

HIGH COURT OF CHHATTISGARH, BILASPUR
WPC No.390 of 2017

Rajesh Kumar Tiwari S/o Omprakash Tiwari Aged About 42 Years R/o Village-Chapda, Post- Baijnathpur, Tahsil & Police Station- Odgi, District-Surajpur, Chhattisgarh (Elected Janpad Member Of Constituency No. 9)

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Versus

1. Shivbalak Ram Yadav S/o Shri Ramdulare Yadav Caste- Ahir, R/o Inderpur, Police Station & Tahsil- Odgi, District- Surajpur, Chhattisgarh (Election Petitioner)
2. Ajay Kumar Gupta S/o Chhandu R/o Village Dhoor, Post- Odgi, Police Station & Tahsil- Odgi, District- Surajpur, Chhattisgarh
3. Chitrakut Dubey S/o Vishwanath Dubey R/o Village- Inderpur, Post, Police Station & Tahsil- Odgi, District- Surajpur, Chhattisgarh
4. Naresh Kumar Jaiswal S/o Shyamdev Jaiswal R/o Village- Dhoor, Post, Police Station & Tahsil- Odgi, District- Surajpur, Chhattisgarh
5. Motilal Sarthi S/o Shivkumar R/o Village- Dhoor, Post, Police Station & Tahsil-Odgi, District- Surajpur, Chhattisgarh
6. Rampal Yadav S/o Subran Yadav R/o Village- Inderpur, Post, Police Station & Tahsil- Odgi, District- Surajpur, Chhattisgarh
7. Rammanohar Yadav S/o Jagdish R/o Village- Inderpur, Post, Police Station & Tahsil- Odgi, District- Surajpur, Chhattisgarh
8. Vijay Kumar Gupta S/o Devnarayan Gupta R/o Village- Chapda, Post- Baijnathpur, Police Station & Tahsil- Odgi, District- Surajpur, Chhattisgarh
9. Shivcharan Rajwade S/o Mangluram R/o Village Inderpur, Post, Police Station & Tahsil-Odgi, District- Surajpur, Chhattisgarh
10. Shivmangal Kurre S/o Tejoram R/o Village- Chapda, Post- Baijnathpur, Police Station & Tahsil- Odgi, District- Surajpur, Chhattisgarh
11. Sanjay Yadav S/o Ayodhya Prasad Yadav, R/o Village Girjapur, Post Odgi, Police Station & Tahsil Odgi, District Surajpur (Chhattisgarh)
12. Santosh Singh, S/o Shriniwas, R/o Village Odgi, Post, Police Station & Tahsil Odgi, District Surajpur (Chhattisgarh)
13. Sandeep Kumar Singh S/o Ramchandra Singh, R/o Village Inderpur, Post, Police Station & Tahsil Odgi, District Surajpur (Chhattisgarh)
14. Omkar Prasad Mishra, Returning Officer (Panchayat)/Naib Tahsildar, Odgi, District Surajpur (Chhattisgarh)
15. Likhanram Painkra, Lecturer, Presiding Officer, Booth No. 55, Through Block Education Officer, Pratappur, District Surajpur (Chhattisgarh)
16. Bodhanram, Assistant Grade- 2, Polling Officer, Booth No. 55, Through Block Education Officer, Pratappur, District

Surajpur (Chhattisgarh)

- 17.** Kameshwar Prasad Singh, Teacher (Panchayat), Polling Officer, Booth No. 55, Through Block Education Officer, Pratappur, District Surajpur (Chhattisgarh)
- 18.** Dharamjeet Ram, Assistant Teacher (Panchayat), Polling Officer, Booth No. 55, Through Block Education Officer, Pratappur, District Surajpur (Chhattisgarh)
- 19.** Ramjeetram, Lecturer (Panchayat), Presiding Officer, Booth No. 56, Through Block Education Officer, Pratappur, District Surajpur (Chhattisgarh)
- 20.** Alekcious Kujur, Teacher (Panchayat), Polling Officer, Booth No. 56, Through Block Education Officer, Pratappur, District Surajpur (Chhattisgarh)
- 21.** Ranjeet Dubey, Assistant Teacher (Panchayat), Polling Officer, Booth No. 56, Through Block Education Officer, Pratappur, District Surajpur (Chhattisgarh)
- 22.** Dilip Kumar Painkra, Assistant Teacher (Panchayat), Polling Officer, Booth No. 56, Through Block Education Officer, Pratappur, District Surajpur (Chhattisgarh)
- 23.** Laxmikumar Nishad, Lecturer (Panchayat), Presiding Officer, Booth No. 57, Through Block Education Officer, Pratappur, District Surajpur (Chhattisgarh)
- 24.** Parasram, Teacher (Panchayat), Polling Officer, Booth No. 57, Through Block Education Officer, Pratappur, District Surajpur (Chhattisgarh)
- 25.** Mohan Singh, Assistant Teacher (Panchayat), Polling Officer, Booth No. 57, Through Block Education Officer, Surajpur, District Surajpur (Chhattisgarh)
- 26.** Komalkant Singh, Assistant Teacher (Panchayat), Polling Officer, Booth No. 57, Through Block Education Officer, Pratappur, District Surajpur (Chhattisgarh)
- 27.** Bundram Sidar, Headmaster Primary School, Paslihapara Bhaiyathan, Presiding Officer, Booth No. 87, District Surajpur (Chhattisgarh)
- 28.** Rajesh Kumar Kushwaha, Teacher (Panchayat), Middle School, Barpara, Polling Officer, Booth No. 87, Through Block Education Officer, Bhaiyathan, District Surajpur (Chhattisgarh)
- 29.** Parmeshwar Ram, Assistant Teacher (Panchayat), Polling Officer, Booth No. 87, Through Block Education Officer, Pratappur, District Surajpur (Chhattisgarh)
- 30.** Ramnarayan Singh, Assistant Teacher (Panchayat), Middle School, Satyanagar, Polling Officer, Booth No. 87, Through Block Education Officer, Bhaiyathan, District Surajpur (Chhattisgarh)
- 31.** Pradeep Tiwari, Upper Division Teacher, Middle School, Bhanwrahi, Bhaiyathan, Presiding Officer, Booth No. 88, District Surajpur (Chhattisgarh)
- 32.** Ramashankar Patel, Teacher (Panchayat), Middle School, Sonpur, Polling Officer, Booth No. 88, Through Block Education Officer, Bhaiyathan, District Surajpur (Chhattisgarh)

33. Krishamohan Gupta, Assistant Teacher (Panchayat), Primary School, Bundiya, Polling Officer, Booth No. 88, District Surajpur (Chhattisgarh)
34. Brijesh Pandey, Assistant Teacher (Panchayat), Primary School, Mohli, Polling Officer, Booth No. 88, District Surajpur (Chhattisgarh)
35. Rameshwar Prasad Nagen, Headmaster, Presiding Officer, Booth No. 106, Through Block Education Officer, Pratappur, District Surajpur (Chhattisgarh)
36. Jayesh Pathak, Lecturer (Panchayat), Higher Secondary School Batra, Polling Officer, Booth No. 106, District Surajpur (Chhattisgarh)
37. Pradeep Kumar Singh, Assistant Teacher (Panchayat), Primary School, Pandopara, Tarka, Polling Officer, Booth No. 106, Through Block Education Officer, Bhaiyathan, District Surajpur (Chhattisgarh)
38. Devendranath Dubey, Assistant Teacher (Panchayat), Primary School, Khadapara, Polling Officer, Booth No. 106, Through Block Education Officer, Bhaiyathan, District Surajpur (Chhattisgarh)
39. Arun Kumar Pandey, Presiding Officer, Booth No. 89, Through Block Education Officer, Odgi, District Surajpur (Chhattisgarh)
40. Ramkumar Singh, Polling Officer, Booth No. 89, Through Block Education Officer, Odgi, District Surajpur (Chhattisgarh)
41. Bechanram Kushwaha, Polling Officer, Booth No. 89, Through Block Education Officer, Odgi, District Surajpur (Chhattisgarh)
42. Dharam Singh, Polling Officer, Booth No. 89, Through Block Education Officer, Odgi, District Surajpur (Chhattisgarh)
43. O.P. Singh, Sub Divisional Officer (Revenue), Pratappur, District Surajpur (Chhattisgarh)
44. B.R. Bhagat, Chief Executive Officer, Janpad Panchayat, Odgi, District Surajpur (Chhattisgarh)
45. M.L. Dhritlahre, Additional Collector, Surajpur, District Surajpur (Chhattisgarh)
46. The Collector, Surajpur (Election Tribunal), District Surajpur (Chhattisgarh)

---- Respondents

For Petitioner	:	Mr.Rahul Mishra, Advocate
For Respondent No.1	:	Mr.Surfaraj Khan, Advocate
For State	:	Mr.Aditya Sharma, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

1/8/2017

1. The petitioner was declared elected as a member of Janpad

Panchayat, Odgi, District Surajpur (Region No.9) in the election held on 4/7.2.2015. Respondent No.1 herein filed the election petition under Section 122 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (hereinafter called as 'Act of 1993') and deposited ₹ 50 along with election petition through challan, in which the present petitioner filed an application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the election petition on the ground that respondent No.1/election petitioner has not deposited the security amount of ₹ 500/- along with the election petition as per Rule 7 of the Chhattisgarh Panchayats (Election Petition, Corrupt Practices and Disqualification for Membership) Rules, 1995 (hereinafter called as 'Rules of 1995'), which was replied by respondent No.1 herein that he has deposited the required security amount of ₹ 50/- through challan, therefore, application is liable to be rejected. The Specified Officer/Collector, Surajpur rejected the application filed by the petitioner under Order 7 Rule 11 of the CPC, against which, this writ petition has been filed.

2. Mr.Rahul Mishra, learned counsel appearing for the petitioner, would submit that deposit of ₹ 500/- as a security in compliance of Rule 7 of the Rules of 1995 is mandatory as Rule 8 of the Rules of 1995 clearly provides that if the provisions of Rule 3, 4 and 7 have not been complied with, the petition shall be dismissed by the Specified Officers, therefore, the order passed by the Specified Officer deserves

to be set aside.

3. Mr.Sarfaraz Khan, learned counsel appearing for respondent No.1, would submit that the Chhattisgarh Panchayat Nirvachan Yachika Pratibhuti Nikshep (Vidhimanyakaran) Adhiniyam, 1996 (hereinafter called as 'Act of 1996') was passed and amount of security in Rule 3 of the Act of 1996 has been reduced to ₹ 50/- in place of ₹ 250/- relying upon the judgment of the Madhya Pradesh in the matter of **Loknath Singh S/o Ramlal Singh Vs. Kedar Singh S/o Ranchor Singh and others**¹ and as such, the order passed by the Specified Officer deserves to be maintained.
4. Mr.Rahul Mishra would submit in rejoinder that the Act of 1996 is applicable to the Rules of 1991 and this would not be applicable so far as the Rules of 1995 is concerned.
5. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
6. From perusal of the pleadings of the respective parties and the order sheets of the Specified Officer, it is evident and clear that respondent No.1/election petitioner has only deposited ₹ 50/- as security deposit in place of ₹ 500/-.
7. Election under the Act of 1993 can be called into question only by filing election petition under Section 122 which reads as under:

¹ 1998 (2) M.P.L.J. 601

“122. Election petition.--(1) An election [xxx] 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 Zila Panchayat to *[Director, Panchayat] and not otherwise.

*Subs. By C.G. Act No. 8 of 2003, for "the Divisional Commissioner".

(2). No such petition shall be admitted unless it is presented within thirty days from the date on which the election [xxx] in question was notified.

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

8. In the exercise of powers, conferred by Sub-section (1) of Section 95 read with Sub-sections (1) & (3) of Section 122 of the Act of 1993, the State Government has framed 'Madhya Pradesh Panchayats (Election Petition, Corrupt Practices and Disqualification for Membership) Rules, 1995. Relevant rules for the present purpose are reproduced as under:

“3. Presentation of election petition.-- (1) An Election Petition shall be presented to the specified Officer during the office hours by the person making the petition, or by a person authorized in writing in this behalf by the person making the petition.

(2) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

“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 candidate.

“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.”

9. In the matter of Babulal Kaluram Kirar and another Vs.

State of M.P. and others², the Division Bench of M.P. High Court, referring to pari materia provisions contained in the Representation of the People Act, 1951 (for short 'Act of 1951') and provisions contained in Rules 3, 4, 7 & 8 of the Rules of 1995, has held that provisions of Rule 7 is mandatory and even if no objection is raised about the non-compliance of Rule 7 of the Election Rules, it is incumbent on the Tribunal to dismiss the petition on being satisfied about the non-compliance of the Rule. It has no jurisdiction to proceed with its trial.

10. In the matter of Uday Singh Vs. Himmat Singh and

others³ also, the High Court of M.P. referring to the judgment of Babulal v. State of M.P., has held that provisions of Rules 7 & 8 of the Rules 1995 are mandatory. Where security amount is not deposited alongwith election petition, such petition is liable to be dismissed summarily. Similar view is expressed in **Amarsingh Vs. Sub-Divisional Officer, Khilchipura**⁴ also and it was held that where the deposit of security for costs

2 1985 MPLJ 411

3 1999 (1) JLJ 200

4 1997 (2) MPLJ 192

not made in compliance of mandatory provision of Rule 7, election petition suffered from fatal defect under Rule 7 and the Sub-Divisional Officer has no option than to dismiss the petition.

11. The Hon'ble Supreme Court in the matter of **Charan Lal Sahu Vs. Nandkishore**⁵, while dealing with the non-compliance of Section 117 of the Act of 1951, has held that non-deposit of security amount alongwith election petition as required by the Section 117 by the petitioner, the High Court has no option but to reject the petition.

12. Similar view has been taken in the matter of **Aeltemesh Rein Vs. Chandulal**⁶ and it has been held that non-compliance of Section 117 leads to dismissal of the election petition by virtue of Section 86(1) of the Act of 1951.

13. In view of the aforesaid provisions of law especially Rule 7 of the Rules of 1995 and decisions of the Supreme Court and the High Court of Madhya Pradesh, it is quite vivid that there is total non-compliance of Rule 7 of the Rules of 1995 by respondent No.1 as no security amount of ₹ 500/- was deposited by respondent No.1 at the time of filing the election petition and only ₹ 50/- was deposited against the security deposit of ₹ 500/-. Rule 7 of the Rules of 1995 is mandatory in nature and consequence has been provided in Rule 8 directing dismissal of election petition.

5 AIR 1973 SC 2464

6 AIR 1981 SC 1199

- 14.** At this stage, it would be appropriate to consider the effect of the Act of 1996 that was published in the Chhattisgarh Gazette on 17.4.1996. Rule 3 and 4 of the Act of 1996 states as under:-

“3. Amendment of Rules, 1991. In the Madhya Pradesh Panchayats (Election Corrupt Practices and Disqualification for Membership) Rules, 1991 in rule 7, for the words “rupees two hundred and fifty” the words “rupees fifty” shall be substituted and shall be deemed to have been substituted with effect from the 25th January, 1994.

4. Validation.-Notwithstanding any Judgment, decree or order of any court or authority any amount deposited as security under rule 7 of the Madhya Pradesh Panchayats (Election Petitions Corrupt Practices and Disqualification for Membership) Rules, 1991 during the period commencing from the 25th January, 1994 and ending on the 3rd June, 1995 shall be deemed to have been validly deposited in accordance with the aforesaid rules and shall not be called in question in any court on the ground merely that security deposit as prescribed has not been paid and accordingly :-

(i) no petition or other proceedings challenged on the ground merely that the security deposit as prescribed has not been paid, shall be maintained or continued in any court;

(ii) where any petition or other proceeding has been dismissed before the commencement of this Act on the ground that necessary amount of security deposit was not paid, it shall be restored and continued as if the provisions of this Act had been in force at all material times when such petition was filed.”

- 15.** A careful perusal of the aforesaid provision would show that Validation Act was brought into force to validate the election petition filed from 25th January, 1994 to 3rd June, 1995 along with security deposit of ₹ 50/- only and the Rules of 1991 was amended by the Act of 1996 by reducing the

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security deposit of ₹ 250/- to ₹ 50/- for the period 25.1.1994 to 3.6.1995 making the election petition competent. It has no application to the Rules of 1996 and that too the election held on 4/7.2.2015, therefore, respondent No.1 was required to deposit ₹ 500/- as security amount at the time of filing the election petition before the Specified Officer, which was not deposited and only ₹ 50/- was deposited and as such, there is no duly constituted election petition in accordance with the Rules of 1995, which entails dismissal of election petition.

16. As a fall out and consequence of the aforesaid discussion, the impugned order passed by the Specified Officer rejecting the application is set aside and application filed by the petitioner under Order 7 Rule 11 of the CPC is hereby allowed and consequent thereto, the election petition filed by respondent No.1 is hereby dismissed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-