

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (227) No.697 of 2015**

Smt. Hirmati Virte W/o Shri Ramvichar Virte, Aged about 43 years, R/o Village Barahnagar, P.S.-Ramchandrapur, Tahsil-Ramanujganj, Janpad Panchayat-Ramchandrapur, Distt.-Balrampur-Ramanujganj, Civil Distt.-Surguja (CG)

---- Petitioner**Versus**

1. Smt. Foolkunwar Maravi W/o Shri Bhagwat Singh Maravi, aged about 45 years, R/o Village Barahnagr, P.S.-Ramchandrapur, Tahsil-Ramanujganj, Janpad Panchayat-Ramchandrapur, Distt.-Balrampur-Ramanujganj, Civil Distt.-Surguja (CG)
2. Election Officer Janpad Panchayat Ramchandrapur, Distt.-Balrampur-Ramanujganj, Civil Distt.-Surguja (CG)

---- Respondents

For Petitioner	:	Mr.Bhupendra Singh, Advocate
For Respondent No.1	:	Ms Neha Verma, Advocate
For State	:	Mr. Dhiraj Wankhede, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****13/02/2017**

1. Invoking jurisdiction of this Court under Article 227 of the Constitution of India, the petitioner herein, who is returned candidate for the post of Sarpanch of Gram Panchayat Barahnagar, Tahsil Ramanujganj, Distt.Balrampur-Ramanujganj, has filed this writ petition calling in question the legality, validity and correctness of the order dated 22.7.2015 (Annexure P/1) by which the Specified Officer has rejected the application filed by the petitioner under Order 7 Rule 11 of the Code of Civil Procedure for dismissal of the

election petition.

2. The petitioner was declared elected as Sarpanch of Gram Panchayat Barahnagar on 12.3.2015. Defeated candidate respondent No.1 herein filed the election petition under Section 122 of the Chhattisgarh Raj Adhiniyam, 1993 read with the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (hereinafter called as 'Rules of 1995') claiming that the election of the present petitioner be declared void as the petitioner herein is a candidate belonging to the unreserved General Category, whereas post of Sarpanch was reserved for Scheduled Tribe. In the said election petition, the present petitioner filed an application under Order 7 Rule 11 of the CPC stating inter-alia that the election petition has not been properly attested as required under Section 3 (2) of the Rules of 1995 and other mandatory provisions of the Rules of 1995 have not been followed, therefore, the election petition deserves to be dismissed, which was duly replied by respondent No.1 herein. Learned Specified Officer by order dated 22.7.2015 rejected the application and fixed the case for written statement, against which, the petitioner has filed this writ petition under Article 227 of the Constitution of India.
3. Mr.Bhupendra Singh, learned counsel appearing for the petitioner, would submit that there is total non-compliance

of Rule 3 (2) of the Rules of 1995 and Rule 3 is mandatory by virtue of the provisions contained in Rule 8 of the Rules of 1995, therefore, the impugned order deserves to be set aside.

4. On the other hand, Ms Neha Verma, learned counsel appearing for respondent No.1, would submit that the Rules of 1995 have been complied with substantially and as such, the writ petition deserves to be dismissed.
5. Mr.Dhiraj Wankhede, learned Government Advocate appearing for the State, has produced the record.
6. I have heard learned counsel appearing for the parties, considered their rival submissions made herein and also gone through the record with utmost circumspection.
7. Rule 3 of the Rules of 1995 states 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 authorised 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.”

Consequence of non-compliance of the Rules of 1995 has been provided in Rule 8 which states as under:-

“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.”

8. From perusal of Rule 3 (1) of the Rules of 1995, it is clear that the election petition shall be presented by the person making the petition or by a person authorised in writing in this behalf by the person making the petition. Rule 3(2) provides that 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. Rule 8 of the Rules of 1995 provides that if the provision of rule 3 or rule 4 or rule 7 have not been complied with, the petition, shall be dismissed by the specified officers and as such, Rule 3(2) of the Rules of 1995 is mandatory in nature.
9. It is well settled law that when consequence of nullification on failure to comply with a prescribed requirement is provided by statute itself there can be no manner of doubt that such statutory requirement must be interpreted as mandatory (See **Rajsekhar Gogai Vs. State of Assam and others**¹).
10. In the matter of **Sharif-ud-din Vs. Abdul Gano Lone**² the

1 (2001) 6 SCC 46

2 AIR 1980 SC 303

Supreme Court has pointed out distinction between mandatory and directory rule and held that the difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter, substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow. Test to determine whether a provision is directory or mandatory pointed out. In reference to Section 89 (3) and 94 of the Jammu & Kashmir Representative Act it has been held that requirement that copy of election petition for respondent should be attested by petitioner is mandatory and for non-compliance of mandatory provision, election petition must be dismissed.

11. In the matter of **Baru Ram Vs. Smt. Parsanni and others**³ Justice Gajendragadkar delivering the judgment for Supreme Court observed as under:-

“Whenever a statute requires a particular act to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to accept the argument that the failure to comply with the said requirement

³ AIR 1959 SC 93

should lead to any other consequence.”

12. The High Court of Madhya Pradesh in the matter of **Shivdhari Laakheswar Chamar Vs. Jaduman Bishwanath Kumar and others**⁴, has held that requirement of Rule 3 (2) of the Rules of 1995 are mandatory in nature and non-compliance thereof will result in dismissal of the election petition. It was held as under:-

“12. In view of the admitted position of the fact that the election petition was not accompanied by such number of certified copies of the election petition as there were respondents, which is a mandatory requirement the same cannot be treated to have been validly presented as per the requirement of Rule 3.”

13. The provision of Rule 3(2) of the Rules of 1995 is similar to Section 81 of the Representation of the People Act, 1951.
14. The Constitution Bench of the Supreme Court in the matter of **Ch. Subbarao Vs. Member Election Tribunal, Hyderabad and others**⁵ has held that copy of election petition has to be attested by the petitioner under his own signature and this is mandatory compliance. It was held as under:-

“12. Though the learned counsel for the appellant made several submissions, we propose to deal with only one, as the same is sufficient for the disposal of this appeal. This was that in the circumstances of the case there had been a substantial compliance with the requirements of Section 81(3). Before, however,

⁴ 1999 (1) MPLJ 291

⁵ AIR 1964 SC 1027

dealing with it, it will be convenient to refer to some of the submissions made to us by the learned Solicitor-General appearing for the contesting respondents. He submitted to us certain propositions which however we consider really unexceptionable. He said that an election petition was not to be equated to an action at law or in equity, but that as the rights were purely the creature of statute, if the statute rendered any particular requirement mandatory, the courts possessed and could exercise no dispensing power to waive non-compliance. We consider these propositions are sound and it is in the light of these basic positions that we shall proceed to consider whether the omission to add the words "true copy" in the copies which were admittedly exact copies of the petition, constituted a non-compliance with Section 81 (3) as to render the petition liable to be rejected under Section 90(3) of the Act."

15. Thus, Rule 3(2) of the Rules of 1995 is mandatory in nature and if the provisions of Rule 3(2) has not been complied with, the election petition is liable to be dismissed.
16. A careful perusal of copy of the election petition would show that the election petitioner has not signed on each page of the election petition and even documents annexed with the election petition have not been signed by him and the petitioner has only signed on the end of the election petition before and after verification of the election petition. Original record of the election petition also does not contain the signature of the election petitioner on each page, which was called for perusal by this Court. Thus, the said election petition is directly in conflict with Rule 3(2) of the Rules of 1995 as the petitioner has not attested the election petition

under his own signature to be a true copy of the petition, therefore, Rule 8 of the Rules of 1995 is attracted and consequence is the election petition is liable to be dismissed invoking Order 7 Rule 11 of the CPC read with Rule 8 of the Rules of 1995 and as such, the Specified Officer is absolutely unjustified in rejecting the application under Order 7 Rule 11 of the CPC.

17. For the foregoing reasons, the writ petition is allowed and the impugned order dated 22.7.2015 (Annexure P/1) passed by the Specified Officer/Sub Divisional Officer (R.), Ramanujganj is hereby quashed and consequent thereto, the election petition filed by respondent No.1 herein before the Specified Officer stands dismissed. No order as to cost(s).

Sd/-
(Sanjay K.Agrawal)
Judge

B/-