

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

ON THE 04th OF OCTOBER, 2023

CIVIL REVISION No. 464 of 2023

BETWEEN:-

**NEETU PARMAR W/O SHRI PRAHLAD
SINGH PARMAR, AGED ABOUT 47
YEARS, OCCUPATION: SOCIAL
WORKER R/O 20 PARMAR GALI
GURUSAHAB WARD TEHSIL MULTAI
DISTRICT BETUL (MADHYA PRADESH)**

.....PETITIONER

***(BY SHRI VIVEK TANKHA AND SHRI SHASHANK SHEKHAR- SENIOR
ADVOCATES WITH SHRI SAMRESH KATARE AND SHRI VIKALP SONI -
ADVOCATES)***

AND

- 1. VARSHAGADEKAR W/O DINESH
GADEKAR, AGED ABOUT 38 YEARS, R/O
GADEKAR COMPOUND BETUL ROAD
TEHSIL NULTAI DISTRICT BETUL
(MADHYA PRADESH)**
- 2. VANDANA SAHU W/O SHRI NITESH SAHU,
AGED ABOUT 40 YEARS, R/O NEAR HOTEL
SAIKRIPA, SUBHASH WARD, TEHSIL
MULTAI, DISTRICT BETUL (MADHYA
PRADESH)**
- 3. PRESIDING OFFICER AND SUB
DIVISIONAL OFFICE REVENUE MULTAI
DISTRICT BETUL (MADHYA PRADESH)**
- 4. DISTRICT ELECTION OFFICER, BETUL
DISTRICT BETUL (MADHYA PRADESH)**

.....RESPONDENTS

***(BY SHRI R.N.SINGH, SHRI MANOJ SHARMA – SENIOR ADVOCATES WITH
SHRI NIKHIL TIWARI AND DEVASHISH SAKALKAR - ADVOCATES)***

This civil revision coming on for admission this day, the court passed the following:

ORDER

This civil revision has been preferred by the petitioner/non-applicant 1 – Neetu Singh (Parmar) challenging the order dated 13.06.2023 passed by First District Judge, Multai, District Betul in Civil MJC.No.23/2022, whereby upon filing election petition by the respondent 1/applicant- Smt. Varsha Gadekar, election of the post of President, Municipal Council, Multai, has been set aside.

2. Undisputed facts are that the election for the post of President, Municipal Council, Multai was notified on 02.06.2022 and election for the President was done on 08.08.2022 in which all the 15 councilors participated. The petitioner/non-applicant 1-Neetu Singh (Parmar) secured 9 votes and respondent 1/applicant-Smt. Varsha received only 6 votes. Resultantly, the petitioner/non-applicant 1- Neetu Singh (Parmar) was declared elected President of the Municipal Council, Multai on 08.08.2022.

3. Upon filing election petition on 06.09.2022 by respondent 1- Smt. Varsha Gadekar, the petitioner- Neetu Singh (Parmar) and Smt. Vandana Sahu were

made parties to the petition as non-applicants 1-2. Presiding Officer and District Election Officer were also impleaded as non-applicants 3-4.

4. Upon issuing summons, the non-applicant 1- Smt. Neetu Singh (Parmar) appeared and filed written statement and contested the matter up to the last stage of the proceedings. The non-applicant 2- Smt. Vandana Sahu initially did not appear in the proceedings (election petition) and she appeared only after evidence of the applicant-Smt. Varsha Gadekar and by filing application under Order 9 Rule 7 CPC she prayed for setting aside the order proceeding ex parte, which vide order dated 07.03.2023 was set aside and in pursuance of the liberty given of filing written statement/reply, the non-applicant 2-Smt. Vandana filed her written statement/reply on 14.03.2023 supporting the case of non-applicant 1- Smt. Neetu Singh (Parmar), however, she did not adduce evidence in support of her contentions raised in the written statement and also did not cross-examine the applicant's witnesses, however, she participated up to stage of final arguments and ultimately learned District Judge by passing impugned order set aside the election of the non-applicant 1- Smt. Neetu Singh (Parmar).

5. Against the aforesaid order of District Judge, the present civil revision has been filed under Section 26 of the M.P. Municipalities Act, 1961 challenging the veracity of the impugned order on several grounds, which came in hearing on 06.07.2023 and while issuing notices to the respondents, this

Court as an interim measure, stayed effect and operation of the order dated 13.06.2023 passed in Civil MJC.No.23/22. In which preliminary objection regarding maintainability of civil revision has been raised on behalf of the respondent 1/applicant- Varsha Gadekar, inviting attention of this Court to the provision contained in Rule 19(2) of the M.P. Municipalities (Election Petition) Rules, 1962, which is reproduced as under:

“19.Revision.- (1) x x x x

(2) At the time of presentation of the petition for revision under sub-section (2) of section 26 against the decision of the judge, the petitioner shall deposit with the High Court a sum of Rs.250/- as security for the costs of the revision. If the provisions of this rule are not complied with the High Court shall dismiss the petition.”

6. It has been contended by the respondent 1 that the civil revision was filed on 01.07.2023 but the amount of Rs.250/- was deposited on 03.07.2023, therefore, there being non-compliance of sub rule (2) of Rule 19, the civil revision is not maintainable. In support of his submissions, learned counsel for the respondent 1 placed reliance on the decisions in the case of Deepak Kumar Soni Vs. Ashok Kumar and others **(2015) 2 MPLJ 166**; Sitaram V/S Radhey Shayam Vishnav And Ors. **(2018) 4 SCC 507**; Charan Lal Sahu V/S Nandkishore Bhatt And Ors. **(1973) 2 SCC 530**; Aeltemesh Rein V/S Chandulal Chandrakar And Ors. **(1981) 2 SCC 689**; Babulal Kaluram Kirar and another V/S State Of M.P And Ors. **1985 MPLJ 411 (DB)**;

Aslam Beg Mirdha V/S Babulal And Ors. (1997) 2 JLJ 154; Masarrat Shahid V/S Umakant Sharma (EP No. 23/2019 dtd. 29.07.2019) (at Gwalior); Naushad Ali V/S Mubarak Ali @ Bhura (CR.No.300/2018 dtd. 16.05.2018) (at Jabalpur); Shivbalak Ram Yadav V/S Rajesh Kumar Tiwari and others (WA.No.315/2017 dtd.12.03.2018)(CGHC); Smt Kamlesh Devi V/S Rita Ashok Kesharwani (C.R.No.127/2016 dtd. 02.01.2017) (CGHC); Smt. Gulshaad Shabdar Khan V/S Smt Ganga Sahu and others (CR.NO.111/2016 dtd. 02.01.2017) (CG HC); Umrao V/S Suresh (W.P.No.211/2017 dtd.18.04.2017); Kanchan Khattar (Smt.) V/S Rakesh Dardawanshi & ors. (CR.NO.74/2015 dtd. 20.01.2016) (at Jabalpur); Shanta Bai V/S Bhuneshwari Sahu & others (WP.No.2461/2010 dtd. 21.07.2010) (CG HC); Shyamlal Holam V/S Kailash Joshi and others ILR 1998 MP 294; Radheshyam Nandlalji Patidar V/S Jagdish Gangaram Patidar and others 1995 MPLJ 909; Sarla Tripathi V/S Kaushilya Devi & others 2004(2) JLJ 263 (DB) & RADHIKA SHASTRI V/S SMT. SANGEET AND ORS. (C.R.no.445/2018 dt. 20.08.2018).

7. With the support of aforesaid decisions, learned counsel for the respondent 1 submits that the controversy has already been resolved and at present there is no dispute about legal position settled by this Court that too on identical facts and circumstances, therefore, the civil revision deserves to be dismissed.

8. In counter, learned counsel appearing for the petitioner-Smt. Neetu Singh (Parmar) submits that there is no basic difference in the provisions contained in Section 20(3) of the M.P. Municipalities Act, 1961 and in Rule 19(2) of the M.P.

Municipalities (Election Petition) Rules, 1962 and submits that a co-ordinate Bench of this Court has, in the case of **Arvind Sahu Vs. Ramnarayan (Raju) Pandey and others** (C.R.No.421/2015 dtd. 09.02.2017) (at Jabalpur) after taking into consideration previous decision of another co-ordinate Bench decision of this Court in the case of Aarti singh Vs. Usha Kol and others **2003(2) MPLJ 224**, held that if the amount of security is deposited within a period of 30 days prescribed for filing election petition, then it is sufficient compliance of the provision and it being a curable defect, the petition is not liable to be dismissed. He submits that in the present case the amount of Rs.250/- was deposited within a period of 30 days prescribed for filing Civil Revision, therefore, the revision is maintainable and the objection deserves to be overruled.

9. Heard learned counsel for the parties and perused the record as well as the aforesaid decisions.

10. A Division Bench of this Court had, in the case of Smt. Sarla Tripathi v/s Kaushilya Devi and others **2004(2) JLJ 263**, upon consideration of the requirement to deposit security amount at the time of presentation of petition under the M.P. Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995, taken into consideration all the previous decisions of Supreme Court as well as of this Court and concluded that

the deposition of security amount along with the petition is a mandatory provision and if the amount of Rs.250/- is not deposited at the time of presentation itself, the petition is liable to be dismissed.

11. Taking into consideration the provision of Section 26 of the M.P. Municipalities Act, 1961 as well as the provision contained in Rule 19(2) of the M.P. Municipalities (Election Petition) Rules, 1962, a co-ordinate Bench of this Court in the case of Deepak Kumar Soni (supra) **2015(2) MPLJ 166**, has decided the almost similar controversy and held as under:

“**10.** In addition to the aforesaid, as per the Major Law Lexicon by P. Ramanatha Aiyar, 4th Edition 2010, 590, the connotation "at the time of presenting of application" has been dealt with in the context of Section 17 of the Provincial Small Cause Courts Act, 1887. Referring the judgment of the Allahabad High Court in the case of liar Kumar Vidyarthi v. Sudha Devi, AIR 2006 NOC 79 (All), it is held that the expression "at the time of presenting of application" occurring in Section 17 of the Act means time when application is presented to the proper officer of the Court. However, in the said context, if the language of Rule 19 (2) is looked into, then it is apparent that at the time of presentation of the petition for revision the sum of Rs.250/-as security for the cost of the revision must be deposited with the High Court and as per the later part of the said Rule, if the provisions of this rule are not complied with then the election petition shall be dismissed. Thus legislature using the word "shall" in first part as well as in later part expressed the concern in the context of depositing the security at the time of presentation otherwise the dismissal is a consequence. Using "shall" makes the compliance of Rule 19 (2), stricto sensu at the time of presentation of the election petition, the deviation from such non-compliance lead to dismissal of the petition. In the said context, it is to be held that Rule 19 (2) either in first part or later part is mandatory. In view of the

discussion made herein above, it is apparent that at the time of presentation of the petition for revision if the cost was not deposited, however, the defect was pointed out by the Section Officer and to rectify the said defect, the cost though deposited on the same day but subsequently which would not lead to different consequence to maintain the petition for the Rule 19 (2) as referred in the statute. In such circumstances, the arguments as advanced by learned Senior Counsel, Shri Shroti relying upon the judgment of M. Karunanidhi (*supra*), would not be applicable in this case. It is not a case where the whole transaction or series of circumstances requires to comply the provisions of Rule 19 (2) of the Election Petition Rules. In fact, it is to be interpreted in the context that when the election petition is presented, the cost shall be deposited by way of security to the High Court. However, the word "at the time of presentation of petition" has been used therein to deposit cost on presentation meaning thereby "eo instanti". In other words, we can say that as and when the decision passed by the Judge has been challenged by filing the revision before the High Court under Section 26 (2) of the Act then at the time of presentation, the security of the cost must be deposited and after pointing out of the defect if such deposit is made in the later part of the day, it would not come within the connotation "at the time of presentation" and it would lead to consequence of dismissal as specified in the later part of sub-rule (2) of Rule 19 of Election Petition Rules."

Upon consideration of the provisions contained in section 26 of the Act of 1961 and Rule 19(2) of the Rules of 1962, similar view has been taken by another co-ordinate Bench of this Court in the case of Naushad Ali (*supra*).

12. So far as applicability of the decision in the case of Arvind Sahu (*supra*), relied upon by learned counsel for the petitioner is concerned, it has not considered the previous Division Bench judgment of this Court in the case of Smt. Sarla Tripathi (*supra*) and Deepak Kumar Soni (*supra*) and the decision in

the case of Arvind Sahu (*supra*) is based on the decision in the case of Aarti Singh (*supra*) which has already been considered and distinguished by another co-ordinate Bench of this Court in the case of Radhika Shastri (*supra*).

13. In view of the aforesaid discussion, there is no doubt about the settled legal position that the security amount of Rs.250/- is required to be deposited at the time of presentation of civil revision itself and if it is deposited later on, that too within limitation period of 30 days prescribed for filing Civil Revision, it makes no difference and such deposit shall not come to the rescue of the petitioner/revisionist, it being not curable defect.

14. Resultantly, this civil revision deserves to be and is hereby **dismissed** as not maintainable for want of deposit of Rs.250/- at the time of presentation of civil revision.

15. Pending application(s), if any, shall stand dismissed.

(DWARKA DHISH BANSAL)
JUDGE

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