

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

BEFORE

HON'BLE SHRI JUSTICE ASHISH SHROTI

CIVIL REVISION No. 175 of 2024

SUMER SINGH

Versus

SMT. RENU GARG AND OTHERS

Appearance:

Shri Pratip Visoriya - Advocate for the petitioner.

Shri M.P.S. Rahguvanshi - Senior Advocate with Shri Manish Gurjar
- Advocate for respondent No.1.

Shri Prashant Singh - Advocate General (through Video Conferencing) with Shri Vivek Khedkar and Shri Deependra Singh Kushwah- Additional Advocate Generals and Shri S.S. Kushwaha & Shri C.P.Singh - Government Advocate for respondent No.3/State.

RESERVED ON: 8/05/2026

ORDER PASSED ON: 13/05/2026

O R D E R

This Civil Revision has been filed by applicant under Section 115 of Code of Civil Procedure read with Section 26(2) of M.P. Municipalities Act, 1961, challenging the order dated 01.02.2024, passed by First District Judge, Sheopur, Distirct Sheopur, in M.J.C. No.91 of 2022 whereby two separate applications filed by non-applicant no.3- Collector/Returning Officer and by non-applicant no.1 under Order 7 Rule 11 CPC has been allowed and the election petition filed by applicant has been dismissed as not maintainable. The reasons for dismissal of election petition are discussed in later part of this order.

PART I:

2. Even though, the present Civil Revision is confined to the validity of impugned order passed by the Election Tribunal thereby dismissing the applicant's

Election Petition (in short 'EP') as not maintainable, because of the contradictory stands taken by non-applicants before different courts, the proceedings have gone in a different direction. Various detailed orders have been passed by the Coordinate Bench of this Court, which needs to be taken note of before dealing with the matter on merits.

3. It be noted here that, on the objection raised by non-applicant no.1 & 3 before the Tribunal, the applicant's EP has been dismissed as premature for want of publication of election of President/non-applicant no.1 in the Official Gazette in view of Section 45 read with Section 20(3) of M.P. Municipalities Act, 1961, (in short 'Act').

4. This Court on 07.10.2025, directed the State Government to clarify as to how non-applicant no.1 is working as President of the Municipal Council, Sheopur (in short 'Council') without publication of her election in Official Gazette. It was also clarified that, if it is found that Gazette notification is essential, the Court may restrain non-applicant no.1 from performing duties of President.

5. On 08.10.2025, non-applicant no.1 & 3 took a stand that publication of the Official Gazette is not required and order passed by Tribunal is erroneous. This Court took a serious note of the contradictory stands taken by the non-applicants as per their own convenience. This Court observed that an important legal question has been raised, which needs to be adjudicated by this Court. In view of specific stand taken by non-applicants before Tribunal, this Court passed an interim order directing that non-applicant no.1 shall immediately stop functioning as President of the Council.

6. The aforesaid order dated 08.10.2025 was unsuccessfully challenged by non-applicant no.3 before the Division Bench of this Court in W.A. No.2965/2025, which was dismissed as not maintainable vide order dated 09.10.2025. The non-applicant no.1 challenged the order dated 08.10.2025 passed in this case by filing SLP(C) No.29637/2025 before the Apex Court, which also got dismissed as withdrawn vide order 17.10.2025.

7. On 13.11.2025, this Court, taking note of dismissal of the Writ Appeal and the SLP, observed that this Court is still willing to hear the parties finally on

merits and at the request of the parties, the case was fixed for 03.12.2025 for final hearing in motion stage.

8. The case was then taken up on 03.12.2025. On the said date, the State Govt. candidly stated before this Court that no notification of election of the President of the Council is required to be published and the objection was wrongly taken before the Tribunal. It was also informed to this Court that a show cause notice has been issued to the OIC of the case on 15.10.2025 calling upon his explanation. This Court took note of the fact that an application under Order VII Rule 11 CPC filed before the Tribunal was not signed by the OIC and was signed only by the Govt. Advocate and also, no affidavit in support of the application was filed. This Court was of the opinion that the Govt. is trying to save the Higher Officials by crucify subordinate officers. During the course of arguments, a statement was made that the State Govt. intends to withdraw the objection raised before the Tribunal and requested this Court not to proceed further with this issue. However, such a stand taken by the Govt. was not found to be *bonafide* and since a legal question has been raised, which cannot be left to the mercy of the Govt., this Court declined to accept the request of the non-applicants' counsel to withdraw their objection and directed that the case shall be heard on its merits by this Court.

9. The case was then taken up on 13.01.2026, when the Govt. Advocate prayed for time to comply with the order dated 03.12.2025 and to point out the steps taken against non-applicant no.3. It was also stated that the Govt. will also clarify, if it intends to take any action against the Govt. Advocate, who filed the application without the signature of the OIC.

10. This Court clarified that that the action against the OIC/non-applicant no.3/Government Advocate, is not the subject matter of this case and therefore, the Court did not intend to dwell upon this aspect. However, Govt. in its reply voluntarily came forward by making an averment that the departmental action has been initiated against the erring Official. Copy of the order of the Commissioner, Chambal Division, Morena dated 15.10.2025 was also filed before this Court.

11. The Court further observed that whether the Govt. likes to take any action or not, is its prerogative, but when the order dated 15.10.2025 was placed on

record pretending that they are serious about the issue, then they must satisfy this Court about the *bonafide* of their action. This Court also observed that the action to be taken by the Govt. should not be illusory but should be against the actual responsible person.

12. The case was then taken up on 20.01.2026, when this Court observed that it is the duty of the Court to ensure that the action is not taken against any innocent person. On the said date, the Govt. Advocate again prayed for time to take action against the person, who is really responsible for filing of the application. This Court reluctantly adjourned the case for a week.

13. On 28.01.2026, learned Govt. Advocate informed this Court that GAD has issued a letter to the Commissioner, Chambal Division, Morena to conduct an inquiry as to who instructed the Govt. Advocate to file the application. It was also submitted that the Commissioner would conclude the inquiry within a week. To this, the Court again observed that the State Govt. itself has enlarged the scope of this Civil Revision and are killing time in the name of conducting inquiry. This Court also observed that present case has been adjourned only because of the Govt. and they are not interested in taking action against the responsible person. However, request for adjournment was accepted and fifteen days' time was granted to submit the inquiry report.

14. On 19.02.2026, an action taken report was filed before this Court, wherein the GAD, vide order dated 13.02.2026, instructed non-applicant no.3 to take action against the Govt. Advocate. The non-applicant no.3 was stated to be not at fault. On the said date also, the Govt. Advocate sought for some more time to apprise this Court about the final decision, which shall be taken against the Govt. Advocate. The Court asked the Govt. Advocate to point out from the report about the finding that non-applicant no.3 is not guilty.

15. The Court again observed that this Court intends to decide the Civil Revision at the earliest, but for the dilatory tactics adopted by the Govt., matter is getting adjourned. Therefore, this Court asked the Commissioner, Chambal Division, Morena to join the court proceedings virtually at 2.30 pm, however, when it was found that the Commissioner has shared the link with unauthorized persons, he was asked to appear in person at 4.30 pm. The Commissioner

appeared in person at 4.30 pm and was heard by this Court.

16. The Court did not accept the report of the Commissioner, and directed the Chief Secretary of the State to himself look into the conduct of non-applicant no.3 and submit a report within 15 days. The Chief Secretary was also directed to enquire into the conduct of the Commissioner.

17. On 10.03.2026, the learned Advocate General appeared and requested for some more time to submit the report as directed on 19.02.2026.

18. Again on 20.03.2026, learned Advocate General asked for time and his prayer was accepted.

19. Lastly, this case was listed on 01.04.2026, when the Additional Advocate General requested for an adjournment for two weeks as the learned Advocate General is not available. This Court observed that the request for adjournment is nothing but an attempt of Bench hunting. The conduct of non-applicants was deprecated and expressing its displeasure about the conduct of the Govt., the case was adjourned for final arguments in the week commencing from 13.07.2026.

20. Non-applicant no.1 thereafter, approached the Apex Court challenging the order dated 01.04.2026 by filing SLP(C) No.13702/2026. The non-applicant again expressed before Apex Court her intention to withdraw the objections taken before the Tribunal. The Apex Court remitted the matter to this Court by giving liberty to non-applicant to submit an application for advancement of hearing of this case. It be noted here that, in almost every order-sheet, this Court has observed that this Court is ready to hear the matter on merits, but the case was adjourned at the instance of non-applicants. Accordingly, the matter was taken up by this Court on 07.05.2026 and the application for pre-ponement of the hearing of the case was accepted. With the consent of learned counsel for the parties, the case was finally heard on 08.05.2026.

21. After the matter was heard and reserved for passing of final order, Shri Vivek Khedkar, Additional Advocate General, filed I.A. No.3937/26 thereby producing on record information regarding various similar cases pending before this Court at different benches. As per the information furnished, there are about 15 petitions pending before Indore Bench while before Gwalior Bench, there are four petitions. Suffice, it to note in this regard that the situation that has arisen in

Municipal Council, Sheopur, is also available in various other Councils.

22. From the narration of aforesaid proceedings, it is evident that the non-applicants took an objection with regard to maintainability of EP on the ground for which they themselves are not sure. The applications were filed by both the parties without supporting affidavit. The non-applicant no.1, being a rival party to the case, is having all the rights to raise objections in the pending EP. However, such objections can be allowed to be taken when the party itself is sure about the same. In the case in hand, the non-applicant no.1 was aware about the fact that no notification has been issued in relation to her election as President, still the objection was raised which has led to the present situation. The conduct of non-applicant no.1 is thus not fair, not only to the election petitioner but also to the Court. Further, it is still a mystery, and is under enquiry, as to who filed the application on behalf of non-applicant no.3. The non-applicant no.3, however, is required to first consider as to whether it is a necessary or proper party to the EP in view of Apex Court judgments in the case of *Jyoti Basu & ors. vs. Debi Bhosal & ors.* reported in (1982)1 SCC 691, *B. Sundra Rami Reddy vs. Election Commission & ors.* reported in 1991 Supp.(2) SCC 624.

23. Looking to the fact that the Council is functioning without its President because of which various practical difficulties are being faced, as pointed out by learned Advocate General during course of arguments, this Court deem it fit to decide the civil revision on merits, keeping the enquiry aspect alive. The learned Advocate General agreed to this proposition and assured this Court that, in compliance of order of this Court, the enquiry report shall be submitted by Chief Secretary within 15 days. Accordingly, the matter is heard finally on merits.

PART II:

24. The facts necessary for decision of this case are that the election of Municipal Council, Sheopur, took place in July' 2022 wherein as many as 23 Councillors were elected including, the applicant and non-applicant no.1. The election of Councillors was notified in official Gazette by State Election Commission on 26.07.2022 as required under Section 45 of the Act. Thereafter, in the first meeting of elected Councillors, held on 05.08.2022, the non-applicant no.1 was elected as President by the elected Councillors. The non-applicant

no.3/Returning Officer issued a certificate of election of non-applicant no.1 as President of Council as required under Rule 14 of M.P. Nagar Palika Adhyaksh Tatha Upadhyaksh ka Nirwachan Niyam, 2019 (in short 'Nirwachan Niyam, 2019'). Challenging this election of non-applicant no.1 as President of the Council, the applicant filed EP under Section 20 of the Act before the District Judge, Sheopur. Though various grounds have been raised challenging the election, however, the same are not required to be narrated in this order as the same are not relevant for purposes of issue involved herein.

25. The non-applicant no.1 filed her written statement (dated 08.05.2023) wherein an objection to the maintainability of EP has been taken inasmuch as no notification published in official Gazette in relation to her election as President, has been produced and, therefore, EP was stated to be premature as per Section 20(3) of the Act. Prior thereto, she filed an application (dated 15.11.2022), without mentioning any provision, *inter-alia* raising objection that the EP is required to be filed within 30 days from the date on which result of such election was notified in Gazette. It is stated that no notification is produced on record. It was therefore, prayed that the applicant be directed to clarify this position else the EP be dismissed as not maintainable. The application was not even supported by any affidavit.

26. Yet another application (dated 29.09.2023) was filed on behalf of non-applicant no.3- Collector/Returning Officer under Order VII Rule 11 CPC raising objection that the EP cannot be accepted till it is filed within 30 days of publication of result of election of President in Gazette. It was also submitted that as per Section 20(3)(ii) of the Act, receipt of Rs.200/- issued by Govt. Treasury is required to be accompanied with EP. The prayer for dismissing the EP as not maintainable was made in the application. Pertinently, this application was also not signed by non-applicant but was signed only by Govt. Pleader and was also not supported by affidavit. Nobody is taking responsibility of having filed this application before the Tribunal.

27. The applicant's reply to the application of non-applicant no.1 was very vague, but in reply to application of non-applicant no.3 (dated 27.10.2023), as also in his written arguments (dated 07.08.2023) he stated that, since the President

has been elected indirectly by Councillors, the name of President is not published in Gazette separately. Only the election of Councillors is published in Gazette. It was also stated that the applicant had made application to non-applicant no.3 to supply copy of Gazette if the name of President/Vice-President is published, but no such copy was supplied. He applied for obtaining copy of Gazette under Right to Information Act, 2005, also, but Public Information Officer of Council vide his letter dated 02.06.2023 also informed that the non-applicant no.1 has assumed charge of President on 10.08.2022 and Gazette regarding election of President/Vice-President is yet not received in Council. He thus asserted that his EP is maintainable.

28. The Tribunal has allowed both the aforementioned applications vide impugned order dated 01.02.2024, and dismissed the EP on following two grounds:

- i. the EP can be filed within 30 days from the date of publication of result of election of President in official Gazette as required under Section 45 of the Act. Since no such notification is available on record, the EP filed is pre-mature;
- ii. the applicant has not filed Govt. Treasury receipt of Rs.200/- as mandatorily required under Section 20(3)(ii) of the Act.

29. Challenging this order passed by Tribunal, the present revision has been filed. Various orders passed by this Court have already been noted in earlier part of this order. The learned counsel for non-applicants submitted that they are ready to give up their preliminary objections and the Tribunal may be directed to decide the EP on merits of the grounds raised therein. However, in view of clear stipulation made by this Court in order dated 03.12.2025, that the parties shall not be permitted to withdraw their objection raised in the application and the legal issue raised with regard to EP being premature or not, shall be decided by this Court. This Court is bound by the said order passed by coordinate bench and, therefore, prayer of counsel for non-applicants to withdraw their objections is declined.

30. The arguments of learned counsel for applicant, learned Advocate General for State and learned senior counsel for non-applicant no.1, were heard at length.

31. Though learned counsel for applicant advanced his arguments referring to various provisions of the Act, however, in substance, he contended that if the preliminary objection raised by non-applicants is to be accepted, then, since, the election of non-applicant no.1 has not yet notified in official Gazette by Election Commission, she is not entitled to hold the post of President of the Council and, therefore, the interim order passed by this Court on 07.10.2025, restraining non-applicant no.1 from performing the work of President with immediate effect, is perfectly justified and the said order is required to be made absolute.

32. Regarding non-submission of receipt of Rs.200/-, as required under Section 20(3)(ii) of the Act, he denied allegations made by non-applicants and submitted that the issue raised by non-applicants is a mixed question of law and fact and cannot be decided at the stage of deciding application under Order 7 Rule 11 CPC and needs to be decided at the time of final hearing of the case. In support of his submissions, he relied upon Division Bench judgment of this Court in the case of ***Renu Shah vs. Kant Shih Dev Singh*** reported in ***2020(4) MPLJ 405***.

33. The learned Advocate General supported the action of Returning Officer and raised an objection with regard to limited scope of interference by this Court under Section 115 of the Code of Civil Procedure. He argued that the jurisdiction of this Court under Section 115 CPC is well settled and is confined only to correction of jurisdictional errors, namely, when the subordinate court has exercised jurisdiction not vested in it, failed to exercise jurisdiction so vested or acted with material irregularity in exercise of such jurisdiction. He submitted that under the guise of invoking revisional jurisdiction of this Court, the applicant is infact seeking exercise of appellate jurisdiction. In support of his submissions, he relied upon ***Shiv Shakti Coop. Housing Society v. Swaraj Developers & Ors***, reported in ***(2003)6 SCC 659***, ***Hindustan Petroleum Corpn. Ltd. v. Dilbahar Singh***, reported in ***(2014)9 SCC 78***.

34. On merits, the learned Advocate General submitted that prior to 2020, the President of a Municipal Council used to be elected directly by voters and in such circumstances, their election was also required to be notified in official Gazette alongwith Councillors. He submitted that the provisions of the Act were amended in the year 2020, thereby providing for indirect election of President by elected

Councillors in first meeting of Council. It is his submission that after amendment in 2020, there is no requirement of publishing election of President in official Gazette and only election of Councillors is required to be so published. As per his submission, after amendment of 2020 in the Act, once the President is elected by Councillors in their first meeting, the Returning Officer is required to issue certificate of his election under Rule 14 of Nirwahan Niyam of 2019. As per his submission, the aforesaid requirement is duly satisfied in this case.

35. The learned Advocate General further submitted that even though provisions of Section 19 of the Act were amended in the year 2020, however, the corresponding provisions of the Act viz. Section 20, 21(2), 43, 45 etc. were inadvertently not amended which has resulted in confusion. He, however, submitted that non-amendment of aforesaid provisions of the Act would not affect the election of non-applicant no.1 as President. He further submitted that, by giving harmonious construction to various provisions of the Act, this Court may allow filing of EP within 30 days of declaration of result of non-applicant as President and issuance of certificate by Returning Officer under Rule 14 of Nirwahan Niyam, 2019.

36. The learned Advocate General also pointed out that on account of interim order dated 07.10.2025, serious difficulties are being faced in the Municipal Council in absence of President of Council in managing its day to day affairs as also in taking policy decisions. He thus, again requested this Court to remit this matter to Tribunal for decision of EP on merits of the case.

37. The learned senior counsel for non-applicant no.1, on his turn, supported the impugned order. He submitted that as per Section 20(3)(ii) of the Act, the applicant was mandatorily required to accompany his EP with the Govt. Treasury receipt of Rs.200/-. He submitted that the applicant failed to attach such receipt alongwith his EP and, therefore, his EP itself is liable to be dismissed on this ground. He relied upon Apex Court judgment in the case of *Sitaram v. Radhey Shyam Vishnav and Ors.*, reported in (2018)4 SCC 507 wherein the Court considered the *pari materia* provision of Rajasthan Municipalities Election Petition Rules, 2009. He also relied upon decision of this Court in the case of *Balveer Singh v. Secretary, Madhya Pradesh State Election Commission,*

Bhopal and Ors., reported in *2014(1) MPLJ 461*.

38. On the other issue regarding publication of election of President in official Gazette, learned senior counsel adopted the arguments of learned Advocate General.

39. The record of Tribunal has also been summoned by this Court. The same is also perused.

40. Considered the arguments.

41. So far as dismissal of EP for want of Govt. Treasury receipt of Rs.200/- as required under Section 20(3)(ii) of the Act is concerned, the learned applicant's counsel is justified in submitting that this issue needs to be decided at the time of arguments based on evidence and cannot be decided at the stage of deciding application under Order 7 Rule 11 CPC. The Division Bench of this Court in the case of *Renu Shah (supra)* has held in this regard as under:

“11. So far as second objection in the petition that the security was deposited in wrong head is concerned, the Tribunal has deferred the aforesaid issue by order dated 15-4-2010 on the ground that it was subject-matter of the evidence and the relevant documents were not before the Election Tribunal. It is not disputed before us that the amount of security was deposited before the Tribunal. Merely it was deposited in the wrong head, will not be a ground to dismiss the election petition. The election petitioner deposited the amount of security to the Election Tribunal and merely it was deposited in a wrong head, will not be a ground to dismiss the election petition. See Budhinath v. Nanilal Jatav, 22 ELR 86 and Kaushlendra Prasad v. Nand Kishore, 22 ELR 484. In spite of this, Election Tribunal decided to defer the issue to ascertain the factual position, in which no fault is found.”

Thus, the Tribunal erred in dismissing the EP for want of compliance of Section 20(3)(ii) of the Act at the very initial stage.

42. For appreciating the other ground regarding publication of election of President of Council in official Gazette by Election Commission, the provisions

of the Act, pre & post amendment of 2020, needs to be examined. However, before that another submission made by learned Advocate General is required to be considered. It is stated that provisions of the Act have been again amended vide M.P. Municipalities (Amendment) Act, 2024 (No.11 of 2024) vide notification dated 09.08.2024. Referring to amended provisions of Section 20 of the Act, it is stated that now the limitation for filing of EP is 30 days from the date on which the election of the President is completed in the meeting convened under Section 55. He also submitted that the word ‘President and’ have been omitted from Section 45 of the Act. As per his submission, by virtue of amendment of 2024, the ambiguity in the provisions has been removed and this amendment needs to be applied in relation to the election in question also.

43. This Court is unable to accept the submission so made by non-applicants’ counsel. It is settled in law that a statutory provision is applicable prospectively unless it is otherwise provided. The provisions amended in 2024 thus would apply on and from 09.08.2024 and not from a prior date. In the case in hand, the impugned order itself was passed on 01.02.2024 i.e. prior to coming into force of amended provision of 2024. Therefore, validity of impugned order cannot be adjudged based upon provisions which were not even in force on the date of passing of order. The submission so made by non-applicants’ counsel is accordingly rejected.

44. Certain provisions of the Act were amended vide M.P. Nagarpalik Vidhi (Sanshodhan) Adhiniyam, 2019, (No.11 of 2020) which were notified on 27.01.2020. The chart comparing various provisions, relevant for decision of this case, pre & post amendment of 2020, is given hereunder:

Section	Prior to amendment of 2020	After amendment of 2020
S.19(1) (a) & (b)	19. Composition of Municipal Council or Nagar Parishad. -(1) A Municipal Council or a Nagar Parishad, shall consist of- (a) President, that is Chairperson, elected by direct election from the Municipal area; (b) Councilors elected by direct election from the wards;	19. Composition of Municipal Council or Nagar Parishad. -(1) A Municipal Council or a Nagar Parishad, shall consist of- (a) President, that is Chairperson, elected by the elected Councillors of Municipal Council or Nagar Parishad;

		(b) Councilors elected by direct election from the wards;
S.20(2) & (3)	<p>20. Election petition.- * * *</p> <p>(2) Such petition may be presented on one or more of the grounds specified in Section 22</p> <p>(a) by any candidate at such election or nomination; or</p> <p>(b)(i) in the case of an election of a Councillor, by any voter of the ward concerned;</p> <p>(ii) in the case of nomination of Councilor, by any Councillor;</p> <p>(iii) in the case of election of President by any voter of the Municipal area;</p> <p>* * *</p> <p>(3) No petition presented under sub-section (2) shall be admitted unless-</p> <p>(i) it is presented within thirty days from the date on which the result of such election or nomination was notified in the Gazette; and</p> <p>* * *</p>	<p>20. Election petition.- * * *</p> <p>(2) Such petition may be presented on one or more of the grounds specified in Section 22</p> <p>(a) by any candidate at such election or nomination; or</p> <p>(b)(i) in the case of an election of a Councillor, by any voter of the ward concerned;</p> <p>(ii) in the case of nomination of Councilor, by any Councillor;</p> <p>(iii) in the case of election of President by any Councilor;</p> <p>* * *</p> <p>(3) No petition presented under sub-section (2) shall be admitted unless-</p> <p>(i) it is presented within thirty days from the date on which the result of such election or nomination was notified in the Gazette; and</p> <p>* * *</p>
S. 21(2)	<p>21. Relief that may be claimed by petitioner.- * * *</p> <p>(2) The expression “returned candidate” means a candidate whose name is notified in the Gazette under Section 45.</p>	Remained same
S.36 (1) & (4)	<p>36. Duration of the Municipality.- (1) Every Municipality unless sooner dissolved, shall continue for five years from the date of appointment for its first meeting and no longer;</p> <p>* * *</p> <p>(4) Subject to the provisions of this Act, the term of President and every Councilor shall be</p>	Remained same.

	coterminous with the term of the Council;	
S.43(1)	43. Election and term of Vice President.- (1) The President and the elected Councilors of the Council shall at its first meeting as referred to in sub-section (1) of Section 55 elect a Vice President from amongst the elected Councilors in the prescribed manner;	43. Election and term of the President and Vice President.- (1) The State Election Commission shall cause the election of President and Vice-President immediately after every election of Municipal Council and Nagar Parishad in such manner as may be prescribed. The elected members of the Council shall elect a President and a Vice-President in the prescribed manner, from elected members in its first meeting as specified in Section 55; Note: Vide M.P. Act No.22 of 2022, the word “State Election Commission” has been substituted with word “Collector” with effect from 12.07.2022 vide M.P. Ordinance 5 of 2022.
S.45	45. Notification of election of President and Councilors.- Every election of the President and Councilors from wards shall be notified by the State Election Commission in the official gazette.	Remained same.
S.55	55. First meeting after general election.- (1) The Chief Municipal Officer shall, with the approval of the prescribed authority within fifteen days of every general election, call a meeting of the elected Councilors for the purpose of electing a Vice-President.	55. First meeting after general election.- (1) The Collector shall, within fifteen days from the date of the notification of election of Councilors under Section 45, call a meeting of elected Councilors for, the purpose of electing a President and Vice-President. Note: Again amended vide M.P. Act No.22 of 2022 vide notification dated 06.10.2022

45. It is thus seen that prior to 2020 Amendment in the Act, the President used to be elected directly by voters. However, in 2020 amendment of the Act, the President is indirectly elected by elected Councillors. The provisions of Section 19(1)(a), 20(2)(b)(iii), 43(1) & 55(1) were suitably amended in this regard. However, there remain provisions *viz.* Section 20(3), 21(2) & 45 which were not suitably amended keeping in view the indirect election of President. These provisions have been amended subsequently vide M.P. Act No.11 of 2024.

46. It is thus evident that pre-amendment, the election of President (directly elected under Section 19(1) of the Act) alongwith Councillors was required to be notified in official Gazette by Election Commission by virtue of Section 45 of the Act. Thereafter, the elected and notified Councillors and President used to elect Vice-President in the Council's first meeting. It is only after such notification, the limitation for filing EP begins. However, post-amendment, only Councillors are directly elected and their election is required to be notified in official Gazette. On the other hand, the President, who is now indirectly elected in first meeting of elected Councillors, is issued a certificate of his election by Collector under Rule 14 of Nirwahan Niyam, 2019. However, the corresponding amendment in Section 45 was not made which continued to provide for publication of notification of election of President and Councillors both. The amendment was however made in Section 55 of the Act providing for calling of first meeting by elected Councillors, to elect President and Vice-President. Notably, from this date, the tenure of Council would commence for a period of five years. If the notification of election of President is mandatory, then the result would be, Council would start its tenure without its President, as though elected there is no notification published as on this date in relation to election of President.

47. Further, amendment in Section 20(3), which provides for commencement of limitation for filing EP, is also not made. Resultantly, even though, after amendment of 2020 in the Act, there is no requirement of publishing notification of election of President in Gazette, the limitation for filing EP still commences from the date of such notification. Apparently, there is serious discrepancy in the provisions of the Act, pre & post amendment. The situation is unworkable inasmuch as there is no requirement of publication of notification of election of President, but EP can be filed only on publication of such notification in Gazette.

48. To further elaborate, it is difficult to reconcile the amended provisions of Section 36 *vis-à-vis* Section 45 of the Act. Section 36 provides for tenure of Council which commences from the date of its first meeting. However, Section 45 provides for notification of election of President and Councillors in the official Gazette. Further, Section 55 now provides for convening first meeting of Councillors for electing President & Vice-President. Now, the situation is, the notification for Councillors is already published, and then only the first meeting of Council can take place whereupon the President is to be elected. Once, he is elected, he is immediately issued with a certificate by the Collector. From the date of first meeting, the tenure of President would commence. However, the publication of his election in Gazette would certainly take place subsequently. Meaning thereby, the tenure of President would commence even prior to publication of his election in Gazette.

49. The reconciliation of Section 36, Section 45 *vis-à-vis* Section 20(3) of the Act is also difficult. The President would start working from the date of first meeting of Council. However, the limitation for filing of EP would start from the date his election is published in official Gazette. For the intervening period from first meeting of Council to the date of publication of notification, the remedy for filing EP would not be available to the aggrieved Councillor. It be noted, after amendment, the election of President can be challenged only by a Councillor as per Section 20(2)(b)(iii).

50. Thus, there appears to be serious ambiguity *inter-se* provisions after 2020 amendment of the Act. The learned counsel for applicant argued that thirty days time provided in Section 20(3) of the Act is infact an outer limit of limitation and the EP could be filed immediately after declaration of result and before publication of notification of election of President in official Gazette. However, the submission so made by applicant's counsel is not acceptable in view of clear language of statute which provides that "*no petition presented shall be admitted unless it is presented within thirty days from the date on which the result of such election was notified in Gazette*". Thus, the cause of action for filing EP would arise only upon publication of result of such election in Gazette.

51. After the matter was heard and reserved for orders, Shri Vivek Khedkar,

learned Addl. Advocate General, produced before this Court a copy of Memo No.2954/1455187/2023/18-3, dated 20.07.2023, issued by Deputy Secretary, M.P. Govt., Urban Development & Housing Department, Bhopal, which is addressed to Joint Director, Urban Administration & Development, Indore Division, Indore. Vide this memo, the Govt. has accepted that, since the directions issued by Apex Court were to be complied with, due to paucity of time, Section 45 could not be amended in 2020 and the process of amending the same is going on. It has been opined that only the election of Councillors is required to be notified in official Gazette and no separate notification is required to be published for election of President of Council. This memo was also brought to the notice of learned applicant's counsel.

52. Even though, the executive instructions issued vide aforesaid memo cannot dilute the provisions of Section 45 of the Act, however, this memo shows the object and intention of the Govt. that in case of indirect election of President, separate notification is not required to be published in official Gazette.

53. In the matter of giving harmonious construction to various provisions of same statute, the Apex Court in the case of ***Sultana Begum vs. Prem Chand Jain*** reported in ***(1997)1 SCC 373***, held as under:

“10. Part II of the Code of Civil Procedure, comprising Sections 36 to 74, as also the whole of Order 21 consisting of Rules 1 to 106, deal with the execution of decree. Section 47, as also Order 21 Rule 2 are, therefore, part of the same legal or statutory system dealing with the same subject, namely, execution of decree. That being so, the rule of interpretation requires that while interpreting two inconsistent, or, obviously repugnant provisions of an Act, the courts should make an effort to so interpret the provisions as to harmonise them so that the purpose of the Act may be given effect to and both the provisions may be allowed to operate without rendering either of them otiose.

11. The statute has to be read as a whole to find out the real intention of the legislature.

15. On a conspectus of the case-law indicated above, the following

principles are clearly discernible:

(1) It is the duty of the courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.

(2) The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of “harmonious construction”.

(4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a “dead letter” or “useless lumber” is not harmonious construction.

(5) To harmonise is not to destroy any statutory provision or to render it otiose.”

54. Following ***Sultana Begum (supra)***, the Apex Court in the case of ***Municipal Corpn., Kalyan Dombivali vs. Sanjay Gajanan Gharat*** reported in **(2024)20 SCC 238**, held as under:

“36. It could thus be seen that it is more than well settled that the court has to avoid the interpretation which will result in head-on clash between two sections of the Act. When one section of an Act is not in a position to bring out the legislative intent, recourse will have to be made to other sections of the statute for gathering the legislative intent. An attempt should be made to see to it that the effect must be given to parts of the statute even if they may, on first blush, appear to be conflicting. One provision of the Act has to be construed with reference to other provisions in the Act, so as to

make a consistent enactment of the whole statute. An attempt should be made of avoiding any inconsistency or repugnancy either within a section or between two different sections.”

55. The non-applicant no.1 got elected as President on 05.08.2022 when the first meeting of elected Councillors took place. By virtue of Section 36(1) & (4) of the Act, her tenure as President commenced from this date. However, the applicant did not get cause of action for filing EP on this date, as there was no notification of result of this election published in Gazette. It is settled in law that no one can be left remediless. However, if Section 36(1) & (4) and Section 20(3) are given their literal meaning, this would leave the applicant without remedy for want of Gazette. Therefore, as has been held by Apex Court in ***Sultana Begum (supra)***, these two provisions are required to be so interpreted that the effect could be given to both and the object of the Act can be achieved.

56. The applicant cannot be punished for something which is impossible. On this, it is profitable to refer to the Apex Court judgment in the case of ***Shekhar Resorts Ltd. vs. Union of India*** reported in (2023)3 SCC 220, wherein the Court held as under:

“19. Therefore, the short question which is posed for consideration before this Court is, whether, when it was impossible for the appellant to deposit the settlement amount in view of the bar and/or the restrictions under the IBC, the appellant can be punished for no fault of the appellant? In a given case can the appellant be made to suffer for no fault of its own, and be rendered remediless and denied the benefit/relief though it was impossible for the appellant to carry out certain acts, namely, to deposit the settlement amount during the moratorium.

20. As per the settled position of law, no party shall be left remediless and whatever the grievance the parties had raised before the court of law, has to be examined on its own merits [Sunil Vasudeva [Sunil Vasudeva v. Sundar Gupta, (2019) 17 SCC 385], SCC para 31].

21.As observed and held by this Court in Calcutta Iron Merchants' Assn. [Calcutta Iron Merchant's Assn. v. CCT, (1997) 8 SCC 42] , no law would compel a person to do the impossible [Calcutta Iron Merchant's Assn. [Calcutta Iron Merchant's Assn. v. CCT, (1997) 8 SCC 42] , SCC para 5].

22.In Gyanichand [Gyanichand v. State of A.P., (2016) 15 SCC 164] it was observed by this Court that it would not be fair on the part of the Court to give a direction to do something which is impossible and if a person has been directed to do something which is impossible, and if he fails to do so, he cannot be held guilty.

23. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, the appellant cannot be punished for not doing something which was impossible for it to do. There was a legal impediment in the way of the appellant to make any payment during the moratorium. Even if the appellant wanted to deposit settlement amount within the stipulated period, it could not do so in view of the bar under the IBC as, during the moratorium, no payment could have been made. In that view of the matter, the appellant cannot be rendered remediless and should not be made to suffer due to a legal impediment which was the reason for it and/or not doing the act within the prescribed time.”

57. It is seen that the inconsistency between the aforesaid provisions of the Act has been rectified by subsequent amendment of 2024 (No.11 of 2024) vide notification dated 09.08.2024, wherein Section 20(3)(i) of the Act has been amended as under:

*“(i) It is presented within thirty days, in case of election of Councillor, from the date on which result of such election or nomination was notified in the official Gazette, and **in case of election of President, from the date on which the election of the President is completed in the meeting convened under Section***

55; and”

58. This Court finds it impossible to effect reconciliation between the amended provisions *vis-à-vis* the provisions which remained un-amended and are thus creating anomaly. From the memo, dated 20.07.2023, the object and intent of State Govt. is also apparent. Thus, invoking rule of “*harmonious construction*”, this Court finds it necessary to read Section 20(3)(i) of Amended Act as has now been amended in the year 2024.

59. It is thus held that the cause of action was available to the applicant to file present EP from the date the non-applicant no.1 was elected as President in the first meeting of the Council held on 05.08.2022. The EP filed by applicant on 23.08.2022, is thus held to be within thirty days from the said date and is very much maintainable.

60. Consequently, the impugned order dated 01.02.2024, passed by First District Judge, Sheopur, Distirct Sheopur, in M.J.C. No.91 of 2022, is set aside. This Civil Revision is **disposed of** with the following directions:

- i. the EP filed by applicant is held to be maintainable and the objections raised by non-applicant no.1 & 3 regarding maintainability of EP for want of Gazette notification, is hereby rejected;
- ii. the Tribunal shall frame an issue and shall deal with the objection of maintainability of EP with regard to non-submission of receipt of Rs.200/-, at the time of final decision of EP;
- iii. the Tribunal shall expedite hearing of the EP and shall conclude the same by the end of November’ 2026;
- iv. in view of observations made in para 22, it is found that the non-applicant no.1 raised the objection knowing well that there is no Gazette notification of her election. This was nothing but creating obstruction in due process of law and amounts to misuse of judicial process. Therefore, she is imposed with cost of Rs.1,00,000/- for her unfair conduct to the applicant as also to the Court. Out of the said amount, Rs.50,000/- shall be payable to the applicant and remaining

Rs.50,000/- to be deposited with District Legal Services Authority, Sheopur. The participation of non-applicant in the proceedings of EP shall be subject to compliance of this condition by her.

- v. the Chief Secretary of the State shall submit report of enquiry, as directed by this Court vide order, dated 19.02.2026, within 15 days from today (without waiting for the next date of hearing). This civil revision though is disposed of, the office shall list this revision in week commencing from 15.06.2026 submitting compliance by the Chief Secretary.

The record of the Tribunal be sent back forthwith. The revision stands **allowed and disposed of** with the aforesaid directions.

(ASHISH SHROTI)
JUDGE

jps/-