

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 15th OF MARCH, 2024

WRIT PETITION No. 2034 of 2023

BETWEEN:-

**SMT. RAMA BAI W/O SHRI RAMESH CHAND,
AGED ABOUT 42 YEARS, OCCUPATION:
HOUSEWIFE R/O VILLAGE ABHAPURI TEHSIL
JHIRNYA DISTT. KHARGONE (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI PEYUSH JAIN, ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
PRINCIPAL SECRETARY DEPARTMENT OF
PANCHAYAT VALLABH BHAWAN BHOPAL
(MADHYA PRADESH)**
- 2. STATE ELECTION COMMISSION CHIEF
ELECTION OFFICE NIRVACHAN BHAWAN 58
AREA HILLS BHOPAL (MADHYA PRADESH)**
- 3. SUB DIVISIONAL OFFICER (REVENUE)
AUTHORIZE PERSON FOR ELECTION
PETITION SDO (R) OFFICE BHIKANGAON
DISTT. KHARGONE (MADHYA PRADESH)**
- 4. RETURNING OFFICER PANCHAYAT
NIRVACHAN TEHSIL JHIRNYA DISTT.
KHARGONE (MADHYA PRADESH)**
- 5. SONU BAI W/O POLUS MEHTA, AGED ABOUT
24 YEARS, OCCUPATION: AGRICULTURE
ADD VILLAGE ABHAPURI TEHSIL JHIRNYA**

DISTT. KHARGONE (MADHYA PRADESH)

.....RESPONDENTS

(BY MS. HARSHLATA SONI, P.L./G.A.)

.....
This petition coming on for admission this day, the court passed the following:

ORDER

Despite service of notice to the respondent No.5, notice has still not been served on her as the service report is also not available. However, considering the fact that it has been more than one year since the petition is pending and a short point is involved, this Court is inclined to dispose of this petition at this stage only, as no prejudice is going to be caused to the respondent No.5.

2] This writ petition has been filed by the petitioner Rama Bai under Article 226 of the Constitution of India against the order dated 16.12.2022, passed by respondent No.3/SDO in an election petition filed under Section 115 of the Panchayat Raj and Gram Swaraj Adhiniyam, 1995 whereby, the election petition has been rejected merely after counting of votes by the Presiding Officer himself, of the voting booth Nos.64 and 65.

3] Shri Peyush Jain, learned counsel for the petitioner has submitted that the manner in which the election petition has been disposed of, runs contrary to the provisions of Rule 11 of the M.P. Panchayat (Election Petition Corrupt Practices and Disqualification for Membership) Rules, 1995, (hereinafter referred to as 'the Election Petition Rules, 1995') which provides that the procedure applicable under the Code of Civil Procedure shall be applicable to such election

petitions. It is also submitted that admittedly, after the election petition was filed, reply was also filed by the respondent No.5, however, without framing any issue and without affording any opportunity to the parties to lead any evidence, the learned Member (SDO) of the Election Tribunal, has straight away counted the votes and has decided the election petition. Thus, it is submitted that the impugned order be set aside and the matter may be remanded back to the Election Tribunal to decide it on merits, after framing the issues and allowing the parties to lead evidence in respect thereof.

4] Counsel for the respondents/State, on the other hand, has submitted that on perusal of the order passed by the SDO, it is apparent that no issues have been framed and the matter has been decided only on the basis of the counting of the votes.

5] Heard. Having considered the rival submissions and on perusal of the documents filed on record, this Court finds that the procedure adopted by the SDO in disposing of the election petition is nowhere provided under the Election Petition Rules, 1995, whereas Rule 11 provides that the election petition shall be decided in the same manner in which the suits are decided under the Code of Civil Procedure. Admittedly, there are disputed question of facts involved in the case, which can only be decided after the issues are framed. In such circumstances, **the impugned order dated 16.01.2022, being bad in law is hereby set aside** and the matter is remanded back to the SDO to decide it afresh, after framing the issues and after providing the due opportunity of leading evidence to all the parties concerned.

6] It is made clear that this Court has not reflected upon the merits

of the case and the SDO shall be solely guided by the evidence produced before him in the election petition.

7] With the aforesaid direction, petition stands *disposed of*.

(SUBODH ABHYANKAR)
JUDGE

Bahar