

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

SINGLE BENCH : SHRI JUSTICE ANAND PATHAK

WRIT PETITION No. 1863 of 2024

Ravindra Kumar Upadhyay

Vs.

The State of M.P. and Ors.

Shri Gaurav Mishra, learned counsel for the petitioner.

Shri G.S.Chauhan, learned Government Advocate for
respondents/State.

Shri Sankalp Sharma, learned counsel for respondent No.2.

ORDER

[Delivered on this 1st day of July, 2024]

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

- (1) That, the impugned order dated 15.01.2024
contained in Annexure P-1 may kindly be quashed and
petitioner's application under Order 7 Rule 11 CPC
may kindly be allowed and, election petition filed by the
respondent no.2 be dismissed, in the interest of justice.*
- (2) Any other suitable writ/order may kindly be passed*

in the interest of justice.

(3) Costs may kindly also be awarded.

2. Precisely stated facts of the case are that petitioner and respondent No.2 participated in the election for the post of Sarpanch in the Gram Panchayat Sikri Jagir, Janpad Panchayat Lahar, Tehsil Mihona, District Bhind. In the said election, respondent No.2 obtained 407 votes whereas petitioner secured 425 votes, consequently petitioner was declared as the elected candidate on 14.07.2022. Being aggrieved by the said defeat, respondent No.2 filed an election petition under Section 122 of The Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred as “Act 1993”). Allegation raised in the said petition against the present petitioner (returned candidate) was that the counting process was conducted improperly. Consequently respondent No.2 as election petitioner, sought annulment of the election results along with a declaration for himself as the rightful candidate to be returned.

3. The present petitioner who is a returned candidate caused his appearance and filed an application under Order VII Rule 11 of CPC seeking rejection of election petition as at the time of filing of election petition, Rs.500/- was not deposited by respondent No.2 as security amount. Therefore, according to the present petitioner as per Rule 7 of Madhya Pradesh Panchayats (Election Petitions, Corrupt Practices and Disqualification of Membership) Rules, 1995, (hereinafter referred as “Rules 1995”) if at the time of presentation of election petition, deposit of Rs.500/- as security amount is not made then as

per Rule 8 of Rules 1995, election petition shall be dismissed by the Specified Officer. Since the election petition was preferred on 10.08.2022 before the Sub-Divisional Officer (SDO), Lahar as Specified Officer but security deposit has not been made before him and the same has been deposited before Tehsildar, Lahar on 10.08.2022, therefore, according to the petitioner it was not a proper presentation of election petition. Said application was rejected by the Court below vide order dated 15.01.2024 (Annexure-P/1) on the ground that security deposit was made before the Tehsildar on the same day under the direction of Specified Officer, therefore, non-compliance of mandatory provision does not appear. Besides that, Court below rejected the application on the ground of *res judicata* also. Against that order petitioner is before this Court.

4. It is the submission of counsel for the petitioner that as per Rule 7 of Rules, 1995, Rs. 500/- as security amount is to be deposited at the time of presentation of election petition and if the amount is not deposited then Rule 8 of Rules, 1995 comes into play which mandates that in case of non-deposition of security amount, election petition shall be dismissed by the Specified Officer. Therefore, authority below caused illegality in not allowing the application under Order VII Rule 11 of CPC preferred by the petitioner and further erred in not rejecting the election petition of the respondent No.2. He relied upon the judgments of Hon'ble Apex Court in the cases of **Charan Lal Sahu vs. Nandkishore Bhatt & Ors. AIR 1973 SC 2464**, **Aeltemesh Rein vs. Chandulal Chandrakar & Others, AIR 1981 SC 1199** and

Sitaram Vs. Radhe Shyam Vishnav and Ors. (2018) 4 SCC 507.

5. Learned counsel for the respondent/State opposed the prayer and supported the impugned order.

6. Respondent No.2 who is election petitioner in the case vehemently opposed the contentions of petitioner. According to him, bare perusal of Rule 7 states that during presentation of election petition, the petitioner therein has to submit a sum of Rs.500/- to the “Specified Officer”. Payment has to be made to the subjective satisfaction of the Specified Officer at the time of presentation of an election petition fulfilling the intent and object of the Rules. When respondent No.2 filed election petition on 10.08.2022, then he was asked to deposit security amount of Rs.500/- before the Tehsildar Lahar and on same day i.e. 10.08.2022, he deposited the security amount of Rs.500/- before Tehsildar Lahar who was acting as Specified Officer and obtained receipt. Therefore, payment of security deposit was made on same day i.e. 10.08.2022. Learned counsel tried to distinguish the judgments relied upon by the petitioner and the law as propounded in the case of **Sitaram (supra)**.

7. He relied upon the judgment of Calcutta High Court in the case of **Biren Ray Vs. Bejayes Mukherjee and Ors. AIR 1958 Cal 320** and judgment of **Smt. Rangoli Rajak Vs. State of M.P. and Ors. AIR 2023 M.P. 130**. According to him, the judgment pronounced in the in the case of **Sitaram (supra)** was in respect of Rule 3 (D) of Rajasthan Municipalities Election Petition Rules, 2009 (hereinafter referred as “Rules 2009”). In the said Rule, it has been mentioned

that election petition shall be accompanied by the treasury challan of Rs.1000/-, which was a specific condition in which treasury challan had to be deposited along with election petition. He also relied upon in the case of **Sarla Tripathi Vs. Kaushilya Devi and Ors. 2004 (2) J LJ 263 (DB)**, **Bina Pandey Vs. Mamta Devi 2012 (II) MPWN 91 (DB)** and **Beena Pandey Vs. Mamta Devi and Ors. ILR (2012) MP 861**, and submits that it is not a condition which is fatal in nature. Courts are of the consistent view that if the security amount is deposited in substance at the time of presentation of election petition then its mode can be different. Therefore, no illegality has been caused in passing the impugned order.

8. Learned counsel for the respondent No.2 also raised the point of *res judicata* as according to him earlier vide order dated 16.01.2023, authority below decided the application filed by the petitioner under Rule 7 and 8 of Rules 1995 and once it is rejected by the same authority then at subsequent stage, second application cannot be preferred as it suffers from vice of *res judicata*.

9. Heard the counsel for the parties at length and perused the documents appended thereto.

10. Petitioner in the present case is the returned candidate of concerned Gram Panchayat and is aggrieved by rejection of his application preferred under Order VII Rule 11 of CPC for dismissal of election petition which was preferred by the respondent No.2. Basis of rejection of election petition as sought by present petitioner is non-compliance of Rule 7 of Rules 1995 by respondent No.2.

Consequences of non-compliance of Rule 7 of Rules 1995 is provided in Rule 8. Therefore, to bring factual and legal clarity, it is apposite to reiterate Rule 7 and 8 of Rules 1995 which are as under:-

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 present case, Sub-Divisional Officer (SDO) Lahar is the Specified Officer therefore, it is to be seen whether respondent No.2 has deposited Rs.500/- as security cost at the time of presentation of election petition before the Specified Officer or not.

14. As per the contentions of counsel for the petitioner as well as respondents, it is not in dispute that respondent No.2 (election petitioner) filed election petition on 10.08.2022 within limitation.

Specified Officer (SDO Lahar) on 10.08.2022 itself prepared a note-sheet in this regard and noted down the necessary particulars. Since, it appears that security amount had to be deposited before the Tehsildar therefore, direction was given by the SDO to respondent No.2 to deposit the security cost Rs.500/- before Tehsildar, Lahar. The said note-sheet dated 10.08.2022 is filed as Annexure/R-2/1. In pursuance thereof, respondent No.2 deposited Rs.500/- on 10.08.2022 itself before the Tehsildar and a note is being endorsed by Tehsildar that said amount is being deposited as security deposit in view of order dated 10.08.2022 given by SDO, Lahar. The said receipt is also part of Annexure/R-2/1. Therefore, it is clear that on 10.08.2022 itself, petitioner filed the election petition and on the same day he deposited the security amount.

15. It is not the case where petitioner caused delay in depositing the security or did not intend to file the security 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. Besides that to ensure cost to be awarded to elected candidate if petition fails, is another reason for prescribing security deposit in election petitions.

16. In the instant case, petitioner relied upon the judgment of Hon'ble Apex Court in the case of **Sitaram (supra)** but it deals in respect of Rule 3(5)(d) of Rules 2009 and said Clause-D of Rule 3(5) of Rule 2009 specifically contemplates that election petition shall be

accompanied by a treasury challan of Rs.1,000/-. In that case, election petition was filed on 09.09.2015 yet it was not accompanied by a treasury challan of Rs.1000/- and said challan 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 amount.

17. Intention of the statute is not that the amount should be deposited and handed over to the Specified Officer but the object is to satisfy the Specified Officer about deposit of the security amount when the election petition is presented. If the Specified Officer is satisfied with the submission of details of deposit made, then certainly Specified Officer can treat that deposit as sufficient compliance of Rule 7 of Rules 1995. Here, Specified Officer was satisfied about the deposit of security amount therefore, he referred the matter to Tehsildar where election petitioner (respondent No.2) had to deposit the security amount. Such act of deposit of security amount before Tehsildar was procedural/ministerial and once substantive compliance is being made then rest was formality. Deposit of security amount is mandatory and the procedure to deposit is directory. In the case of **M. Y. Ghorpade vs Shivaji Rao M. Poal & Ors. (2002) 7 SCC 289**, the Hon'ble Apex Court in Para-5 has given guidance as under:-

Para-5:- Before examining the different decisions of this Court on which the parties have relied upon and looking at the provision of [Section 117](#) of the Act, it is crystal clear to us

that the aforesaid provision requires deposit of Rs. 2,000/- as security for the cost has to be made at the time of presenting an Election Petition. **The object of having aforesaid provision could be to discourage entertaining frivolous Election Petitions and to make provision for cost in favour of the parties who ultimately succeed in the Election Petition.** Sub-section (2) of [Section 117](#) authorises the High Court to call upon an Election Petitioner during the course of the trial of an Election Petition, to give such further security which may be necessary, depending upon the facts and circumstances of the case. **It would, therefore, be apparent that the requirement of making a security deposit of Rs.2,000/- is mandatory and the same has to be made while presenting an Election Petition, but the mode of deposit as well as the person who could make a deposit has to be complied with in accordance with the rules of the High Court in question and, as such has been held to be directory in several decisions of this Court.**

18. Coordinate Bench of this Court in the case of **Beena Pandey (supra)** in almost identical fact situation held that deposit of security

is mandatory and not the mode in which it is deposited. The said order of learned Single bench was challenged before learned Division Bench of this Court and in the same case of **Bina Pandey (supra)**, the Division Bench of this Court affirmed the order passed by the learned Single Judge and held that security amount can be deposited before the Tehsildar under the direction and order of the SDO.

19. Not only this, earlier Division Bench of this Court in the case of **Tika Ram Vs. Darshanlal, 1988 (I) MPWN 192** while dealing in a case where security amount was deposited in the bank and details of said deposit were mentioned in the election petition then the Court has considered that the said deposit is the sufficient compliance for depositing the security amount.

20. That judgment rendered in **Tika Ram (supra)** was later on considered by the Hon'ble Apex Court in the case of **Lalli Patel Vs. State of M.P. and Ors. (2018) 17 SCC 486** and held that such type of compliance has sufficient compliance when election petitioner made a treasury deposit and produced the receipt before the Specified Officer. The coordinate bench in another case in the matter of **Smt. Rangoli Rajak (supra)**, held in similar fashion that compliance of deposit of security amount is sufficient for election petition to be pursued.

21. Even otherwise, if the contentions of present petitioner are accepted then it would constrict the right of election petitioner because generally in Sub-Divisions (unit in revenue department) some times bank facilities are inadequate and/or one revenue officer is

entrusted with the account section therefore, in election petitions such pedantic approach for deposit of security cost would not be in the interest of justice as well as litigating parties.

22. One more aspect deserve consideration is the point of *res judicata*. Earlier petitioner filed an application under Rule 8 of Rules 1995 which was rejected by the Specified Officer vide order dated 16.01.2023, copy of which is part of record. Therefore, under the garb of Order VII Rule 11 of CPC, application is being preferred on same set of facts. Therefore, application suffers from vice of *res judicata* also. However, this Court has already decided the issue in detail in preceding paragraphs on merits therefore, does not intend to delve deeply into this ground.

23. In cumulative analysis, no case for interference is made out. **Petition is hereby dismissed.** Looking to the long pendency of election petition, it is expected that Specified Officer shall conduct the election petition on brisk pace and decide the same at an expeditious note.

(ANAND PATHAK)
JUDGE