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

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ON THE 1st OF FEBRUARY, 2023

WRIT PETITION No. 27091 of 2022

BETWEEN:-

SMT. RASHMI W/O SHRI VEERU RAWAT, AGED ABOUT 36 YEARS, OCCUPATION: HOUSEWIFE VILLAGE KHADAUAA GRAM PANCHAYAT KHANAUAA TEHSIL BHITARWAR (MADHYA PRADESH)

.....PETITIONER

(BY SHRI D.S. RAGHUVANSHI AND SHRI SAURAV SINGH TOMAR)

AND

1. **SMT. BHARTI W/O SHRI RAGHVENDRA SINGH, AGED ABOUT 31 YEARS, OCCUPATION: HOUSEWIFE VILLAGE KHADAUAA TEHSIL BHITARWAR (MADHYA PRADESH)**
2. **SMT. DEV KUMAR RAWAT W/O SHRI ANANT SINGH, AGED ABOUT 60 YEARS, VILLAGE RAMJIPUR GRAM PANCHAYAT KHADAUAA TEHSIL BHITARWAR GWALIOR (MADHYA PRADESH)**
3. **SMT. GEETA W/O SHRI POORAN SINGH JATAV, AGED ABOUT 45 YEARS, VILLAGE RAMJIPUR GRAM PANCHAYAT KHADAUAA TEHSIL BHITARWAR DISTRICT GWALIOR (MADHYA PRADESH)**
4. **SMT. JAISHRI W/O SHRI PUNJAB SINGH RAWAT, AGED ABOUT 29 YEARS, VILLAGE RAIPURSANI GRAM PANCHAYAT KHADAUU TEHSIL BHITARWAR DISTRICT GWALIOR (MADHYA PRADESH)**
5. **SMT SUNITA BAI W/O SHRI KARAN SINGH RAWAT, AGED ABOUT 37 YEARS, VILLAGE RAMJIPUR GRAM PANCHAYAT KHADAUAA TEHSIL BHITARWAR GWALIOR (MADHYA PRADESH)**

6. THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY DEPARTMENT OF REVENUE VALLABH BHAWAN BHOPAL (MADHYA PRADESH)
7. THE RETURNING OFFICER (PANCHAYAT) TEHSILDAR BHITARWAR GWALIOR (MADHYA PRADESH)
8. PITHASIN ADHIKARI JANPAD PANCHAYAT POLLING BOOTH NO. 152 VILLAGE RAIPURSANI (MADHYA PRADESH)
9. THE SUB DIVISIONAL OFFICER AND SPECIFIED OFFICER SUB DIVISION OFFICE U/S 122 OF PANCHAYAT ACT, BHITARWAR DISTRICT GWALIOR (MADHYA PRADESH)

.....RESPONDENTS

**(BY SHRI R.D. JAIN SR. ADVOCATE WITH SHRI SANGAM JAIN - ADVOCATE)
SHRI RBS TOMAR APPEARS ON CAVEAT.**

This petition coming on for admission this day, JUSTICE MILIND RAMESH PHADKE passed the following:

ORDER

The present petition has been preferred against the final order dated 18.11.2022 passed by the SDO in an Election Petition under Section 122 of the M.P. Panchayat Rajya Adhiniyam, 1993.

The main contention which has been raised by the Counsel for the petitioner is that the procedure as prescribed under Rule 11 of The M.P. Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (for brevity Rules of 1995) has not been followed as no issues have been framed so also parties have not been allowed to adduce their evidences and only on the basis of reply which has been filed, the final order has been passed. Rule 11 of Rules of 1995 which prescribes a certain procedure has not been followed, which lays down as under:

"11. Procedure before the specified officer and his powers. -(1)

Subject to the provisions of these rules, every election petition shall be enquired into by the specified officer as nearly, as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits :Provided that it shall have only be necessary for the specified officer to make a memorandum of the substance of the evidence of any witness examined by him.

(2) The specified officer, shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters :-

- (a) discovery and inspection;
- (b) enforcing the attendance of witnesses, and requiring the deposit of their expenses;
- (c) compelling the production of document;
- (d) examination of witnesses on oath;
- (e) reception of evidence taken on affidavit; and
- (f) issuing commission for examination of witnesses and summoning and examining *suo motu* any person whose evidence, appears to him to be material";

In the light of aforesaid, it is submitted by the Counsel for the petitioner that election petition shall be tried as a suit as per provisions contained in the Code of Civil Procedure and the same are required to be mandatorily followed. He has relied upon the judgment passed in the cases of **Vadivelu v. Sundaram and Ors., reported in 2000 (8) SCC 355, Ram Niwas vs. Pooran and Ors, reported in 2001 (II) MPJR 198, Pooran vs. The Election Officer and Ors, reported in 2001 (II) MPJR 190 and**

Rameshchandra Bhilala vs. Bashir and Ors., reported in 2011 (1) MPHT 35.

Per contra, learned Sr. Counsel while supporting the impugned order argued that from the order impugned, it is reflected that it was passed only after affording equal opportunity to the parties and only because the procedure as prescribed under Section 11 of Rules of 1995 has not been followed, the entire order cannot be said to be vitiated, however, he candidly admits that in the light of the judgments cited by the petitioner, the only course left would be to relegate the parties to the SDO to hear the election petitions afresh, in accordance with Rule 11 of Rules of 1995.

After hearing the learned Counsel for the parties and after perusing the record, it appears that the procedure as laid down under Rule 11 of Rules of 1995 has not been followed as no issues have been framed and the parties have not been allowed to adduce their evidences. Thus, the entire proceedings stands vitiated. The procedure as laid down under the provisions of the CPC for trying the suit is to be followed in cases where election petitions are tried under Section 122 of M.P. Panchayat Rajya Adhiniyam, 1993.

In the light of the above discussion and in the light of the above judgments, this Court deems it fit to relegate the parties to the SDO for adjudicating the election petition afresh after framing of the issues and allowing the parties to adduce their evidences. Accordingly, the order dated 18.11.2022 passed by the learned SDO in Election Petition is hereby set aside.

The parties are directed to appear before SDO on 6th of February, 2023.

Let the entire exercise thereafter be done within a period of three months from the first date of appearance of the parties.

It is needless to mention that learned SDO shall proceed from the stage of framing of issues on the basis of the pleadings which have been made by the parties in the election petition as well as in the reply.

The parties are free to raise all the objections which are permissible, as per law.

With aforesaid observations and direction, the petition stands disposed of.

**(MILIND RAMESH PHADKE)
JUDGE**

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