

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGRAWAL

ON THE 30th OF JUNE, 2022

WRIT PETITION NO.14078 OF 2022

Between:-

- 1. EMPLOYEES' PROVIDENT FUND ORGANISATION, THROUGH THE REGIONAL PROVIDENT FUND COMMISSIONER, ZONAL OFFICE, BHAVISHYA NIDHI BHAVAN, BHOPAL (M.P.).**
- 2. REGIONAL OFFICE, JABALPUR THROUGH THE REGIONAL PROVIDENT FUND COMMISSIONER, BHAVISHYA NIDHI BHAVAN, VIJAY NAGAR, JABALPUR (M.P.).**
- 3. REGIONAL OFFICE, BHOPAL, THROUGH THE REGIONAL PROVIDENT FUND COMMISSIONER, OFFICE AT 59, JAIL ROAD, ARERA HILLS, BHOPAL (M.P.).**

.....PETITIONERS

(SHRI RAHUL DIWAKAR - ADVOCATE)

AND

- 1. THE MADHYA PRADESH ELECTION COMMISSION, THROUGH THE CHIEF ELECTION OFFICER, NIRVACHAN SADAN, 17, ARERA HILLS, BHOPAL (MADHYA PRADESH)**
- 2. THE DISTRICT COLLECTOR/DISTRICT ELECTION OFFICER DISTRICT JABALPUR (MADHYA PRADESH)**

3. THE DISTRICT COLLECTOR/DISTRICT
ELECTION OFFICER, DISTRICT BHOPAL
(MADHYA PRADESH)

....RESPONDENTS

*(SHRI SIDDHARTH SETH – ADVOCATE FOR THE
RESPONDENT NO.1-ELECTION COMMISSION
AND SHRI ANKIT AGRAWAL – GOVERNMENT
ADVOCATE FOR RESPONDENTS NO. 2 AND 3)*

AND

WRIT PETITION No. 13840 of 2022

Between:-

1. JABALPUR DIVISION INSURANCE
EMPLOYEES UNION (JDIEU) THROUGH ITS
GENERAL SECRETARY HEERA LAL
KUSHWAHA S/O LATE MALURAM
KUSHWAHA AGED ABOUT 50 YEARS 1197
BABA KI BAGIA, PUSHPAK NAGAR
ADHARTAL JABALPUR (MADHYA
PRADESH)
2. CENTRAL ZONE INSURANCE EMPLOYEES
ASSOCIATION THROUGH ITS PRESIDENT
NAVENDU CHAKRAVARTY S/O LATE GOPAL
CHAND CHAKRAVARTY AGED ABOUT 67
YEARS R/O PLOT NO.55, GURUDEV
COLONY, BEDI NAGAR, NEAR AMAN
SCHOOL JABALPUR M.P. (MADHYA
PRADESH)

.....PETITIONERS

(SHRI VIJAY KUMAR TRIPATHI - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH
THROUGH ITS CHIEF SECRETARY

**MANTRALAYA VALLABH BHAWAN
DISTRICT BHOPAL (MADHYA PRADESH)**

2. **M.P. STATE ELECTION COMMISSION
NIRVACHAN BHAWAN THROUGH
NIRWACHAN BHAWAN 58 ARERA HILLS,
BHOPAL M.P. (MADHYA PRADESH)**
3. **COLLECTOR AND DISTRICT ELECTION
OFFICER THROUGH DISTRICT KATNI
M.P. (MADHYA PRADESH)**
4. **LIFE INSURANCE CORPORATION OF
INDIA THROUGH THE ZONAL MANAGER
60-B JEEVAN SHIKHA, HOSHANGABAD
ROAD BHOPAL M.P. (MADHYA PRADESH)**

....RESPONDENTS

**(SHRI ANKIT AGRAWAL – GOVERNMENT
ADVOCATE FOR RESPONDENTS NO. 1 AND 3
AND SHRI SIDDHARTH SETH – ADVOCATE FOR
THE RESPONDENT NO.2-ELECTION
COMMISSION AND)**

*These petitions coming on for admission this day, **Hon'ble
Shri Justice Vivek Agrawal**, passed the following:*

ORDER

These writ petitions are taken up for analogous hearing on a Court Slip allowed by Hon'ble the Chief Justice.

2. Learned counsel for the respondent-M.P. State Election Commission has filed an application seeking vacation of stay as was granted by Coordinate Benches on 27.06.2022 and 24.06.2022, when these applications have been marked to this Court.

3. The issues raised in both the petitions are common. They have been filed respectively on behalf of Employees Provident Fund Organization and Jabalpur Division Insurance Employees Union (JDIEU), raising an important legal issue that petitioners or their employees do not fall within the four corners of the legal provisions contained in Madhya Pradesh Nagar Palika Nirvachan Niyam, 1994 (hereinafter referred to as “Rules of 1994” for short) or the provisions contained in Madhya Pradesh Panchayat Nirvachan Niyam, 1995 (hereinafter referred to as “Rules of 1995” for short).

4. Chapter-III of the Rules of 1994 provides for Administrative Machinery for conducting elections. It is submitted that Rule 11 of Rules of 1994, provides for Officers and Staff. Rules 11 and 17 are important which read as under :-

“11. Officers and Staff for conducting elections.-(1)

The State Government shall, when so requested by the Election commission make available to the Election Commission such staff as may be necessary for the discharge of the functions conferred on the Election Commission under the Act and these rules.

(2) All the officers and Members of the staff appointed or deployed for preparation of Voters’ list and conduct of election of any Municipality under the Act or these rules, shall function under the superintendence, direction and control of the Election Commission.

(3) The Commission may assign such duties and functions to officers and members of staff appointed or deployed under sub-rule (1) and invest them with such powers, in relation to such areas, as it may deem

necessary or consider fit in relation to conduct of elections and matters connected therewith or incidental thereto.

17. Appontment of Presiding and Polling Officers.-

(1) The Returning Officer shall with the prior approval of the District Election Officer appoint a Presiding Officer for each polling station and such polling officer or officers to assist the presiding officer, as he deems necessary :

Provided that no person who is not in the employment of the State Government or a local authority or any public undertaking of the State Government, shall be appointed as Presiding Officer.”

5. First Proviso below Rule 17 of the Rules of 1994 clearly provides that no person who is not in the employment of the State Government or a local authority or any public undertaking of the State Government shall be appointed as Presiding Officer.

6. Similarly, reading provisions of Rules of 1995, it is pointed out that Rule 17 is similar to Rule 11 of the Rules of 1994 and Rule 24 is similar to Rule 17 of the Rules of 1994.

7. It is submitted that under Rule 24(1) (iv) of Rules of 1995, it is provided that no person, who is not any other institution, concern or undertaking which is established by or under a provincial or State Act, or which is not controlled or not financed wholly or substantially by funds provided directly or indirectly by the State, shall not be appointed as Presiding Officer.

8. Reading aforesaid provisions, it is submitted that since petitioners are neither the employees of an institution concerned or undertaking which is established by or under a provincial or State Act, or which is controlled or financed wholly or substantially by the funds provided directly or indirectly by the State Government, they cannot be appointed as Presiding Officer and, therefore, the decision of the Election Commission to appoint members of the Petitioner-Organization, is *per se* inappropriate and illegal.

9. Shri Siddharth Seth, learned counsel for the State Election Commission in support, draws attention of this Court to an order passed by a Coordinate Bench of the High Court of Madhya Pradesh at Indore in Writ Petition No.12574 of 2022, decided on 23.06.2022, submits that Indore Bench of this Court has taken a view that impugned orders passed by the Madhya Pradesh Election Commission assigning election duties to the members of the Petitioner-Association does not call for any interference and the petitions have been dismissed.

10. I have carefully perused the said order passed by the Indore Bench of this Court.

11. Shri Seth, learned counsel is in agreement that material provisions contained in Rule 17 of Rules of 1994, first proviso to the said Rule i.e. 17(1) and provisions contained in Rule 24(1)(iv) of Rules of 1995, have not been taken into consideration by the Coordinate Bench at Indore, though they are para-materia for deciding the present controversy.

12. Thus, in my opinion, orders passed by the Coordinate Bench having not taken into consideration, relevant provisions of the Rules, namely, Rule 17 and 24 respectively of Rules of 1994 and 1995, will not act as a binding precedent on this Court and, therefore, it cannot be said that petitions are misconceived.

13. In fact, on the touchstone of the provisions contained in Rules 17 and 24 respectively of Rules of 1994 and 1995, as extracted above, these petitions deserve to be and are allowed, as apparently respondent No.1 has acted beyond the statutory provision.

14. At this stage, Shri Seth, submits that tomorrow i.e. 01.07.2022, elections are going to take place. Officers from the Petitioner-Organization have been already deputed for election work and at this last moment, any change will adversely effect process of election which is the soul of any democracy.

15. Taking these facts into consideration and also the fact that this Court requested Shri Rahul Diwakar and Shri Vijay Kumar Tripathi, to seek instructions from their respective clients to cooperate and coordinate with the Election Commission in the process of election as this democratic process cannot be allowed to be subdued on account of certain personal difficulties.

16. Learned counsel for the petitioners have been gracious enough to agree that barring three-four employees who have proceeded on leave for outstation after stay was granted in the respective petitions, all other members of the respective Petitioner-Organization have agreed to cooperate with the Election Commission in discharge of its

pious duty for 01.07.2022 only despite the fact that State Election Commission has utterly failed to read and understand legal provisions contained in respective Rules as extracted above, as a good will gesture and a responsible citizen of the country.

17. As consent has been given by the petitioners, therefore, except for three-four persons, whose names will be supplied to Shri Siddharth Seth, all other persons will report for election duty tomorrow, but that being a gesture of magnanimity as legally they are not bound to report for duty, this Court would like to place on record its appreciation for their acceptance of performance of duty for tomorrow. But, it is made clear that Election Commission shall not treat this one time exception as its right and will be free to make arrangements from amongst pool of officers/employees as are permissible under the Rules to be deployed for election duty on future dates even for ongoing elections.

18. In above terms, petitions are allowed and disposed off.

Certified copy today.

(VIVEK AGRAWAL)
JUDGE