

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CR-1857-2018

Date of decision : 20.11.2018

Geeta Rani

... Petitioner

Versus

Rekha Rani and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Jagdish Manchanda, Advocate,
for the petitioner.

Mr. S. S. Momi, Advocate,
for respondent no.1.

AMOL RATTAN SINGH, J.

By this petition, the petitioner challenges the order dated 08.03.2018, passed by the learned Civil Judge (Junior Division), Pehowa, vide which the application filed by the petitioner, seeking dismissal of the election petition filed by respondent no.1 herein (petitioner before that Court), was dismissed, also provisionally allowing the application filed by respondent no.1 seeking to deposit Rs.250/- as security in the Government treasury, as is necessary by way of a pre-condition to the election petition.

While dismissing the petitioners' application, it has been held in the impugned order that the said respondent herein (Rekha Rani) had already affixed stamps/tickets of Rs.250/- alongwith her petition and further, since the case was already at the stage of recording the evidence of the respondent, it would be better to decide the issue on inadequate fee also while finally adjudicating upon the petition.

Hence, despite the stamps/tickets of Rs.250/- having been affixed on the election petition, an additional sum of Rs.250/- was ordered to be

provisionally deposited by respondent no.1 (petitioner in the election petition) in the Government treasury, pending decision of the petition.

Aggrieved of that order, the present revision petition has come to be filed by the petitioner, who is the elected candidate of Ward no.4 in the Municipal Committee, Pehowa, pursuant to an election held on 22.05.2016, that election having been challenged by respondent no.1 herein.

2. At the time when the notice was issued in this petition on 20.03.2018, notice regarding stay of the proceedings before the lower Court (Election Tribunal) had also been issued with, eventually, on 03.07.2018, proceedings there having been stayed by this Court, upon learned counsel for the petitioner having cited a judgment of a Division Bench of this Court in **Sugan Chand Saini v. Senior Sub-Judge, Narnaul** 1996 (3) RCR (Civil) 625.

In that judgment, it had been held by the Division Bench that if the requisite fee is not paid at the time of filing of the election petition, the petition is to be rejected at the threshold, with no subsequent petition maintainable to make good the fee.

3. Before this Court, Mr. Jagdish Manchanda, learned counsel for the petitioner, other than relying upon the aforesaid judgment, also relied upon a recent judgment of the Supreme Court in **Sitaram v. Radhey Shyam Vishnav & others** AIR 2018 SC 1298, as also of a co-ordinate Bench of the Madhya Pradesh High Court in **Balveer Singh v. Secretary, Madhya Pradesh State Election Commission and others** 2013 (46) RCR (Civil) 720, to submit that payment of the mandatory fee cannot even be by way of any stamps affixed on the petition and must necessarily be by way of a deposit made in the Government treasury, failing which the election petition must

necessarily be dismissed.

Thus, he submitted that not only does the fee have to be deposited, it necessarily must be deposited as per the procedure prescribed in Section 2 (n) of the Haryana Municipal Election Rules, 1978 (hereinafter to be referred to as the Rules), by which the word “treasury” has been defined as follows:-

“2(n) “treasury” means a Government treasury or sub-treasury or a bank to which the Government treasury business has been made over;”

Mr. Manchanda further referred to Rules 77 and 79 of the said Rules, which are reproduced hereinunder:-

“77. Deposit to be made when petition is presented and return of deposit-(1) Every election petition shall be accompanied by a receipt from the Government treasury for two hundred and fifty rupees or Government Promissory Notes of equal value at the market rate of the day and security for all costs that may become payable by him or them.

(2) If a petitioner, by whom the deposit referred to in sub-rule (1) has been made, withdraws his election petition as provided in rule 82 and in any other case after final orders have been passed on the election petition, the deposit shall, after deducting such amount as may be ordered to be paid as costs, charges and expenses be returned to the petitioner by whom it was made; and if such petitioner dies during the course of the enquiry into the election petition, any such deposit, made by him, shall after the amount of such costs as may be ordered to be paid have been deducted, be returned to his legal representative.

(3) All applications for the refund of a deposit shall be made to the [Tribunal] who shall pass orders thereon in accordance with these rules.”

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“79. Petition to be dismissed for non-compliance with rules.-If

any of the provisions of sub-rule (1) of Rule 75 or sub-rule (1) of Rule 77 have not been complied with, the Tribunal shall pass an order, dismissing the election petition and such orders shall be final.”

The contention of learned counsel for the petitioner therefore is that the word “shall” having been used in sub-rule (1) of Rule 77, it is mandatory that the sum of Rs.250/- be either deposited in the Government treasury, with a receipt obtained therefrom, or Government Promissory Notes of equal value, must be purchased.

Hence, as per Mr. Manchanda, if any election petition is not seen to be accompanied with either of the two documents, even affixation of stamps/tickets of an equal value, on the election petition itself, would not 'validate' the election petition, which must therefore be rejected at the threshold itself.

4. In reply to the aforesaid contentions, Mr. S.S. Momi, learned counsel appearing for respondent no.1, referred to sub-section (26) of Section 2 of the Indian Stamp Act, 1899, wherein a stamp is defined as follows:-

[(26) “Stamp” means any mark, seal or endorsement by any agency or person duly authorised by the State Government, and includes an adhesive or impressed stamp, for the purpose of duty chargeable under this Act.]

He thus submitted that with a stamp meaning any mark, seal or endorsement authorised by the Government, including an adhesive stamp, the purpose of the fee being imposed before an election petition can be entertained, stood fulfilled by the fixation of stamps by respondent no.1 (petitioner in the election petition), money thereby having been deposited with the Government, to go to its treasury.

Hence, he submitted, simply because the method of submission was not by way of a promissory note or a receipt issued from the treasury, would not mean that the deposit was not made with the Government.

5. Having considered the matter, first, the judgments cited by learned counsel for the petition in *Sugan Chand*, as also in *Sitarams'* and *Balveer Singhs'* cases (*all supra*), need to be looked at.

In *Sugan Chands'* case, a Division Bench of this Court, relying upon a judgment of the Supreme Court in **Charan Lal Sahu v. Nand Kishore** AIR 1973 SC 2464, held that Rules 77 and 79 of the Rules make it mandatory that an election petition can only be entertained upon deposit of Rs.250/- as security, and if the said amount was not deposited, the Tribunal had no option but to dismiss the petition, with no second petition being maintainable.

A judgment of the Supreme Court in **Aeltemesh Rein v. Chandulal Chandrakar and other** AIR 1981 SC 1199 was also referred to by the Division Bench, to hold as above.

In the more recent case of *Balveer Singh*, a co-ordinate Bench of the M.P. High Court held as above, also referring to *Charan Lal Sahu's* and *Aeltemesh Reins'* cases among other judgments.

In *Balveer Singhs'* case also, the petitioner before the Election Tribunal had submitted stamps of Rs.200/- instead of having submitted a security deposit in the treasury by way of a *challan*.

The Court had held that such deposit could not be accepted, it being against the method of deposit as given in Rule 19(2) of the Madhya Pradesh Municipalities (Election Petition) Rules, 1962, which reads as follows:-

“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.”

Hence, if one looks at the ratio of the aforesaid judgments, especially the one of the M.P. High Court, the contention of Mr. Manchanda, learned counsel for the petitioner in the present case, would seem to be irrefutable.

6. However, in my opinion, in fact, even in the light of the judgment cited by him in *Sita Rams'* case, (of the Supreme Court), read with the definition of a “Stamp”, as pointed out by Mr. Momi, learned counsel for the respondent, from Section 2(26) of the Stamp Act, the contention has to be rejected.

This is for the reason that in *Sita Rams'* case, a three Judge Bench of the Supreme Court held as follows, after discussing the law on the subject:-

“39. The discussion hereinabove can be categorised into three compartments. First, the deposit is mandatory and the mode of deposit is directory; second, the non-deposit will entail dismissal and irregular deposit is curable and third, in other areas like verification, signature of parties, service of copy, etc., the principle of substantial compliance or the doctrine of curability will apply. In the case at hand, Rule 3(5)(d) commands that the election petition shall be accompanied by the treasury challan. The word used in the Rule is “accompanied” and the term “accompany” means to co-exist or go along. There cannot be a separation or segregation. The election petition has to be accompanied by the treasury challan and with the treasury challan, as has been understood by this Court, there has to be a deposit in the treasury. The 2012 Rules, when understood

appropriately, also convey that there has to be deposit in the treasury. Once the election petition is presented without the treasury challan, the decisions of this Court in *Charan Lal Sahu* and *Aeltemesh Rein* pertaining to non-deposit will have full applicability. The principle stated in *M. Karunanidhi*, *K. Kamaraja Nadar*, *Chandrika Prasad Tripathi* and other decisions will not get attracted. The interpretation placed on the 1986 Rules by the learned Single Judge in *Ashok Kumar* cannot be treated to lay down the correct law. We arrive at the said conclusion as we do not find that there is really any Rule which prescribes filing of treasury challan before the Election Tribunal in election petition after seeking permission at the time of presenting an election petition. Permission, if any, may be sought earlier. Such was the case in *Bajrang Lal v. Kanhaiya Lal* where the election petition was submitted on 31-8-2005 and an application was submitted before the court below on 30-8-2005 under Section 53 of the Act of 1959 with the signature of the advocate and an order was passed by the court on the same application itself on 30-8-2005 allowing the advocate to deposit the security amount under Section 53 of the Act of 1959 for election petition. The election petition was submitted on 31-8-2005. In such a fact situation, the High Court found that there was compliance with the provision.

40. Mr Jain would submit that this is not an incurable defect as the deposit has been made within the period of limitation. The said submission leaves us unimpressed inasmuch as Rule 7 leaves no option to the Judge but to dismiss the petition. Thus, regard being had to the language employed in both the Rules, we are obligated to hold that the deposit of treasury challan which means deposit of the requisite amount in treasury at the time of presentation of the election petition is mandatory. Therefore, the inevitable conclusion is that no valid election petition was presented. In such a situation, the learned Additional District Judge was bound in law to reject the election petition.”

(Emphasis applied by this Court)

Hence even though, again in that case the petition before the

Apex Court was dismissed on the ground that deposit of the requisite amount in a treasury at the time of presentation of the election petition is mandatory, however, in the first part of paragraph 39 (as reproduced hereinabove), on the second issue their Lordships held that the “mode of deposit is directory” and that “the non-deposit will entail dismissal and irregular deposit is curable

7. Thus, non-deposit of the requisite fee necessarily has to result in dismissal of an election petition; however, an irregular deposit, has been held to be a curable defect. Therefore, in my opinion, the money actually having been deposited with the Government, with stamps procured for the necessary value, which were duly affixed on the election petition itself at the time when the petition was submitted to the Court, simply because the money was not directly deposited in the treasury by way of a *challan* form, would not entail 'automatic' dismissal of the election petition filed by respondent no.1 herein, challenging the election of the petitioner. In fact, even the stamps issued to the respondent herein are necessarily by way of a receipt showing proof of deposit of money, which is to go to the treasury.

That being so, I would see no reason to entertain this petition.

8. However, whether or not stamps for a sufficient amount were affixed, which were duly purchased prior to the filing of the election petition by respondent no.1, will be issues (amongst others), to be gone into by the learned Civil Judge at the time of final adjudication of the election petition, this Court having only adjudicated upon the question that the election petition would be maintainable if stamps showing deposit of the requisite amount of fee, were duly affixed on the election petition at the time of its filing, with the mode of deposit not being mandatory in terms of the judgment of the Supreme

Court in *Sitarams'* case (supra), it being a curable defect which even now respondent no.1 can cure by depositing another additional sum of Rs.250/- in the treasury by way of a *challan*/by way of a Government Promissory Note.

9. In fact, in my opinion, even a second deposit now in the treasury would not be required in view of the fact that the stamps issued to respondent no.1 are actually a form of a receipt for the money he has deposited, duly going to the Government treasury and therefore would comply with the conditions set out of in sub-rule (1) of Rule 77 of the Rules.

However, since the rule stipulates deposit of the money by way of a *challan* to be submitted to the treasury, or a Government promissory note, then, with the form of deposit having been held by the Supreme Court to be a curable defect, a second deposit may seem to be necessary, simply to cure the defect in the manner of such deposit, even though both the deposits go to the Government treasury, the existing one in the form of stamps, (issued by way of proof of receipt of the deposit), with the method to be adopted now being by way of a *challan* to be submitted to the treasury, for the requisite fee amount.

10. Hence, in the light of the aforesaid discussion, I do not find any ground to allow this petition, which is consequently dismissed, in terms of what has been held hereinabove.

No order as to costs.

(AMOL RATTAN SINGH)
JUDGE

November 20, 2018.

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Whether speaking / reasoned

Yes

Whether reportable

Yes