

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.6886 of 2017

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed by the unsuccessful petitioner/R1 in OP.No.445 of 2014 and R2 in OP.No.524 of 2014 assailing the order, dated 27.10.2017, of the learned Principal District Judge, Nalgonda, passed in IA.No.337 of 2016 filed under Order VII Rule 11(d) of the Code of Civil Procedure, 1908, read with Rules 1, 2 & 4 of A.P. Municipalities (Decision of Election Disputes) Rules, 1967 [hereinafter, 'Rules of 1967'], requesting to dismiss both the afore-stated OPs *in limine*.

2. I have heard the submissions of Sri M. Rajender Reddy, learned counsel for the revision petitioner herein, Sri M. Venkata Ram Reddy, learned counsel appearing for the 1st respondent herein, Sri N. Praveen Kumar, learned standing counsel for the 3rd respondent herein/Nalgonda Municipality. I have perused the material record.

3. The parties in this revision petition shall hereinafter be referred to as arraigned in this revision petition for convenience and clarity.

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

The revision petitioner is the returned candidate having been declared elected for the post of Councillor of 17th ward of Nalgonda Municipality. The 1st respondent herein is one of the unsuccessful contestants for the said post. He filed OP.No.445 of 2014 under Section 17 of the A.P. (TS) Municipalities Act, 1965, [hereinafter, 'Act of 1965'] to declare that the revision petitioner is

disqualified under Section 13(B) of the said Act for the post of the Councillor of 17th ward of Nalgonda Municipality. In his said OP he *inter alia* stated that the revision petitioner/returned candidate suffered disqualification as he had five children and that out of them, two were born after the commencement of the Act of 1965 and that in the affidavit filed along with the nomination, the revision petitioner suppressed the actual number of children he is having and that he resorted to mal practice and succeeded in the election by surreptitious means. The revision petitioner/returned candidate is resisting the said OP. The Commissioner, Nalgonda Municipality, the 3rd respondent herein filed the other OP.No.524 of 2014 by invoking the same Section of law requesting to decide as to whether the revision petitioner is disqualified or not under Section 13(B) of the said Act for the post of Councillor of the said ward of the Municipality. The revision petitioner is resisting the said OP also. In the pending OPs, the revision petitioner/returned candidate filed the afore-stated Interlocutory Application requesting to dismiss both the OPs *in limine* for violation of certain mandatory provisions of the Act of 1965 and the Rules of 1967. The said Interlocutory Application was resisted by the respondents 1 & 3 herein, that is, the petitioners in the respective OPs by filing counters. Their counters were adopted by respondents 2 & 4 herein, that is, the Government of Telangana and one Kathula Nagaraju, who filed a complaint petition against the revision petitioner about revision petitioner's disqualification. On merits and by the orders impugned in this revision, the learned District Judge dismissed the petition of the revision petitioner/returned candidate. Hence, he is before this Court.

5. Before proceeding further, it is necessary to refer to the cases of the parties.

5.1 The case of the revision petitioner/returned candidate in support of the request to dismiss both the OPs *in limine*, in brief, is as follows: - 'The OPs are filed against him by the respondents 1 & 3 claiming that he is disqualified for contesting the election to the post of Councillor of Ward No.17 of Nalgonda Municipality in view of Section 13(b) of Act of 1965. The elections were held on 30.03.2014. The results were declared on 12.05.2014. The revision petitioner is the returned candidate. As per Section 343-ZA of the Act of 1965, no election shall be called in question except by an Election Petition presented in accordance with the Rules. The 1st respondent herein/petitioner in OP.No.445 of 2014 is not competent to file the said OP. The Commissioner alone is competent to invoke the provision of Section 17 of the Act of 1965. Hence, the said OP filed by the 1st respondent herein is liable to be dismissed *in limine*. The 1st respondent filed a similar petition *vide* CFR No.2232 of 2014, on 11.06.2014, against this revision petitioner on the file of Senior Civil Court, Nalgonda, and withdrew that petition and then filed the present OP no.445 of 2014. Hence, the above said OP is not maintainable. The period of limitation prescribed for presentation of the election petition under the Rules is 15 days from the date of declaration of results of the election. The OPs are respectively filed on 28.07.2014 and 03.09.2014. Hence, both the OPs are barred by law of limitation. At the time of filing of the said OPs, the 1st and 3rd respondents herein/petitioners in both the OPs had not made the security deposits in compliance of the mandatory provision of Rule 4(1)(ii) of the Rules of 1967. Hence, both the OPs are liable for dismissal *in limine*. As the

OPs are liable for rejection for non compliance of the mandatory provision and are liable for dismissal *in limine* in view of the above facts, the further process of enquiry in the OPs even if undertaken would be a futile exercise. The OPs are filed with oblique motives. Hence, both the OPs may be dismissed/rejected *in limine*?

5.2 The common contentions of the respondents 1 & 3, the petitioners in both the OPs, in brief are as follows:

The revision petitioner/returned candidate is disqualified to continue to hold the post of the Councillor of the subject ward of the Municipality. The 1st respondent being a voter/member of the Municipality is entitled to file the petition. His OP is maintainable. The allegation that the 1st respondent is not competent to file the OP is false and is denied. The OPs are filed to declare the elected member of the ward as disqualified. Hence, the OPs are not election petitions. The 1st respondent has not filed any petition in the Senior Civil Court for the relief claimed in the present OP.No.445 of 2014. The reliefs claimed in the said OP in CFR.No.2232 of 2014 and in the instant OP.No.445 of 2014 are different. The OP in CFR.No.2232 of 2014 is already withdrawn. Since the OPs are not filed to challenge the election or the election procedure, the provision of Rule 4(1)(ii) of the Rules of 1967 is not applicable to the present OPs. The said Rules are not applicable to the OPs of the respondents 1 & 3. Hence, the petition of the returned candidate may be dismissed.

6. I have given earnest consideration to the submissions made on behalf of both the sides.

7. Dealing first with the contention that the 1st respondent/unsuccessful candidate is not entitled to file the OP against the revision petitioner/returned candidate, it is to be noted that the short but important question is as to whether the OP.No.445 of 2014 filed by the 1st respondent/unsuccessful candidate is liable for rejection or dismissal *in limine* on the ground that he is not competent to institute the said OP.

7.1 Admittedly, the revision petitioner is the successful returned candidate. The 1st respondent is an unsuccessful contestant in the election to the post of the Councillor of the ward. The 1st respondent filed the OP.445 of 2014 stating that the revision petitioner is disqualified to hold the post of the Councillor of the Ward as he had five children and that out of them two were born after the commencement of the Act of 1965 and that in his affidavit filed along with the nomination he suppressed the actual number of children he is having and resorted to malpractice and succeeded in the election by surreptitious means. Now the revision petitioner/returned candidate is contending that the 1st respondent/petitioner in the OP is not competent to file the petition and that the Commissioner of the Municipality is alone competent to institute any such OP.

7.2 In this backdrop, it is necessary to refer to the provision of Section 17 of the Andhra Pradesh (TS) Municipalities Act, 1965, which reads as under:

‘District Judge to decide questions of disqualifications of members:

(1) Where an allegation is made by any voter or authority to the Commissioner in writing that any person who is elected as a member has not qualified or has become disqualified under Section 13, Section 13-A, Section 13-B, Section 14, Section 16 or Section 19 and the Commissioner has given intimation of such allegation to

the member and such member disputes the correctness of the allegation so made or where any member himself entertains any doubt whether or not he has become disqualified under any of those sections,--

(a) Such member or any other member may, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be; and

(b) The Commissioner shall, either on the direction of the Council or with the approval of the Government if no such direction is given within a period of two months from the date of placing of the matter by the Commissioner before the Council apply for a decision to the District Judge of the district in which the municipality is situated.

2. The said Judge, after making such inquiry, as he deems necessary, shall determine whether or not such person disqualified and his decision shall be final.

3. Pending such decision, the member shall be entitled to act, as if he was not disqualified.'

A perusal of the Section makes it evident that the provision does not enable the complainant himself to approach the District Judge for adjudication. In fact, the interpretation of the above Section fell for consideration before this Court in **Sonti Srinivasa Rao v. Boina Lakshmi Narayana and others**¹ wherein this Court having analysed the Section held as follows: 'From a perusal of the section, it is evident that the only way through which proceedings can land before the Court of District Judge, under Section 17 is through an application, made by the Commissioner. The provision does not enable the complainant himself to approach the District Judge for adjudication. In case, there was any inaction or default, on the part of the Commissioner in taking

¹ 2006(5) ALT 825

necessary steps, contemplated under Section 13-A, the aggrieved party must have recourse to any remedy, to compel the Commissioner to discharge his obligation. The default on the part of the Commissioner does not confer right upon the complainant, to approach the District Judge.'

7.3 A plain consideration of the provision of Section 17 of the Act of 1965 makes it manifest that where an allegation is made by any voter or authority to the Commissioner in writing that any person who is elected as a member has not qualified or has become disqualified under Section 13, 13A, 13B, 14, 16 or 19 and the Commissioner has given intimation of such allegation to the member and such member disputes the correctness of the allegation so made or where any member himself entertains any doubt whether or not he has become disqualified under any of those sections, such member or any other member, within a period of two months from the date on which such intimation is given or doubt is entertained as the case may be apply for a decision to the District Judge of the District. However, the Commissioner also shall, either on the direction of the Council or with the approval of the Government, if no such direction is given within a period of two months from the date of placing of the matter by the Commissioner before the Council, apply for a decision to the District Judge. Thus, a unadorned reading of the Section shows that the power to apply to the District Judge is conferred upon the member against whom any allegation is made, in case where a doubt is entertained by the member himself, or any other member and that in all other cases, on the Commissioner. Further, the power conferred on the said Commissioner is to be exercised at the direction of the Council or with the approval of the Government. But no power is conferred on the unsuccessful

candidate or the voter or the complainant to directly apply to the District Court. Even in a case where the voter/complainant who made an allegation in writing against the elected member to the Commissioner was aggrieved on account of inaction on the part of that authority, he cannot directly approach the District Court, but, has to avail a remedy to compel the said authority to act in accordance with the provision of law.

7.4 On the above analysis, this Court is of the considered view that the Court below was in error in holding that the OP filed by the 1st respondent herein is maintainable and that it is competent to entertain such an application. As a sequel to the above finding, this Court holds that the said impugned order, which is contrary to the plain language of Section 17 of the Act of 1965 is unsustainable and is liable to be set aside and that on this ground alone, the OP.No.445 of 2014 filed by the 1st respondent herein in the District Court, Nalgonda, is liable to be rejected/dismissed *in limine*.

8. The next aspect to be dealt with is as to the non-maintainability of both the OPs for not making the security deposits at the times of presentation of both the OPs as required under Rule 4(1)(ii) of the Rules of 1967. Insofar as the petition filed by the Commissioner, that is, OP.No.524 of 2014, there is no dispute that no such deposit is made. It is also not disputed that at the time of presentation of the OP.445 of 2014, no security deposit has been made. It is also not in dispute that such required deposits are not even made subsequently, that is, within the periods of Limitation allowed under law for institution of such OPs. In this back drop of admitted and undisputed facts, it is to be noted that Rule 4 of the Rules, 1967 postulates that at the time of presentation of the petition, the petitioner shall deposit with it- (i) a sum of five hundred rupees in

the case of election of a Chairman and (ii) a sum of one hundred rupees in any other case as security for the costs of the same. Rule 4(2) of the said Rules makes it clear that if the provisions of sub-rule (1) are not complied with the Election Tribunal shall dismiss the petition and Rule 4(3) postulates that upon compliance with the provisions of sub-rule (1) the Election Tribunal shall proceed to enquire with the petition. The common contention of the revision petitioner is that neither the first respondent nor the 3rd respondent, who filed the respective original election petitions, had not made the security deposits of Rs.1,00/- (Rupees one hundred only) each at the time of presentation of the OPs by them. As per sub-rule 2 of Rule 4 of the said Rules, for non compliance with such mandatory requirement, the Original Petitions are liable to be dismissed. Be it noted that the word employed in the Rule is 'shall' and that the language employed in the Rule mandates that the compliance is mandatory. The fact that no deposits admittedly are made on the dates of the presentations of the petitions is not in dispute.

8.1 It is apt to now refer to the precedential guidance. The principles laid down by the Courts in cases arising under the Representation of the People Act, 1951, are relevant, and they afford guidance in adjudicating the question at issue.

In **Charan Lal Sahu v. Nandkishore and others** [AIR 1973 S.C. 2464], the petitioner though filed the election petition within the period of limitation, did not deposit the security amount of Rs.2,000/- as-required under Section 117 of the Representation of the People Act; Hence, it was held that the non-deposit of the security amount along with the election petition leaves no option to

the Court but to reject it. It was also observed that the right conferred being a statutory right, the terms of the statute must be complied with. **Ravindra Nath v. Raghbir Singh:** [AIR 1968 S.C. 300] relates to validity of elections of Rajya Sabha from the State of Madhya Pradesh. Under Section 97(1) of the Representation of the People Act recrimination petition is required to be filed within fourteen days from the date of commencement of the trial. The security deposit under Sec. 117 also must be enclosed along with the petition of recrimination. The petitioners deposited Rs. 1,000/- while filing the recrimination petition and after a long gap of several months, the balance amount of Rs. 1000/- was deposited. As there was non-compliance with the provisions of Sec. 97(1) read with Section 117, the rejection of the recrimination petition was upheld by the Supreme Court. In **Aeltemesh Rein vs. Chandulal Chandrakar and others (AIR 1981 SC 1199)**, the facts of the case show that there was non compliance with section 117 of the Representation of People Act and the only final question was – ‘what is the consequence of non compliance with section 117 of the Act?’ The Supreme Court referred to the settled legal position in Charan Lal Sahu (supra) wherein it was held that the High Court has no option but to reject an election petition which is not accompanied by the payment of security amount as provided in section 117 of the Act. The Supreme Court further held as follows: “Section 86(1) of the Act provides that the High Court shall dismiss election petition which does not comply with the provisions of Sections 81, 82 or 117. In that view of the matter the High Court was right in dismissing the election petition summarily.”

8.2 I have also gone through the copies of rulings in the cases cited by the learned counsel for the revision petitioner and the learned counsel for the respondents 1 & 3. Though the above decisions of the Supreme Court are rendered in matters arising under Representation of People Act, yet, the ratios in the decisions on an analogy are squarely applicable to the instant case facts wherein also the mandatory requirement of making the security deposits is not complied with at the time of presentation of both the OPs before the District Judge by the respondents 1 & 3 respectively and as non making of the deposits at the time of presentation of petitions by the said respondents before the District Judge leaves no option to the Court but to dismiss the OPs summarily.

9. Dealing finally with the contention of the respondents 1 & 3 that as accepted by the Court below, the OPs are not election petitions, it is to be noted that such a contention cannot be countenanced as the ground of disqualification urged relates to disqualification for election or for holding office as a member and the Original Petitions are filed seeking to decide the question of disqualification of the revision petitioner/returned candidate.

10. Viewed thus, this Court finds that OP.No.445 of 2014 filed by the 1st respondent herein is liable for rejection/dismissal *in limine* for the reason that the 1st respondent is not competent to file the OP. This Court further finds that the said OP and the OP filed by the 3rd respondent are liable for rejection/dismissal *in limine* for non compliance of making the mandatory security deposits at the time of presentations of the said OPs, and as the said non compliance of the mandatory requirement leaves the Court with no option but to dismiss the OPs.

11. In the result, the Civil Revision Petition is allowed and the impugned order is set aside. As a sequel, IA.No.337 of 2016 is allowed and both the afore-stated OPs shall accordingly stand rejected summarily/dismissed *in limine*.

There shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

M. SEETHARAMA MURTI, J

18.01.2018

Note: Issue CC by 22.01.2018.

[B/o]

Vjl

