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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI
ON THE 16th OF JUNE, 2022**

WRIT PETITION No. 13464 of 2022

Between:-

**DILEEP @ DILEEP BHARTI GOSWAMI S/O
KASHI PURI @ KASHI BHARTI GOSWAMI ,
AGED ABOUT 45 YEARS, OCCUPATION:
FARMER 110., VIRBHADRA MOHALLA
, LAMHETAGHAT , WARD NO.11 (RAVI SHANKAR
WARD) (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI RAVINDRA KUMAR GUPTA, ADVOCATE)

AND

1. **M.P. STATE ELECTION COMMISSION, BHOPAL
THROUGH ITS SECRETARY NIRVACHAN
SADAN, 58, ARERA HILLS, BHOPAL (M.P)
(MADHYA PRADESH)**
2. **DISTRICT ELECTION OFFICER EX OFFICIO
COLLECTOR JABALPUR (MADHYA PRADESH)**
3. **APPEAL OFFICER FOR REGISTRATION OF
ELECTORS RULES 1960 JABALPUR EX OFFICIO
SDO (REVENUE) JABALPUR 482001 (MADHYA
PRADESH)**
4. **NIRVACHAK REGISTRARIAN ADHIKARI EX
OFFICIO TEHSILDAR NAGAR PARISHAD
BHERAGHAT JABALPUR (MADHYA PRADESH)**

.....RESPONDENTS

**(RESPONDENTS NO.1 TO 4 BY SHRI SIDDHARTH SETH,
ADVOCATE).
(RESPONDENT/STATE BY SHRI G.P.SINGH, GOVT. ADVOCATE)**

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

following:

ORDER



The present writ petition under Article 226 of the Constitution of India has been filed being aggrieved with the order dated 10.6.2022, annexure P/1, passed in appeal No.108/B-121/2022-23 by the Appeal Officer, Nagar Parishad, Bhedaghat, (ex-officio S.D.O. Jabalpur (Revenue)).

The grievance of the petitioner is that the petitioner is a resident of Ward No.11, Lamheta Ghat, Jabalpur, since 2017. His name was also included in the voter list issued in the year 2021 by the Election Commission for the purpose of election of Legislative Assembly and was issued the voter card No.MSD 3162625 dated 23.3.2021. His name is also published in the Vidhan Sabha electoral roll, 2022 area Bargi-96 Part No.190 Section 1. On 8.3.2022 the Panchayat and Nagriya Nikai elections were notified. Thereafter, the election programme was declared. The petitioner was surprised when he found that his name is omitted from the voters' list. He immediately submitted an application under Rule 21 of the Registration of Electors Rules, 1960, before the respondent no.4 on 1.6.2022 requesting to add his name. Vide order dated 7.6.2022 the application was rejected. Being aggrieved thereof, the petitioner filed an appeal under Rule 23 of the Registration of Electors Rules, 1960 before the respondent no.3. However, vide impugned order dated 10.6.2022, the appeal was also dismissed.

The contention of learned counsel for the petitioner is that now the position is that the name of the petitioner does not find place in any of the voters' list anywhere in India, therefore, the petitioner has lost his valuable right to vote and to take part in the elections. The name of the petitioner has been excluded from the voters' list only on the basis of report of the Patwari and to extend the undue benefit to some other interested person. In such circumstances, the petitioner prays that this Court may be pleased to interfere in



the matter and permit him to fill up the nomination form for the ensuing elections. He submitted that the last date for submitting of nomination is 18.6.2022. Hence, there is urgency in the matter.

Per contra, learned counsel for the respondents, at the outset, submitted that the present writ petition is not maintainable in view of the fact that elections have already been notified on 27.5.2022. Thereafter, nominations have been invited and final list of candidates have already been published on 10.6.2022. Learned counsel for the respondents submitted that it is a settled legal position that once the election process is put into motion and election is to be held in accordance to the said process at this stage no further direction in the writ petition can be issued. The petitioner is entitled to challenge the process only after the elections are held by filing election petition.

Learned counsel further submitted that according to the election programme once the provisional voters' list is prepared, opportunity of making objections, etc. is also provided which the petitioner did not avail. It is only when the post was notified as O.B.C. post, the petitioner is before this Court.

Learned counsel for the respondents/State further submitted that the petition is also not maintainable on the ground that the petitioner has not challenged the order dated 7.6.2022, annexure P/2, and is liable to be dismissed on this ground alone. In support of his contention he has placed reliance on the judgment of the Apex court in the case of **Laxmibai Vs. Collector, Nanded and others, reported in (2020)12 SCC 186** and **S.K.Mahaboob Bee (Smt.) and others Vs. State Election Commissioner and others, reported in (2000)10 SCC 512** to contend that the writ petition is not maintainable after the elections have been notified. Learned counsel has further relied upon the



judgment of the Apex Court in the case of *Javed and others Vs. State of Haryana and others, reported in (2003)8 SCC 369*, to contend that the right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. At the most, in view of Part IX having been added in the Constitution, a right to contest election for an office in Panchayat may be said to be a constitutional right. The same cannot be equated with a fundamental right.

He has further relied upon the judgment of the Apex court in the case of *Rajbala and others Vs. State of Haryana and others, reported in (2016)2 SCC 445*, wherein the Apex Court has again reiterated the same principles of law that the right to vote and right to contest election is a constitutional right, following the judgment of the Apex court in the case of Javed (supra).

At this stage, learned counsel for the petitioner submitted that he would be satisfied if he is permitted to file a detailed representation before the respondent no.1, which may be directed to be decided as expeditiously as possible within 24 hours.

In view of the aforesaid enunciation of law and the settled legal position, this Court is not inclined to entertain this writ petition at this stage. However, looking to the fact that the name of the petitioner has been omitted from the voters' list merely on the report of Patwari, it would be expedient in the interest of justice to grant liberty to the petitioner to approach the respondent no.1 seeking redressal of his grievance. Accordingly, this petition is disposed of with liberty to the petitioner to file a detailed representation before the respondent no.1 today itself. If such a representation is filed, the respondent no.1 is directed to dwell upon the same and pass a reasoned and speaking order in accordance with law as expeditiously as possible preferably within a



period of 24 hours from the date of receipt of certified copy of this order.

The petition stands disposed of with the aforesaid liberty.

Certified copy today.

(S. A. DHARMADHIKARI)
JUDGE

HS

