to the petitioner because of changing his vote from 122 to 93 in the polling center, he lost the election.

2.4 The petitioner filed an election petition under Section 122 of the Panchayat Act challenging the election of Dheeraj Singh. The Returning Officer and Presiding Officers filed their reply admitting that there was an error in filling Form

No.17, but the same was corrected later on. The petitioner secured 93 votes and Rakesh Kumar secured 122 votes. Vide order dated 13.01.2023 (Annexure P/1) the SDO (Revenue), Sub Division Sonkatch, District Dewas (MP) allowed the election petition, set aside the election result dated 14.07.2022 and directed the Returning Officer, Panchayat Election, Tehsil Tonk Khurd, District Dewas (MP) to conduct recounting of votes of all the Polling Centers of Gram Panchayat Barkheda, Tehsil Tonk Khurd, District Dewas (M.P.) within three days and complete the election proceedings of the Sarpanch.

3. Being aggrieved by the aforesaid order, the petitioner has filed the present writ petition on the ground that on 13.01.2023 the learned SDO (Revenue) wrongly directed for recounting of votes instead by calculating 122 votes in Polling Booth No.52, the petitioner ought to have been declared as an elected candidate for the post of Sarpanch. The Returning Officer as well as the District Election Officer have violated the provisions of Rule 84 of the Nirvachan Niyam by correcting Form No.17, without recording any reason, therefore, the order is liable to be set aside and the petitioner be declared as elected Sarpanch of Gram Panchayat Barkheda, Tehsil Tonk Khurd, District Dewas (M.P.).

4. Surprisingly, Dheeraj Singh, who was elected, and his election was set aside, has not challenged the impugned order dated 13.01.2023 before this Court.

5. After the order passed by the SDO (Revenue), Sub Division Sonkatch, District Dewas (MP), recounting was held on 16.01.2023 in the presence of all the candidates; and no change was found in respect of Polling Booths No.53 and 55 and fresh Form No.17 were filled. In Polling Centre No.54, the petitioner secured two more votes and got 161 votes in place of 159 votes.

6. In the recounting of the votes casted in Polling Centre No.52, Dheeraj Singh got 181 votes, the petitioner secured 94 votes (93+1) and the votes of Rakesh Kumar were reduced from 122 to 93 votes and 72 (44+28) more votes have been rejected as invalid votes.

7. In the first round of counting, 44 votes were rejected as invalid votes but in recounting 72 votes were rejected and all the rejected votes were deleted from the 122 votes of Rakesh Kumar and the final outcome of the result remained unchanged, as Dheeraj Singh secured 629 votes, the petitioner secured 618 votes, Rakesh Kumar got 453 votes and Sohanlal Patel got 106 votes. The petitioner was defeated by 11 votes. After recounting, Dheeraj Singh was declared as elected Sarpanch of Gram Panchayat Barkheda, Tehsil Tonk Khurd, District Dewas (M.P.).

8. After hearing learned counsel for the parties, in order to find out as to how the rejected votes have been increased from 44 to 72 in Polling Centre No.52,

whereas in Polling Centres No.53, 54 and 55, no change was found, this Court directed the respondents to call and produce all the votes for the perusal of this Court.

9. All the votes have been produced before this Court in sealed envelopes and after opening, it is found that all these 72 votes were because there was a round seal against the names of multiple candidates, the Returning Officer certified by putting seals and sign on overleaf of ballot papers. The SDO (Revenue) and other Revenue Officers were present before this Court but no one was in a position to explain as to how all these 28 votes were not rejected in the first round of counting when invalidity was apparent. They are also not in a position to explain as to how all these votes were deleted from the total votes cast in favour of Rakesh Kumar. Earlier Rakesh Kumar secured 122 votes and after recounting, 28 votes have been rejected.

10. Out of 72 rejected votes, in 41 votes, no one casted a vote for Rakesh Kumar and in the remaining 31 votes, apart from Rakesh Kumar, a round seal was put against the names of other candidates also. So, why these votes have only been deducted from the total votes of Rakesh Kumar, no explanation has been given by the learned Government Advocate and other officers.

11. It is apparent that these votes were made invalid in order to maintain the winning of Dheeraj Singh. If these 72 votes were invalid, then they could have been rejected in the first round of counting. If they were not rejected, then it can be presumed that earlier all were valid and by way of forgery, they were made invalid votes.

12. Valid votes can be made invalid, but invalid votes cannot be made valid. These valid votes were earlier shown in Form No. 17 against the name of petitioner Kamal Singh Patel, later on, the Form was changed and Rakesh Kumar has been shown securing 122 votes. These votes either were cast in favour of the petitioner Kamal Singh Patel or Rakesh Kumar, but in order to maintain the winning of candidate Dheeraj Singh, they were made invalid and rejected. This is nothing but a forgery and fraud with the Constitution of India as well as the Panchayat Act and Nirvachan Niyam which ensure free and fair elections in this country.

13. It also appears that Dheeraj Singh was so confident that his winning would be maintained, that is why he did not challenge the impugned order by which his selection was set aside and the recounting of votes was ordered. It seems that by securing 122 votes in the polling centre the petitioner was winning the election, but in order to elect Dheeraj Singh as Sarpanch of Gram Panchayat, all these manipulations were started by election officers. Therefore, the entire election is

liable to be set aside and declared as void, because it was corrupted by the Presiding Officers and Returning Officers. It was the duty of the District Education Officer to examine all these glaring crimes committed by its subordinate election officers.

14. Shri Pradeep Kumar Gupta, learned counsel appearing for the petitioner was right in saying that once Form No.17 has been filled, then the power lies with the District Education Officer to correct the clerical or arithmetical mistakes or errors under Rule 84 (1) of the Nirvachan Niyam.

15. Sub Rule (1) of Rule 84 of the Nirvachan Niyam says that the District Election Officer may at any time, but not later than fifteen days from the date of declaration of result under Rule 81, either *suo moto* or on a report of the Returning Officer, correct by an order any clerical or arithmetical mistake or error in the result sheet in Form No.16, 16-A, 17, 17-A etc. As per the proviso, no correction or amendment shall be made except after giving a notice to all contesting candidates from the ward or constituency, as the case may be.

16. Sub Rule (2) of Rule 84 of the Nirvachan Niyam says that an order passed by the District Election Officer under sub-rule (1) shall be in writing and contain reasons therefor and a corrected copy of the return of election in Form No.20 or

20-A, 21 or 21-A, 22 or 22-A or 23 or 23-A, as the case may be, duly signed and certified copy shall be sent to the Returning Officer for grant of Certificate of Election.

17. Therefore, even if there was a mistake in Form No.17, that could have been corrected only by the District Election Officer, after following the procedure prescribed under Rule 84 of Nirvachan Niyam; and that too by passing an order in writing. There is no such order by the District Election Officer for changing the votes in Form 17.

18. In view of the above discussion the entire election of the Sarpanch of the Gram Panchayat Barkheda held on 01.07.2022 is set aside. The impugned order dated 13.01.2023 passed by the SDO (Revenue), Sub Division Sonkatch, District Dewas and recounting of the votes all are set aside. The competent authority is directed to notify the fresh election of the Sarpanch of Gram Panchayat Barkheda, Tehsil Tonk Khurd, District Dewas (M.P.).

19. The Collector Dewas is directed to keep all documents connected with the election in question including all ballot papers in safe custody. The Collector, Dewas is directed to send a complaint to the local Police for registration of a First Information Report (FIR) against the election officers, who were deputed in this

election of Sarpanch of Gram Panchayat Barkheda in whose custody, these election papers were tampered.

All these ballots are returned to the Government Advocate in three sealed envelopes for handing over to the Collector Dewas.

All pending interlocutory application, if any, stands disposed off.

(VIVEK RUSIA)
JUDGE

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