

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 26-2-2018****Delivered on 12-3-2018****WA No. 315 of 2017**

Shivbalak Ram Yadav S/o Shri Ramdulare Yadav, Caste Ahir, R/o
Inderpur, Police Station And Tehsil Odgi, District Surajpur, CG

---- Appellant**Versus**

1. Rajesh Kumar Tiwari S/o Omprakash Tiwari, Aged About 42 Years R/o Village Chapda, Post Baijnathpur, Tehsil And Police Station Odagi, District Surajpur, Chhattisgarh, Elected Janpad Member Of Constituency No. 9)
2. Ajay Kumar Gupta S/o Chhadu R/o Village Dhoor, Post- Odgi, Police Station And Tahsil- Odgi, District- Surajpur, Chhattisgarh
3. Chitrakut Dubey S/o Vishwanath Dubey R/o Village- Inderpur, Post, Police Station And Tahsil- Odgi, District- Surajpur, Chhattisgarh
4. Naresh Kumar Jaiswal S/o Shyamdev Jaiswal R/o Village- Dhoor, Post, Police Station And Tahsil- Odgi, District- Surajpur, Chhattisgarh
5. Motilal Sarthi S/o Shivkumar R/o Village- Dhoor, Post, Police Station And Tahsil-Odgi, District- Surajpur, Chhattisgarh
6. Rampal Yadav S/o Subran Yadav R/o Village- Inderpur, Post, Police Station And Tahsil- Odgi, District- Surajpur, Chhattisgarh
7. Rammanohar Yadav S/o Jagdish R/o Village- Inderpur, Post, Police Station And Tahsil- Odgi, District- Surajpur, Chhattisgarh
8. Vijay Kumar Gupta S/o Devnarayan Gupta R/o Village- Chapda, Post- Baijnathpur, Police Station And Tahsil- Odgi, District- Surajpur, Chhattisgarh
9. Shivcharan Rajwade S/o Mangluram R/o Village Inderpur, Post, Police Station And Tahsil-Odgi, District- Surajpur, Chhattisgarh
10. Shivmangal Kurre S/o Tejuram R/o Village- Chapda, Post- Baijnathpur, Police Station And Tahsil- Odgi, District- Surajpur, Chhattisgarh
11. Sanjay Yadav S/o Ayodhya Prasad Yadav, R/o Village Girjapur, Post Odgi, Police Station And Tahsil Odgi, District Surajpur Chhattisgarh
12. Santosh Singh, S/o Shriniwas, R/o Village Odgi, Post, Police Station And Tahsil Odgi, District Surajpur Chhattisgarh
13. Sandeep Kumar Singh S/o Ramchandra Singh, R/o Village Inderpur, Post, Police Station And Tahsil Odgi, District Surajpur Chhattisgarh
14. Omkar Prasad Mishra, Returning Officer Panchayat/ Naib Tahsildar, Odgi, District Surajpur Chhattisgarh
15. Likhanram Painkra, Lecturer, Presiding Officer, Booth No. 55,

- Through Block Education Officer, Pratappur, District Surajpur Chhattisgarh
16. Bodhanram, Assistant Grade- 2, Polling Officer, Booth No. 55, Through Block Education Officer, Pratappur, District Surajpur Chhattisgarh
 17. Kameshwar Prasad Singh, Teacher Panchayat, Polling Officer, Booth No. 55, Through Block Education Officer, Pratappur, District Surajpur Chhattisgarh
 18. Dharamjeet Ram, Assistant Teacher Panchayat, Polling Officer, Booth No. 55, Through Block Education Officer, Pratappur, District Surajpur Chhattisgarh
 19. Ramjeetram, Lecturer Panchayat, Presiding Officer, Booth No. 56, Through Block Education Officer, Pratappur, District Surajpur Chhattisgarh
 20. Alekcious Kujur, Teacher Panchayat, Polling Officer, Booth No. 56, Through Block Education Officer, Pratappur, District Surajpur Chhattisgarh
 21. Ranjeet Dubey, Assistant Teacher Panchayat, Polling Officer, Booth No. 56, Through Block Education Officer, Pratappur, District Surajpur Chhattisgarh
 22. Dilip Kumar Painkra, Assistant Teacher Panchayat, Polling Officer, Booth No. 56, Through Block Education Officer, Pratappur, District Surajpur Chhattisgarh
 23. Laxmikumar Nishad, Lecturer Panchayat, Presiding Officer, Booth No. 57, Through Block Education Officer, Pratappur, District Surajpur Chhattisgarh
 24. Parasram, Teacher Panchayat, Polling Officer, Booth No. 57, Through Block Education Officer, Pratappur, District Surajpur Chhattisgarh
 25. Mohan Singh, Assistant Teacher Panchayat, Polling Officer, Booth No. 57, Through Block Education Officer, Surajpur, District Surajpur Chhattisgarh
 26. Komalkant Singh, Assistant Teacher Panchayat, Polling Officer, Booth No. 57, Through Block Education Officer, Pratappur, District Surajpur Chhattisgarh
 27. Bundram Sidar, Headmaster Primary School, Paslihapara Bhaiyathan, Presiding Officer, Booth No. 87, District Surajpur Chhattisgarh
 28. Rajesh Kumar Kushwaha, Teacher Panchayat, Middle School, Barpara, Polling Officer, Booth No. 87, Through Block Education Officer, Bhaiyathan, District Surajpur Chhattisgarh
 29. Parmeshwar Ram, Assistant Teacher Panchayat, Polling Officer, Booth No. 87, Through Block Education Officer, Pratappur, District Surajpur Chhattisgarh
 30. Ramnarayan Singh, Assistant Teacher Panchayat, Middle School, Satyanagar, Polling Officer, Booth No. 87, Through Block Education Officer, Bhaiyathan, District Surajpur Chhattisgarh
 31. Pradeep Tiwari, Upper Division Teacher, Middle School, Bhanwrahi, Bhaiyathan, Presiding Officer, Booth No. 88, District

Surajpur Chhattisgarh

32. Ramashankar Patel, Teacher Panchayat, Middle School, Sonpur, Polling Officer, Booth No. 88, Through Block Education Officer, Bhaiyathan, District Surajpur Chhattisgarh
33. Krishamohan Gupta, Assistant Teacher Panchayat, Primary School, Bundiya, Polling Officer, Booth No. 88, District Surajpur Chhattisgarh
34. Brijesh Pandey, Assistant Teacher Panchayat, Primary School, Mohli, Polling Officer, Booth No. 88, District Surajpur Chhattisgarh
35. Rameshwar Prasad Nagen, Headmaster, Presiding Officer, Booth No. 106, Through Block Education Officer, Pratappur, District Surajpur Chhattisgarh
36. Jayesh Pathak, Lecturer Panchayat, Higher Secondary School Batra, Polling Officer, Booth No. 106, District Surajpur Chhattisgarh
37. Pradeep Kumar Singh, Assistant Teacher Panchayat, Primary School, Pandopara, Tarka, Polling Officer, Booth No. 106, Through Block Education Officer, Bhaiyathan, District Surajpur Chhattisgarh
38. Devendranath Dubey, Assistant Teacher Panchayat, Primary School, Khadapara, Polling Officer, Booth No. 106, Through Block Education Officer, Bhaiyathan, District Surajpur Chhattisgarh
39. Arun Kumar Pandey, Presiding Officer, Booth No. 89, Through Block Education Officer, Odgi, District Surajpur Chhattisgarh , District : Surajpur, Chhattisgarh
40. Ramkumar Singh, Polling Officer, Booth No. 89, Through Block Education Officer, Odgi, District Surajpur Chhattisgarh
41. Bechanram Kushwaha, Polling Officer, Booth No. 89, Through Block Education Officer, Odgi, District Surajpur Chhattisgarh
42. Bharam Singh, Polling Officer, Booth No. 89, Through Block Education Officer, Odgi, District Surajpur Chhattisgarh
43. O. P. Singh, Sub Divisional Officer Revenue, Pratappur, District Surajpur Chhattisgarh
44. B. R. Bhagat, Chief Executive Officer, Janpad Panchayat, Odgi, District Surajpur Chhattisgarh
45. M. L. Dhritlahre, Additional Collector, Surajpur, District Surajpur Chhattisgarh
46. The Collector, Surajpur Election Tribunal), District Surajpur Chhattisgarh

---- Respondents.

For appellant	:	Shri Sarfaraj Khan, Adv.
For respondent No. 1	:	Mr. Rahul Mishra, Advocate.
For State	:	Shri R.K. Gupta, Dy. Adv. General

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. JUDGMENT

Sharad Kumar Gupta, Judge

1. In this writ appeal challenge is levied to the order dated 1-8-2017 passed by learned Single Judge of this Court in WPC No. 390/2017 vide Annexure A-1 whereby and whereunder he set aside the order dated 1-2-2017 passed by the respondent No. 46 vide Annexure P-1 whereby respondent No. 46 rejected the application filed by respondent No. 1 under Order 7 Rule XI of the Code of Civil Procedure, 1908 (in brevity 'CPC').

2. This is admitted by the appellant that he and the respondents No. 1 to 13 had contested the election for the post of Member of Janpad panchayat Odgi, Distt. Surajpur (Region No. 9), the respondent No. 1 was declared elected as Janpad Panchayat member of Odgi, he preferred an election petition dated 23-2-2015 under Section 122 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (in brevity 'Act of 1993') vide Annexure P-2 before the respondent No. 46 along with a copy of challan of Rs. 50/- as security deposit for filing election petition, vide Annexure P-3, the respondent No. 1 filed an application under Order 7 Rule 11 of the CPC for dismissal of election petition for non-compliance of Rule 7 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership), Rules, 1995 (in brevity 'Rules of 1995') as the appellant had not deposited the amount of security deposit of Rs. 500/- which was mandatory, the respondent No. 46 rejected the aforesaid application filed by the respondent No. 1,

the respondent No. 1 preferred aforesaid writ petition which was decided as aforesaid.

3. Being aggrieved by the order Annexure A-1 passed by learned Single Judge, the appellant has preferred this writ appeal.

4. Shri Sarfaraz Khan, Counsel for the appellant strenuously argued that as per the Section 3 of the Chhattisgarh Panchayat Nirvachan Yachika Pratibhuti Nikshep (Vidhimanyakaran) Adhiniyam, 1996 (hereinafter called as 'Act of 1996'), the requirement was only to deposit Rs. 50/- as security deposit appended with the election petition, Section 4 of the Act of 1996 deals with all the election petitions which had been filed after the enactment of the Act of 1996, thus order Annexure A-1 passed by learned Single Judge may not be proper and deserves to be set aside.

5. Shri Rahul Mishra, Counsel for the respondent No. 1, Shri R.K. Gupta, Dy. Advocate General for the State argued that order Annexure A-1 is in accordance with law, just and proper. Earlier MP Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership), Rules, 1962 (in brevity 'Rules of 1962') was applicable and repealed by Rules 1991, as per Rules 1991 the security deposit amount was Rs. 250/-, to avoid the confusion, the Act of 1996 was introduced by reducing security deposit amount Rs. 250/- to Rs. 50/- with the object to validate the election petitions which were presented between 25-1-1994 and 3-6-1995, thus in the case in hand, for the election held in 04-07.02.2015 Rs. 500/- was required to be deposited as security

deposit.

6. Now we will consider that at the time of filing of Annexure P-2 what was the amount required to be deposited as security deposit.

7. Section 122 of the Act of 1993 deals with filing of election petition for panchayat election which reads thus :-

“122. Election petition.--(1) An election [xxx] under this Act shall be called in question only by a petition presented in the prescribed manner:-

(i) in case of Gram Panchayat to the Sub-Divisional Officer (Revenue);

(ii) in case of Janpad Panchayat to the Collector; and

(iii) in case of Zila Panchayat to *[Director, Panchayat] and not otherwise.

*Subs. By C.G. Act No. 8 of 2003, for "the Divisional Commissioner".

(2). No such petition shall be admitted unless it is presented within thirty days from the date on which the election [xxx] in question was notified.

(3) Such petition shall be enquired into or disposed of according to such procedures as may be prescribed.”

8. The Rules of 1995 have been notified and published on 3-6-1995 in the Gazette of Madhya Pradesh. Rules 3, 7 and 8 of the Rules of 1995 are relevant for adjudication of the matter which read thus :-

“3. Presentation of election petition.-- (1) An Election Petition shall be presented to the specified Officer during the office hours by the person making the petition, or by a person authorized in writing in this behalf by the person making the petition.

(2) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned

in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

7. **Deposit of security.**--At the time of presentation of an election petition, the petitioner shall deposit with the specified officer a sum of Rs. Five Hundred as security. Where the election of more than one candidate is called in question, a separate deposit of an equivalent amount shall be required in respect of each such returned candidate.

8. **Procedure on receiving petition.**--If the provisions of Rule 3 or Rule 4 or Rule 7 have not been complied with, the petition, shall be dismissed by the specified officers."

8. The Act of 1996 was published in the gazette on 17-4-1996. Sections 3 and 4 of the Act of 1996 read as under :-

"3. Amendment of Rules, 1991. In the Madhya Pradesh Panchayats (Election Corrupt Practices and Disqualification for Membership) Rules, 1991 in rule 7, for the words "rupees two hundred and fifty' the words "rupees fifty" shall be substituted and shall be deemed to have been substituted with effect from the 25th January, 1994.

4. **Validation.**--Notwithstanding any Judgment, decree or order of any court or authority any amount deposited as security under rule 7 of the Madhya Pradesh Panchayats (Election Petitions Corrupt Practices and Disqualification for Membership) Rules, 1991 during the period commencing from the 25th January, 1994 and ending on the 3rd June, 1995 shall be deemed to have been validly deposited in accordance with the aforesaid rules and shall not be called in question in any court on the ground merely that security deposit as prescribed has not been paid and accordingly :-

(i) no petition or other proceedings challenged on the ground merely that the security deposit as prescribed has not been paid, shall be maintained or continued in any court;

(ii) where any petition or other proceeding has been dismissed before the commencement of this Act on the ground that necessary amount of security deposit was not paid, it shall be restored and continued as if the provisions of this Act had been in force at all material times when such petition was filed.”

9. From the Sections 3 and 4 of the Act of 1996, it is very unequivocal that the election petitions filed between 25-1-1994 to 3-6-1995 should be appended with the security deposit of Rs. 50/-, instead of Rs. 250/-. More over, in the case in hand, the election proceedings have taken place in 2015 and Annexure P-2 was filed in the year 2015. Thus, provisions of Sections 3 and 4 of the Act of 1996 are not attracted in the case in hand, instead of it, provisions of Rule 7 of the Rules of 1995 are attracted. Thus, this Court finds that at the time of filing of election petition Annexure P-2, the amount payable as security deposit was Rs. 500/-.

10. Now we will consider whether the provisions of Rule 7 and 8 of the Rules of 1995 are mandatory or directory.

11. Learned counsel for the appellant placed reliance in the matter of **K. Kamaraja Nadar -v- Kunju Thevar and others** [AIR 1958 SC 687], in which Hon'ble Supreme Court in para 31 held that :-

“..... the words “in favour of the Secretary to the Election Commission” used in Section 117 are directory and not mandatory in their character. What is of the essence of the provision contained in Section 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.”

12. Learned counsel for the respondent No. 1 placed reliance in **Sarla Tripathi (Smt) -v- Smt. Kaushalya Devi and others** [2004 (2) JLJ 263], in which a Division Bench of High Court of Madhya Pradesh had dealt with the similar matter, para 8 of the judgment is relevant and reproduced below :-

“8. In the present case, it is not disputed that the amount was not deposited at the time of presentation of the petition but later. In somewhat similar situation, a Division Bench of this Court in **Babulal -v- State of M.P.** (1985 JLJ 644) has observed that the expression “shall deposit” and the penalty of failure prescribed in Rule 8 clearly spell out that the provision of Rule 7 is mandatory and the requirement of making the deposit of security amount is along with the petition as clear from the expression “at the time of presentation of an election petition”. Para 10.01 of the report containing the said observations reads under :

“10.01. On a plain reading of Rule 7 the requirement of making the deposit of security amount is along with the petition. The expression : “At the time of presentation of an election petition,” in Rule 7 is very significant. Thus, the requirement of deposit of security amount along with the petition is an essential link in the chain of presentation of the petition. Therefore, if this link is missing, there is no valid presentation of the petition. The Tribunal has a jurisdiction only when there is a validly presented petition before it.”

13. Learned counsel for the respondent No. 1 further placed reliance In **M. Karunanidhi -v- Dr. H.V. Hande and others** [(1983) 2 SCC 473], in which the Hon'ble Supreme Court considering the akin provisions of Section 117 of the Representation of the People Act, 1951 (in brevity 'Act of 1951') held that Section 117(1) of the Act of 1951 is in two parts. The first part 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 Section 86(1). But the second part regarding the requirement of its deposit in the High Court in accordance with the rules of the High Court is directory.

14. Learned counsel for the appellant placed reliance In the matter of **M.Y. Ghorpade -v- Shivaji Rao M. Poal and others** [2002(7) SCC 289], in which Hon'ble Supreme Court held that :-

“The sum of Rs 2000 must be deposited while filing an election petition under Section 117 of the Act of 1951 and that is undoubtedly mandatory, through whom the will be deposited etc. cannot be held to be mandatory.”

15. In the matter of **Aeltemesh Rein Vs. Chandulal**, (AIR 1981 SC 1199) it has been held by Hon'ble Supreme Court that non-compliance of Section 117 of the Act of 1951 leads to dismissal of the election petition by virtue of Section 86(1) of the Act of 1951.

16. In the matter of **K. Kamaraja Nadar** (supra), the Hon'ble Supreme Court held that the provision of Section 117 of the Act of 1951 that to whom the security amount may be deposited is directory. It does not say that deposit of particular amount as

security deposit is not mandatory. Thus, appellant does not get any help from the above case law.

17. Looking to the decisions in **Sarla Tripathi** (supra), **Aeltemesh Rein** (supra), **M. Karunanidhi** (supra), **M.Y. Ghorpade** (supra), this Court finds that the provisions of Rules 7 and 8 of Rules of 1995 are mandatory in nature.

18. The appellant had not deposited the requisite security amount of Rs. 500/-, instead of it, he had deposited only Rs. 50/- which is violative of Rule 7 of Rules of 1995. The respondent No. 46 ought to have complied with Rule 8 of the Rules of 1995, but he declined to do so. Thus, the order Annexure P-1 passed by the respondent No. 46 is not in accordance with the statutory provisions of Rules 7 and 8 of the Rules of 1995 and he committed illegality while passing the aforesaid order and we found that learned Single Judge has not committed any illegality or jurisdictional error while passing the order Annexure A-1. Therefore, we are in respectful agreement with the well reasoned impugned order passed by learned Single Judge vide Annexure A-1 and we affirm it.

19. In the result, the appeal being devoid of substance deserves to be and is hereby dismissed with costs of Rs. 25,000/- in favour of respondent No.1, payable by the appellant to respondent No.1 within three months from the date of this judgment.

Sd/-
(**Thottathil B. Radhakrishnan**)
Chief Justice

Sd/-
(**Sharad Kumar Gupta**)
Judge