

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
EP No. 2 of 2024**

(KUNDAN MALVIYA Vs SMT. KANCHAN TANVE AND OTHERS)

Dated : 02-07-2024

Shri Arvind Shrivastava - Advocate for petitioner.

Shri Anvesh Shrivastava – Advocate for respondent No.1.

Heard on **I.A. No.12409/2024**, an application for modification of order dated 13.05.2024 by which respondents No.1 was proceeded *ex-parte*.

It is submitted by Shri Anvesh Shrivastava that notice on respondent No.1 was treated to be served on 23.04.2024. It was also admitted by Shri Anvesh Shrivastava that respondent No.1 had received the notice on 23.04.2024.

However, that is not the crucial question which is to be considered for deciding this application.

Paragraph 2 of the application reads as under:

“2. That, as per the status reflected on the website of this Hon'ble Court the notice on the respondents were treated to be served on 23.04.2024. That however the acknowledgment of the same was received on 08.05.2024, but before the same the matter was taken up on 06.05.2024, wherein the Hon'ble Court was kind enough to grant one last opportunity for the appearance of the respondents having failed which the Hon'ble Court shall proceed *ex-parte*. Hence, on 13.05.2024 the Hon'ble Court had been pleased to consider the respondent no.1 as *ex-parte*.”

From plain reading of this paragraph, it is clear that respondent No.1 has made baseless and false allegation against the Court by alleging

that although acknowledgment of receipt of notice was received on 08.05.2024 but before the same the matter was taken up on 06.05.2024 and respondent No.1 was treated as served and an opportunity was given to her to appear and ultimately, on 13.05.2024 she was proceeded *ex-parte*.

As per the office note, a note was prepared by the office on 27.04.2024 which reads as under:

“Notices are served as per Indian Post Website, service report inserted.”

Only on the basis of said service report which was supported by the online service report of registered notice, this Court had treated respondent No.1 as served on 06.05.2024. Therefore, the allegation made by respondent No.1 in her application that although the receipt of acknowledgment of notice was received by this Court on 08.05.2024 but before the same the matter was taken up on 06.05.2024 and respondent No.1 was treated as served is false and baseless.

During the course of arguments, it was submitted by counsel for respondent No.1 that notice which was sent by registered post was received by employee of respondent No.1 and not by respondent No.1.

If respondent No.1 had authorized her employee to receive the notice on her behalf, then she cannot take advantage of her own wrong/act specifically when it is submitted by counsel for respondent No.1 that respondent No.1 was aware of the fact that next date before the High Court was 06.05.2024 and thereafter, it was adjourned for 13.05.2024.

Be that whatever it may be.

So far as non-appearance of respondent No.1 on 13.05.2024 is concerned, it is submitted by counsel for respondent No.1 that since

polling for Lok Sabha election was to take place in Khandwa on 13.05.2024, therefore, respondent No.1 did not appear.

Accordingly, this Court thought that respondent No.1 might be under impression that her personal appearance is required, therefore, it was enquired from counsel for respondent No.1 as to whether respondent No.1 is personally present or not?

It is submitted by Shri Anvesh Shrivastava that respondent No.1 is not present.

Furthermore, counsel for respondent No.1 was also directed to point out from the notice which was sent to her to show that direction was for her personal appearance.

It was fairly conceded by counsel for respondent No.1 that direction was either for her personal appearance or for an appearance through her counsel. Therefore, the pleading regarding polling in Khandwa on 13.05.2024 is nothing but an attempt to play fraud on the Court and in fact the whole attempt of respondent No.1 appears to avoid filing of the written statement.

Section 86(6) of the Representation of the People Act, 1951 provides that the trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day unless its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

Thus, the whole attempt of respondent No.1 appears to frustrate the statutory provisions of Section 86(6) of the Representation of the People Act, 1951 and for making an attempt to achieve the said ill-designed goal, respondent No.1 has gone to the extent of making allegation against the

Court that although acknowledgment of receipt of notice was received by the Registry on 08.05.2024, but still respondent No.1 was treated to be served on 06.05.2024.

Be that whatever it may be.

This Court is of considered opinion that reasons which have been assigned by respondent No.1 are not sufficient to set aside the *ex-parte* proceedings. However, there is another aspect of the matter which cannot be lost sight of.

Petitioner himself has filed an application for amendment of election petition which has been registered as I.A. No.12369/2024. The said application is yet to be decided.

Since an application for amendment is pending and ultimately if it is allowed, then a fresh notice of amended election petition will be required to be issued to respondent No.1 although she has already been proceeded *ex-parte*.

Under these circumstances, this Court is of considered opinion that although respondent No.1 has miserably failed in pointing out the sufficient cause for setting aside *ex-parte* proceedings but in view of I.A. No.12369/2024 filed by petitioner for amendment of election petition, this Court thinks it appropriate to allow I.A. No.12409/2024.

Accordingly, *ex-parte* proceedings drawn against respondent No.1 on 13.05.2024 are hereby **recalled** subject to payment of cost of **Rs.50,000/-** to be deposited by respondent No.1 within a period of one week in the Registry of this Court.

It is made clear that this cost has been imposed on two grounds i.e. (i) an attempt has been made by respondent No.1 to delay the proceedings in spite of statutory provision of Section 86(6) of the Representation of

the People Act, 1951 and (ii) in order to achieve the ill-designed goal respondent No.1 has gone to the extent of making allegation against the Court that although the acknowledgment of receipt of notice was received by the Registry on 08.05.2024, but still this Court had treated respondent No.1 as served on 06.05.2024.

Counsel for petitioner is directed to supply copies of I.A. No.12368/2024 and I.A. No.12369/2024 to counsel for respondent No.1 during the course of the day.

I.A. No.12369/2024 shall be considered on 04.07.2024.

It is made clear that in case if cost is not deposited within a period of one week from today i.e. up to 09.07.2024, then this order shall automatically lose its effect.

List on **04.07.2024**.

(G.S. AHLUWALIA)
JUDGE