
(1995) 10 MP CK 0033
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1198 of 1994

Sugnabai

APPELLANT

Vs

Election Officer, Gram Panchayat and Others

RESPONDENT

Date of Decision : 20-10-1995

Acts Referred:

Madhya Pradesh Panchayat Election Rules, 1994 — Rule 77, 77(1), 91
Madhya Pradesh Panchayat Raj Adhiniyam, 1994 — Section 122, 122(1)

Citation : (1996) JLJ 48 : (1996) 41 MPLJ 134 : (1996) MPLJ 134

Hon'ble Judges : C. Kumar Prasad, J

Bench : Single Bench

Advocate : C.L. Yadav, for the Appellant; Zelawat, G.A. for Respondent Nos. 1, 2, 3 and 5 and Amarsingh, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Prasad, J.

The petitioner in the present Writ Application seeks a direction that she be declared as the duly elected "Sarpanch" of Gram Panchayat Bamni Bujurga and she has the right to function as such.

According to the petitioner, election programme was declared by the Election Officer for election of "Sarpanch" of Gram Panchayat Bamni Bujurga. According to the petitioner, she and respondent No. 4 Smt. Parshadi Bai, have filed nominations for election to the office of the "Sarpanch". According to her, she got the highest number of votes and consequently the Election Officer declared her as "Sarpanch" on 8-6-1994 according to Rule 77 of Madhya Pradesh Panchayats Election Rules, 1994 (hereinafter referred to as "Election Rules, 1994") and public announcement was made of her election. She has further stated that the result of her election was also published in the Newspaper on 10-6-1994.

According to the petitioner on 15-6-1994, election of "Up- Sarpanch" of Gram

Panchayat was to be held and respondent No. 2 issued notice on 10-6-1994 to Panchas and Sarpanchas i.e. the petitioner for the said purpose. However, on 15-6-1994 when she went to participate as "Sarpanch" in the meeting of the Gram Panchayat, she was told that she is not "Sarpanch" of the Gram Panchayat and it is respondent No. 4 who has been elected as "Sarpanch". In the aforesaid premises the petitioner prays for declaration by appropriate Writ that she is the duly elected "Sarpanch" of the Gram Panchayat and she may be allowed to function as such without any impediment.

Two returns have been filed, one on behalf of respondents Nos. 1 and 3 i.e. the Election Officer and the Block Development Officer and other by respondent No. 4 who according to the petitioner was illegally elected as "Sarpanch". Their stand in the return is that because of the mistake in the return is that because of the mistake in counting of the votes there was announcement of the election of the petitioner but she was never notified as such. According to the respondents the petitioner on verification was found to have got 324 votes whereas respondent No. 4 got 399 votes and even before the election of the petitioner was notified the mistake came to the notice of the authorities concerned and accordingly respondent No. 4 was notified to have been elected to the office of "Sarpanch" of the Gram Panchayat.

Shri C. L. Yadav, representing the petitioner and Shri Amar Singh representing respondent No. 4 have taken a common stand that once the election of their clients have been declared the same can be set aside only by the Election Petition and the authorities after notifying the election become functus officio and they are not permitted by law to change the result. In the backdrop of the aforesaid submission it is necessary to decide, who was notified as Sarpanch.

Section 122 of the M. P. Panchayat Raj Adhiniyam. 1993 provides as under:-

Section 122. Election Petition : (1) An election or co-option under this Act shall be called in question only by a petition presented in the prescribed manner.

(i) in case of Gram Panchayat to the Sub-Divisional Officer (Revenue);

(ii) in case of Janpad Panchayat to the Collector; and

(iii) in case of Zilla Panchayat to the Divisional Commissioner and not otherwise.

(2) No such petition shall be admitted unless it is presented within thirty days from the date on which the election or co-option in question was notified.

Reading of the aforesaid provision makes it clear that the election petition is the remedy contemplated after the result is notified. Rule 91 of the Election Rules 1994 reads as follows :

91. Manner of notifying election and co-option : (1) Every election and co-option of Panch, Sarpanch and Up-sarpanch of Gram Panchayat, and Up-sarpanch of a Gram Panchayat, as the case may be, shall be notified by the prescribed authority in Form 33 by affixing a notice on the notice board in its office and in

the office of the Gram Panchayat and Janpad Panchayat concerned.

(2) Every election and co-option of member, president and Vice President of Janpad Panchayat as the case may be, shall be published by the prescribed authority in Form 34 by affixing a notice on the notice board of his office and in the office of the Janpad Panchayat and Zila Panchayat concerned.

(3) Every Election and co-option of President, Vice President and Member of a Zilla Panchayat as the case may be, shall be published in Form 15 by the prescribed authority by affixing on notice board of his office and the office of Zila Panchayat, a copy of such notice shall be sent for publication in the Madhya Pradesh Gazette for General information.

The petitioner has nowhere averred that his election was ever notified as contemplated under Rule 91 of the Election Rules but has stated that on 8-5-1984 her election was declared under Rule 77 of the Election Rules. Rule 77 of the rules reads as follows :

77. Declaration of Results. - (1) The Returning Officer (Panchayat) or the Assistant Returning Officer (Panchayat) shall :

(a) declare to be elected the candidate for the post of panch who have secured the largest number of valid votes and certify the return of election in Form 23.

(b) the result sheet for the office of Sarpanch, member of Janpad Panchayat and Zila Panchayat shall be sent to the Returning Officer (Panchayat) or such authorised officer shall compile all the result sheets regarding Sarpanchas of Gram Panchayat within the block in Form 24 and declare the candidate who secured largest number of valid votes for a particular Gram Panchayat elected and shall certify the return of election in Form 24.

(c) for the election of member of Janpad Panchayat compile all the result sheets of Form 21 and prepare Form 25 and declare the candidate who received the largest number of valid votes elected and shall certify the return of election in Form 26.

(2) The Returning Officer (Panchayat) or the officers authorised by him shall send the signed copy of the returns under this rule to the District Officer (Panchayat) and to the commission.

Reading of Rule 77(1) of the Election Rules makes it explicit that so far as declaration of result of Panch is concerned it has to be done by Returning Officer (Panchayat) or the Assistant Returning Officer (Panchayat) whereas election of Sarpanch under Rule 91 of the Election Rules has to be notified by the Prescribed Authority. The Prescribed Authority according to the petitioner is Tahsildar. Further under Rule 77(I)(b) of the Election Rules, the Returning Officer (Panchayat) or the Assistant Returning Officer (Panchayat) are only authorised to declare the result of panch and not of the Sarpanch and they are required only to send the result sheet to the Returning

Officer who after compilation of the result sheet, is required to declare result of the election in Form 24. It is not averred that petitioner was ever declared as such. However, I find on record Form 24 signed by the Returning Officer (Ann. R. 13) which shows that petitioner Sugnabai has got 324 votes whereas respondent No. 4 Smt. Parsadibai has got 399 votes. Moreover, the respondents have placed on record notification, as contemplated under Rule 91 of the Election Rules by which respondent No. 4 was notified as elected "Sarpanch" of the Gram Panchayat. Rule 91 of the Election Rules contemplates notification by the prescribed authority and the petitioner has not produced any document nor I find in the records any notification contemplated under the said rules and issued by the prescribed authority in her favour. However, the notification of election of respondent No. 4 as provided under Rule 91 was issued in her favour by the S. D. O. cum prescribed authorities.

Thus, I am clearly of the view that the petitioner was never notified as elected "Sarpanch" in accordance with law whereas respondent No. 4 was notified as such.

Section 122(1) of the Act contemplates challenge of election only by election petition and as such the writ petitioner is not entitled to get any relief in the present petition.

In the result, I do not find any merit in the application and it is dismissed in limine.