THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.1211 of 2015

ORDER:

This civil revision petition under Article 227 of the Constitution of India by the 1^{st} respondent in Election OP.no.1 of 2013 is directed against the orders dated 19.02.2015 of the learned Principal Junior Civil Judge, Gudivada passed in IA.no.130 of 2014 in the aforementioned OP filed by the 1^{st} respondent/revision petitioner under Section 151 of the Code of Civil Procedure, 1908 requesting to dismiss the said OP for non compliance of the provision of Rule 5 of the A.P. Panchayat Raj [Election Tribunals in respect of Gram Panchayats Mandal Parishads and Zilla Parishad] Rules, 1995 ('the Rules, for brevity).

2. I have heard the submissions of the learned counsel for the revision petitioner and the learned counsel for the 1^{st} respondent. I have perused the material record.

3. The parties shall hereinafter be referred to as 'the revision petitioner' and the '1^{st} respondent' for convenience and clarity.

4. The facts, which are necessary to be stated as a prelude to these orders, in brief, are as follows:

The 1^{st} respondent brought the Election OP.no.1 of 2013 ('the El.OP', for brevity) under Section 233 of the Panchayat Raj Act, 1994 to declare the election of the revision petitioner as not valid and to further declare that the 1^{st} respondent is the duly elected Sarpanch after recounting of the votes after calling for the ballot papers and record from the respondents 3 and 4 herein.

4.1 During the pendency of the said El.OP the revision petitioner brought the aforementioned IA.no.130 of 2014 on the ground that the 1^{st} respondent is required to make a mandatory deposit of an amount of Rs.100/- as security for the costs at the time of presentation of the EI.OP and that the said requirement is mandatory and is a condition precedent for entertaining the EI.OP as per the provision of Rule 5 of the Rules, but, the 1st respondent had instituted the EI.OP on 16.08.2013 and that the Court below had issued a challan no.133/2013-14 to the 1st respondent on 17.08.2013 for deposit of the said amount of Rs.100/- but, the 1st respondent had deposited the said amount on 24.10.2013 and had filed the challan on that day into Court and that, therefore, the deposit of Rs.100/- was not made while instituting the EI.OP in compliance with the provision of the Rule and within the time stipulated under law and that, therefore, the EI.OP is not maintainable and that the 1st respondent is not entitled to prosecute the same and that the EI.OP is liable for dismissal.

5. Per contra, the case of the 1st respondent herein, in brief, is this:

The EI.OP was filed on 16.08.2013 before the Tribunal. On the same day itself, a lodgement schedule was filed for issuing a treasury challan by the Tribunal for deposit of the costs. The Tribunal had issued the challan on 17.08.2013, for deposit of the costs. Unless the Sub-Treasury Office (STO for short), Gudivada issues a number to the challan, the necessary amount cannot be deposited in the State Bank by way of the said challan. The Sub Treasury Officer, Gudivada and staff of the STO were taking part in Samaikyandhra agitation from 13.08.2013 to 17.10.2013. The information furnished by the STO, Gudivda in reply to the request made under the Right to Information Act in that regard has been filed with the counter. As such, there is no failure on the part of the 1st respondent in making the deposit of Rs.100/- towards security deposit as required under Rule 5 of the Rules. The State Bank of India main branch, Gudivada remained closed on 18.10.2013 and 19.10.2013 due to bandh (closure/shutting down) call given by the Joint Action Committee for Samaikyandhra, Gudivada. 20.10.2013 is a Sunday. The security deposit by way of challan was made on 24.10.2013 in SBI after a number was assigned to the said challan by the STO, Gudivada. Another

El.OP.5 of 2013 was filed before the Tribunal on 06.08.2013 and in that OP also on the same day itself the lodgement schedule for issuance of challan for deposit of costs was filed. The Tribunal issued a challan to the concerned in that OP but the deposit in that case as per Rule 5 of the Rules was made on 08.08.2013 but not on 06.08.2013. Therefore, if the present El.OP filed by the 1st respondent is to be dismissed, the El.OP.no.5 of 2013 shall also be dismissed. Generally, whenever any proceeding is filed before the Tribunal before 05:00 PM of any day, the Office of the Tribunal will issue challan on the next day or on any other day convenient to the Office of the Tribunal for making the security deposit. That does not mean that the party has not complied with the Rule. It is practically impossible to pay the security deposit on the date of the filing of the petition when the challan itself is not being issued by the Tribunal on the same day. There is no strict requirement under the Rule that the security deposit shall be made at the time of presentation of the El.OP. Only after verification of the petition filed, the Office of the Tribunal puts up a note for registering and numbering the petition. Unless the security deposit is made the El.OP shall not be numbered. If an Election Petition is numbered without payment of the security deposit, may be, in such a case the Election Petition may be liable for dismissal. Once the Tribunal had issued the challan on a date beyond the date on which the election petition is instituted, the Rule cannot be strictly construed. There are no legal grounds to dismiss the Election OP in the circumstances stated.

6. During course of enquiry before the Tribunal no oral evidence is adduced on either side. However, exhibit P1 was marked on the side of the revision petitioner and exhibit R1 was marked on the side of the 1st respondent herein. On merits, the Tribunal had dismissed the petition. Therefore, the aggrieved revision petitioner is before this Court.

7. The learned counsel for the revision petitioner while reiterating the case of the revision petitioner would submit as follows: “Admittedly the security deposit is not made as per Rule 5 of the Rules on the date the El.OP was instituted or on the date the challan was issued by the Tribunal. Even according to the own showing of the 1st respondent, the strike was called off by the Sub-Treasury Officer and staff by 17.10.2013; and the two day bandh observed by the State Bank and its Staff was over well before the deposit was admittedly made by the 1st respondent. As the Sub-Treasury Officer and Staff had called off the strike even by 17.10.2013 and the Bank had remained closed only on 18.10.2013 and 19.10.2013, the security deposit could have been made on 21.10.2013 since 20.10.2013 is a Sunday. However, the security deposit was admittedly made on 24.10.2013 in the Bank after obtaining the number on the challan from the STO, Gudivada. Therefore, even assuming for a moment that there are circumstances which lead to the delayed deposit, still the deposit is deliberately belatedly made on 24.10.2013 and not before that day even though there is a possibility to make such deposit before that date. The Court below ought to have seen that Rule 5 of the Rules is mandatory and deposit of Rs.100/- is a condition precedent for entertaining the El.OP. The 1st respondent could not explain as to why the deposit could not have been made on 21.10.2013, 22.10.2013 and 23.10.2013, that is, for three days even though there are no impediments for making the deposit during those three days. Therefore, the deposit made on 24.10.2013, in any view of the matter, is not a valid deposit and it is not a deposit made in compliance with the mandatory requirement of Rule 5 of the Rules. Hence the order impugned is liable to be set aside and the El.OP filed by the 1st respondent is liable for rejection/dismissal."

8. On the other hand, the learned counsel for the 1st respondent while supporting the orders of the Tribunal would submit as follows: "For reasons beyond the control of the 1st respondent, the deposit could not be made within the time allowed under law or within a reasonable time. The time stipulated under the Rule is not mandatory. The deposit could be made even before the registration of the Election Petition by the Tribunal. The Tribunal issued the challan on the next day but not on the day when the El.OP was instituted. However, the STO and his staff were on strike for a long period. The State Bank did not work for two days due to the bandh observed by its staff. The next day, that is, 20.10.2013 being a Sunday the number on the challan was obtained and the deposit was made on 24.10.2013; and in making such deposit on that day there is no intentional or deliberate delay. If on technical considerations, the application of the revision petitioner is allowed and the EI.OP stands rejected, it would amount to denial of the 1st respondent's right to have his cause in the EI.OP decided on merits and it would lead to denial of justice. Therefore, keeping in view the larger public interests and the ends of justice, the Tribunal has passed the order accepting the explanation of the 1st respondent. The Tribunal had rightly held that the 1st respondent could not be blamed for making the deposit on 24.10.2013 and that the 1st respondent is justified in making the deposit on 24.10.2013 and that the delay in deposit is not due to intentional and voluntary acts of the 1st respondent. Since the delay, if any, is only on account of the reasons beyond his control and as the application of the revision petitioner is devoid of merit, the Tribunal had rightly dismissed the application of the revision petitioner. Hence the revision petition assailing the said well reasoned order is liable to be dismissed."

9. I have bestowed my attention to the facts of the case. I have noted the submissions. As could be seen from the material record, the EI.OP was filed by the 1st respondent before the Tribunal on 16.08.2013. Admittedly, along with the EI.OP, a lodgement schedule was filed for issuance of a challan by the Tribunal for making the security deposit. However, the Tribunal had issued the challan on the next day that is on 17.08.2013. It is undisputed that unless the STO of Gudivada assigns a number to the challan, the security deposit will not be accepted by the SBI, Treasury Branch, Gudivada. Therefore, after obtaining the challan the 1st respondent is required to obtain a treasury number on the challan from the STO, Gudivada. The fact that at the relevant time, the Sub-Treasury Officer and his staff were striking work on account of the Samaikyandhra agitation and the STO is not functioning from 13.8.2013 to 17.10.2013 is not in dispute. The 1st respondent having invoked the provisions of the RTI Act and having obtained information in that regard from the STO, Gudivada and having filed the said document with the said information had sufficiently established the said fact. Further, on 18.10.2013 and 19.10.2013 the State Bank had remained closed on account of band call given by the Joint Action Committee for Samaikyandhra, Gudivada. The said fact is also not in dispute. 20.10.2013 is a Sunday. Therefore, for all the above reasons, which are beyond his control, the 1st respondent was not in a position to make the security deposit till 20.10.2013. Therefore, sufficient and valid grounds were shown by the 1st respondent for not making the security deposit till 20.10.2013. Be that as it may, the security deposit was made admittedly on 24.10.2013 in the Bank after obtaining a number on the Challan from the STO, Gudivada. Therefore, the crucial question is as to whether, for not making the deposit during 21.10.2013 to 23.10.2013 (both days inclusive) and for making the deposit on 24.10.2013, it is possible to hold that the security deposit is not made within the time allowed under law and that, therefore, the El.OP of the 1st respondent is liable for rejection for non compliance of the mandatory provision of Rule 5 of the Rules.

10. Dealing first with the issue as to whether Rule 5(2) mandates the Election Tribunal to dismiss the El.OP for not depositing a sum of Rs.100/- at the time of presentation of the El.OP it is profitable to refer to the decision of this Court in **Anjamma v. Pushpamma** [2000(1) ALD 77]. In this decision, a Division Bench of this Court after referring to the precedents and the provision of the Rule had answered the question holding that the election petition filed by the 1st respondent therein is liable to be dismissed *in limine* for non compliance of the mandatory provision and that the finding of the Tribunal therein that if the deposit is made before the first appearance of the respondent it amounts to compliance is erroneous and cannot be sustained in view of the law laid by the Supreme Court in **Shipra v. Shantilal Khoiwal [AIR 1996 SC 1691]**.

11. It is also necessary to refer to the Sub-rules (i) and (ii) of Rule 5 of the Rules, which read as follows:

"5(i) At the time of presentation of the petition, the petitioner shall deposit with it in cash Rs.100/- (Rupees one hundred only) as security for the costs of same.

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

A plain reading of the decision and the provision of the Rule shows that once the mandatory provision is not complied with, the Tribunal has to necessarily dismiss the petition. It is to be noted that on the days on which either the Treasury Office or the Bank is closed, there is a settled practice in the Subordinate Courts to receive Court fee or challan fee in cash by the offices of the Courts on the party concerned obtaining permission from the Court concerned. As per such practice, the amounts collected by the office of the Court from the parties concerned would be deposited by the staff of the Court into the Treasury or the Bank, as the case may be, on the immediate working day of the Bank or the Treasury, as the case may be. From the record it appears that the 1st respondent did not make an attempt to request the Tribunal to accept the deposit stating that the Sub-Treasury Officer and his staff are on strike on account of the Samaikyandhra agitation. Be that as it may. Accepting that the 1st respondent has got good grounds in support of the contention that he could not be blamed for not making the deposit till 20.10.2013, still it is for the 1st respondent to explain the delay of three days in making the deposit. 20.10.2013 being a Sunday, on the three subsequent dates i.e., from 21.10.2013 to 23.10.2013 (both the days inclusive) the 1st respondent had ample opportunity for making the security deposit after obtaining the requisite number on the challan from the STO, Gudivada. He did not do so. In the counter filed before the Tribunal, no explanation, much less a valid explanation, is offered on the said aspect. Though an explanation is sought to be offered before this Court stating that the counsel of the 1st respondent had been to Kamakshi temple and Srimatham at Kanchipuram a few days prior to those three days as per the customary visits he makes during that period of every year and that on hectic participation in sevas and poojas at Kanchipuram, the counsel became sick and that, therefore, he could not return to Gudivada immediately and that he had regained normal health on 22.10.2013 and that thereafter he had started at Kanchipuram on 23.10.2013 morning hours and had reached Gudiada on 23.10.2013 night hours and that, therefore, on the next day of his arrival, that is on 24.10.2013 the security deposit was made cannot be countenanced by this Court. Though the learned counsel for the 1st respondent sought to contend that the revision petitioner had raised the contention for the first time in this revision in regard to the said three days delay from 21.10.2013 to 24.10.2013, and that, therefore, the 1st respondent is entitled to offer an explanation for the said delay in this revision, the said contention also cannot be countenanced for the reason that it is for the 1st respondent to explain the delay on his own at the earliest opportunity by giving valid reasons because the Rule mandates that the security deposit shall be made as prescribed in the Rule. Therefore, the question whether the revision petitioner had raised an objection or not is not material and it is for the 1st respondent to offer a valid explanation in the first instance for the delay of three days from 21.10.2013 to 23.10.2013. That delay is not explained at the earliest opportunity. Even otherwise, the belated explanation offered that too stating that the counsel is responsible for the delay cannot be countenanced, more particularly in view of the mandatory requirement of the Rule and the fact that the Tribunal is not empowered to condone the delay. Further, in view of the precedential guidance in the Division Bench decision of this Court and the mandatory provision of the Rule, the Tribunal has no option but to dismiss the petition.

12. Having regard to the aforementioned reasons, this Court is of the considered view that the order impugned warrants interference as the Court below had dismissed the petition of the revision petitioner even in the absence of valid explanation for the delay of three days, that is from 21.10.2013 to 23.10.2013 (both days inclusive) in making the security deposit.

13. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. Accordingly, IA.no.130 of 2014 is allowed and as a sequel the EI.OP.no.1 of 2013 is dismissed.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

25th April, 2016
Vjl