

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2441 of 2016**

- Ram Krishna Sahu S/o Shri Gopal Ram Sahu, Aged About 42 Years
R/o Village Babai, Post Rukse, Tahsil S. Lohara, Distt. Kabirdham CG

---- Petitioner**Versus**

1. Shri Pardeshi Patel S/o Shri Amritlal Patel, Aged About 32 Years R/o Village Bhagwatatola, Post Silhati, Tahsil S. Lohara, Dist. Kabirdham Chhattisgarh,
2. Shri Ashok Kumar Sahu, S/o Shri Kheduram Sahu, Aged About 30 Years R/o Village Ranveerpur, Tahsil S. Lohara, Dist. Kabirdham Chhattisgarh
3. Shri Ishwar Lal, S/o Shri Birelal Sahu, Aged About 50 Years R/o Village Kosmanda, Post Gaurmati, Block Sahaspur Lohara, District Kabirdham Chhattisgarh
4. Krishna Kumar Parmar, S/o Shri Bhagwat Parmar, Aged About 40 Years R/o Village Baniya, Post Gaurmati, Block Sahaspur Lohara, District Kabirdham Chhattisgarh
5. Chetan Singh Netam, S/o Shri Paltan Netam, Aged About 40 Years R/o Village Ranjeetpur, Post Ranjeetpur, Tehsil And Thana S. Lohara, District Kabirdham, Chhattisgarh.
6. Jitendra Singh, S/o Shri Gore Singh Rajput, Aged About 30 Years R/o Village Mohbhatta, Post Dharamgarh, Tehsil Sahaspur Lohara, District Kabirdham Chhattisgarh
7. Sanjay Sahu, S/o Shri Tirathram Sahu, Aged About 35 Years R/o Village Achanakpur, Post Dharamgarh, Tehsil Sahaspur Lohara, District Kabirdham, Chhattisgarh
8. Hasan Sahu, S/o Shri Ramsukh Sahu, Aged About 30 Years R/o Village Pest Rakse, Tahsil Sahaspur Lohara, Distt. Kabirdham Chhattisgarh
9. District Election Officer, Three Level Panchayat Election 2014-15- Cum- Collector Kabirdham, Kawardha, Dist. Kabirdham Chhattisgarh
10. Director, Panchayat, Indrawati Bhawan, Naya Raipur, Chhattisgarh.

---- Respondent

WPC No. 2449 of 2016

- Mohammed Kalim S/o Shri Mohammad Yusuf, Aged About 32 Years
R/o Village Bachedi, Post Daihandi, Tahsil And Zila Kabirdham,
Chhattisgarh

---- Petitioner

Versus

1. Shri Santosh Patel S/o Shri Premlal Patel, Aged About 40 Years R/o
Village Samnapur, Tahsil Kawardha, Distt. Kabirdham, Chhattisgarh
2. Shri Uttam Jaiswal, S/o Shri Ramu Jaiswal, Aged About 42 Years R/o
Village Jorataal, Tehsil Kawardha, District Kabirdham, Chhattisgarh
3. Shri Girdhar Ram Nirmalkar, S/o Shri Gulab Nirmalkar, Aged About 37
Years R/o Gram Bazaar Chhaarbhata, Post Bazaar Chhaarbhata,
Tahsil Sahaspur Lohara, Distt. Kabirdham, Chhattisgarh
4. Shri Nandram Patil, S/o Shri Savatram Patil, Aged About 35 Years R/o
Village Newari, Post And Tehsil Kawardha, District Kabirdham,
Chhattisgarh
5. Shri Bhagwat Chandrawanshi, S/o Shri Bisram Chandrawanshi, Aged
About 41 Years R/o Village Khaudara Khurdh, Post Rabeli, Tehsil
Kawardha, District Kabirdham, Chhattisgarh
6. Shri Bhagirathi, S/o Shri Sahasram Chandrawanshi, Aged About 50
Years R/o Village Paliguda, Tehsil Kawardha, District Kabirdham,
Chhattisgarh
7. Shri Ratiram Chandrawanshi, Aged About 50 Years R/o Village
Pipariya, Thana Pipariya, Tehsil Kawardha, District Kabirdham,
Chhattisgarh
8. District Election Officer, Three Level Panchayat Election 2014-15-
Cum- Collector Kabirdham, Kawardha, Distt. Kabirdham, Chhattisgarh
9. Director, Panchayat, Indrawati Bhawan, Naya Raipur, Chhattisgarh

---- Respondent

For Petitioners : Shri Amrito Das, Advocate.
For Respondent No.1 : Shri Manay Nath Thakur, Advocate.
For Respondent/State : Shri Vikram Dixit, Deputy GA.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

22/01/2019 :

1. Since the legal issue involved in both the Writ Petitions is same, they are being disposed of by this common order.
2. For the purposes of disposal, the facts and pleadings made in WPC No.2441/2016 are referred.
3. The petitioner has called in question the impugned order passed by the Director, Panchayat dismissing the petitioner's Election Petition under Section 122 of the CG Panchayat Raj Adhiniyam, 1993 (for short 'the Adhiniyam') on merits as well as on the ground that the petitioner having not deposited security amount of Rs.500/- along with the Election Petition, the Election Petition is not maintainable.
4. Before proceeding to decide the merits of the matter, I would take up the issue of maintainability of the Election Petition for the reason that if the election petition is not found to be maintainable, merits of the petition is not required to be gone into.
5. It is argued that the petitioner and respondent No.1 Pardeshi Patel contested the election for member of Zila Panchayat, Kabirdham from constituency No.13 wherein the polling and declaration of result was done on 28.1.2015. Thereafter respondent No.1 Pardeshi Patel was declared elected on 1.2.2015. Election Petition was preferred within time on 28.2.2015 clearly mentioning that security deposit of Rs.500/- is being paid as required under Rule 7 of the CG Panchayats (Election Petition, Corrupt Practices and Disqualification for Membership)

Rules, 1995 (for short 'the Rules, 1995'). The petitioner had in fact handed over the amount to the Deputy Director, Panchayat, but the receipt was given only on 10.4.2015. According to the petitioner, delayed issuance of receipt is not owing to any fault on the part of the petitioner, therefore, the petitioner cannot be penalized holding that the petitioner deposited the requisite fee belatedly. It is also argued that no issue was framed regarding maintainability of the election petition, therefore, this could not have been decided at the end of trial of election petition, as the same would amount to taking the petitioner by surprise.

6. Per contra, learned counsel for the respondents would submit that if the petition suffers from any material defect which includes non-payment of security deposit within time, which is mandatory under Rule 7 of the Rules, 1995, nothing prevents the Election Tribunal to decide the question. It is also argued that the petitioner has raised objection that the election petition has not been preferred in accordance with the Rules and the petitioner having himself committed default of non-payment of security deposit along with election petition, he cannot raise plea of taken by surprise or non-framing of issues.
7. In the matter of **Santoshi Vs. Additional Collector**, {2008 (4) MPHT (Chh) 20}, coordinate Bench of this Court has held thus in paras 13 to 17:-

“13. In the matter of **Babulal Kaluram Kirar and another Vs. State of M.P. and Others** {1985 MPLJ 411}, the Division Bench of M.P. High Court, referring to pari materia provisions contained in the Representation of the People Act, 1951 (for short Act

of 1951) and provisions contained in Rules 3, 4, 7 & 8 of the Rules of 1995, has held that provisions of Rule 7 is mandatory and even if no objection is raised about the non-compliance of Rule 7 of the Election Rules, it is incumbent on the Tribunal to dismiss the petition on being satisfied about the non-compliance of the Rule. It has no jurisdiction to proceed with its trial.

14. In the matter of **Uday Singh Vs. Himmat Singh and others** {1999 (1) MPLJ 200} also, the High Court of M.P. referring to the Judgment of Babulal Vs. State of M.P. (Supra) has held that provisions of Rule 7 & 8 of the Rules 1995 are mandatory. Where security amount is not deposited alongwith election petition, such petition is liable to be dismissed summarily. Similar view is expressed in Amarsingh (supra) also and it was held that where the deposit of security for costs not made in compliance of mandatory provision of Rule 7, election petition suffered from fatal defect under Rule 7 and the Sub-Divisional Officer has no option than to dismiss the petition.

15. The Hon'ble Supreme Court in the matter of **Charan Lal Sahu Vs. Nandkishore** {AIR 1973 SC 2464}, while dealing with the non-compliance of Section 117 of the Act of 1951, has held that non-deposit of security amount alongwith election petition as required by the Section 117 by the petitioner, the High Court has no option but to reject the petition.

16. Similar view has been taken in the matter of **Aeltemesh Rein Vs. Chandulal**, {AIR 1981 SC (1) 99} and it has been held that non-compliance of Section 117 leads to dismissal of the election by virtue of Section 86 (1) of the Act of 1951.

17. Relying upon the principles of law laid down in the above referred judgments, I am of the opinion that there is total non-compliance of Rule 7 of the Rules of 1995 by the election petitioner/respondent No.2, as no security amount was deposited at the time of filing election petition. Later on, only Rs.50/- was deposited as against requisite security deposit of Rs.Five hundred. In these circumstances, the Election Tribunal had no option but to dismiss the election petition in view of Rule 7 & Rule 8 of the Rules of 1995. Submission of learned counsel for the State that no written or oral objection was taken by the petitioner before the Election Tribunal is concerned, as held in the judgments cited above a

duty is cast upon the Election Tribunal to verify the election petition, whether the same has been filed in accordance with the election petition rules before entertaining the petition. Since no security amount was deposited by the election petitioner at the time of filing election petition and only Rs.50/- was deposited as security amount later on, there was no validly constituted election petition before the Tribunal and the Tribunal ought to have dismissed the election petition under Rule 8 in limine.”

8. The view taken by the coordinate Bench in the matter of Santoshi (Supra) was earlier reiterated by the Division Bench of M.P. High Court in the matter of **Sarla Tripathi (Smt.) Vs. Smt. Kaushilya Devi and Others** {2004 (2) JLJ 263}.
9. The law is thus fairly well settled that if the security amount is not deposited along with Election Petition, it violates the mandatory provisions as contained in Rule 7 of the Election Petition Rules. Therefore, the Election Petition must be dismissed without trial. Even if trial is held overlooking the said defect, but it comes to the notice of the Election Tribunal at the end of trial, the defect would remain material defect and the same cannot be ignored by the Election Tribunal. The mere fact that Election Petition has already been tried would not confer jurisdiction on the Election Tribunal to allow the Election Petition on merits on other grounds overlooking the material defect. The argument raised at the Bar that since issues were not framed alerting the petitioner that he has to answer this defect in his petition, it could not have been decided by the Election Tribunal is referred only to be rejected for the reason that whether or not the Election Petition has been filed properly in accordance with the Rules by adhering to the mandatory provision would always remain open for

consideration and no issues are required to be framed in this regard. Defect is about maintainability of the Election Petition, therefore, when the petitioner himself is aware that he did not deposit the security amount along with Election Petition, no useful purpose would be served in framing the issues in this regard. If such plea is allowed, it would render the mandatory requirement of deposit of security amount along with election petition redundant because every election petitioner who has failed to make such deposit would later on turn around to raise the ground that the amount was in fact paid in cash to the Reader of the Presiding Officer of the Election Tribunal or to some other employee. The Rule requires deposit in the Government Treasury for which the receipt is issued. Payment of security amount in cash to any employee of the Election Tribunal is not a ground which can be allowed to be agitated to cover up the defect of non-payment of security deposit at the time of filing of the Election Petition.

10. The Election Tribunal has not committed any illegality in dismissing the election petition for non-compliance of the mandatory provision of payment of security deposit along with the election petition.
11. The Writ Petition is bereft of any substance, it deserves to be and is hereby dismissed.
12. Since the core issue has already been decided, as above, WPC No.2449/2016 is also dismissed.
13. Resultantly, both the Writ Petitions are dismissed.

Sd/-
Judge
 (Prashant Kumar Mishra)