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WP-27237-2022

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 25th OF NOVEMBER, 2024WRIT PETITION No. 27237 of 2022*SMT. CHANCHAL GUPTA**Versus**SMT. RAKHI DHALI*

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Appearance:

Shri Rajas Pohankar, learned counsel for the petitioner.

Shri Rahul Rajpoot, learned counsel for the respondent.

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ORDER

1. The petitioner has assailed the order dated 09.11.2022 passed by the Sub Divisional Officer, Revenue, Shahpur District Betul, whereby learned Sub Divisional Officer allowed the application filed under Order 6 Rule 17 of the CPC and permitted the respondent to carry out the amendment in the appeal preferred by the respondent under Section 91 of the *M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993* (hereinafter referred to as 'Act, 1993').

2. The short facts of the case are that the petitioner and the respondent contested for the post of *Panch* for Ward No.16 of Gram Panchayat, Chopana, District-Betul. On 14.07.2022, Returning Officer declared the petitioner as elected and issued a certificate in favour of the petitioner. Being aggrieved by the election of the petitioner, the respondent filed an appeal under Section 91 of the Act, 1993 assailing the certificate dated 14.07.2022 before the Sub Divisional Officer, Shahpur on 21.07.2022. After appearance, petitioner raised an objection regarding the maintainability of the appeal under Section 91 of the Act, 1993 and



consequently, an application was moved on behalf of the respondent on 30.08.2022 under Order 6 Rule 17 of the CPC for correcting the cause title of the appeal by inserting the words 'election petition' in place of 'appeal' and mentioning 'Section 122' in place of 'Section 91 of the Act, 1993' as well as replacing the word 'appellant' by 'petitioner' and 'non-appellant' by 'respondent'. The application was opposed by petitioner on the ground that the proposed amendment will change the nature of the lis and an appeal filed under Section 91 of the Act, 1993 cannot be converted into an election petition under Section 122 of the Act. Learned Sub Divisional Officer by order dated 09.11.2022 allowed the application filed under Order 6 Rule 17 of the CPC considering the explanation given by the respondent that the mistake occurred due to typographical error and inadvertence. Being aggrieved by the order of allowing the application under Order 6 Rule 17 of the CPC by which the permission was granted to convert the appeal filed under Section 91 of the Act, 1993 into an election petition under Section 122 of the Act, 1993, the present petition has been preferred.

3. With the consent of parties, the matter is heard finally for the purpose of final disposal of the petition.

4. Learned counsel for the petitioner submits that an election petition can be filed under Section 122 of the Act, 1993 and in accordance with Rule 3 of *M.P. Panchayat (Election Petitions Corrupt Practices & Disqualification For Membership) Rules 1995*. He further submits that as per Rule 7 of the Rules, 1995 at the time of presentation of election petition, the petitioner is under obligation to deposit a sum of Rs.500/- as security with the specified officer and until and unless amount is deposited, no election petition can be entertained. He further submits that where no security deposit was accompanied with the election



petition, the petition cannot be entertained and same is liable to be dismissed under Rule 8, which provides that if the provisions of Rules 3, 4 or 7 are not complied with, the petition shall be dismissed by the specified officer. It is not in dispute that along with the appeal filed under Section 91 of the Act, 1993, no amount was deposited as security amount and even along with the amendment application, it was not offered by the respondent to deposit the security amount therefore, in the absence of deposition of security amount, no election petition can be entertained and the same was liable to be dismissed according to the Rule 8 of the Rules, 1995. When no amount as security was deposited, the appeal could not be converted into election petition.

5. Similarly, an election petition is required to be verified in accordance with the provisions of Rule 5 (C) of the Rules 1995 which provides that the election petition should be verified in the manner laid down in the Code of Civil Procedure, 1908 and the pleadings should be verified. It is trite law that if an election petition is not duly verified, the same is not maintainable.

6. Learned counsel for the petitioner has drawn attention of this Court towards the original appeal (Annexure P-1), which was filed by the respondents as well as the amended appeal (which was treated as election petition after amendment) (Annexure P-8) and submits that there was no verification at the time of filing the original appeal or even after amendment therefore, the same cannot be treated as valid election petition and is liable to be rejected. He further submits that even no affidavit has been filed in support of the so called election petition in accordance with provisions of Order 6 Rule 15 (4) of the CPC. He further submits that Coordinate Bench in the matter of *Kana Mandal Vs. State of M.P. & Ors. 2010 (2) MPLJ 468* has held that election petition is required to be presented and verified by the election petitioner himself and should be accompanied with the



security amount of Rs.500/-, which ought to have been deposited at the time of presentation and if these rules are not complied with, the election petition is liable to be dismissed. He submits that the order passed by the Sub Divisional Officer is contrary to the provisions of Rules, 1995 and the same is liable to be quashed. The relevant paragraphs of the judgment are as under:

"12. In the instant case since the presentation of election petition was not strictly in accordance with Rule 3 of the Rules 1995 the same was liable to be dismissed in limine.

13. Furthermore, Rule 5 of this Rules 1995 stipulates that:-

"5. Contents of petition - An election petition shall--

(a) contain a concise statement of all material facts on which the petitioner

(b) set forth with sufficient particulars the ground on which the election is called in question;

(c) be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (V of 1908) for the verifications of pleadings.

14. Thus, it is the requirement of Rule 5 (c) that the election petition be signed and verified by the petitioner in the manner laid down in the Civil Procedure Code, 1908 (hereinafter to be referred as Code of 1908) for the verifications of pleading under Order 6, Rule 15 of the Code of 1908 which stipulates that:

"15. Verification of pleadings (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

(4) The persons verifying the pleading shall also furnish an affidavit in support of his pleadings."

15. In this case at hand as is evident from the election petition annexure P/1 that though the same is signed but is not verified as required under Rule 5 (c) read with the Code of 1908.

16. Regarding contention that, the election petition was not accompanied by requisite security. It is observed that the amount of Rs. 500/- was deposited with Tehsildar on 8.2.2010 with Tehsildar Amarpatan.

Rule 7 stipulates:

"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 candidates is called in question, separate deposit of an equivalent amount shall be required in respect of each returned candidates."

17. The provisions has been held to be mandatory by Division Bench of this Court in *Sarla Tripathi (Smt) v. Smt. Kaushliya Devi and others*, (2004) 2 JLJ 263 wherein it was observed by their Lordships:

"8. In the present case it is not disputed that the amount was not deposited at the time of presentation of the petition but later on. In some what similar situation, a Division Bench of this Court in *Babulal v. State of M.P. (supra)* has observed that the expression "shall deposit" and the penalty of failure prescribed in Rule 8 clearly spell out that the provisions of Rule 7 is mandatory and the requirement of making the deposit of security amount is along with the petition as clear from the expression "at the time of presentation of an election petition." Para 10.01 of the report containing the said observations read under:

"10.01. On a plain reading of Rule 7 the requirement of making the deposit of security amount is along with the petition. The expression: "At the time of presentation of an election petition" in Rule 7 is very significant. Thus the requirement of deposit of security amount along with the petition is an essential link in the chain of presentation of the petition. Therefore, if this link is missing, there is no valid presentation of the petition. The tribunal has a jurisdiction only when there is a validly presented petition before it."

7 . *Per contra*, learned counsel appearing on behalf of respondents supported the order passed by the Sub Divisional Officer on the ground that the election of petitioner was duly challenged by the respondent by preferring a petition but due to typographical error or inadvertently the same was drafted as an appeal and a wrong provision was mentioned in the appeal. He further submits that if a petition is filed mentioning wrong provisions, the same may be corrected at any time during the pendency of the petition and when it was came to the knowledge of the election petitioner (respondent) that wrong provision has been mentioned, the amendment application was filed, which was duly allowed by the Sub Divisional Officer and the Sub Divisional Officer has not committed any error



in allowing the application.

8. Heard arguments of the counsel for the parties and perused the documents available on record.

9. An election can only be challenged in an election petition and election petition can be filed in accordance with Rules, 1995. In the present matter, the result of the election was challenged by the respondents by filing an appeal under Section 91 of the Act, 1993, however, later on, it is submitted that due to typographical error and inadvertently wrong provisions were mentioned and the same be treated as election petition. At the time of deciding the application filed under Order 6 Rule 17 of the CPC for amendment, the Sub Divisional Officer was under obligation to consider the provisions of Rules, 1995 and examine the same whether an appeal filed under Section 91 of the Act, 1993 can be converted into an election petition under Section 122 of the Act. The nature of the appeal cannot be changed into an election petition by simply mentioning the correct provisions. As per Rule 5 of the Rules, 1995, the pleadings are required to be verified in the manner laid down in the Code of Civil Procedure, 1908, whereas no verification was there in the appeal memo and therefore, even by allowing the amendment, the appeal could not be converted into a valid election petition. When the facts are not verified by affidavit, the petition cannot be treated as election petition. Similarly, the amount of security was not deposited by the respondent as per Rule 7 and therefore, the petition cannot be entertained and is liable to be rejected under Rule 8.

10. An application for amendment cannot be allowed to convert an appeal into election petition, if the compliance of mandatory provisions of Rules, 1995 are not established. Election petition is required to be filed strictly as per the provisions of Rules, 1995 and by allowing an application for amendment an appeal which was not filed in compliance of the provisions of Rules, 1995 cannot be permitted to



convert into election petition.

11. Considering the above provisions of law and the law laid down by the Coordinate Bench in the case of *Kana Mandal (supra)*, the order dated 09.011.2022 passed by the Sub Divisional Officer allowing the application under Order 6 Rule 17 of the CPC is liable to be set aside and consequently is hereby set aside.

12. The petition is allowed. There shall be no order as to costs.

(VINAY SARAF)
JUDGE

P/-