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WP-18926-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 19th OF FEBRUARY, 2026WRIT PETITION No. 18926 of 2024*KHUSHBU BISEN**Versus**AASU AND OTHERS*

.....
Appearance:

Shri Pravesh Naveriya - Advocate for petitioner.

Shri Nitesh Kumar Jain - Advocate for respondent No.1.

*Shri Sumit Raghuwanshi - Govt. Advocate for respondent
No.5/Collector.*

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ORDER

This petition has been filed assailing the order dated 18.12.2023 (Annexure P/7) passed by the respondent No.5-Collector District Balaghat (M.P.) whereby the election petition preferred by the petitioner under Section 122 of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 against the respondent No.1 was rejected.

2. It is a case of the petitioner that she contested elections and was duly appointed on the post of Member of Janpad Panchayat, No.20 Vikas Khand Khairlanjhi District Balaghat. The Respondent No.1 also contested elections for the post of Member of Janpad Panchayat, No. 19, Vikas Khand Khairlanjhi and was duly appointed on the post of Member of Janpad Panchayat, No.19, Vikas Khand Khairlanjhi. It is submitted that amongst



Members of concerned Janpad Panchayat, for the post of President which has been reserved for OBC women candidate; the petitioner being eligible candidate submitted her candidature for the said post. The respondent No.1 was also elected on the post reserved for OBC women candidate, therefore, she submitted her candidature for the post of President, Janpad Panchayat Khairlanjhi. The petitioner got to know that respondent No.1 has not attested her OBC caste certificate along with her candidature which is mandatory requirement in terms of the M.P. Panchayat Nirvachan Rules, 1995 which was amended in the year 2019 and as per amended provisions, the submission of caste certificate is made mandatory. The candidate who wishes to contest the elections on the posts which are reserved for a particular category then it would be mandatory for him to annex caste certificate issued by the competent officer of Government of Madhya Pradesh. Attention is invited to the amended Rules of 2019 which is placed on record as Annexure P/3 and it is submitted that along with the nomination paper, the documents which are required to be annexed are provided and Sl. No. 2 i.e. 'Enclosed documents with nomination paper' clearly demonstrates that "copy of Caste certificate issued by competent officer of Government of Madhya Pradesh in case of a member of reserved category" is required to be submitted. Attention is also drawn to the nomination paper submitted by respondent No.1 in terms of Annexure P/2 and it is contended that no caste certificate is submitted by the respondent No.1. Page 19 of the compilation shows that as per Sl. No.2 of "आरक्षित वर्ग का सदस्य होने की दशा में, मध्यप्रदेश शासन के सक्षम प्राधिकारी द्वारा जारी जाति प्रमाण-पत्र की प्रति.", the respondent No.1 has mentioned "नहीं" and in Sl.



No. 6, it is mentioned that the caste certificate of OBC has been issued from the State of Maharashtra and after marriage when she migrated to the State of Madhya Pradesh and her husband belongs to OBC category, she also belonged to that category. An affidavit to the aforesaid effect is submitted.

3. It is argued that the aforesaid aspect does not amount to submission of caste certificate and does not fulfil the requirement in terms of the amended Rules of 1995. The petitioner immediately filed an election petition under Section 122 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 and prayed that the respondent No.1 be declared as disqualified for the post in question as the nomination form itself should have been rejected at the threshold for want of necessary document. The learned Collector has not considered the aforesaid aspect of the matter and rejected the election petition filed by the petitioner on the ground that the affidavit as required in terms of the Circular dated 05.12.2014 has been submitted by the respondent No.1 despite the fact that after amendment in the Madhya Pradesh Panchayat Nirvachan Niyam in the year 2019, it has become mandatory to produce the caste certificate. Therefore, the order passed by the Collector is unsustainable. To buttress the submissions, the petitioner's counsel has relied upon the orders passed by this Court in the cases of (i) Richa vs Smt. Sushila Singh and others : WP No. 8388 of 2023 decided on 27.06.2023 (ii) Smtl Rashmi vs Smt. Bharti and others : WP No. 27091 of 2022 decided on 01.02.2023 and (iii) Brajesh Singh vs Ram Prasad Deharia : WP No. 29557 of 2023 decided on 28.12.2023. On these grounds, he has prayed for quashment of the impugned order.



4. On notice being issued, separate replies have been filed by respondents No.1 and 5. Counsel appearing for respondent No.1 has submitted that at the time of scrutiny of the nomination paper before the Returning Officer, no objection was raised by the petitioner and after having lost the election, the election petition was filed. The petitioner is estopped by her own conduct from challenging the nomination of respondent No.1 on technical grounds. He has placed reliance upon the judgment passed by the Hon'ble Supreme Court in the case of Madras Institute of Development Studies vs K. Sivasubramaniyan reported in (2016) 1 SCC 454. It is contended that the petitioner is having an alternative and efficacious remedy against the order passed by the Collector. The petition filed directly before this Court is not maintainable. The respondent No.1 has clearly disclosed that she belongs to OBC category. She filed an affidavit to the aforesaid effect at the time of filing of the nomination form. She possesses valid caste certificate issued from District Nagpur (Maharashtra) clarifying that she belongs to 'Pinjara' community which is notified as 'OBC' in the State of Maharashtra as well as in the State of Madhya Pradesh. It is contended that in terms of Clause 13(4) of the M.P. State Election Commission's letter dated 27.05.2022, it is expected from a candidate contesting from a reserved post for Three-tier Panchayati Raj Institutions that they must attach a caste certificate issued by the competent authority of the Madhya Pradesh Government in the prescribed format along with the nomination paper. If the candidate does not have the caste certificate available at the time of filing the nomination paper, they must submit an affidavit to the aforesaid effect before the scrutiny of the



nomination paper begins. The respondent No. 1 duly submitted the affidavit concerning her caste at the time of filing of nomination paper. Therefore, the grounds taken by the petitioner in the election petition are not available to her. Absence of caste certificate issued from State of Madhya Pradesh at the time of filing of nomination is merely a procedural error and does not effect the substantive eligibility of the respondent No.1, for which he has relied upon the judgment passed by the Hon'ble Supreme Court in the case of Dolly Chhanda vs Chairman, JEE reported in (2005) 9 SCC 779 wherein it is held that the possession of qualification is substantive; proof is procedural. Migration of respondent No.1 from the State of Maharashtra to the State of Madhya Pradesh does not extinguish her OBC status. All these aspects were rightly considered by learned Collector while dealing with the issue and passed the impugned order which is just and proper. He has prayed for dismissal of the writ petition.

5. Counsel appearing for the respondent No.5/Collector has filed a separate reply. It is contended that the respondent No.1 has already submitted an affidavit affirming her caste/category along with required documents and the Returning Officer has no jurisdiction to consider the veracity of the affidavit and to reject the nomination paper. He is required to accept it in terms of Rule 40-A(2) of the Madhya Pradesh Panchayat Nirvachan Niyam 1995 for which he has placed reliance upon the judgment passed in the case of Smt. Vidhya Manjhi vs State of M.P. and others : WP No. 522 of 2015 decided on 12.02.2015 (Gwalior Bench) wherein Rule 40-A(2) of the M.P. Panchayat Nirvachan Niyam, 1995 was taken note of and it was categorically



held that the Returning Officer has no jurisdiction except to proceed once he receives the affidavit along with nomination paper. Petitioner's contention that OBC certificate issued by the State of Maharashtra is not valid in the State of M.P. is untenable. Once an affidavit to the aforesaid effect is filed, no inquiry is permissible or required to be carried out by the Returning Officer. The Collector has considered the aforesaid aspect as well as the Circular dated 05.12.2014 issued by the M.P. State Election Commission, Bhopal and passed the impugned order rejecting the election petition filed by the petitioner. He has prayed for dismissal of the writ petition.

6. Heard learned counsels for the parties and perused the record.

7. The sole question which arises for consideration is, : "whether in absence of a caste certificate issued by a competent authority of the Government of Madhya Pradesh, the nomination paper filed by the respondent No.1 was rightly accepted by the Returning Officer" ?

8. It is an admitted position that the respondent No.1 and petitioner contested the elections in the year 2022 for the post of President, Janpad Panchayat Khairlanjhi. Along with the nomination paper, the respondent No.1 has not submitted the caste certificate. From document (Annexure P/2) i.e. 'nomination paper' which is filled by the respondent No.1 under the column of documents required along with the nomination paper, she has furnished the information as under :

अनु क्रमांक	दस्तावेजों के विवरण	संलग्न है/नहीं
2	आरक्षित वर्ग का सदस्य होने की दशा में, मध्यप्रदेश शासन के सक्षम प्राधिकारी द्वारा जारी जाति प्रमाण-पत्र की प्रति	नहीं
6	अन्य : अभ्यर्थी को महाराष्ट्र शासन डिप्टी कलेक्टर नागपुर द्वारा जारी पिंजरा जाति 'अन्य पिछड़ा वर्ग' जाति प्रमाण पत्र ... अभ्यर्थी द्वारा पिंजरा जाति के संबंध में वैवाहिक स्थिति के संबंध में शपथ पत्र	



9. The language used in the nomination paper is clear which requires that a caste certificate issued from the State of M.P. by the competent authority is to be submitted by the candidate along with the nomination paper. Admittedly, respondent No.1 has not submitted such certificate, rather she has submitted affidavit wherein it is mentioned at Sl. No. 6 that she has a caste certificate issued from the District Nagpur (Maharashtra) which shows that she belongs to OBC category ('Pinjara' community) and after marriage, she migrated to the State of Madhya Pradesh. She has given an affidavit on 02.06.2022 with respect to her caste wherein she has mentioned as under :

3. यह कि शपथकर्ती का पूर्व नाम यासमिन वल्द शेख महबूब जाति पिंजारा जन्मस्थान नागपुर मह. था तथा मह. राज्य में शपथकर्ती को अन्य पिछड़ा वर्ग का जाति प्रमाण पत्र जारी किया गया था ।

4. यह कि शपथकर्ती ने गुनाराम बघेले जाति पंवार ग्राम झिरिया तहसील खैरलांजी जिला बालाघाट से हिन्दू रिति से विवाह किया है तथा विवाह के बाद उसका नाम आशु बघेले पति गुनाराम बघेले हो गया है। तथा इसी नाम से मुझे जाना पहचाना जाता है। शपथकर्ती के पति गुनारामबघेले पंवार जाति के हैं जो अन्य पिछड़ा वर्ग के अंतर्गत म.प्र. के बालाघाट जिले में अधिसूचित है।

10. From the perusal of the affidavit, it is apparently clear that no caste certificate issued from State of Madhya Pradesh by the competent authority was submitted by the respondent No.1 along with the nomination paper. The Madhya Pradesh Gazette vide Annexure P/3 dated 01.02.2019 which was made effective from the date of such notification contains "Details of documents enclosed with the Nomination Paper, for which receipt is provided to the candidate" wherein Sl. No. (2) which stipulates "copy of caste certificate issued by competent officer of Government of Madhya Pradesh in case of a member of reserved category" and it is to be enclosed before scheduled date and time of scrutiny.

11. The requirement is of 'enclosure of caste certificate issued by the



competent officer of the Govt. of Madhya Pradesh in case of a member of a reserved category' is specifically mentioned in the Form-4 'Nomination Paper' which is quoted hereinabove. In the said amended notification, there is no mentioning of submission of affidavit in lieu of caste certificate. The affidavit/declaration is required in pursuance to information relating to criminal antecedents, assets, liabilities and educational qualifications as per Rule 31(A) of the M.P. Panchayat Nirvachan Niyam, 1995. Therefore, it is apparently clear that no caste certificate issued by competent officer of Government of M.P. is submitted by respondent No.1. From the perusal of the impugned order, it is seen that the Collector while dealing with the election petition has taken note of Notification issued by the M.P. State Election Commission, Bhopal dated 05.12.2014. Admittedly, the election took in the year 2022. By the time, the amended notification in the M.P. Panchayat Nirvachan Niyam, 1995 vide M.P. Gazette dated 01.02.2019 was already published and was in force. Therefore, the said notification was required to be considered by the Collector while dealing with the election petition. There is no consideration of the said amended notification by the Collector. On this ground alone, it can safely be said that the order passed by the Collector is unsustainable because he has failed to consider the subsequent amended notification dated 01.02.2019 pointing out the required documents to be furnished along with the nomination paper.

12. The other arguments advanced before this Court is that the affidavit submitted by respondent No.1 regarding her caste will be sufficient, is of no help to her for the reason that she does not have any caste certificate issued



by the competent officer of Govt. of M.P.. Neither in the nomination form nor in the affidavit submitted by respondent No.1, she has mentioned that she is in possession of the caste certificate issued by the competent officer of Govt. of M.P. which shows that she belongs to OBC community. In absence of any such assertion in the nomination paper or in the affidavit submitted along with the nomination paper, the said aspect could not be considered by the authorities. However, as this Court has already arrived at a conclusion that the learned Collector has not considered the subsequent notification dated 01.02.2019 which mandates submission of caste certificate in case of reserved category candidates, therefore, the impugned order dated 18.12.2023 becomes unsustainable. The same is hereby quashed.

13. The matter is remanded back to the respondent No.5/Collector District Balaghat for reconsideration of the election petition filed by petitioner and to decide the same afresh in accordance with law taking note of the subsequent amendment in the Madhya Pradesh Panchayat Nirvachan Niyam vide M.P. Gazette dated 01.02.2019 as the same is applicable to the elections which were held in the year 2022. It is made clear that the opportunity of hearing shall be ensured to all concerned. The entire exercise be completed within a period of 90 days from the date of receipt of certified copy of this order.

14. In above terms, petition is disposed of finally. No order as to costs.

(VISHAL MISHRA)
JUDGE