

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1092 of 2015

- Smt. Hema Bai Sahu @ Smt. Hima Sahu W/o Janak Lal Sahu @ Doman Lal Sahu Aged About 37 Years R/o Village- Chikhali, Ward No. 3, post- Jevra Sirsa, Tahsil And Distt. Durg (C.G.)

---- Petitioner

Versus

1. State Of Chhattisgarh Through- The Secretary, Panchayat Department, Mahanadi Bhawan, Naya Raipur, Distt. Raipur (Chhattisgarh)
2. Director Directorate Of Panchayat, Indravati Bhawan, Naya Raipur, Distt. Raipur (Chhattisgarh)
3. Collector Durg, Collectorate, Durg (Chhattisgarh)
4. Returning Officer District Panchayat, Election Ward No. 5, Durg, District Durg (Chhattisgarh)
5. Smt. Dheeraja Banjare W/o Vijay Kumar Banjare Aged About 45 Years R/o Village- Bodhegaon, Ward No. 13, Post- Nankatthi, Distt. Durg (Chhattisgarh)
6. Smt. Vidya Sharma W/o Hirendra Kumar Sharma Aged About 45 Years R/o Village- Chikhali, Post- Jevra Sirsa, Tahsil And District- Durg (Chhattisgarh)
7. Smt. Renu Deshmukh W/o Kaushal Prasad Deshmukh Aged About 44 Years R/o Village- Funda, Post- Bori, Tahsil- Dhamdha, Distt. Durg (Chhattisgarh)

---- Respondent

For Petitioner	Mr. Kishore Bhaduri, Advocate
For Respondent/State	Mr. Majid Ali, Panel Lawyer
For Respondent No.7	Mr. Sunil Otwani, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

5/11/2015

Heard finally with the consent of learned counsel for the parties.

(2) The petitioner is an elected member from constituency No.5 of Zila Panchayat, Durg. Her election has been challenged by respondent No.7 by preferring an election petition before the Director (Panchayat) under Section 122 of the Panchayat Raj Adhiniyam, 1993.

(3) On receipt of notice from the Election Tribunal, the petitioner raised an objection to the maintainability of the election petition, on submission that there is non-compliance of mandatory provisions contained under Rules 3(2) of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices & Disqualification for Membership) Rules, 1995 (in short "the Rules, 1995"), inasmuch as, copies supplied to her did not carry the attestation and signature of the election petitioner in the manner required in the law. Respondent No.7 contested the said application on submission that the above said Rule has been duly complied with.

(4) Mr. Sunil Otvani, learned counsel for respondent No.7, would submit that the copies submitted along with the election petition, for affecting service on the non-applicants before the Election Tribunal, carried the signature of the Election Petitioner. Placing reliance on the law laid down by the Supreme Court in the matter of **Ch. Subbarao vs. Member, Election Tribunal, Hyderabad and others**, ¹, **Dr. Anup Singh v. (1) Abdul Ghani and others (2) Shri Lachman Singh MLA**², **M. Kamalam vs. Dr. V.A. Syed Mohammad**, ³, **Ravindra Singh vs. Sub Divisional Officer-cum-Prescribed Authority Datia and others**, ⁴ and **G. M. Siddeshwar vs. Prasanna Kumar**⁵, it is contended that a

1 AIR 1964 SC 1027

2 AIR 1965 SC 815

3 AIR 1978 SC 840

4 2006 (3) M.P.H.T. 150

5 2013 AIR SCW 1777

copy of the election petition served on the petitioner, which has been filed as Anneuxre P/3 in the writ petition, would demonstrate that all the pages were signed by respondent No.7, therefore, even if the words “attested” or “true copy attested” are not written over the signature of respondent No.7, the same would not amount to non-compliance of the mandatory provisions contained in Rule 3(2) of the Rules, 1995.

(6) Mr. Bhaduri, learned counsel for the petitioner, would rely on a Single Bench decision of the M.P. High Court in the matter of **Dr. Omprakash Soni vs. Ashok Kumar Bhargava and others** ⁶, to argue that Rule 3(2) is mandatory and when attestation is not made by the election petitioner, it has to be dismissed in *limine*.

(7) The Constitutional Bench judgment, in the matter of **Dr. Anup Singh (supra)**, has considered precisely the same issue where the copies of the election petition were signed by the election petitioner but the words “true copy” were not mentioned over the signature. In that case, under the provision of the Representation of the People Act, 1951, the Supreme Court considered the *pari materia* provisions of Section 90(3) and 81(2) of the Representation of the People Act, 1951 to hold that the election petitioner having signed on every page of the copy is deemed to have complied with the mandatory provisions even if the words “true copy” are not written above the signature. It is held therein that by putting signature on every page of the copy, the election petitioner has owned responsibility of the contents of the election petition and thus, there is substantial compliance of mandatory provisions.

(8) In the matter of **Dr. Omprakash Soni (Supra)**, the M.P. High

6 AIR 1996 M.P. 43

Court was faced with a situation where the copy of the election petition was not signed by the election petitioner but the same was attested by the lawyer. Thus, there was non compliance of the mandatory provision and in the said fact situation, it was held that the election petition suffers from fatal defects.

(9) In the facts and circumstances of the present case, the law laid down by the Constitutional Bench of the Supreme Court in the matter of **Dr. Anup Singh (Supra)** squarely applies and the Election Tribunal has not committed any illegality while rejecting the petitioner's objection.

(10) Accordingly, the writ petition stands dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

Shyna

Headlines

WPC No.1092 of 2015

Copies of Election Petition signed by petitioner but word true copy not mentioned. Not a fatal defect. There is substantial compliance of Rule 3(2).