

**(2022) 12 MP CK 0065**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 28733 Of 2022**

Bhanwaribai And Others

APPELLANT

Vs

Madhya Pradesh Election Commission Through Secretary And  
Others

RESPONDENT

**Date of Decision : 12-12-2022**

**Acts Referred:**

Constitution Of India, 1950 — Article 226  
Madhya Pradesh Panchayat Election Rules, 1994 — Rule 22  
Madhya Pradesh Panchayati Raj Evam Gram Swaraj Adhiniyam, 1993 — Section 26,  
27, 44, 87

**Citation : (2022) 12 MP CK 0065**

**Hon'ble Judges : Vijay Kumar Shukla, J**

**Bench : Single Bench**

**Advocate : Sudeep Bhargava, Vinita Phaye**

**Final Decision : Dismissed**

## Judgement

Vijay Kumar Shukla, J

The present petition is filed under Article 226 of the Constitution of India challenging the order dated 5.12.2022 passed by the Presiding Officer in election petition rejecting the application for grant of stay filed by the petitioners.

The petitioners are elected members of Janpad Panchayat, Ujjain. The petitioner No.1 was also contesting for the post of President. The election of the President and Vice President was scheduled on 27.07.2022. According to the petitioners, all the 13 petitioners were deprived from casting vote by the Returning Officer and the minority group consisting of 12 persons got the President elected. Being aggrieved with it, the petitioners filed a petition before this Court which was registered as WP No.17927 of 2022. Initially this court passed an interim order and stayed the publication of the Notification u/S.26 of the Madhya Pradesh Panchayati Raj Evam Gram Swaraj Adhiniyam, 1993 (hereinafter the same shall be referred as Adhiniyam). However, the said petition was dismissed on the

ground of alternative remedy of filing election petition. After receipt of the order passed by this court, the respondent No.2 immediately issued Notification u/S.26 read with Rule 22 of M.P. Panchayat Election Rules 1994 (hereinafter the same is referred as the Rules). The petitioner filed an election petition on 16.11.2022 and on the same day, the election tribunal granted stay on the first meeting. However, by the impugned order, the said stay order has not been extended further and the application for grant of stay has been rejected.

Counsel for petitioners submits that the petitioners have been deprived from casting their vote in the election of President and Vice President of Janpad Panchayat which was held on 27.07.2022. The minority of 12 persons got the President elected and, therefore, the election tribunal ought to have continued the stay order.

After hearing learned counsel for petitioners, I do not find any merit in the petition. In the earlier round of petition, the petitioners have raised the same grievance that they have been deprived from casting their votes in the election held on 27.07.2022 and this Court declined to interfere in the petition on the ground of availability of alternative remedy of election petition. The interim order passed by this Court was vacated. The petitioners filed election petition and the tribunal has granted the interim order but after representation of the other side and taking into consideration the provisions of Sec.26 and 27 of Adhiniyam, did not continue the stay order and rejected the application for stay.

I do not find any illegality in the impugned order warranting any interference under Article 226 of the Constitution of India. The tribunal has only passed the interim order. The election petition is pending before the tribunal. Whether the petitioners have been deprived from casting their vote or they voluntarily opted for not casting the vote is a question of fact which is to be decided by the election tribunal after recording the evidence.

The Notification u/S.26 was published on 14.11.2022 and as per the provisions of Sec.27 of Adhiniyam, first meeting of Janpad Panchayat has to be held within 30 days of the date of publication u/S.26 and, therefore, the tribunal has rightly declined to continue the stay order. The stay order could not have been continued in view of the mandate of Sec.26 of and 27 of Adhiniyam which reads as under:-

"26. Publication of names of members, President and Vice President, - The names of the members, President and Vice-President of Janpad Panchayat shall be published by the prescribed authority in such manner as may be prescribed.

27. First meeting and term of office.- (1) First meeting of the Janpad Panchayat shall be held within 30 days of the date of publication under Section 26. Such meeting shall be convened by prescribed authority and provisions of Section 44 regarding meeting, as far as may be, shall apply in respect of the said meeting.

(2) Unless otherwise provided in the Act the office bearers of Janpad Panchayat

shall hold office for five years from the date of the first meeting and no longer;

[Provided that notwithstanding anything contained in the sub-section an office bearer of Janpad Panchayat shall cease to hold office forthwith on his ceasing to be a voter of a Gram Panchayat area within the Block].

(3) If before the expiry of the period prescribed in sub-section (2) the Janpad Panchayat is not newly constituted, it shall stand dissolved on the expiry of the said period and the provisions of Section 87 shall apply thereto for a period not exceeding six months within which the Janpad Panchayat shall be reconstituted in accordance with the provisions of this Act."

In view of the provisions of Sec.26 and 27, the tribunal has rightly held that first meeting of Janpad Panchayat has to be held within 30 days of the publication u/ S.26. Thus, there is no illegality in the impugned order. The petition is devoid of any merit and substance. The same is dismissed.