

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**W.P.(C) No. 127 of 2021**

Jagmohan Chauhan, S/o. Pirtee Ram Chauhan, Aged About 25 Years,
R/o. Village- Ganekera, Development Block- Basna, Police Station And
Tahsil- Basana, District- Mahasamund, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through Secretary, Panchayat And Welfare Department, Mahanadi Bhawan, Mantralaya, New Raipur, Atal Nagar, District- Raipur, Chhattisgarh
2. The Collector, Mahasamund, District- Mahasamund, Chhattisgarh
3. Sub Divisional Officer (Revenue) And Prescribed Authority Saraipali, District- Mahasamund, Chhattisgarh
4. Office Of Tahsildar Saraipali, Tahsil- Saraipali, District- Mahasamund, Chhattisgarh
5. Anusuiya Chauhan, W/o. Kirti Chauhan, Aged About 31 Years, R/o. Village- Nawagaon, Development, Block- Basana, P.S. And Tahsil- Basana, District- Mahasamund, Chhattisgarh
6. Mahabir Chauhan, S/o. Shri Chamaar Singh Chauhan, Aged About 39 Years, R/o. Village- Ganekera, Development Block- Basna, Police Station And Tahsil- Basana, District- Mahasamund, Chhattisgarh
7. Parasahu Ram Chauhan, S/o. Shaiddo Chauhan, Aged About 33 Years, R/o. Village- Ganekera, Development Block- Basna, Police Station And Tahsil- Basana, District- Mahasamund, Chhattisgarh
8. Prakash Kumar Mishra, Presiding Officer In The Election, High Class Teacher, Govt. Higher Secondary School, Ghatakchhar, Tahsil- Saraipali, District- Mahasamund, Chhattisgarh
9. Office Of The Returning Officer / Election Officer (Panchayat) Mahasamund, Block And Tahsil Mahasamund, District- Mahasamund, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Siddharth Dubey, Advocate
For State/Respondents No.1 to 4	:	Mr. Sudeep Agrawal, Dy. A.G.
For Respondent No.5	:	Mr. Kishore Narayan, Advocate
For Respondent No.8.	:	Mr. Raghavendra Pradhan, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****07.09.2021**

Heard

1. Challenge in this petition is to the order dated 29.10.2020 whereby the election petition preferred under Section 122 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (*hereinafter referred to as "the Adhiniyam, 1993"*) has been rejected accepting the ground raised by way of preliminary objection.
2. It is submitted that against the selection of the Sarpanch of respondent No.5, the petitioner who was also contesting candidate filed an election petition under Section 122 of the Adhiniyam, 1993. During such proceeding before the S.D.O., who is competent authority, an objection was preferred by Annexure P-4 that the election petition is not maintainable on different grounds. Predominant ground was projected that the copy of election petition which was supplied the endorsement with the word "attested and true copy" was not scribed which is required under Rule 3(2) of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices & Disqualification For Membership) Rules, 1995 (*hereinafter referred to as "the Rules, 1995"*). The learned S.D.O. after hearing the parties accepted the preliminary objection dismissed the entire petition filed under Section 122 of the Adhiniyam, 1993 by holding that the copy of the petition which was supplied by the petitioner to the opposite party was not endorsed with word attested to be certified copy, which is mandatory under the Rules.
3. Learned counsel for the petitioner would refer to the election petition which is placed on record as Annexure P-3 and submits that the copy of petition itself was bearing the signature of the petitioner. Therefore, even if the word "it is attested true copy" of the original petition has not been scribed, it will not make any

difference and the law laid down in **2006 (3) M.P.L.J.** is answer to the dispute. Therefore, the order of the S.D.O. be set aside and the case be remanded back for hearing before the S.D.O.

4. Per contra, learned counsel for the respondents would submit that under Sub-Rule 2 of Rule 3 of the Rules, 1995 the requirement to make an endorsement that it is “attested true copy” is mandatory. Therefore, the order impugned is well merited. It is further submitted that even on the merit since there is a huge difference in between the count margin no useful purpose would be served to remand the case back to the S.D.O.
5. I have heard learned counsel for the parties and perused the order of the S.D.O.
6. The order of dismissal of election petition shows that pursuant to the objection raised by the respondent No.5 along with different grounds, while the order was passed the S.D.O. confined its order to the issue that the copy of election petition which was supplied to the respondents were not endorsed with “attested to be true copy”. The order speaks of Section 22 Rule 17 of the Adhiniyam, 1993, which is not in the statute book. Therefore, the tenor of the order is only on the fact that the petition was dismissed for non-compliance of Rule 3(2) of the Rules, 1995. Rule 3 of the Rules, 1995 for the sake of brevity is reproduced herein :

“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.”

7. The similar issue came up for hearing before the High Court of Madhya Pradesh in case of ***Ravindra Singh v. Sub-Divisional Officer-Cum-Prescribed Authority, Datia & Others*** reported in ***2006 (3) M.P.L.J.*** wherein the Court at Para 8, 9 & 10 held as under :

“8. As far as attestation of the true copies sent along with the notice to respondent No. 1 is concerned, Rule 3 sub-rule (2) of the Rules of 1995 contemplates 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. In the present case, the material available on record indicates that the copies sent to the respondents bore the signature of the petitioner, however the words "attested as true copies" were not mentioned above his signatures and it was on this count that non-compliance with Rule 3(2) has been found to be established and the election petition dismissed. The question of incorporating the words "true copy" or "attested true copy" while filing an election petition under the [Representation of the People Act](#) was considered by the Five Judge Bench of Supreme Court in the year 1965 in the case of Dr. Anup Singh (supra). In Para 6 of the aforesaid judgment, Supreme Court has referred to [Section 81\(3\)](#) of the Representation of the People Act and the provisions reproduced therein indicate that the said provision is pari materia with Rule 3(2) of the Rules of 1995. The provision of [Section 81\(3\)](#) of the Representation of the People Act also contemplates that every copy shall be attested by the person under his own signatures to be true copy of the petition.

9. Thereafter in Para 7 exactly similar situation as is existing in the present case is considered and it is observed by the Supreme Court in the aforesaid order as under:

“(7). An exactly similar matter came to be considered by this Court in *Subba Rao v. Member, Election Tribunal*, AIR 1964 SC 1027. In that case also the copies were signed by the petitioner but there was no attestation in the sense that the words “true copy” were omitted above the signature of the petitioner. This Court held that as the signature in original was there in the copy, the presence of such original signature in the copy was sufficient to indicate that the copy was attested as a true copy, even though the words “true copy” were not written above the signature in the copies. This Court further held that there was substantial compliance with [Section 81\(3\)](#) of the Act and the petition could not be dismissed under [Section 90\(3\)](#). That case applies with full force to the facts of the present case, and it must therefore, be held that there was substantial compliance with [Section 81\(3\)](#) and the petitions could not therefore be dismissed under [Section 90\(3\)](#).” (Emphasis supplied).

10. From the aforesaid it is clear that if the copies sent to the respondents bear the signature of the petitioner mere omission to write the words “true copy” or “attested true copy” will not make any difference. This question is again considered by a Bench of this Court in the case of *Rameshwar Dayal Arale* (supra). In Para 8 of the aforesaid judgment the effect of not making the endorsement, i.e., “attested true copy” was considered and after relying upon an earlier judgment of the Supreme Court in the case of *M. Kamalam* (supra), it has been held by this Court that if the copies of the election petition for service on the respondent is signed by the election petitioner, then the requirement of

mentioning the words "true copy" is wholly imaginary and unwarranted. Keeping in view the law laid down by the Supreme Court so also by this Court in the aforesaid case it has to be held that on the ground of non-compliance of Rule 3(2), the election petition could not be dismissed and it has to be held that the requirement of Sub-rule (2) of Rule 3 of Rules of 1995 have been complied with and therefore, dismissal of the election petition on this ground was unwarranted.

8. Reading of the aforesaid Para would clearly demonstrate that writing the true copy or attested true copy or even if there is omission made, it will not make any difference or would be fatal. Perusal of the copy of the petition which is placed would show that copy of election petition was bearing signature of the petitioner, therefore, simply because of the reason that words as attested to be true copy was not scribed will not make any difference and dismissal only on this count cannot be sustained.
9. Applying the aforesaid dictum in the present case, the order of the S.D.O. dated 29.10.2020 cannot be sustained and it is accordingly set aside. The case is remanded back to the Court of S.D.O. Saraipali, District Mahasamund, to decide the election petition afresh on the merit after giving an opportunity of hearing to the parties. The S.D.O. shall conclude the hearing of the petition within a period of four months from the date of receipt of a copy of this order.
10. In view of the above, the petition is allowed. No order as to costs.

Aks

Sd/-
(Goutam Bhaduri)
Judge