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WA-39-2024

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&amp;

HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 9<sup>th</sup> OF FEBRUARY, 2026WRIT APPEAL No. 39 of 2024*BRAJESH SINGH**Versus**RAM PRASAD DEHARIA AND OTHERS*

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Appearance:

Shri Sanjay K. Agrawal - Senior Advocate with Shri Rohit Sohaura -  
Advocate for petitioner.

Shri Sanjay Sarwate - Advocate for respondent No.1.

Shri Ritwik Parashar - Government Advocate for respondent No.9.  
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ORDER

*Per. Justice Pradeep Mittal*

The present writ appeal has been filed by the appellant assailing the judgment and order dated 28.12.2023 passed by the learned Single Judge of this Court in W.P. No.29557/2023, whereby the writ petition filed by the appellant was dismissed. By the said writ petition, the appellant had challenged the order dated 16.11.2023 passed by the Commissioner, Jabalpur Division, acting as the Election Tribunal.

2. By order dated 16.11.2023, the Election Tribunal allowed the election petition filed by respondent No.1 and set aside the election of the appellant to the post of Member, Zila Panchayat, Seoni. The Tribunal held



that Bagri/Bagdi caste falls under Rajput/Thakur caste in District Seoni and is not recognised as a Scheduled Caste as per various Government orders. On this basis, the Tribunal concluded that the appellant did not belong to the Scheduled Caste category and, therefore, was not qualified to contest the election for a seat reserved for Scheduled Caste under Rule 31(1) of the M.P. Panchayat Nirvachan Niyam, 1995 and Section 14(2) of the Panchayat and Gram Swaraj Act, 1993. Consequently, the election of the appellant was declared void under Rules 21(1)(a) and 23(1)(b) of the M.P. Panchayat (Election Petition, Corrupt Practices and Disqualification from Membership) Rules, 1995, with a direction to hold fresh election.

3. Aggrieved by the order of the Election Tribunal, the appellant approached this Writ Court by filing W.P. No.29557/2023, contending that the election petition was decided without framing issues and without granting opportunity to the parties to lead evidence, despite specific request having been made. It was pleaded that the controversy relating to wrongful acceptance of the nomination form could not have been adjudicated without recording evidence, particularly when the appellant had filed a detailed reply supported by documents showing compliance with Rule 40A of the M.P. Panchayat Nirvachan Niyam, 1995 and the Circular dated 13.12.2021. It was further contended that the Election Tribunal erred in determining the caste status of the appellant solely on the basis of executive instructions, without any evidentiary foundation and in disregard of the Constitutional (Scheduled Castes) Order, 1950.

4. The learned Single Judge, however, dismissed the writ petition vide



impugned order dated 28.12.2023, holding that as per Form-4 prescribed under Rule 31 of the M.P. Panchayat Nirvachan Niyam, 1995, as amended by notification dated 24.04.2019, submission of caste certificate along with the nomination form is mandatory. It was held that since the appellant did not file the caste certificate within the stipulated time, the nomination itself was defective and ought to have been rejected at the stage of scrutiny by the Returning Officer.

5. The appellant has now preferred the present writ appeal, contending that the judgment of the learned Single Judge is contrary to the statutory scheme of the Nirvachan Niyam, 1995. It is urged that Rule 40A, which begins with a non-obstante clause, specifically provides a complete mechanism in cases where the Returning Officer doubts the caste status of a candidate contesting from a reserved seat. As per Rule 40A(2), once the candidate files an affidavit affirming his caste status, the Returning Officer is required to treat the nomination as valid without making any further enquiry. It is further contended that the portion of Form-4 relied upon by the learned Single Judge pertains to the part to be filled by the Returning Officer and merely records the documents enclosed, and does not mandate rejection of nomination for non-submission of caste certificate along with the nomination form.

6. It is also the appellant's case that Form-4 must be read harmoniously with Rule 40A, failing which the said statutory provision would be rendered redundant. The appellant further submits that the learned Single Judge travelled beyond the pleadings of the parties and the reasoning



adopted by the Election Tribunal, and therefore, the impugned judgment warrants interference in the present writ appeal.

7. Learned counsel for the appellant submits that the judgment and order dated 28.12.2023 passed by the learned Single Judge, whereby the writ petition was dismissed, is illegal, arbitrary and contrary to the settled principles of law and, therefore, deserves to be set aside.

8. It is contended that the learned Single Judge has completely misconstrued the scope and mandate of Rule 40A of the M.P. Panchayat Nirvachan Niyam, 1995, which begins with a non-obstante clause and provides a complete statutory mechanism in cases where the caste status of a candidate contesting from a reserved seat is doubted. It is submitted that as per Rule 40A(1), if the Returning Officer has any prima facie doubt regarding the caste of a candidate, he is required to issue a notice calling upon the candidate to file an affidavit. Rule 40A(2) further mandates that once such an affidavit is filed, the Returning Officer shall make no further enquiry and shall treat the nomination as valid. The learned Single Judge failed to appreciate that the instructions issued by the State Election Commission are in consonance with Rule 40A and supplement the statutory framework.

9. Learned counsel further submits that the learned Single Judge erred in ignoring the vital issue of non-framing of issues and denial of opportunity to lead evidence by the Election Tribunal. It is argued that an election petition is required to be tried like a civil suit and must be decided strictly on the pleadings raised by the parties. The Election Tribunal decided



the matter without framing issues or recording evidence, despite a specific request by the appellant. The learned Single Judge wrongly declined to examine this illegality on the premise that the nomination itself was defective, which approach is contrary to settled law.

10. It is also argued that though the learned Single Judge rightly held that the finding of the Election Tribunal regarding Bagri caste not being a Scheduled Caste in District Seoni was contrary to the Presidential Order, he nevertheless travelled beyond the pleadings of the parties and substituted his own reasoning to uphold the Tribunal's order on a ground never pleaded by the election petitioner. Such an approach, it is submitted, is impermissible in election matters, where adjudication must strictly confine itself to the pleadings.

11. Learned counsel submits that the reliance placed by the learned Single Judge on Form-4 is wholly misconceived. The relevant portion of Form-4 pertains to the part to be filled by the Returning Officer and merely acknowledges the documents enclosed with the nomination paper. It nowhere mandates rejection of nomination for non-submission of caste certificate along with the nomination form. Form-4 has to be read harmoniously with Rule 40A, failing which Rule 40A would be rendered redundant. It is further pointed out that no such provision akin to Rule 40A exists under the Representation of the People Act, 1951 or the Municipal laws, and the Legislature has consciously incorporated Rule 40A for Panchayat elections keeping in view the realities faced by rural and rustic candidates.



12. It is further submitted that the learned Single Judge failed to appreciate the constitutional status of the State Election Commission under Article 243-K of the Constitution of India, which vests in it the power of superintendence, direction and control of Panchayat elections. The instructions issued by the State Election Commission, being in furtherance of Rule 40A and meant for smooth conduct of elections, are binding and govern the field. The finding of the learned Single Judge holding such executive instructions to be bad in law is, therefore, erroneous and unsustainable.

13. Lastly, learned counsel submits that the observations made by the learned Single Judge regarding alleged confusion created by the State Election Commission by continuing the Circular dated 05.12.2014 are based on surmises and conjectures. The said Circular has been consciously adopted and reiterated by subsequent notifications dated 19.03.2021, 13.12.2021 and 02.06.2022. The reliance placed on the Guidelines of July, 2020 is also misplaced, as the said guidelines themselves clarify that they are only advisory and subject to statutory rules.

14. In view of the aforesaid submissions, learned counsel prays that the impugned judgment and order dated 28.12.2023 passed by the learned Single Judge be set aside.

We have heard learned counsel for the parties.

15. The similar issue has already been considered by this court in Writ Appeal No.1218 of 2024 decided on 09.12.2025 titled as Rajendra Singh versus State of Madhya Pradesh and others and it was held that it is an admitted fact that the appellant does not possess the caste certificate of OBC,



therefore, there is no declaration by any law that he belongs to the OBC Category. The self-declaration of caste is not sufficient to contest the election. That order has been challenged in SLP No.37020 of 2025 before the Apex Court, that SLP was dismissed with observation that we are not inclined to interfere the impugned judgement. therefore, the view of this Court is confirmed by Hon'ble Supreme Court.

16. Learned counsel of appellant heavily reliance the provision of 40 A of the M.P Panchayat Nirvachan NIyam 1995, that provision regarding the stay on election in certain cases, it means that provision inserted only for expedite the election proceeding not for the relaxation to prove the caste, if any dispute arose and matter came before the court. Therefore, that ground is not acceptable.

17. The M.P. Election Commission issued a letter dated 27.05.2022 and issued a direction that a candidate contesting from a reserved seat for the three-tier Panchayat Raj Institutions will be required to attach a caste certificate in the prescribed format issued by the competent authority of the Madhya Pradesh Government along with the nomination paper. If the candidate does not have a caste certificate at the time of filing the nomination paper, he/she will have to submit an affidavit regarding his/her caste belonging to the category for which the seat is reserved, before the Returning Officer, before the scrutiny of nomination papers begins. In case of not submitting the caste certificate issued by the competent authority of the Madhya Pradesh Government or not submitting the affidavit regarding being a member of the reserved category, the candidate's nomination paper



will be cancelled. That letter itself makes it clear that the caste certificate is mandatory for nomination for a reserved seat, but the only relaxation is that if the candidate does not possess a caste certificate at the time of nomination, then an affidavit is sufficient, and the Election Commission has no power to inquire into the matter relating to the caste of the candidate. That fact also gets clear that on that ground the election would not be stayed. The above provision is only for conducting uninterrupted elections and not for relaxation for filing the caste certificate.

18. Petitioner heavily reliance section 18 of the M.P Panchayat Nirvachan Niyam 1995 regarding the Commission's power to issue General or Special orders or directions, which is reproduce here-

*Rule - 18 Notwithstanding anything contained in these rules, the Commission may issue such special or general orders or directions which may not be inconsistent with the provisions of the Act for fair and free elections.*

19. Learned counsel pointed out that under that provision, the Election Commission has given relaxation to file the caste certificate. We are not satisfied with the view of the learned counsel for the petitioner, the Commission has no power to make any rule inconsistent with the provisions of the Act. On a reading of the directions issued by the Election Commission, it was never intended to relax the rule for filing the caste certificate forever, it has been relaxed only for filing of the nomination and till the conduct of the election, so as to avoid delay in conducting the election. On the above policy, it is also clear that the Election Officer will not





inquire into the caste of the candidate if an affidavit is filed with the nomination form. It means the Election Commission wants to conduct the election within the prescribed period and no one is deprived on the ground that he has no caste certificate at the time of election.

20. The intention of the legislature behind the rule 40A of the M.P. Panchayat Nirvachan Niyam, 1995 is to protect the right of candidates belonging to the reserved category to contest election proceedings without interruption or delay. Mere non-submission of a caste certificate does not deprive a reserved category candidate of the right to submit a nomination form during the election process. For this purpose, the Election Officer shall not inquire into the caste of the candidate, nor shall the election proceedings be stayed on that ground. The above provision does not grant relaxation from filing a caste certificate along with the nomination form. It only provides time to submit the caste certificate later, if required, at the stage when the candidate's caste is challenged by any other candidate or voter.

21. The petitioner has also argued contending that the election petition was decided without framing issues and without granting an opportunity to the parties to lead evidence. That argument is also not acceptable because the petitioner does not possess a caste certificate till now. The Election Officer does not have the power to decide the caste of the petitioner, caste can only be proved by a caste certificate. Hence, on the ground that the election petition was decided without framing issues and without granting an opportunity, the argument is not acceptable. The petitioner wants to prolong the period till the completion of the tenure to



fulfilment of his desire, he wants to remand the petition on this ground that the issues could not be framed.

22. Rule 40A of the M.P. Panchayat Nirvachan Niyam, 1995 has been relied upon heavily by the appellant, which is reproduced below:-

"40A. [ Stay on elections in certain cases. [Inserted by Notification No. F.1-40-95-XXII-P-2, dated 17-2-1999.]

(1)Notwithstanding anything contained in these rules, if it comes to the notice of the Returning Officer at any time prior to the date of poll that the nomination of any candidate who, prima facie, does not belong to a Scheduled Caste, Scheduled Tribe or Other Backward Class, has been accepted for a seat which is reserved for Scheduled Castes, Scheduled Tribes or Other Backward Classes as the case may be, through oversight or want of objection or for any other reason, he shall forthwith issue a notice to such candidate, asking him to file an affidavit that he belongs to the category for which the seat is reserved. (2)In case the candidate concerned files an affidavit, the Returning Officer shall make no further inquiry into the matter and treat the nomination as valid.(3)In case the concerned candidate fails to file an affidavit on or before the date specified in the notice, it shall be presumed that he does not belong to the category for which the seat is reserved and the Returning Officer shall report full facts to the following competent authority, as the case may be and seek its permission to review his own order, regarding the validity of the nomination, namely :-(i)Sub-Divisional Officer (Revenue) in case of election of a Panch or Sarpanch of a Gram Panchayat;(ii)Collector in case of election of a member of Janpad Panchayat; and(iii)Divisional Commissioner in case of a member of Zila Panchayat.(4)The Competent Authority, shall immediately, dispose off every case referred to it under sub-rule (3), and communicate its order to the Returning Officer, as soon as possible.(5)After receiving the permission of the Competent Authority, the Returning Officer, may review his own order and exclude the name of the concerned candidate from the list of validly nominated candidates prepared under Rule 35 and from the list of contesting candidates, if such list has already been prepared and published the Returning Officer shall prepare a revised list of contesting candidates and publish it in accordance with the provisions of Rule 40 :Provided that if the concerned candidate has in the meanwhile submitted an affidavit in response of the notice issued under sub-rule (1), the Returning Officer shall not review his order.(6)If the Competent Authority fails to dispose off the case referred to it under sub-rule (3) at least five days before the day of poll or the mistake in acceptance of nomination as specified in sub-rule (1), comes to the notice of the Returning Officer on a day where-after a period of less than seven days is left for the day of poll, the Returning Officer shall postpone the election of such seat and report the matter to the Commission through the District Election Officer.(7)The Commission shall, after satisfying itself that the Returning Officer has duly reviewed his order, issue revised time schedule for completion of election for the seat in question."

23. On a careful reading of the said provision, it is clear that Rule 40A has been incorporated with the object of ensuring that the election process is not stalled or delayed merely on account of a dispute relating to caste at the stage of scrutiny of nomination papers. The provision enables the Returning Officer to proceed with the election process on the basis of an affidavit, without entering into an enquiry regarding the caste of the



candidate. However, Rule 40A does not dispense with the statutory requirement of establishing caste status in accordance with law, nor does it grant a permanent exemption from producing a caste certificate. The provision merely postpones such verification to a later stage, if required, and is intended only to facilitate uninterrupted conduct of elections. Therefore, Rule 40A cannot be interpreted to mean that a candidate can successfully contest and continue to hold a reserved seat without possessing a valid caste certificate issued by the competent authority.

24. In case of *Kalka Vs. Ramji Lal (2002) 3 MPLJ 124* it has been *that trial of an election petition is like a civil trial and framing of issues and recording of evidence are necessary for the proper adjudication of the dispute.*

25. There is no quarrel with the settled proposition of law that an election petition is to be tried like a civil suit and that framing of issues and recording of evidence is generally necessary where disputed questions of fact arise. However, in the present case, the said judgments are not acceptable and are clearly distinguishable on facts. It is an admitted position that the appellant does not possess a caste certificate of Scheduled Caste even till date. In the absence of a valid caste certificate, the caste status of the appellant cannot be established in the eyes of law, and no amount of oral or documentary evidence can substitute the statutory requirement of a caste certificate issued by the competent authority. Since the appellant lacks the basic qualification to contest a seat reserved for Scheduled Caste, no triable issue survives for adjudication. Therefore, the contention regarding non-



framing of issues and denial of opportunity to lead evidence does not merit acceptance and does not vitiate the proceedings.

26. We have considered all grounds taken in the appeal and the law cited with the writ appeal. It is an admitted fact that the appellant does not possess the caste certificate of Scheduled Caste, therefore, there is no declaration by any law that he belongs to the Scheduled Caste category. The self-declaration of caste is not sufficient to contest the election.

27. In view of the above, we do not find any ground to interfere with the order dated 28.12.2023 passed by the learned Single Judge of this Court in W.P. No. 29557/2023. Accordingly, the writ appeal is dismissed as being devoid of merit.

(VIVEK RUSIA)  
JUDGE

(PRADEEP MITTAL)  
JUDGE

Praveen