CHHATTISGARH PANCHAYATS (ELECTION PETITIONS, CORRUPT PRACTICES AND DISQUALIFICATION FOR MEMBERSHIP) RULES, 1995.

(PR)234 ELECTION PETITIONS ... DISQUALIFI .... RULES, 1995 THE MADHYA PRADESH PANCHAYATS (ELECTION PETITIONS, CORRUPT PRACTICES AND DIS- 1. 2. 3. 4. 5. 6. 7. 8. 9. IO. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29

30. QUALIFICATION FOR YÆMBERSHIP) RULES,.1995 CONTENTS Short title. Definitions. Presentation of election petition. Parties to the petition. Contents of the petition. Relief that mäY be claimed by the petitioner. Deposit of security. Procedure on receiüing petition. Copy of the election petition to be served on each respondent. Election petitions to be enquired into through one or more proceedings. Procedure before the specified officer and his powers. Parties to produce their witnesses Withdrawal of election petition. Abatement of election petition. Recrimination when seat claimed. Application of the Indian Evidence Act, 1872. Appearance bef&e the specified officer. Documentary evidence. Secrecy of voting not to be infringed. Answering of criminating questions and certificate of indemnity. Grounds for declaring election to -oe void. Corrupt practices. Decision. Procedure in case of equality of votes. Finality of decision. Costs. Payment of costs out of security and its refund. Execution of orders as to costs. Disability arising out of corrupt practices. Repeal. R. c s a o P a c 1 THE MADHYA PRADESH PANCHAYATS (ELECTION PETI- TIONS, CORRUPT PRACTICES AND DISQUALIFICATION FOR MEMBERSHIP) RULES, 1995 Not(fication No. B-l -21 (1)95-xx11-p-2, dated 2-6-1995, Pub. in M.P. Gaz. Ext., dt. 3-6-1995, p. 516(6) to (12), made u/ s. 95(1), read with sub-section (1) & (3) of s. 122

1. Short title.-These rules may be called the Madhya Pradesh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995. ELECTION PETITIONS ... DISQUALIFI .... RULES, 1995 (PR)235 COMMENTARY In the proceedings of the meeting against Sarpanch of Gram Panchayat, the names of who* were present was mentioned and all the panchas including Sarpanch and Up-Sarpanch signed the proceedings. Collector gravely erred in setting aside the resolution recording passing of no-confidence motion on the ground that presence was not mentioned. Sukhnandan Patel v. state 0fM.P., 2003 (1) MPLJ 220=2003 (2) JIJ 74

2. Definitions.-In these rules, unless the •context otherwise re- qyires,— (a) "Act" means the Madhya Pradesh Panchayat Raj Adhiniyam, 1993 (No. 1 of 1994); (b) "Pleader" means any person entitled to appear and plead for another in a Civil Court and includes an Advocate, a Vakil and an Attorney ' of a High Court; (c) Returned Candidate" means a candidate whose name has been published under sections 19, 26 or 33 of the Act as duly elected; (d) "Specified Officer" means the Officer specified in sub- section (1) of Section 122 of the Act in relation to Gram Panchayat, Janpad Panchayat and Zila Panchayat, as the case may be. COMMENTARY Returned Candidate.-As required by Ss.19, 26 and 33 of the Act, unless the election of a candidate is notified there is no 'returned candidate' and no election petition can be filed without impleading as party the returned candidate against whom certain allegations under Rule 21 are made and relief sought. Chandra Bhan Singh v. State of M.P., Chandra Bhan Singh v. State 0fM.P., 2001 (2) MPHT 242=2001 (2) 419 (F.B.)

3. Presentation of election petition.-(l) An election Petition shall be presented. to the specified Officer during the office hours by the person making the petition, or by a person authorised in writing in this behalf by the person making the petition. (2) Every election petition shall be acpompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner undyr his own signature to be a true copy of the petition. COMMENTARY 1. Requirements of Election Petition.-[l] Extra copy of memorandum of Election Petition gi€en to returned candidate/respon- dent No. 1 before Election Tribunal, It was not required to be signed and verified by the Election Petitioner. Natthulal v. Shakuntalabai, 2011 (2) MPLJ 424 = 2011(2) CMPHT 133. (PR)236 ELECTION PETITIONS ... DISQUALIFI .... RULES, 1995 [2] Rule 3 only provides signing and attestation of copies filed along with the election petition. Election petition filed by the respondent was accepted by the authority in accordance with the provisions of Rule 3 and thereafter notice on the said election petition was issued to the appellant. Nothing on record to establish that a signed and attested copy

of the election petition was not sent to the appellant along with the notice. Appellant should have established this fact and as the best evidence which was available to the appellant was not produced by him, an adverse inference has rightly been drawn against him. Additional copy, i.e. an extra copy which was given to the counsel for the appellant during the proceedings need not be signed and attested by the election- petitioner as that is not the requirement of Rule 3. Shakuntalabai v. Nathulal, 2011(3) MPLJ 119 = 2011(5) MPHT 35

2. Maintainability of petition.-[l] Election petition filed by respondent No. 6 was not duly verified and the security amount required to be deposited at the time of presentation of the petition. Petitioner not having complied with mandatory provisions of the Rules was not main- tainable. Kana Mandal v. State 0fM.P., 2010(2) MPLJ 468 = 2010(3) MPHT 278. [2] Election Petition not presented by the election petitioner by presenting it herself or through an authorized advocate. Election peti- tion dismissed in view of provisions of Rules 3, 8 and 21. Kamlesh Nut v. Commissioner, 2012(4) MPLJ 385 = 2012(5) MPHT 127. [3] Copies of the election petition served on the respondent did not bear the signatures of the petitioner, were not verified and did not bear attestation as required by Rule 3(2). Election Tribunal rightly dismissed the election petition. Baijulal Verma v. Additional Collector, Chhindwara, 2009(4) MPLJ 548 = 2010(1) MPHT 477. [41 If a party is having the best evidence in his power and possession he is duty bound to produce it in the Court in order to resolve the controversy and that party. should not place reliance on the abstract doctrine of onus of proof that it was no part of his duty to produce it. Respondent No. 1 should have filed the copy of election petition served upon her along witlfthe summons in-the court in order to resolve the dispute. The Election Tribunal erred in dismissing the election petition by holding that there is non-compliance of Rule 3 •of the Rules. The impugned order passed by the Election Tribunal set aside. Natthulal v. Shakuntalabai, 2011(2) MPLJ 424 = 20110) MPHT 153. [5] Neither the requisite cppies of the Electi n Petition were filed nor they are signed. Non-Compliance of Rule 3 b the Election Petitioner. Election petition dismissed. Rakesh v. Returning Officer Panchayat Nirvachan, 2012(4) MPLJ 458 = 2012(5) MPHT 194

3. Invalid presentation.- [1] Presentation by Counsel under Vakalatnama which did not- specifically authorise him to present the petition. Presentation was held to be improper and petition liable to be dismissed. Tara v. Dabia, 2002 (3) MPLJ 591=2002 (2) MPHT 554. ELECTION PETITIONS ... DISQUALIFI .... RULES, 1995 (PR)237 [21 The election petition was not presented by the petitioner but it was filed by somebody else. Therefore, a election petition presented contrary to the provisions of sub-rule (1) of Rule 3 is not maintainable and has to be dismiésed in view of the mandatory requirement of Rule 8 of the Rules, 1995. Geeta Devi Yadav v. Archana, 2008 (1) MPLJ 261 = 2008(2) JIJ 34. [31 Vakalatnama does not authorise an Advocate in writing to present the election petition before the Competent Authority. Urmila Devi v. Returning Officer (Panchayat), 2008(4) MPHT 410 = 2008(3) MPWN 92

4. Election petition by voter in a ward different from the ward from the person was elected-Maintainability.-The election petitioner, though he belonged to a different ward of the Gram Panchayat assailed the election of the writ petitioner, who had been elected as Up-Sarpanch though elected as Panch from a ward in which the election petitioner was not the voter. In that event, the concept of wards melts into insignificanceand his election becomes a cause of grievance for any person who belongs to Gram Panchayat. It is to be borne in mind that in the absence of any categorisation who can file an election petition and the only provision that throws some light being rule 3fthe same has to be purposively interpreted. The said provision enshrines that an election petition is to be presented to the specified officer during the office hours by the person making a petition or by a person authorised in writing in that behalf by the person making the petition. It is apparent that a relief can be claimed declaring the election of the returned candidate to be void in addition to further declaration. Thus, a person may not claim that he himself or other candiddate has been duly elected but may seek a relief for declaration simpliciter that the election of the returned candidate is void. Thus the keyword is 'person'. Though the word 'person' has been mentioned, it would not engult in its ambit or seep a person from anywhere. He must have some connection or nexus with the election. He must be a person aggrieved. The petitioner was therefore a person aggrieved and the election petition at his instance was maintainable. Hukum Singh v. Collector, Panna, 2002 (1) MPLJ 233=AIR 2002 MP 32=2001 (2) JIJ 270

5. Recou•nting of votes.-Difference of votes was only 17. Electricity failed twice and votes were counted in candle light. Sufficient cir- cumstances to order for recount. Rakib Mohammad v. District Collector, AIR 2003 39=2002 (3) MPLJ 415=2902 (5) MPHT 487 (DB). [2] It is obligatory on part of Election Tribunal to give specific finding about its satisfaction for directing recount. Smt. Kgmlesh Gautam v. Sub Division Officer, AIR 2009 (NOC) 754 MP

6. Petition properly attested.-A perusal of theopy of the election petition which was accompanied with the petition and was supplied to the petitioner, reveals that on each and every page the third respondent has put her signature. In the circumstances, mere non-mention of 'true copy would not be sufficient to hold that the Rule 3(2) of the Rules has (PR)238 ELECTION PETITIONS ... DISQUALIFI .... RULES, 1995 not been complied with. Subha Rao v. Member, *Election Tribunal, (AIR 1964 SC 1072) REL. Ku. Parwati Bai Thakur v. State 0fM.P., 2007(3) - MPHT 63. Photo copy of petition supplied to the respondent was signed by the petitioner but not mentioned words "attested true copy" held it is substantial compliance of Rule 3(2) and not liable to dismiss under Rule 8. Mrs. Indira Singh v. Mrs. Anjana Sharma, 2006(4) MPHT 152. See also: Ravindra Singh v. SDO cum Prescribed Authority, Datia, 2006(3) MPLJ 570 = 2006(3) MPHT 150

7. Petition not attested by election petitioner- Effect.-[l] Where election petition was not attested by the petitioner as required by sub-rule (2), the provision of the rule being mandatory, failure would lead to summary dismissal of election petition. Attestation by Advocate would not save the petitioner. Dr. Omprakash Soni v. Ashok Kumar Bhargava, AIR 1996 MP 43. [2] The provisions are mandatory. Attested copies of documents supplied to respondents not signed by petitioner. Petition liable to be dismissed. Defect cannot be cured after expiry of period of limitation. Amolsingh v. Hameersingh,, 1996 (I) MP WN 122. Where requirement of the provision is not complied, no decision on merit can be given. Rambharosa v. State of M.P., 1996 (I) MP WN 81

8. Failure to file copies of election petition- Petition to be dismissed.-[l] Where in compliance with the provisions of rule 3, election petition did not accompany as.many copies of the same as there were respondents, the requirement being mandatory, such a petition was liable to be dismissed under the provisions of rule 8. Shivdhari 'Lakhesar v. Jaduman Bishwanath, 1999 (1) MPLJ 291. See also: [2] Udaysingh v. Himmatsingh, 1999 (1) JLJ 200. [3] Petition should be attested by the election petitioner. In its absence the petition is liable to be dismissed. Attestation by advocate would not save the petition. Omprakash Soni v. Ashokkumar, AIR 1996 MP 43. [4] Attested copies of documents supplied to respondents not signed by petitioner- Petition liable to be dismissed. Defect cannot be cured after period of limitation. Amolsingh v. Hamir Singh? 1996 (I) MP WN 122

4. Parties to the petition.-Where the petitioner in addition to claim- ing a declaration that the election, of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected he shall join as respondents to his petition all the contesting candidates at the election. COMMENTARY 1. Candidates at the election.- Person who withdrew their. can. ELECTION PETITIONS ... DISQUALIFI .... RULES, 1995 (PR)'239• 2. Parties to election petition.-[l] Persons who withdrew their candidature on the date of withdrawal of nomination are not required to be made party to an election petition. Devram v. Sadu, 1996 MPLJ 606=1996 JIJ 240. [2] Where petitioner claims that he or any other person be declared elected in place of the returned candidate, he has to join only the contesbing candidates as party and not those whose nomination has been rejected or who withdrew his nomindtion. Harishankar Suryavanshi v. State of M.P., 1998 (2) Vidhi Bhaswar 225

5. Contents of the petition.-An election petition shall— (a) contain a concise statement of all material facts on which the petitioner relies; (b) set forth with sufficient particulars, the grounds on which the election is called in question; (c) be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (V of 1908), for the verifications of pleadings. C O M MEN T ARY 1 e Verification- Substantial compliance.-The object of verifying the pleading is fif on the party responsibility about truthfulness of its contents and the same Rule has made to the election petition filed under S. 122 of the Panchayat Act. When the facts are verified by affidavit, then the rule has been substantially compiled with. Ramrati v. S.D.O., Sidhi, 2005 (3) MPLJ 101

2. Distinction between material facts and particulars.-Under Rule 5 the election petition requires a concise statement of all material facts on which the petitioner relies, and sets forth with sufficient par-

ticulars, the grounds on which the election is called in question. Material facts are facts upon which election petitioner files an election petitton showing cause of action. What particulars could be material facts would depend upon the facts ofeach case and no universal rule can be laid down. It is however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the case are material facts and must be stated in the pleading by the party. Material facts are primary ov basic facts which must be pleaded by the election petitioner in support of the case set up by the petitioner to prove the cause of action. Partic lars on the other hand are details in support of materiål facts pleaded b the party. They amplify, refine and embellish material facts by giving distinctive touch to the basis contours of a picture already drawn so as to make if full, more clear and more informative. Ramavtar Budhouwa v. Smt. Susheela Singh, 2007(1) JIJ 54. (PR)240 ELECTIONPETITtONS ... DISQUALIFI .... RULES, 1995 6. Relief that may be claimed by the petitioner.-A petitioner may claim— (a) a declaration that the election of all or any of the returned candidates is void; and (b) in addition thereto, a further declaration that he himself or any other candidate has been duly elected

7. Deposit of security.-At the time of presentation of an election petition, the petitioner shall deposit with the specified officer a sum of Rs. five Hundred as security. Where the election of more than one candidate is called in question, a separate deposit of an equivalent amount shall be required in respect of each such returned candidates. COMMENTARY Deposit of security amount is essential.-Fresh election petition filed by the petitioner by withdrawing the earlier petition. While filing the second election petition, security amount has to be deposited by the petitioner. Amount deposited with the first election petition cannot be treated as deposit of security for entertaining the second election peti- tion. Election petition rightly dismissed by the Election Tribunal for non-compliance of Rule 7 of the Rules. Roopa Singh v. State of M.P., 2012(2) MPLJ 435 = 2012(2) MPHT 502. Where no security deposit was accompanied with the election peti- tion, the•petition cannot be entertained and liable to be dismissed under Rule 8. No deposit thereafter can remove the defect. Saria Tripathi (Smt.) v. Smt. Kaushalya Devi, 2004 (2) JLJ 263 (DB). See alsoAyodhya Prasad v. State 0fM.P., 2001 (2) MPLJ Notes 25. Enclosement of receipt not compulsory in each case.-Rule 7 does not say that an election petitioner is bound and obliged to file a copy of the receipt along with the election petition: If the Presiding Officer receives the security cost in cash and does not issue the receipt immedi- ately thereafter, then such a lapse or inaction on the part ofthe Presiding Officer or his office, election petitioner cannot be allowed to suffer. Lata Patle v. Smt. Kamlesh Gautam, 2008 (1) MPLJ 388

8. Procedure on receiving petition.-lf the provisions of rule 3 or rule 4 or rulé 7 have not been complied withöthe petition, shall be dismissed by the specified officers: Provided that the petition shall not pe dismissed under this rule without giving the petitioner an opportunity of being heard. COMMENTARY 1. Non-compliance of Rules in Election Petition.-[l] Issue of defect of non-compliance of the rules can be taken up by the Election Tribunal at any stage and it is not incumbent upon the authority to do so only at the threshold. Baijulal Verma v. Additional Collector, Chhindwara, 2009(4) MPLJ 548 = 2010(1) MPHT 477. lay ed ny on Is. Ite be i- Li a 7 1 ELECTION PETITIONS ... DISQUALIFI .... RULES, 1995 (PR)241 [2] Non compliance with Rules 3, 4 or 7. Prescribed Authority if after hearing .the petitioner finds non-compliance of Rules 3, 4 or 7, it has no choice but to dismiss the petition. Divisiya w / o Naresh Paraste v. Shanta w /o Narayan Singh Pusham, 2011 (2) MPLJ 701

2. Provisions are mandatory.-[l] The provisions of Rules 7 and 8 are mandatory. Where security amount was not deposited along with the election petition, such a petition is liable to be dismissed. Udaysingh v. Himmatsingh, 1999 (1) JLJ 200. [2] But in a case where deposit was not made along with the election petition but made subsequently before expiration of the period of limita- tion and also before cognizance of the matter was taken, the election petition does not suffer from a fatal defect. AIR 1986 MP 49 Disting. Ravi Thakur v'. Shivshankar, AIR 1997 NIP 136. See also Kailashnarayan v. Namur, 1996 JIJ 391. [3] It is essential that an election petition should be signed and verified. Further it is essen!ial that it should accompany as many copies of such a petition as there are respondents. Udaysingh v. Himmatsingh, 1999 (1) JIJ 200. See also: [4] Shivdhari v. Jaduman, 1998 (2) JLJ 183. [5] Where deposit of security amount was not made along with election petition and the S.D.O. took cognizance of it, directed recount of votes and passed order for setting aside election of the returned candidäte, the order is bad. Election petition suffered from fatal defect. Amarsingh v. Sub-divisional Officer, 1997 (2) MPLJ 192

3. Scope of preliminary objections.-After filing of the pleadings the presiding officer heard preliminary arguments and on the basis of this the election petition has been dismissed. Héld, preliminary objec- tions may be considered by the Election Tribunal but the scope of preliminary objections is limited under Rule 8 of the Rules, in respect of objection relating to the presentation of election petition under Rule 3, non-furnishing of the security as required under Rule 7 of the Rules or non- impleadment of parties as required under Rule 4 of the Rules. Except these, thére is no provision for hearing preliminary objection and deciding the case at preliminary stage. The Election Tribunal committed an error of jurisdiction in adopting the aforesaid procedure. Lalamadas s/o Roopdas v. Vidyanati, 2007(1) MPLJ 410

9. Copy of the election petition to be served on each respondent.- The specified office? shall, as soon as may bé, cause a copy of petition to be served on each respondent. COMMENTARY Rule 9 does nowhere say that the copy required to be verified under Rule 3 is only to be served upon the respondent. However a juxtapose reading of Rule 9 with Rule 3 we must observe that the copies submitted (PR)242 ELECTION PETITIONS ... DISQUALIFI .... RULES, 1995 R. 10 under Rule 3(2) must only be supplied to the party/respondent after they put their appearance in the Court. Lata Patle v. Smt. Kamlesh Gautam, 2008 (1) MPLJ 388

10. Election petitions to be enquired into through one or nåore proceedings.-When, in respect of any election of a candidate, more peti- tions than one are presented, the specified officer may at his discretion enquire into the petitions either in one or more proceedings as he deems. fit

11. Procedure before the specified officer and his powers.-(l) 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 only be necessary for the specified officer to make a memorandum of the substance of the evidence of any witness•examined by hiln. (22) The specified officer, shall have the powers which are vested in a Court under tlae Code of Civil Procedure, 1908, when trying a suit in respect of the folloxäng matters:— (a) (b) (c) (d) (e) (f) discovery and inspection; enforcing the attendance of witnesses, and requiring the deposit of their expenses; compelling the production of document; examination of witnesses on oath; reception of evidence taken on affidavit; and issuing commission for examination of witnesses and summon- ing and examining suo moto any person whose evidence, apz pears to him to be material. COMMENTARY 1. Jurisdiction of specified officer.-The specified Officer cannot entertain application under S.122 before publication of notification under Rule 22 of the Nirvachan Niyam, 1995. He also cannot order stay of issue ofnotification under the Nirvachan Niyam of 1995. Order passed by him staying publication of notification and setting aside election were without jurisdiction and therefore quashed. Chandra Bhan Singh v. State 0fM.P., 2002 (1) MPLJ 58

2. Specified Officer.-The term 'specified officer' in. this rule cannot be construed to mean Collector only. The rule governs enquiry of all election petitions questioning election to Gram Panchayat, Janpad Panchayat and Zila Panchayat. Hence the expression 'Qecified officer' has been incorporated. Fröm the scheme of the Act and the M.P.Land Revenue Code, the Additional Collector shall be deemed to be a specified officer in case election petition is transferred to him by the Collector exercising his power under section 17(2) of the M.P.Land Revenue Code, 1959. Rajkumar Shivhare v. Anand Kumar Tiwari, 2000 (3) MPLJ 391=2000 (2) JIJ 121. R. 13 ELECTION PETITIONS ... DISQUALIFI .... RULES, 1995 (PR)243 3. Enquiry essential in election petition.-Provisions of Rule 11 specifically provides that the enquiry in the eléction petition shall be as nearly as may be in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure. Lalamadas s/o Roopdas v. Vidyawati, 2007(1) MPLJ 410

12. Parties to produce their witnesses.-lt shall be the duty of the parties to produce their witnesses on the Hate fixed for evidence, and they shall not be entitled to an adjournment for non-attendance of their witnesses: Provided that the specified officer may, at his discretion, order the issue of summons to any witness on the necessary process fee and costs being deposited by the party concerned. COMMENTARY No need to examine Returning Officer and to call him in evidence .-Sub-rule (3) of Rule 80 of M.P. Panchayat Nirvachan Niyam, 1995 provides that every decision the Returning Officer or such other officer authorised by him under sub-rule (2) of Rule 80 shall be in writing and contain the reasons therefor. Thus there is no need to examine the Returning Officer by the specified offcer in suo motu powers for deciding whether he has passed any written order dr not, it can be established by filing copy of the order. Kailashi v.

Bharosi Bai, 2008 (2) MPIJ 218 = 2008(5) 204 = 2008(1) rywwN 106 = _AIR 2008 (NOC) 1536 13. Withdrawal of election petition.-(l) No election petition shall be withdrawn without the leave of the specified officer. (2) If there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners. (3) When an application for withdrawal is made, a notice thereof fbdng a date for the hearing of the application shall be given to all other parties to the petition. (4) No application for withdrawal shall be entertained after the evidence of the petitioner is över. (5) If the application is granted, the petitioner shall be ordered to pay the costs of.the respondents theretD as incurred or such portion thereof as the specified officer may deem fit. COMMENTARY Withdrawal of petition.-[ll Mere filing of an application for withdrawal of election petition will not automatically result into withdrawal of election petition. Can be withdrawn only with the leave of the specified officer. This is a matter of common knowledge that in elections lot of pressure, threatening, money and muscle power are employed and this sometimes resultS into filing ofa withdrawal applica- tion in the election petition. Thus, a power is given to the specified officer to examine the genuineness of such a request and if the said authority (PR)244 ELECTION PETITIONS ... DISQUALIFI .... RULES, 1995 14 comes to the conclusion that in the facts and circumstances of the case, such a leave cannot be granted, it has a power to refuse the same. Leelawati v. Kanhaiyalal, 2011(4) MPLJ 131 = 2012(1) JIJ 33. [2] Rule 21(1)(d) Recount of votes-Consideration.-Held, mere rejection of an application under Rule 80 filed by the petitioner is not a sufficient ground for ordering recount of votes. Vidhyawati Lilhare v. Sub-Divisional Officer-cum-Prescribed Officer, Lanji, Balaghat, 2010(1) MPLJ 115 = 2010(4) MPHT 92 = 2010(2) JIJ 29. [3] Withdrawal of election petition by election petitioner as a result of compromise by the petitioner and elected candidate-respondent. Par- ties were closely related and withdrawal was in their domestic interest. Moreover it was not a case involving any allegation of corrupt practice but only a case of recouting of votes. Leave to withdraw election petition granted. Meena Singh v. Prescribed Authority-Cum-Collector, 1998 (2) MPLJ 309

14. Abatement of election petition.-An election petition shall abate duly on the death of the petitioner or of the several petitioners or of the sole respondent. COMMENTARY Death of respondent the returned candidate.- In Bhushan v. S.D.O. Janjgi+ [1998 (2) JLJ 79], under similar rules of 1991, rule 15, it is held that in a case where the respondent, the returned candidate has died and the petitioner has sought the remedy of declaring the petitioner elected in place of returned candidate, in accordance with the exception provided therein, the petition shall have to be decided on merits and the petition shall not abate. But under the present rules there is no such exception provided and under the circumstances the petition shall abate

15. Recrimination when seat claimed.-Whereas, at an enquiry into an election, any candidate claims, the seat for himself, the elected can- didate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the elected candidate and a petition had been presented calling in question his election. COMMENTARY Applicability.-Rule 15 applies when seat is claimed by the election petitioner. A prayer for general recount is not included in it. Tulsiram v. Uttamkhan, 2003 (1) MPLJ 333

16. Application of the Indian Evidence Actv 1872.-Subject, to the provisions of these rules, the provisions of the Indian Evidence Act, 1872 (1 of 1872) shall apply in all respects to an enquiry into an election petition. R. 21 ELECTION PETITIONS ... DISQUALIFI .... RULES, 1995 (PR)245 17. Appearance before the specified officer.-An appearance, applica- tion or act before the specified •officer may be made or done by the party in person or by a pleader or an agent duly appointed to act on his behalf: Provided that it shall be open tc.the specified officer to direct any party to appear in person whenever it considers if necessary

18. Documentary evidence.-Nc document shall be in admissible in evidence on the ground that it is not duly stamped or registered

19. Secrecy of voting not to be infringed.-No witness or other person shall be required to or allowed to-state for whom he has voted

20. Answering of criminating questions and certificate of indem- nity.-(l) No witness shall be excused from answering any question as to any matter relevant to a matter in issue in any enquiry upon the ground that the answer to such question may criminate or may tend to criminate him, or that it may expose or may tend to expose him to any penalty or forfeiture: Provided that— (a) a witness who answered truly all

questions which he is required to answer shall be entitled to receive a certificate of indemnity from the specified officer. (b) an answer given by a witness to a question put by or before the specified officer shall not except in the case of any criminal proceeding for perjury in respect of the evidence, be admissible in evidence against him in any proceeding. (2) When a certificate of indemnity has been granted to any witness, it inay be pleaded by him in any Court and shall be a- full and c0mplete defense to or upon any criminal charge arising out of the matter to which such certificate relates but it shall not be deemed to relieve him from any disqualification in connection with an election imposed by the Act or the rules made thereunder

21. Grounds for declaring election to be void.-(l) Subject to the provisions of sub-rule (2) if the specified officer is of opinion- (a) that on the date of his election the returned candidate who was not qualified or was disqualified to be chosen to fill the seat under-the-Acc or (b) that any corrupt practic has been committed by a returned candidate or his election agent or by any other person with the consent of a returned •candidate or his election agent; or (c) that any nomination paper has been improperly rejected; or (d) that the result of the election in so far as it concerns returned candidate has been materially affected— (i) by the improper acceptance Of any nomination; or (ii) by a corrupt practice having been committed in the interest of the returned candidate by person acting with the con- sent of the candidate or his agent; or (iii) by the improper acceptance, refusal or rejection of any vote or the reception of any vote which is void; or (iv) by any non-compliance with the provisions of the Act or of any rules or orders made thereunder; the specified officer shall declare the election of the returned candidate to be void. (PR)246 ELECTION PETITIONS ... DISQUALIFI .... RULES, 1995 R. 22 (2) If in the opinion of the prescribed authority a returned candidate has been guilty by an agent of any corrupt practice, but the prescribed authority is satisfied— (a) that no such corrupt praetice was committed at the election by the candidate and every such corrupt practice was committed contrary to the instructions and without the consent of the candidate; (b) that the candidate took all reasonable means for preventing the commission of corrupt practice at the election; and (c) that in all other respect the election was free from any corrupt practice on the part of the candidate or any of his agent; then the prescribed authority may decide that the election of the returned candidate is not void. COMMENTARY 1. Order ofrecount.- An order ofrecount cannot be passed on mere asking. An issue should be framed, evidence be recorded and the question should be decided on going through such an evidence. Secrecy of votes cannot be lightly revealed. Udaysingh v. Himmatsingh, 1999 (1) JIJ 200. [2] Recount of votes cannot be ordered even on consent. Secrecy of voting cannot be broken lightly. Gajanan v. Ramcharan, 1997 (11) MPWN 3

2. Result materially affected or not-cases.- [1] Election declared void.-The nomination paper of a returned candidate itself is found to have been improperly accepted because the returned candidate superseded his some assets etc. Held, his result has been obviously materially affected therefore his election properly declared as void. Mehboob Khan v. Lallu Bhai, AIR 2009 (NOC) 532 MP = 2008 (4) MPLJ 198 = 2008(3) JIJ 307 = 2008(5) MPHT 95. [21 Returned candidate lady superseded fact of having nine children, it would not have caused any disqualification to her, therefore the result of the election is not materially affected and the improper acceptance of nomination paper due to incomplete information in the declaration did not provide a ground to set aside the election. Siyawati v. Phoolwati, 2009(1) MPHT 301 = 2009(1) JLJ 431 = AIR 2009 (NOC) 425 MP = 2008 (4) MPLJ 437

22. Corrupt practices.-The following shall be deemed to be corrupt practices for the purposes of these rules:— (i) Bribery as defined and explained clause (1) of section 123 the Representatiorfof the People Act, 1951 (No. 43 of 1951). (ii) Undue influence as defined in clause (2) of section 123 of the Representation of the People Act, 1951. (iii) The systematic appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent, to vote or refrain from voting on grounds of caste, race, community or religion or the use of or appeal to, religious symbols or, the use of or appeal to national symbol such as the R. 23 ELECTION PETITIONS ... DISQUALIFI .... RULES, 1995 (PR)247 national emblem, for national flag, for the furtherance of the prospects of that candidate's election. (iv) The publication by a candidate or his agent or by any other person with the consent whether direct, indirect or implieå of the candidate or his election agent of any statement of fact in relation to the personnel character or conduct of any candidate, or in relation to the candidature, or withdrawal from contest of - any candidate being a statement reasonably calculated to prejudice the prospects of that candidate's election. (v) The hiring or procuring whether on payment or otherwise of any vehicle or vessel

by a candidate or his agent or any other person with the consent of the candidate or his election agent for the conveyance of any elector other than the candidate himself, and the members of his family or his agent, to or from any polling station provided in accordance with the rules made under the Act: Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to or from any such polling station, shall not be deemed to be a corrupt.practice under this clause and if the vehicle or vessel so hired is a vehicle or vessel not propelled by a mechanical power: Provided further that the use of any public transport vehicle by an elector at his own cost for the purpose of going to or coming from, any such polling station shall not be deemed to be a - corrupt .practice_under zhis clause Explanation.-ln this clause the expression 'vehicle' means any (vi) (vii) (viii) (ix) (x) vehicle used or capable or being used for the purpose of road transport whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise. The holding of any meeting in which intoxicating liquors are served. The issuing of any circular, placard or poster having a reference to the election which does not bear the name and address of the printer and publisher thereof. Personation at election as defined in SecG01å 171-D of the Indian Penal Code, 1860. The employment or connivance at the employment of any panchayat officer or servant or an employee as mentioned in sub-clause (d) of clause (1) of Section 36 of the Act as an agent for canvassing. Acting of any Panchayat Officer or servant of an employee as mentioned in sub-clause (d) of clause (l) of Section 36 of the Act as an agent in connection with th$ election of the candidate

23. Decision.-(l) At the conclusion of the enquiry the specified officer shall make an order— (a) dismissing the election petition; or (b) declaring the election of all or any of the returned candidates to be void; or (c) declaring the election of all or any of the returned candidate to be void and the petitioner or any other candidate to have been (PR)248 ELECTION PETITIONS ... DISQUALIFI .... RULES, 1995 duly elected. R. 24 (2) If any person who has filed an.election petition has in addition to calling in question the election of the returned candidate, claimed decla- ration that he himselQor any other candidate has been duly elected and the specified officer is of opinion— (a) that in fact the petitioner of such other candidate received a majority of valid votes, or (b) that buth the votes obtained by the returned candidate the petitioner or such other candidate would have obtained a majority of valid votes; the specified officer shall, after declaring the election of the returned candidate to be void, declare the petitioner or such other tndidate, as the case may be, to have been duly elected. (3) AC the time of making order under this rule. the. specified officer shall also make an order— (a) Where any charge is made in the pet ition of any corrupt practice having been committed at the election, recording— (i) a finding whether any corrupt practice has or has not been proved to have been committed at the election and the nature of that corrupt practice, and (ii) the name of all person, if any, who have been proved to have been guilty of any corrupt practice and the nature of that practice; and (b) fixing the total amount o! costs payable and specifying the persons by whom the costs shall be paid: Provided that a person who is not party to the petition shall not be named in the order under sub-clause (ii) of clause (a) unless— (a) he has been given notice to appear before him and show cause why he should not be so named; and (b) if he appears in pursuance of the notice, he has beeh given an opportunity of cross examining any witness who has already been examined by the specified officer and had given evidence against, of calling evidence in his defence and of being heard. COMMENTARY Appeal and Revision.-Rules framed for election petitions etc. do not provide any appeal or revision. Decision pronounced under Rule 23 has further been declared to be final under Rule 25. Hukumchand v. Dheerji, 2001 (1) JIJ 229

24. Procedure in case of equality of votes.-lf during the enquiry it appears to the specified officer that there is an equality of votes between and candidate at the election and that an addition of a vote would entitled any of these candidates to be declared elected then, specified officer shall decide between them by lot and proceed as if the one in whose favour the lot falls, had received an additional vote

25. Finality of deqision.-The decision of the specified officer shall be final. 1 R. 30 ELECTION PETITIONS ... DISQUALIFI .... RULES, 1995 (PR)249 26. Costs.-(l) The expenses as per the following table incurred by any person in attending to give evidence shall unless •the specified officer otherwise directs, be deemed to be part of the cost- (i) Actual fares of travel by any made of conveyance including bus, train or taxi or combination thereof from his place of residence or work to the court of the specified officer. (ii) Rs. 40/- per day or part thereof to cover the expenses incurred towards daily allowance. (2) Costs shall be the discretion of the specified officer who shall have full powers to determine as to by and

to whom and to what extent such costs are to be paid. (3) The pleader's fees payable by a party shall be determined by the officer which shall not exceed more than Rs. Five Hundred

27. Payment of costs out of security and its refund.-(l) The costs as determined by the specified officer shall, if they have not already been paid, be paid in full, or so far as possible, out of the security deposit under rule 7, on an application made in writing in that behalf within a period of three months from the date of such order to the specified officer by the person in whose favour the costs have been awarded. (2) If there is any balance left out of the said security deposit after payment of the costs, such balance, or where not costs have been awarded or no applicationqs aforesaid has been made within said period of three months, the whole of said deposit may, on an application made in that behalf in writing to the specified officer by the person by whom deposit has been made or if such person dies after making such deposit, by the legal representative of such person, be returned to the said person or to his legal representative as the case may be

28. Execution of orders as to costs.-An order as to costs under the provisions of these rules may be produced before the Principal Civil Court of original jurisdiction within the local lirnits of whose jurisdiction any person direct by such order to pay any sum of money has a piace of residence or business, and such Court shall executethe order or cause the same to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in suit

29. Disability arising out of corrupt practices.-lf any person, upon the trial of an election petition, is found guilty of any corrupt practice, he shall, for a period of six years from the date on which such finding takes effect, be declared by the specified officer to be disqualified for the mem- bership of any panchayat: Providing that the State Government may; for reasons to be recorded in writing, remove the disqualification incurreå under this rule, with effect from such date as may be specified therein or reduce the period of such disqualification

30. Repeal.-A11 previous rules on the subject shall stand repealed from the date of final publication -of these rules in fthe •Madhya*radesh Gazette".