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**(1989) 12 MP CK 0015**  
**In the Madhya Pradesh High Court**  
**Case No : M.P. No. 305 of 1989**

Shivlal Ghassuram

APPELLANT

Vs

Returning Officer, Gram Panchayat and Others

RESPONDENT

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**Date of Decision :** 13-12-1989

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Madhya Pradesh Panchayat Act, 1981 — Section 117

**Citation :** (1990) MPJR 162 : (1990) 35 MPLJ 462 : (1990) MPLJ 462

**Hon'ble Judges :** T.N. Singh, J; S.K. Dubey, J

**Bench :** Division Bench

**Advocate :** M.C. Jain, Dy. Government, S.K. Jain, for the Appellant; R.K. Shinde, for the Respondent

**Final Decision :** Dismissed

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## Judgement

T. N. Singh, J.

The petitioner claims that he has been duly declared a Sarpanch as per Annexure P-2 but the Returning Officer acted illegally and arbitrarily in declaring Tularam, respondent No. 4, as the Sarpanch elected for Gram Panchayat, Bhaingna, in Tahsil Bhitwar of Gwalior District.

Returns have come from the respondents and they are two in number. A separate return is filed by respondent No. 4 Tularam and on behalf of the Returning Officer and S. D. O a common return is filed. With that return has come Annexure R-3, and that is crucial to the decision in the instant case. We are required, indeed, to compare Annexure P-2 and Annexure R-3, as both, admittedly, are filled up and signed by the Returning Officer. The relevant election law which is not disputed is that under the provisions of M. P. Panchayats Act, 1981 (for short, the "Panchayat Act") the Returning Officer has to submit a report to the Chief Election Officer after declaring result of the election and that has also come on record. That is Annexure R-4. That also we have read.

What is clearly projected on pleadings is the fact that Annexure P-2 was hurriedly prepared and that exercise was not in due conformity with the returning provision. Having realised that fact, the returning officer proceeded to do what he was mandated to do under the election law. It is true that as per Annexure P-2 petitioner was declared elected but the result declared in Annexure R-3 favoured respondent No. 4. Whatever that may be, law has to be examined. Reliance is placed in that connection on Rule 72 of the Panchayat Election and Co-option Rules, 1988. That we quote :

72. Declaration of result. - The Returning Officer or such other Officers authorised by him in this behalf shall then declare to be elected the candidate/ candidates for the post of Panch who have secured the highest number of valid votes in the polling station and clarify the return of election of Panchas in Form G-XVI and send signed copy thereof to the Returning Officer. The return prepared in Form G-XVII in all polling stations for the election of Sarpanch shall be sent on the same day to the Returning Officer or such other Officer authorised by him, who shall compile all the returns of election received from all polling stations at the headquarter of the Gram Panchayat. He shall declare the candidate to be elected who has secured the highest number of valid votes and certify the return of election in Form G-XVII. The Returning Officer or the Officer authorised by him shall send a signed copy of Form G-XVI and G-XVII to the Collector. If, after the counting to exit between any candidates, and the addition of one vote will entitle any of these candidates to be declared elected, the Returning Officer or such other Officer authorised by him in this behalf, shall forthwith decide between these candidates by lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

Shri R. K. Shinde, who has appeared for respondent No. 4, has submitted that the provision is mandatory, and about that we have no doubt. It is settled law that when election procedures are prescribed, those are to be strictly adhered to. Therefore, it was incumbent on the part of the Returning Officer to fill up Form G-XVIII in the manner prescribed. Indeed the mandatory nature of the provision in regard to its various requirements is duly spelled out. The express mandate of Rule 72 is that "return (ba) prepared in Form G-XVII in all polling stations for the election of Sarpanch" and that to be sent on the same day to the Returning Officer who has to compile all those returns received from all polling stations. That is done at the headquarter of the Gram Panchayat. The statutory Form also indicates that requirement, as column 2 of the Form, contemplates votes polled to be recorded ward-wise before total votes polled by any candidate are recorded in Col. 3.

In the instant case, Annexure P-2 is a blank and held document in so far as col. 2 is concerned and counsel's submission, is therefore salutary that Annexure P-2 has to be regarded as a zero document. Indeed, there is no entry at all in col, 2 which is wholly blank; it is only in Col. 3 that total number of votes polled are recorded separately against the two candidates, petitioner Shivilal and his rival,

respondent 4 Tularam. In Annexure R-3 not only the procedure prescribed under Rule 72 is duly and properly followed by making due and proper entries, but in that document a note is also appended to make the position clear. The mistake committed in preparing Annexure P-2 is neither covered up nor concealed; it is admitted and explained. The note speaks that in the defective document (Annexure P-2) the votes were totalled without counting the votes polled in Wards Nos. 9 and 10 and therefore, declaration of result made in that document was defective and was ignored. A fresh declaration had to be made as per Annexure R-3 wherein petitioner is shown to have polled a total of 338 votes as against 415 votes polled by respondent No. 4. That must be accepted, according to Shri Shinde, as the final position on facts and law concerning Sarpanch's election of Bhaingna Gram Panchayat. Annexure R-3 is the same statutory form as P/2. Indeed in the statutory "report" contemplated (Annexure R-4) further clarification is made of the faux pas.

In the premises aforesaid, it is also submitted by Shri Shinde, there could be no question of the Returning Officer being functus officio after preparing Annexure P-2, which Annexure R-3 had superseded. His contention is, firstly, that the document (Annexure P-2) prepared by him was zero document; secondly, he had not washed off his hands as he had to shuffle more papers and do more work before becoming functus officio. Indeed, that eventuality, counsel submits, would arise only when the statutory report is filed. In the instant case, admittedly, no report was filed or sent by the Returning Officer to the Chief Election Officer in regard to Annexure P-2 and report was submitted in regard only to Annexure R-3 as per Annexure P-4. That report contains full clarification in regard to the discrepancy in the result declared as per Annexure P-2.

We have no doubt if there can be any dispute about the legal position. A statutory authority retains jurisdiction to deal with any particular matter till such time as he has to exercise any function in regard to the powers conferred on him. He shall have also jurisdiction to correct mistakes committed in due discharge of his duty, if by such correction what he does is only ensuring compliance of the statutory duties. Indeed,, he can be said then to be discharging his functions properly and duly exercising powers in that regard under the relevant statutory provision. When such powers are exercised that is done in accordance with the procedure prescribed therefor. In the instant case, Annexure P-2 was prepared in violation of the provision prescribed and to undo the mischief Annexure R-3 was prepared and result properly declared on the basis thereof which attained finality on report in that regard being submitted as per Annexure R-4.

Counsel has further submitted that the instant petition is not maintainable and has drawn our attention to a decision of the Apex Court in Krishna Ballabh Prasad Singh v. Sub-Divisional Officer, Hilsa, AIR 1988 SC 1746, submitting that there is a parity of factual matrices and ratio of the decision applies squarely to the facts and circumstances of the instant case. His further submission is also that section

117 of the Act is in part materia with Article 329(b) of the Constitution and section 81 of the Representation of Peoples Act. In that regard, it is submitted, this Court had examined that position in *Bacchanlal v. State of M. P.*, 1989 MPJR 728. That contention is also substantial and is accepted. Indeed if the petitioner Shivilal who can be said to have any grievance in regard to the declaration of result in favour of respondent No. 4 as per Annexure R-3. It is not a case in which it can be said that there was no election held in accordance with the provisions of the Act; on the other hand, it is rather a case of the type contemplated in *Bachhantal* (supra) that when powers are exercised under the Act and election is held in accordance therewith, the only remedy is by way of an election petition u/s 117 of the Act.

For the reasons aforesaid, we are of the view that there is no merit in this petition and it is dismissed. However, Shri S. C. Jain, who appears for the petitioner, has made a reasonable prayer that for pursuing a misconceived remedy, the petitioner's right to pursue the statutory remedy of an election petition need not be time barred. He has submitted that a direction be made in that regard. That prayer is not opposed and is allowed. If within two weeks the petitioner files an election petition as contemplated u/s 117 of the Act, that shall not be time barred.

In the result the petition fails and is dismissed and the interim order passed on 7-3-1989 is recalled, (c. c. today).