

(1970) 12 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 267 of 1969

Shyamlal

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 09-12-1970

Acts Referred:

Citation : AIR 1971 MP 176 : (1971) JLJ 305 : (1971) MPLJ 274

Hon'ble Judges : Bishambhar Dayal, C.J;S.P. Bahrgava, J

Bench : Division Bench

Advocate : R.K. Tankha, for the Appellant; K.P. Munshi, Government Advocate and L.S. Baghel, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : Rajbali Singh and Others Vs. Shyamlal and Others, AIR 1973 SC 276 : (1973) 3 SCC 715 : (1973) 1 SCR 59 : (1972) 4 UJ 868

Bishambhar Dayal, C.J.

This is a petition by Shyamlal who is a voter and is challenging the election to the membership of the Municipal Council of Sidhi. Respondents Nos. 5 to 10 filed their nomination papers in which they mentioned only the number of the ward for which they were seeking election and did not mention the name of the ward. These nomination papers were accepted as valid and the elections were held. The form in which the nomination papers were to be filed required that both the name and the number of the ward for which the candidate was contesting should be mentioned. It is, therefore, obvious that the intention of the Legislature in getting both the name and the number filled was to be sure about the ward for which a candidate wanted to get himself nominated. Obviously, out of the two things--the number and the name--the name is certainly more specific and chances of mistakes, if a name is mentioned, are less than they are in merely mentioning the number. The number can be so written as may be read to be

another number. For instance, the figure "2" badly written may be read as "7" or may be read as "9" or any other number. Thus, the requirement of the rule that the name as well as the number of the ward should be mentioned certainly intended that the name had to be mentioned in any case and to make the position doubly sure it was also provided that the number should be mentioned. It may be mentioned here that before the present rules came into force in 1966, the rules merely required the mention of the name of the ward and did not consider the number of the ward to be at all necessary or important. We are, therefore, of opinion that the mention of the name of the ward is absolutely essential and without the mention of the name of the ward, the identity of the ward cannot be ascertained with certainty. Suppose in a case somebody writes a figure which is doubtful or writes one number and describes the ward by another name, then in such a case it will be difficult to say that it was the number which correctly described the ward. But if the name is mentioned, it can certainly be said that the ward has been described properly by name and if in such a case the number is defective, it may be considered as defective filling of the form. Where, however, the name itself is not mentioned, it must be treated as a total failure to mention the name of the ward which is a mandatory requirement according to the rules.

Under the old rules and the old form the matter came up to this Court in several cases. A Division Bench of this Court in *Shivkaran v. Supervising Officer, Tah. Jaora*, 1968 MP LJ 407 had to deal with a case in which the number of the ward had been mentioned but the name had not been mentioned. It was also noted in the ruling that in the M. P. Municipalities (Wards) Rules, 1963, there was a provision that "each ward shall be known by the number given to that ward serially" and it was also provided that "in addition, a name to the ward shall also be given." Thus, according to the Wards Rules, the number was also a description of the ward and a name was also to be given to the ward. It was still considered that the mention of the number alone was not sufficient compliance with the mandatory rule of specifying the name of the ward.

Learned counsel appearing for the respondents has strenuously contended that the filling of the number was a substantial compliance with the requirement of the rule. The same argument had been advanced before the Division Bench in the above-noted case and in support of it Supreme Court cases which have also been relied upon now were cited, laying down the general principle that substantial compliance with the requirements of a directory rule was enough. It was argued before the Division Bench that mention of the number of the ward, which gave sufficient identity of the ward, should be treated as sufficient compliance. But that description was not considered sufficient and the nomination paper was held to be invalid. We think that the mere change in the form, which now requires both the number and the name to be mentioned, does not make any substantial difference. The rule, if at all, is more stringent and is not less mandatory, so that strict compliance with the rule may be required now. We see no reason to differ from the case quoted above.

The petition is accordingly allowed. The nomination papers of respondents Nos. 5 to 10 are declared invalid and consequently their elections are also set aside. Parties, however, shall bear their own costs. The outstanding amount of the security deposit shall be refunded to the petitioner.