

**HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR**

SINGLE BENCH : SHRI JUSTICE ANAND PATHAK

WRIT PETITION No. 15708 of 2023

Arshpreet Kaur @ Arshdeep

Vs.

The State of M.P. and Ors.

Shri Udit Saxena, learned counsel for the petitioner.

Shri Vivek Khedkar, learned Additional Advocate General for
respondents/State.

Shri D.S.Kushwaha, learned counsel for respondent No.4.

ORDER

[Delivered on this 2nd day of July, 2024]

The present petition is preferred under Article 226 of the
Constitution seeking following reliefs:-

- 1. That, the impugned order dated 20-06-2023
annexure P/1 passed by the respondent No.2 may
kindly be quashed.*
- 2. That, the election petition filed by the
respondent No.4 before the Respondent No-2 may
kindly be dismissed.*

3. That, the other relief doing justice including cost be awarded.

2. Precisely stated facts of the case are that petitioner is a returned candidate of Gram Panchayat Devkhedi Janpad Panchayat Ashoknagar, M.P. And respondent No.4-Sushila Bai filed an election petition under Section 122 of The Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred as “Act 1993”).

3. Petitioner contested the election of the post of Sarpanch of Gram Panchayat and won with 337 votes. The aforesaid election of petitioner was challenged by respondent No.4 by filing the election petition before SDO, Ashoknagar with the allegation that since petitioner is not member of Scheduled Caste, therefore, her election be declared as null and void.

4. On receiving the election petition, petitioner filed an application under Order VII Rule 11 of CPC before the Presiding Officer for dismissal of election petition on the ground that election petition is not presented by the respondent No.4 herself and the counsel was not authorized by respondent No.4 in this regard. Copy of election petition was not certified as true copy and election petitioner did not sign the copy as required under Rule 3 (2) of The Madhya Pradesh Panchayats (Election Petitions, Corrupt Practices and Disqualification of Membership) Rules, 1995, (hereinafter referred as “Rules 1995”). The said petitioner raised all those points before the Specified Officer but vide order dated

03.02.2023, the application preferred by the petitioner as returned candidate was rejected. However, petitioner by way of another application raised the objection regarding delay in filing security amount. According to counsel for the petitioner, the election petition was filed by respondent No.4 on 25.07.2022 and security amount was filed on 26.07.2022. He referred the proceedings of Specified Officer (SDO Ashoknagar) in this regard vide Annexure P-2. According to him, said delay is fatal in view of Rule 7 and 8 of Rules 1995.

5. Learned counsel for the respondent/State opposed the prayer and prayed for dismissal.

6. Learned counsel for respondent No.4 supported the impugned order. According to him, such delay caused in filing the security amount is condonable and therefore, SDO has rightly condoned the delay.

7. Heard the counsel for the parties and perused the record/documents appended thereto.

8. In the case in hand election petitioner (respondent No.4) is facing peculiar situation because she preferred election petition under Section 122 of the Act 1993 on 25.07.2022 before Specified Officer but did not deposit the security amount as contemplated under Rule 7 of Rules 1995 and security amount has been deposited on 26.07.2022.

9. Petitioner in the present case is a returned candidate of Gram Panchayat Devkhedi and is aggrieved by rejection of his

application preferred under rule 8 of Rules of 1995. Basis of rejection of election petition as per petitioner is non-compliance of Rule 7 of Rules 1995.

10. Therefore, to bring factual and legal clarity, it is apposite that Rule 7 and 8 of Rules 1995 is reproduced for ready reference:-

7. Deposit of security.

At the time of presentation of an election petition, the petitioner shall deposit with the specified officer a sum of Rs. five hundred as security. Where the election of more than one candidate is called in question, a separate deposit of an equivalent amount shall be required in respect of each such returned candidates.

8. Procedure on receiving petition.

If the provisions of Rule 3 or Rule 4 or Rule 7 have not been complied with, the petition, shall be dismissed by the specified officers :Provided that the petition shall not be dismissed under this rule without giving the petitioner an opportunity of being heard.

11. Rule 2 (d) of Rules 1995 define Specified Officer . The said definition reads as under:-

2. Definitions.

- In these rules, unless the context otherwise requires,-

(a) XXX

(b) XXX

(c) XXX

(d) "Specified Officer" means the Officer specified in sub-section (1) of Section 122 of the Act in relation

to Gram Panchayat, Janpad Panchayat and Zila Panchayat, as the case may be.

12. Since election petition is preferred under Section 122 of the Act 1993 therefore, Section 122 also deserve to be reproduced for ready reference:-

Section 122. Election petition. -

(1) An election [x x x] under this Act shall be called in question only by a petition presented in the prescribed manner :-

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

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

(iii) in case of Zila 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 [x x x] in question was notified.

(3) Such petition shall be enquired into or disposed of according to such procedures as may be prescribed.

13. In the case of **Sitaram Vs. Radhe Shyam Vishnav and Ors. (2018) 4 SCC 507**, Hon'ble Apex Court has categorically held that delay in deposit of security amount cannot be condoned. In the said

case election petition was filed on 09.09.2015 and treasury challan of Rs.1000/- was deposited on 16.09.2015. Said delay was found to be contrary to the spirit of Rule 3 (5) (D) of Rajasthan Municipalities Election Petition Rules, 2009 (hereinafter referred as “Rules 2009”). The said election petition was rendered as dismissed because of such non-compliance. Similarly in the case of **Sarla Tripathi Vs. Kaushilya Devi and Ors. 2004 (2) JLJ 263 (DB)**, Division Bench of this Court held in following manner:-

“It appears that this decision was not brought to the notice of the learned Single Judge in Kailash Narayan (supra). The decisions noticed in the said case relate to the question of amendment and, therefore, were not relevant for deciding as to whether or not the amount of security required to be deposited at the time of the presentation of the petition could be deposited after presentation on a later date. Section 86(5) of the Representation of People Act, 1951 itself permits amendment as regards particulars of any corrupt practices alleged in a petition as may be necessary for ensuring fair and effective trial. In F.A. Sapa v. Singopa (AIR 1991 SC 1557), the Supreme Court has observed that the defect in the verification of an election petition is not fatal but failure to cure

the same would be fatal as observed in R.P. Moidutty v. P.T. Kunju Mohd. [2000(1) SCC 481]. This requirement is contained in section 83(1) of the Representation of People Act while section 86(1) requires the High Court to dismiss an election petition which does not comply with the provisions of section 81 or 82 or section 117 and not a petition which does not comply with the provisions of section 83. Rule 8 of the Election Petition Rules clearly provides for dismissal of the petition if the provisions of Rules 3, 4 or Rule 7 have not been complied with. Therefore, any decision with regard to the curability of the defect in verification of the petition or with regard to the permissibility of the amendment is not relevant in respect of requirement of deposit of security laid down by Rule 7 and the consequence of failure provided in rule 8. C.K. Prasad, J. has followed the judgment in Kailash Narayan in Ravi Thakur and has distinguished the case of Babulal (supra) on the ground that the question whether the security amount could be deposited within the period of limitation after presentation of the petition was not in issue in the said case. We

are afraid, we cannot subscribe to this view of the learned Single Judge. As apparent from the passage quoted hereinabove, the Division Bench has clearly held that the requirement of making the deposit of security amount is along with the petition which clearly implies that there is no option to deposit the amount on a later date. Rule 7 is clear, without ambiguity and unequivocal. It requires deposit at the time of the presentation of the petition and thus, any deposit made after the date of the presentation of the election petition would not be its compliance. It is not a case where along with the presentation of the election petition that deposit of security was made in the manner other than the one prescribed by rule 7. The view expressed by Dharmadhikari, J. in Uday Singh (supra) appears to be the correct exposition of the Rules. The view expressed in Kailash Narayan (supra) and Ravi Thakur (supra) is not correct. Since it is not disputed in the present case that the election petition was filed on 10.2.2000 while the security deposit was made on 3.3.2000, the election petition was liable to be dismissed under rule 8.”

14. In the present case, Sub-Divisional Officer (SDO) Ashoknagar is the Specified Officer. Therefore, it is to be seen whether respondent No.4 has deposited Rs.500/- as security cost at the time of presentation of election petition before the Specified Officer or not.

15. It is the case where respondent No.4 caused delay in depositing the security amount while filing the election petition. Purpose of deposit of security cost is to ensure sincerity of litigant regarding election petition because challenge raised over election of a returned candidate is a serious affair and it cannot be treated casually, therefore, to ensure that election petitioner is serious in his/her disposition regarding pursuing the election petition, security cost is to be deposited. Another reason apparently exists is to ensure cost for other side (returned candidate), in case petition of election petitioner fails.

16. In the instant case, petitioner relied upon the judgment of Hon'ble Apex Court in the case of **Sitaram (supra)** and it deals in respect of Rule 3(5)(d) of Rules 2009 and said Clause-D of Rule 3(5) of Rule 2009 which specifically contemplates that election petitioner shall be accompanied by a treasury challan of Rs.1000/-. In that case election petition was filed on 09.09.2015 yet it was not accompanied by a treasury challan of Rs.1000/- and it was filed on 16.09.2015. Therefore, in those factual premises, the said order has been passed. Here, petitioner had to file the election petition along with Rs.500/- as security. Here, the intention of the statute is not

that the amount should be deposited and handed over to the Specified Officer then and there only, but the object is to satisfy the Specified Officer about deposit the security amount when the election petition is presented. Here, election petition was preferred on 25.07.2022 and security amount was deposited on 26.07.2022, therefore, delay has been caused in depositing security amount on same date when election petition was submitted.

17. It is true that mode of deposit is directory whereas the requirement of deposit is mandatory but at the same time it is to be seen that when election petition is preferred then on same day security amount of Rs.500/- be deposited before the Specified Officer. It can be in any mode but it has to be deposited with the subjective satisfaction of Specified Officer. This aspect has been dealt with by this Court in the recent judgment delivered on 01.07.2024 in case of **Ravindra Kumar Upadhyay Vs. The State of M.P. and Ors. (W.P.No.1863/2024)** but that analogy would not come to the rescue of election petitioner in the present case because election petition was filed on 25.07.2022 and security amount was deposited on next date i.e. 26.07.2022. Therefore, rigors of Rules 7 and 8 of Rules 1995 would come into play to the detriment of election petitioner.

18. In cumulative analysis, since the election petitioner/respondent No.4 failed to comply the mandatory provision of rule 7 of the Rules of 1995 wherein she was required to deposit the security deposit of Rs.500/- on 25.07.2022 itself

before the SDO, Ashoknagar and SDO, Ashoknagar committed error in not considering this aspect raised by the petitioner through his application under Rule 7 of the Rules of 1995.

19. In the conspectus of facts and circumstances of the case, the petition preferred by the petitioner is hereby **allowed**. The order impugned dated 20.06.2022 passed by Sub-Divisional Officer (SDO) Ashoknagar is hereby set aside. The election petition preferred by election petitioner/respondent No.4 before the SDO, Ashoknagar is **dismissed**.

20. Requisitioned record be sent back.

(ANAND PATHAK)
JUDGE