

Writ Petition No.9167/2015

30.11.2016

Shri R.K. Verma, learned Senior Counsel with Shri Sourabh Shrivastava, learned counsel for the petitioner.

Shri Ajay Pratap Singh, learned Government Advocate for respondent State.

Shri R.S. Thakur, learned counsel for respondent No. 2.

With consent of learned counsel for the parties the matter is finally heard.

The issue, which crops up for consideration is whether an election petition under Section 122 of the Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993, which does not contain a verification but is duly supported by an affidavit verifying the facts and contents of the pleadings in election petition can be said to suffer an inherent defect as would make it vulnerable to its maintainability.

The election petition is at the instance of respondent No. 2 against the election of the petitioner as Sarpanch, Gram Panchayat, Ugli, Tahsil Kevlari, district Seoni. Objections were raised by the petitioner as to its maintainability for non-compliance of Rule 5 of the Madhya Pradesh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995. Rule 5 mandates:

- “5. Contents of the petition.-**An election petition shall-
- (a) contain a concise statement of all material facts on which the petitioner relies;
 - (b) set forth with sufficient particulars, the grounds on which the election is called in question;

- (c) be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (V of 1908), for the verifications of pleadings.”

Admittedly the petition is supported by an affidavit.

The question is whether Election Petition suffers an inherent defect.

Rule 8 of 1995 Rules envisages that :

“**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.”

Thus when there is non compliance of Rules 3, 4 and 7 of the Rules, 1995, it leads to dismissal of election petition. Thus, the defect, if any, qua Rule 5 of the Rules, 1995 is not an inherent defect as would lead to the dismissal of election petition at the threshold.

The next question is whether a non-verification, but the pleadings being supported by an affidavit duly verifying the facts would entail the election not maintainable. The issue has been answered by a co-ordinate Bench of our High Court in **Ram Rati v. Sub Divisional Officer, Sidhi and others** [2005 (3) MPLJ 101] wherein His Lordships held:

“7. Section 122 of the M.P. Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as 'Adhiniyam' for short) envisages that the election under this Act shall be called in question only by a petition presented in a prescribed manner in case of Gram Panchayat to Sub-Divisional Officer. Rule 3 of Rules provides that 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. 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. Rule 5 provides that election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 for verification of petition. Rule 5 provides about verification of petition and said election petition was duly verified by filing affidavit of petitioner as found by the Sub-Divisional Officer. When the election petition was duly verified by filing affidavit on oath then it can not be said that the election petition was not duly verified. Code of Civil Procedure provides for verification of pleadings under Rule 15 of Order 6, which provides that every pleading shall be verified at the foot by the party or by any of the parties or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. In the rules there is no provision that in case of non-verification or defective verification the petition itself shall be dismissed while in respect of Rules 3, 4 and 7 there is provision in Rule 8, that if these provisions are not complied then the petition shall be dismissed by the specified officer. The proviso of this rule provides that the petition shall not be dismissed without giving an opportunity to the petitioner of being heard. But in respect of Rule 5 there is no such provision which provide

that merely for non-compliance of Rule 5 the election petition may be dismissed. An opportunity should be provided to the petitioner to rectify the defect in this regard. The object of verifying the pleading is to fix on the party responsibility about truthfulness of its contents and the same Rule has been made applicable to the election petition filed under Section 122 of the Adhiniyam. When the facts are verified by filing affidavit, then rules has been substantially complied with. Dismissal of election petition on the sole ground of defective verification will deprive respondent No. 2 a reasonable opportunity to correct the defect. In the aforesaid circumstances, when the pleadings were duly verified by filing affidavit, then it can not be said that the Rule 5 of the Rule has not been complied with. The Sub-Divisional Officer after considering the fact has found that the contents of election petition were duly verified by respondent No. 2 by filing her affidavit. In such a finding I do not find any error to interfere.”

The petitioner though has placed reliance on the decision in **G.M. Siddeshwar v. Prasanna Kumar** (AIR 2013 SC 1549), this decision instead of substantiating the contention raised on behalf of the petitioner supports the view that the defects in election petition which are not inherent are not fatal. Their Lordships were pleased to observe:

“34. In any event, as in the present case, the same result has been achieved by the election petitioner filing a composite affidavit, both in support of the averments made in the election petition and with regard to the

allegations of corrupt practices by the returned candidate. This procedure is not contrary to law and cannot be faulted. Such a composite affidavit would not only be in substantial compliance with the requirements of the Act but would actually be in full compliance thereof. The filing of two affidavits is not warranted by the Act nor is it necessary, especially when a composite affidavit can achieve the desired result.”

The impugned order when is tested on the anvil of above analysis, cannot be faulted with or would warrant an interference.

Consequently, petition fails and is dismissed. No costs.

**(SANJAY YADAV
JUDGE**