

(2022) 07 MP CK 0062
In the Madhya Pradesh High Court
Case No : Writ Petition No. 16878 Of 2022

Mamta Upadhyay

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 21-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 243O

Madhya Pradesh Panchayat Nirvachan Niyam, 1995 — Rule 77(2)

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 122

Citation : (2022) 07 MP CK 0062

Hon'ble Judges : Sushrut Arvind Dharmadhikari, J

Bench : Single Bench

Advocate : Shiv Kumar Sharma, Pravanlaghn Pandey

Judgement

Sushrut Arvind Dharmadhikari, J

In this petition filed under Article 226 of the Constitution of India, the petitioner is seeking a direction to the respondent No.3 for recounting of votes of Polling Booth No.51, 52 and 53 in respect of election held on 08.07.2022 for the post of Sarpanch of Gram Panchayat Patoha, Tehsil Churhat District Sidhi (M.P.).

Learned counsel for the petitioner submitted that the petitioner has filed an application for recounting the votes before the respondent No.3 on the same day i.e. on 08.07.2022 (Annexure P/3) in accordance with Rule 77(2) r/w Rule 80(1) of the Madhya Pradesh Panchayat Nirvachan Niyam, 1995, (hereinafter referred to as 'the Rules of 1995') but no action whatsoever has been taken by the respondents to decide the application. In these circumstances, direction may be issued to respondent No.3 to decide the same in accordance with aforesaid provision at the earliest. Learned counsel for the petitioner has further submitted that in identical petition bearing W.P.No.15343/2022 seeking similar relief, this Court has allowed the petition directing the respondents to recount the votes before declaration of results.

Per contra, Shri Pandey opposed the aforesaid contention and submitted that various disputed questions of fact are involved in the present case, which can only be done in the election petition. He further submitted that the present writ petition is not maintainable in view of the fact that the election has already been notified on 27.05.2022 and thereafter results are also declared on 14.7.2022. In support of his contention he has placed reliance on the judgment of the Apex court in the case of Laxmibai Vs. Collector, Nanded and others, reported in (2020)12 SCC 186 and S.K.Mahaboob Bee (Smt.) and others Vs. State Election Commissioner and others, reported in (2000)10 SCC 512 to contend that the writ petition is not maintainable after the elections have been notified. However, he fairly stated that the petitioner has alternative remedy of filing election petition under Section 122 of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter shall be referred to as "the Adhiniyam") after the election is over.

Constitutional amendment has been brought in the Constitution incorporating Section 243-O of the Constitution of India, relevant provisions whereof reads as under:-

"243-O. Bar to interference by courts in electoral matters.-Notwithstanding anything in this Constitution -

(a) xxx xxx xxx

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State."

In the light of the substantive provisions for filing of election petition under Section 122 of the Adhiniyam and in view of the aforesaid pronouncement of law and keeping in view the Division Bench judgment of this Court passed in W.A. No.809/2022 (Gwalior Bench) dated 11.07.2022 so also looking to the fact that disputed questions of fact are involved in this case which cannot be adjudicated in the writ petition under Article 226 of the Constitution of India, this Court is not inclined to entertain this writ petition at this stage.

So far as identical petition bearing W.P.No.15343/2022 is concerned, the petitioner therein had applied on the very same day and he had the receiving on the application of the same date. In the instant case learned counsel has submitted that no such application has been received by the respondents/authorities. Therefore, no interference is warranted at this stage in exercise of powers under Article 226 of the Constitution of India.

Accordingly, the petition stands dismissed. However, the petitioner would be at liberty to avail the remedy as available to him under Section 122 of the Adhiniyam at the appropriate time.

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