
(2006) 04 MP CK 0093
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2448 of 2005

Ravindra Singh

APPELLANT

Vs

Sub-Divisional Officer-cum-Prescribed Authority and Others

RESPONDENT

Date of Decision : 18-04-2006

Acts Referred:

Madhya Pradesh Panchayat Nirvachan Niyam, 1995 — Rule 2, 90
Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 122, 122(2), 19
Madhya Pradesh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 — Rule 3(2)
Representation of the People Act, 1951 — Section 67, 81(3), 90(3)

Citation : (2006) 3 MPLJ 570

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Vivek Jain and Rahul Dandotia, for the Appellant; C.S. Dixit, Government Advocate for Respondent No. 1, S.S. Bansal and Amit Bansal for Respondent No. 2 and Yogesh Chaturvedi, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Menon, J.

Challenging the order Annexure P-1, dated 28-3-2005 passed by the Sub Divisional Officer, Datia, dismissing a election petition filed by the petitioner u/s 122 of the M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as "the Adhiniyam of 1993"), petitioner has filed this petition.

Election for appointment to the post of Sarpanch of Gram Panchayat Airai, Tehsil & District Datia was held on 16-1-2005 and counting of votes took place on 27-1-2005. According to the petitioner in the counting respondent No. 1 was declared as elected by a margin of one vote. Inter alia contending that counting of votes has not been conducted properly, in accordance with the statutory rules, certain valid votes have been declared as invalid and certain invalid votes have been declared as valid as a result thereof petitioner lost the election by a margin

of one vote, petitioner preferred the present election petition u/s 122 of the Adhiniyam of 1993. According to the petitioner immediately after the counting of votes when results were declared by the prescribed officer on 27-1-2005 and therefore, he filed the election petition on 2-2-2005. Grievance of the petitioner is that the aforesaid election petition has been dismissed mainly on two grounds. First ground is that the election petition has been presented before notification of election and therefore the same being premature is rejected. The second ground for rejection of the election petition is that the election petition is not presented in accordance with the provisions of Rule 3(2) of the Madhya Pradesh Panchayats (Election Petition, Corrupt Practices and Disqualification for Membership) Rules, 1995 (hereinafter referred to as Rules of 1995), in as much as the copies accompanying the election petition are not attested by the petitioner in his own signature to be true copy of the election petition. Apart from the aforesaid two grounds, it is submitted by Shri Jain, learned Counsel for the petitioner that on merits also certain observations have been made in dismissing the petition and these observations have been made without framing of issues and putting the same to trial after recording of evidence.

Shri Jain submits that Section 122(2) of the Adhiniyam of 1993 only contemplates that the election petition shall not be admitted unless it is presented within thirty days from the date on which the election in question was notified. According to Shri Jain this section nowhere contemplates a situation that an election petition can be filed only after the notification is issued. Shri Jain argues that these provisions have been incorrectly interpreted by the Election Tribunal for dismissing the petition. Referring to Section 19 of the Act of 1993 Shri Jain points out that every election of Sarpanch, Up Sarpanch and Panchas shall be published by the prescribed authority in such manner as may be prescribed and the notifying authority in the present case is the Sub Divisional Officer, Revenue. Thereafter referring to Rule 90 of the M.P. Panchayat Nirvachan Niyam, 1995 Shri Jain points out that elections of Members of the Janpad Panchayat are notified by affixing a notice in Form 26-A on the notice board in the office of the Zila Panchayat and in the office of the District Election Officer. In the present case, it is stated that no such notification was issued and without considering the date when such notification if any is issued dismissal of the election petition is said to be illegal. As far as the second ground with regard to attestation of copies are concerned, Shri Jain referring to the original records received and the copy of the election petition served on the respondents and filed by him and available at Page 62 of the original record points out that each and every page of the copy supplied to the respondent bears the signature of the petitioner, however the words "attested to be true copy" are not mentioned. Shri Jain submits that on this ground the election petition could not be dismissed as signature of the petitioner in each and every page of copy is sufficient compliance with the provisions of Rule 3(2) of the Rules of 1995. In support of this contention, he invites my attention to the judgment of the Supreme Court in the case of Anup Singh Vs. Shri Abdul Ghani and Another, , so also the judgment

of this Court in the case of Rameshwar Dayal Arale v. Munna Singh Bhadoria AIR 1992 MP 161, wherein reliance has been placed on an earlier judgment of the Supreme Court in the case of M. Kamalam Vs. Dr. V.A. Syed Mohammed, . Based on these judgments Shri Jain argues that rejection of the petition on the ground that the words "attested true copy" are not mentioned is not sustainable.

Refuting the aforesaid contentions, Shri C.S. Dixit, learned Govt. Advocate for the respondent No. 2, so also Shri S.S. Bansal, learned Counsel for respondent No. 1 argue that as the petitioner has committed violation of statutory provisions mandatory in nature, election petition has been rightly rejected by the Sub Divisional Officer, which does not call for any interference in this matter. Shri C.S. Dixit, learned Govt. Advocate points out that u/s 122(2) of the Adhiniyam of 1993 an election petition can be filed only after the notification is issued, and in the instant case, as no notification is said to have been issued the order passed by the Sub Divisional Officer is proper and the same does not call for any interference.

Having heard the learned Counsel for the parties at length and on perusal of the averments made and the legal question involved in the petition, I am of the considered view that for the reasons to follow hereinafter, Sub Divisional Officer has committed a grave and material irregularity in dismissing the election petition filed by the petitioner on the grounds indicated in the order.

It was the specific case of the petitioner before the Election Tribunal that when counting of votes took place on 27-1-2005 and after the results were declared there were irregularities in the matter and therefore, he approached the authorities immediately for getting certified copy of a notification of the election results. On this, petitioner was informed that he will be supplied the same on 29-1-2005. On 29-1-2005, when the petitioner appeared and filed an application seeking certified copy of the notification of election, he was not supplied with certified copy and was informed that the results of the election have been declared. Petitioner therefore, came out with a specific case that he is not being supplied with certified copy of the notification notifying the election and therefore, filed the petition with a specific averment that results of the election have been declared on 27-1-2005. Sub Divisional Officer while considering the aforesaid issue in a very casual manner did not even care to find out as to when and in what manner the result was declared and election was notified. He simply mentioned in the order that as the election is not notified the election petition filed before notification is premature. There is no enquiry by the Election Tribunal with regard to the fact as to when and in what manner the election results and the election itself was notified. Available in the original record of the Election Tribunal are the averments made by the petitioner with regard to the efforts made by him for obtaining the certified copy of the result, certified copy of the application filed by him on 29-1-2005 for obtaining the certified copy of the notification is also filed. In this the official concerned on 1-2-2005 has sought for instructions from the concerned Competent Authority and the aforesaid

endorsement indicates that on 1-2-2005 no reason was given to the petitioner and the certified copy was also not supplied, therefore, petitioner filed the petition. In dismissing the petition on the ground that it is a premature and election has not been notified the Sub Divisional Officer has not considered all these questions and has dismissed the petition even without indicating a date when the election is said to have been notified and the results were declared. In dealing with the matter and in dismissing the election petition in such a casual manner, Election Tribunal has committed a grave irregularity. Even though Shri Vivek Jain, learned Counsel for the petitioner by referring to the definition of the "Returned candidate" as appearing in the Rule 2(c) of the Nirvachan Niyam, "Ejection" as defined in Section 67(a) of the Representation of the People Act and thereafter placing reliance on Section 19 of the Adhiniyam of 1993 and Rule 90 of the Rules of 1995 tried to emphasis that the petitioner had filed the election petition after the results were declared and therefore, the same was in order and I am of the considered view that the said question has to be decided after considering the factual aspect and the legal questions involved in the matter. Instead of considering the question properly after conducting proper enquiry action taken for dismissing the election petition only on the ground that election is not notified was not proper. On this ground the order passed by the Sub Divisional Officer has to be quashed.

As far as attestation of the true copies sent alongwith the notice to respondent No. 1 is concerned, Rule 3 Sub-rule (2) of the Rules of 1995 contemplates that 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 of the petition. In the present case, the material available on record indicates that the copies sent to the respondents bore the signature of the petitioner, however the words "attested as true copies" were not mentioned above his signatures and it was on this count that non-compliance with Rule 3(2) has been found to be established and the election petition dismissed. The question of incorporating the words "true copy" or "attested true copy" while filing an election petition under the Representation of the People Act was considered by the Five Judge Bench of Supreme Court in the year 1965 in the case of Dr. Anup Singh (supra). In Para 6 of the aforesaid judgment, Supreme Court has referred to Section 81(3) of the Representation of the People Act and the provisions reproduced therein indicate that the said provision is *pari materia* with Rule 3(2) of the Rules of 1995. The provision of Section 81(3) of the Representation of the People Act also contemplates that every copy shall be attested by the person under his own signatures to be true copy of the petition.

Thereafter in Para 7 exactly similar situation as is existing in the present case is considered and it is observed by the Supreme Court in the aforesaid order as under:

7. An exactly similar matter came to be considered by this Court in Ch. Subbarao

Vs. Member, Election Tribunal, Hyderabad, . In that case also the copies were signed by the petitioner but there was no attestation in the sense that the words "true copy" were omitted above the signature of the petitioner. This Court held that as the signature in original was there in the copy, the presence of such original signature in the copy was sufficient to indicate that the copy was attested as a true copy, even though the words "true copy" were not written above the signature in the copies. This Court further held that there was substantial compliance with Section 81(3) of the Act and the petition could not be dismissed u/s 90(3). That case applies with full force to the facts of the present case, and it must therefore, be held that there was substantial compliance with Section 81(3) and the petitions could not therefore be dismissed u/s 90(3).

(Emphasis supplied)

From the aforesaid it is clear that if the copies sent to the respondents bear the signature of the petitioner mere omission to write the words "true copy" or "attested true copy" will not make any difference. This question is again considered by a Bench of this Court in the case of Rameshwar Dayal Arale (supra). In Para 8 of the aforesaid judgment the effect of not making the endorsement, i.e., "attested true copy" was considered and after relying upon an earlier judgment of the Supreme Court in the case of M. Kamalam (supra), it has been held by this Court that if the copies of the election petition for service on the respondent is signed by the election petitioner, then the requirement of mentioning the words "true copy" is wholly imaginary and unwarranted. Keeping in view the law laid down by the Supreme Court so also by this Court in the aforesaid case it has to be held that on the ground of non-compliance of Rule 3(2), the election petition could not be dismissed and it has to be held that the requirement of Sub-rule (2) of Rule 3 of Rules of 1995 have been complied with and therefore, dismissal of the election petition on this ground was unwarranted.

As far as adverting into the merit with regard to recounting of votes and invalidation of votes are concerned, there is much force in the contention advanced by Shri Jain to the effect that these questions could be decided only after issues are framed and evidence is recorded. Election petition is required to be put to trial. Decision on the election petition without framing of issues and recording of evidence merely on the basis of reply submitted by the respondents to the election petition and after calling for comments from the Returning Officer was not proper. That being so it has to be held that on the merits also the Election Tribunal has committed a grave error in deciding the question without framing of issues and recording of evidence.

Accordingly, in the facts and circumstances of the case for the reasons indicated hereinabove, this petition is allowed. Order Annexure P-1, dated 28-3-2005 passed by the Election Tribunal and Sub Divisional Officer, Datia is quashed. It is held that the election petition cannot be dismissed for non-compliance with the provisions of Rule 3(2) of the Rules of 1995, the case is remanded back to the

Election Tribunal for deciding all other questions afresh in accordance with law after giving due opportunity of hearing to the parties. Petition stands allowed and disposed of as aforesaid without any order as to cost.