

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.111 of 2016

Order reserved on: 7-12-2016

Order delivered on: 2-1-2017

Smt. Gulshaad Shabdar Khan (shown as 'Gulshaad Begum' in the impugned order), W/o Shri Shabdar Khan, Caste Musalmaan, aged about 29 years, Corporator Ward No. 4, Nagar Panchayat Jaijaipur, District Janjgir-Champa, R/o Jaijaipur, Tahsil Jaijaipur, District Janjgir-Champa (CG), Civil & Revenue District Janjgir-Champa.

---- Petitioner

Versus

1. Smt. Ganga Sahu, W/o Shri Jagdish Sahu, aged about 29 years, R/o Jaijaipur, Tahsil Jaijaipur, District Janjgir-Champa.
2. The Collector/District Election Officer, District Janjgir-Champa (CG)
3. The Tahsildar/Returning Officer, Jaijaipur, Tahsil Jaijaipur, District Janjgir-Champa (CG)
4. The Chief Municipal Officer, Nagar Panchayat Jaijaipur, District Janjgir-Champa.
5. State of Chhattisgarh, through the Collector, District Janjgir-Champa.

---- Respondents

For Petitioner: Mr. B.P. Sharma and Mr. Manay Nath
Thakur, Advocates.

For Respondent No.1: Mr. Y.C. Sharma, Advocate.

For State/Respondents No.2, 3 and 5: -

Mr. Avinash Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Invoking the jurisdiction of this Court under Section 26(2)

of the Chhattisgarh Municipalities Act, 1961 (hereinafter called as 'the Act of 1961'), the petitioner herein calls in question legality, validity and correctness of the order dated 30-7-2016 (hereinafter called as 'the impugned order') passed by the Additional District Judge-cum-Election Tribunal, Sakti in Misc. Civil Suit No.39/2016 by which the petitioner's election on the post of Councillor from Ward No.4 of Nagar Panchayat Jaijaipur, has been set aside in an election petition filed by respondent No.1 herein, on the ground that the order passed by the Election Tribunal is contrary to the facts and law available on record and therefore the impugned order deserves to be set aside.

2. When the matter was taken-up for hearing on 26-8-2016, Mr. Y.C. Sharma, learned counsel appearing for respondent No.1/caveator, took a preliminary objection that the petitioner did not deposit the mandatory deposit of Rs.250/- as required under Section 19(2) of the Chhattisgarh Municipalities (Election Petition) Rules, 1962 (hereinafter called as 'the Rules of 1962') towards security for costs along with the revision petition, as it was filed on 5-8-2016 and when the Registry pointed out the defect of non-payment of mandatory deposit then only, on 11-8-2016, the mandatory deposit was made and such a deposit cannot be said to be the deposit in compliance of Section

19(2) of the Rules of 1962 and therefore the revision petition deserves to be dismissed. However, thereafter, the petitioner filed application under Section 151 read with Order 23 Rule 3 of the Code of Civil Procedure, 1908, praying that the petitioner be permitted to withdraw the revision petition with liberty to file afresh within the period of limitation, in the interest of justice. This Court by order dated 8-9-2016, allowed respondent No.1 / caveator to file reply to that application and records of the Election Tribunal were also requisitioned and directed the matter to be listed for hearing on preliminary objection of maintainability of the revision as well as on the application under Section 151 read with Order 23 Rule 3 of the CPC, but no reply was filed and ultimately, after hearing on the said application and preliminary objection, the matter was heard on maintainability of civil revision as well as on admission and also on interim relief.

3. Mr. Y.C. Sharma, learned counsel appearing for respondent No.1/caveator, would submit that the petitioner was required to deposit Rs.250/- as security for costs of revision petition at the time of presentation of revision petition as mandatorily required by Rule 19(2) of the Rules of 1962 and since the petitioner has failed to deposit the mandatory deposit by depositing and filing at the time of

presenting the revision on 5-8-2016, the revision petition cannot be entertained and as such, the preliminary objection be upheld and the revision petition be dismissed on this short ground alone.

4. Mr. B.P. Sharma, learned counsel appearing for the petitioner, would submit that the Rules of 1962 have not been specifically adopted by the State of Chhattisgarh and therefore such rule would not be applicable. He would further submit that this Court while considering the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification from Membership) Rules, 1995 which is *pari materia* to Rule 19(2) of the Rules of 1962 had already held that security deposit may be made within the period of limitation and if cognizance of the election petition has not been taken and security deposit has already been made within the period of limitation, the election petition does not suffer from fatal defect and therefore the default be overruled. The petitioner has also filed an application under Section 151 read with Order 23 Rule 3 of the CPC claiming that if the Court is of the view that the decision of the M.P. High Court rendered in the matter of **Radheshyam Nandlalji Patidar v. Jagdish Gangaram Patidar and others**¹ is applicable, the petitioner be permitted to withdraw the instant petition

¹ 1995 M.P.L.J. 909

with liberty to file afresh within the period of limitation, in the interest of justice.

5. I have heard learned counsel for the parties and considered their rival submissions made therein and also gone through the records with utmost circumspection.
6. In order to determine the dispute raised, it would be appropriate to notice the provisions of the Chhattisgarh Municipalities Act, 1961 dealing with election petition. Section 20 of the Act of 1961 provides that election petition can be presented on one or more of the grounds mentioned in Section 22. Section 22 provides grounds for declaring election or nomination to be void. Section 24 deals with decision on election petition. Section 26(1) provides that no appeal shall lie against the decision of the Judge on the petition, whereas, Section 26(2) provides that any party aggrieved by the decision of the Judge on the petition may, within thirty days from the date of such decision, apply to the High Court for revision on the grounds mentioned therein.
7. In exercise of the powers conferred by sub-section (1) and clause (i) of sub-section (2) of Section 355 read with Section 23 of the Act of 1961, the State Government has framed rules known as the Chhattisgarh Municipalities (Election Petition) Rules, 1962, for trying election petition

as well as procedural requirements for filing revision. Rule 19 of the Rules of 1962 provides for revision which reads as under: -

"19. Revision.-(1) No petition by way of revision shall lie against any interlocutory order passed by the Judge.

(2) At the time of presentation of the petition for revision under sub-section (2) of section 26 against the decision of the Judge, the petitioner shall deposit with the High Court a sum of Rs. 250 as security for the costs of the revision. If the provisions of this rule are not complied with the High Court shall dismiss the petition."

8. A careful perusal of sub-rule (2) of Rule 19 of the Rules of 1962 would make it transparently clear that first part of the rule states, "at the time of presentation of the petition for revision", the petitioner is required to deposit with the High Court a sum of Rs.250/- as security for the costs of the revision.
9. The word 'presentation' has many different significations in the context and circumstances in which it is used. The dictionary meaning of 'presentation' is delivering, filing, showing.
10. Thus, the person presenting the petition for revision under sub-section (2) of Section 26 of the Act of 1961 is required to deposit Rs.250/- as security for costs at the time of filing the revision petition.

11. Second part of sub-rule (2) of Rule 19 of the Rules of 1962 provides, "if the provisions of this rule are not complied with the High Court shall dismiss the petition". In this second part, the legislature has consciously provided the consequence of non-fulfillment of the condition enumerated in the first part of the rule by providing that the Court "shall" dismiss the revision petition.
12. Principles of Statutory Interpretation by Justice G.P. Singh (12th Edition 2010) unmistakably provides that when consequence of nullification on failure to comply with a prescribed requirement is provided by the statute itself, there can be no manner of doubt that such statutory requirement must be interpreted as mandatory. (Also see **Rajsekhar Gogoi v. State of Assam**².)
13. In a decision in the matter of **Sharif-ud-din v. Abdul Gani Lone**³, Justice E.S. Venkataramiah delivering the judgment for the Supreme Court observed that whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to accept the argument that failure to comply with the said requirement should lead to any other consequences.

² (2001) 6 SCC 46 (para 11)

³ (1980) 1 SCC 403

14. In the matter of **M.Y. Ghorpade v. Shivaji Rao M. Poal and others**⁴, the Supreme Court while considering Section 117 of the Representation of the People Act, 1951, which provides that at the time of presenting an election petition, the petitioner shall deposit in the High Court in accordance with the Rules of the High Court a sum of two thousand rupees as security for the costs of the petition, it has been held that the requirement of making a security deposit of Rs.2,000/- is mandatory and the same has to be made while presenting an election petition, but the mode of deposit as well as the person who could make a deposit is directory.
15. In the matter of **Charan Lal Sahu v. Nandkishore Bhatt and others**⁵, it was held by Their Lordships of the Supreme Court that the High Court has no option but to reject the election petition which is not accompanied by payment of security as provided in Sections 86 and 117 of the Representation of the People Act, 1951, as Section 86(1) of the said Act provides that High Court shall dismiss an election which does not comply with the provisions of Section 81 or Section 82 or Section 117. That decision has been followed subsequently by the Supreme Court in the matter of **Aeltemesh Rein v. Chandulal Chandrakar**

4 (2002) 7 SCC 289

5 AIR 1973 SC 2464

and others⁶.

16. Not only this, the M.P. High Court also in the matter of **Radheshyam Nandlalji Patidar** (supra) has clearly held that Rule 19(2) of the Rules of 1962 is mandatory and the petitioner has to deposit security deposit of Rs.250/- at the time of presentation of revision petition and if he fails to do so, the revision petition would be liable to be dismissed.
17. The judgment rendered in the matter of **Radheshyam Nandlalji Patidar** (supra) has been followed with approval subsequently by that Court in the matter of **Aslam Beg Mirdha v. Babulal and others**⁷ clearly holding the provisions under Rule 19(2) of the Rules of 1962 are mandatory, security amount has to be deposited along with the revision petition and the High Court has no discretion to condone the lapse. It is further held that the revision petition is not maintainable, as the provisions of Rule 19 of the Rules of 1962 are mandatory and not directory and observed in paragraphs 18, 19 and 20 as under: -

"18. The judgment referred in the cases of Kailash Narayan (supra) and Ravi Thakur (supra), and directly in conflict with the Division Bench judgment of this Court in the case of Babulal & another v. State of M.P. &

⁶ AIR 1981 SC 1199

⁷ 1997 (2) JLJ 154

others, 1985 JLJ 644, while considering the provisions of Rule 7 and Rule 8 of Panchayat (Election Petition, Corrupt Practices and Disqualification for Membership) Rules, 1962 it was held that on account of deficiency in deposit of security amount the election petition should be dismissed. It was held that the rule is mandatory. Law does not provide any extension of time to deposit security amount. The amount deserves to be deposited at the time of presentation of the petition, as held in the case of Charan Lal Sahu (supra) and in the case of Aoltemesh Rein (supra).

19. The law is also settled by this Court in respect of section 26 of the Act and Rule 19 of the Rules in the case of Radheshyam (supra).

20. Since the mandatory provision of deposit of security at the time of presentation of petition was not complied with, the Court has no option but to dismiss the revision petition under Rule 19 of the Rules. Language of Rule 19 is plain and simple. Since elections of Municipality are subject to challenge under the provision of Article 243ZG of the Constitution of India, the Court had no power to exercise the jurisdiction in extending the period to deposit the security or to condone the delay to deposit the security amount."

18. Very recently, the above stated two judgments i.e.

Radheshyam Nandlalji Patidar (supra) and **Aslam Beg Mirdha** (supra) have been followed with approval in the matter of **Deepak Kumar Soni v. Ashok Kumar and others**⁸ by the M.P. High Court.

19. In **Sharif-ud-din** (supra), Justice E.S. Venkataramiah delivering judgment for the Supreme Court observed that whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure

to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow.

20.Their Lordships of the Supreme Court in **M.Y. Ghorpade** (supra) considering the *pari materia* provisions contained in Section 117 of the Representation of the People Act, 1951 has held that the aforesaid provision requires deposit of Rs.2,000/- to be made at the time of presenting an election petition. The object of having the aforesaid provision could be to discourage entertaining frivolous election petitions and to make provision for cost in favour of the parties who ultimately succeed in the election petition.

21. On the basis of aforesaid analysis and in light of the provisions contained in Rule 19(2) of the Rules of 1962, I do not have slightest doubt in my mind that the rule provides mandatorily to the person filing revision petition under sub-section (2) of Section 26 of the Act of 1961 to imperatively deposit Rs.250/- as security for the costs of the revision and if security for the costs is not deposited, the consequence has also been provided which is dismissal of revision petition by the Court and as such, this Court has no discretion to condone the delay in depositing the security deposit.

22. Therefore, Rule 19(2) of the Rules of 1962 is mandatory in nature and if compliance of the same has not been made, the result would be that this Court has no option except to dismiss the revision petition.

23. At this stage, it would be appropriate to notice the judgment cited by Mr. B.P. Sharma, learned counsel appearing for the petitioner, rendered in W.P.(C) No.2461/2010 (Shanta Bai v. Bhuneshwari Sahu and others) decided on 21-7-2010 wherein this Court while dealing with Rules 7, 8 and 9 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification from Membership) Rules, 1995 has held that security deposit must be made at the time of presentation of election petition, security deposit may be made within the period of limitation and if the cognizance of the election petition has not been taken before the security deposit, the election petition does not suffer from fatal defect.

24. The case cited above is distinguishable from the facts of the present case for more than one reason, firstly, Rule 19(2) of the Rules of 1962 has been considered by the M.P. High Court in **Radheshyam Nandlalji Patidar** (supra) and **Aslam Beg Mirdha** (supra). Both these decisions were rendered by the M.P. High Court prior to reorganization of

the State on 1-11-2000 and therefore they are binding on this Court on the principle of judicial comity. Since **Radheshyam Nandlalji Patidar** (supra) and **Aslam Beg Mirdha** (supra) are holding the field since long i.e. for fairly long time, there is no reason to take a different view from that. Even otherwise, in the matter of **Babulal & another v. State of M.P. & others**⁹, a Division Bench of the M.P. High Court while considering Rules 7 and 8 of the Panchayat (Election Petition, Corrupt Practices and Disqualification for Membership) Rules, 1962 it was held that on account of deficiency in deposit of security amount the election petition should be dismissed. It was held that the rule is mandatory. Law does not provide any extension of time to deposit security amount.

25. This would bring me to the facts of the present case as the revision petition was filed on 5-8-2016 without making or depositing Rs.250/- as security for costs and office objection was raised on 6-8-2016 that the copy of mandatory receipt of security amount of Rs.250/- is not filed with the memo of revision in compliance of Rule 19(2) of the Rules of 1962, then only, the petitioner taking note of that objection, deposited Rs.250/- on 11-8-2016 and on 16-8-2016, the Registrar (Judicial) noted that the mandatory deposit has been made and thereafter, the matter was listed

before this Court for admission on 24-8-2016. Since the petitioner has not deposited Rs.250/- as security for the costs of the revision at the time of presentation of election petition as required by Rule 19(2) of the Rules of 1962 and the Rule being mandatory requires dismissal of revision petition for non-compliance of the Rules of 1962, the Court has no option except to dismiss the revision petition on account of non-compliance of Rule 19(2) of the Rules of 1962 for not depositing the security for the costs of the revision at the time of presentation of revision petition and as such, the revision petition deserves to be dismissed.

I.A.No.2, application under Section 151 read with Order 23 Rule 3 of the CPC: -

26. This application has been filed by the petitioner for treating the petition in order and permitting the petitioner to withdraw the petition with liberty to file afresh within the period of limitation, in the interest of justice. The petitioner has prayed that there is no such default and if the Court is of the view that decision rendered in the matter of **Radheshyam Nandlalji Patidar** (supra) is applicable then the petitioner be permitted to withdraw the revision petition with liberty to file afresh within the period of limitation.

27. It has already been held in the foregoing paragraphs that

the revision petition is not maintainable in view of non-compliance of making security deposit at the time of presenting the revision petition and therefore the revision petition deserves to be dismissed. The petitioner cannot be permitted to withdraw the revision petition as held in **Radheshyam Nandlalji Patidar** (supra) in which similar prayer was made before that Court and it has been held by the M.P. High Court that such permission cannot be granted because indirectly, this is defeating the provisions of law.

28. Consequently, the preliminary objection is upheld and revision petition is dismissed as not maintainable for want of mandatory deposit along with the revision petition leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.111 of 2016

Smt. Gulshaad Shabdar Khan

Versus

Smt. Ganga Sahu and others

HEAD NOTE

The decisions rendered by the M.P. High Court prior to 1-11-2000 are binding on the Chhattisgarh High Court on the principle of comity.

म.प्र. उच्च न्यायालय द्वारा 1.11.2000 के पूर्व दिए गए निर्णय छत्तीसगढ़ उच्च न्यायालय पर सौजन्यता के सिद्धांत के अनुसार बाध्यकारी हैं।