

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

CIVIL REVISION PETITION No.583 of 2016

BETWEEN

Mohd Mukhtar Ahemed ... Petitioner

AND

Syed Habeed and 5 others ... Respondents

DATE OF JUDGMENT PRONOUNCED: 07.04.2016

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

- 1 Whether Reporters of Local :
newspapers may be allowed to see the
Judgments?
- 2 Whether the copies of judgment : may
be marked to Law Reports/Journals
- 3 Whether Their Ladyship/Lordship: wish
to see the fair copy of the Judgment?

*** THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

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! Counsel for the Petitioner : Sri Mohd. Adnan

^Counsel for the Respondents : Sri V. Srinivas
Sri K. Amarnath Reddy

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>Head Note:

? Citations:

1. 2015 (4) ALD 394
2. 2001 (1) ALD 77
3. AIR 1983 SC 558
4. AIR 1958 SC 687

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

CIVIL REVISION PETITION No.583 of 2016

ORDER:

This revision under Article 227 of the Constitution of India is directed against the orders passed by the Senior Civil Judge, Vikarabad, Ranga Reddy District, on 02.11.2015 in I.A.No.826 of 2015

moved in Election O.P.No.18 of 2014.

The petitioner herein was successfully returned from ward No.23 of Tandur Municipality as a Councilor. This election as such has been challenged by the 1st respondent herein by instituting Election O.P.No.18 of 2014. During the course of inquiry in the said Election O.P., the revision petitioner has moved I.A.No.826 of 2015 in terms and in accordance with Rule 4 (1) & (2) of Andhra Pradesh Municipalities (Decision of Election Disputes) Rules 1967 (for short 'the Rules') seeking rejection of the main election O.P. for non-compliance of the requirements contained in Rule 4(1) of the Rules. That application was dismissed on 02.11.2015 by the Election Tribunal and hence, this revision was instituted.

Heard Sri Mohd. Adnan, learned counsel for the petitioner and Sri Vedula Srinivas, learned counsel for the 1st respondent/election petitioner and Sri Amarnath Reddy on behalf of the 5th respondent, who is also another contestant in the election.

It is contended that Rules framed for determination of election disputes are liable to be compulsorily complied with and any failure to comply with the same shall necessarily result in rejection of the election O.P. itself. This submission hinges completely upon the construction liable to be placed on Rule 4 of the Rules which were framed under Sub Section 1 of Section 326 of the A.P. Municipalities Act, 1965. Rule 4 of the Rules reads as under:

"4. (1) At the time presentation of the petition, the petition shall deposit with it, as security for the cost of the same-

(i) a sum of five hundred rupees in the case of election of Chairman; and

(ii) a sum of one hundred rupees in any other case.

Explanation: - Where the election of more than one returned candidate is called in question, a separate deposit shall be made in respect of each such returned candidate.

(2) If the provisions of sub-rule (1) are not complied with, the Election Tribunal shall dismiss the petition.

(3) Upon compliance with the provisions of sub-rule (1) the Election Tribunal shall proceed to inquire into the petition.”

This Rule makes it clear that at the time of presentation of a petition, calling in question any election, one is required to deposit, as a security for the costs, a sum of Rs.100/-, in case the election of a Councilor not being the Chairman of the Municipality is challenged. Sub Rule 2 thereof makes it very clear that if the provisions of Sub Rule 1 are not complied with, the Election Tribunal shall dismiss the petition. Sub Rule 3 makes it further clear that upon compliance with the provision of Sub Rule 1 the Election Tribunal shall proceed to inquire into the petition. The main theme behind Rule 4 is that whenever an election petition is presented, along with the petition a deposit, as a security for the costs shall also deposit. If the challenge is to the election of a Chairman of the Municipal Council the sum so required to be deposited is Rs.500/-, in other cases, the sum required to be deposited is Rs.100/- only. If such deposit is not made, the Election Tribunal has no further discretion except to dismiss the election petition. The Election Tribunal can proceed to inquire into the petition only upon compliance with the provision of Sub Rule 1 of Rule 4, but not otherwise.

It is contended on behalf of the petitioner that the 1st respondent has not deposited Rs.100/- along with the election petition. He deposited that sum of Rs.100/- only after the election Tribunal passed the impugned order on 02.11.2015 whereas the election petition was filed in the year 2014 itself. Therefore, the payment so made by the petitioner is falling outside the maximum period of limitation prescribed for the presentation of election petition itself.

Sub Rule 1 Rule 2 of the Rules reads as under: “The petition shall be presented within 15 days of the date of declaration of the results of the election.” This is a mandatory provision and that was not in dispute. Therefore, it is contended that any payment of Rs.100/- made by the 1st respondent herein beyond this limit of 15 days from

the date of declaration of the results of election cannot be construed as a payment in compliance with Sub Rule 1 of Rule 4 of the Rules. Hence, the Election Tribunal has no other choice except to reject the election O.P. instituted by the 1st respondent, instead the Election Tribunal has committed a gross error in directing the payment by way of deposit with the treasury now. Hence, the impugned order passed on 02.11.2015 is liable to be set aside and the election O.P.No.18 of 2014 itself shall be rejected.

Sri Mohd. Adnan, learned counsel for the petitioner has also placed reliance upon judgment rendered by this Court in **Bangaru Sankaraiah Vs. Talari Pothalaiah and others**^[1]. Justice P.Naveen Rao after noticing Rule 5 of A.P. Panchayat Raj Election Tribunal in respect of Gram Panchayat Rules, 1995 held that non-compliance with the requirement of Sub Rule 1 of Rule 5 would be fatal. In the course of the said judgment, an earlier judgment of this Court rendered by a Division Bench in **Anajamma Vs. S.Pushpamma**^[2] was also adverted to.

Per contra, Sri V.Srinivas, learned counsel for the 1st respondent/election petitioner would contend that the factual assertion that the election petitioner has not deposited Rs.100/- along with the election petition is incorrect, as, he did deposit Rs.100/- in the form of Court fee stamps, apart from paying the court fee liable to be paid for maintaining an election petition itself. The security deposit of Rs.100/- is made by depositing the court fee stamps which would go to the account of the Court only, in as much as the mode of deposit is not made very clear by the Rules. That was the reason why the election petition was entertained and the petitioner in this revision instead of facing the inquiry has filed I.A.No.826 of 2015 for rejecting the election petition itself. Since the petitioner has substantially complied with the requirement of Rule 4(1) of the Rules by depositing Rs.100/- in the form of court fee stamps, no exception need be drawn to the present

order passed on 02.11.2015 by the Election Tribunal. Sri V.Srinivas placed reliance upon the judgment rendered in **M.Karunanidhi Vs. H.V.Handa** ^[3] in support of his plea.

The Supreme Court in the aforementioned case was required to consider the scope of Rule 8 of the Madras High Court (Election Petitions) Rules, 1967. Rule 8 thereof reads as under:

“An Election Petitioner before presenting his election petition shall deposit in the High Court in cash a sum of two thousand rupees towards security for costs as provided for under Section 117 of the Act and shall produce the receipt of the Registrar for the same at the time of presentation of the petition.”

The Madras High Court has taken the view that if sum of Rs.2,000/- towards security for costs is deposited by obtaining lodgment schedule from the Accounts Department from the High Court at the time of presentation of election petition, it would amount to a substantial compliance of the requirement of the Rules and hence, held that election petition need not be rejected. While upholding this view of the Madras High Court, Justice A.P. Sen speaking for the Supreme Court had pointed out the classic distinction between the mandatory nature of requirements and the directory nature of requirements. In so far as procedural aspects of the election dispute resolution are concerned, it reads as under:

“The first part of sub-s. (1) of s.117 provides that at the time of presenting an election petition, the petitioner shall deposit in the High Court a sum of Rs. 2000/- as security for the costs of the petition, and the second is that such deposit shall be made in the High Court in accordance with the rules of the High Court. The requirement regarding the making of a security deposit of Rs. 2000/- in the High Court is mandatory, the non- compliance of which must entail dismissal in limine of the election petition under sub-s. (1) of s.86 of the Act. But the requirement of its deposit in the High Court in accordance with the rules of the High Court is clearly directory. As Maxwell on the Interpretation of Statutes, 12th edn. at p.314 puts it: "An absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially." The rule of construction is well settled and we need not burden the judgment with many citations.

It is well established that an enactment in form mandatory might in substance be directory and the use of the word "shall" does not conclude the matter. The general rule of interpretation is well-known and it is but an aid for ascertaining the true intention of the Legislature which is the determining factor, and that must ultimately depend on the context. The following passage from Crawford on 'Statutory Construction' at p.516 brings out the rule:

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other."

This passage was quoted with approval by the Court in State of U.P. v. Manbodhan Lal Srivastava, (AIR 1957 SC 912) The State of Uttar Pradesh & Ors. v. Babu Ram Upadhyaya (AIR 1961 SC 751) and Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur. (AIR 1965 SC 895) The Court in Manbodhan Lal's case, (supra) where Art. 320 (3) (c) of the Constitution was held to be directory and not mandatory, relied upon the following observations of the Privy Council in Montreal Street Railway Company v. Normandih (AIR 1917 PC 142):

"The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at. The cases on the subject will be found collected in Maxwell on Statutes, 5th ed., p.596 and following pages. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

(Emphasis is played)

The learned Judge has approvingly quoted the following passage from the earlier judgment of the Supreme Court in the case of **K.Kamaraja Nadar Vs. Kunju Thevar**^[4]:

"It would be absurd to imagine that a deposit made either in a Government Treasury or in the Reserve Bank of India in favour of the Election Commission itself would not be sufficient compliance with the provisions of [s. 117](#) and would involve a dismissal of the petition under [s. 85](#) or [s. 90\(3\)](#). The above illustration is sufficient to demonstrate that the words "in favour of the Secretary to the Election Commission" used in s.117 are directory and not mandatory in their character. What is of the essence of the provision contained in s. 117 is that the petitioner should furnish security for the costs of the petition, and should enclose along with the petition a Government Treasury receipt showing that a deposit of one thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India, is at the disposal of the Election Commission to be utilised by it in the manner authorised by law and is under its control and payable on a proper application being made in that behalf to the Election Commission or to any person duly authorised by it to receive the same, be he the Secretary to the Election Commission or any one else."

In view of the above legal principle brought out by the Supreme Court, all we need to apply the test in the instant case was whether there was substantial compliance with the requirement of Rule 4 by the 1st respondent/election petitioner?

The 1st respondent/election petitioner has deposited towards security of costs Rs.100/- by way of court fee stamps, supplied along with the election petition, but however, when an objection is raised later on, by the impugned order passed now the Election Tribunal directed payment once again by obtaining lodgment schedule and make a deposit in the government treasury. In my opinion, once a court fee stamps are affixed and it has been duly accepted, the relevant value thereof passes on to the State. That would be a fair and substantial compliance with the requirement of Rule 4(1) of the Rules, all the more so, as the Rule is couched in somewhat ambiguous terms when it has not specified the mode of deposit of security of costs. When the Rule is not very clear that the security costs shall be deposited in the form of cash with the Election Tribunal, if the election petitioner has genuinely believed that affixing Rs.100/- court fee

stamps representing the security costs is a faithful compliance it only reflects the *bonafide* action of the election petitioner. The civil rules of practice, it appears are silent as to the mode of making deposit of security for the costs. The Rules in question being framed for achieving a special objective, ought to have specified the mode of that deposit of security for the costs, to put matters beyond any pale of doubt. When the Rule itself has left some room for speculation, the mode of compliance attempted by the 1st respondent/election petitioner cannot be construed as lacking in any *bonafides*. When a substantial and faithful compliance has been attempted and even thereafter by the impugned order, once again a sum of Rs.100/- is directed to be deposited, which the 1st respondent/election petitioner has complied with and, particularly, when this revision is preferred under Article 227 of the Constitution of India, which is essentially intended to ensure that the Tribunals do not over step their limits of jurisdiction, I am of the opinion that the matter does not call for any interference at the hands of this Court.

Accordingly, this civil revision petition is dismissed. I hope and trust that the election petition will be decided on its merits as expeditiously as possible, preferably, before the end of August, 2016.

Consequently, miscellaneous petitions, if any pending shall stand dismissed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

07.04.2016

Note: L.R. Copy to be marked
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[\[1\]](#) 2015 (4) ALD 394

[\[2\]](#) 2001 (1) ALD 77

[\[3\]](#) AIR 1983 SC 558

[\[4\]](#) AIR 1958 SC 687