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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR-3091-2022 (O&M)
Reserved on : 24.11.2022
Date of Decision : 30.11.2022**

Sweety Bhatia

....Petitioner

VERSUS

Babita and others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.K. Singla, Advocate for the petitioner.

Mr. Aftab Singh Khara, Advocate for respondent No.1.

Mr. Saurabh Girdhar, AAG Haryana for respondent No.3.

Mr. Pradip Bhandari, Advocate for respondent No.4.

ALKA SARIN, J.

The present revision petition under Article 227 of the Constitution of India has been filed challenging the order dated 07.07.2022 (Annexure P-10) passed by the Election Tribunal-cum-Civil Judge (Junior Division), Tohana, District Fatehabad dismissing the application filed by the petitioner under Rule 79 of the Haryana Municipal Election Rules, 1978 (hereinafter referred to as 'Election Rules 1978') read with Order 7 Rule 11 CPC for rejection of the election petition as also the order allowing the respondent No.1 to deposit the mandatory fee/costs for the purposes of filing of the election petition.

The brief facts relevant to the present *lis* are that the petitioner and respondent No.1 contested the election for the post of Councillor of the Municipal Committee, Tohana for Ward No.6, Tohana. The petitioner was declared elected as Councillor for Ward No.6 of the Municipal Committee, Tohana. The election of the petitioner was challenged by respondent No.1 by filing an election petition before the Tribunal on 28.06.2022. Para 7 of the election petition reads as under :

“7. That the petitioner has deposited in sum of Rs.250/- in treasury as court fee for filing this petition and treasury receipt is attached herewith.”

Along with the said election petition, an application was filed for permission to deposit Rs.250/- for filing the election petition.

On 29.06.2022 the Tribunal passed the following order :

“Election petition presented today before me being Vacation Judge. Alongwith the petition an application for seeking permission to institute the petition during summer vacations has been filed. Keeping in view the urgency involved in the matter, necessary permission to file the petition during summer vacations is hereby accorded to the petitioner.

Now, notice of this petition as well as application for allowing the applicant to deposit Rs.250/- for the purpose of filing the election petition Haryana Municipal Act. 1973, application for direction be issued for opening the tendered ballot paper in the presence of local commission and application for staying the

operation of oath of allegiance of the declared councilor of Ward no.6, MC Tohana be given to the respondents for 1.7.2022. Summons be given dasti if so desired.”

An application was filed by the petitioner under Rule 79 of the Election Rules, 1978 read with Order 7 Rule 11 CPC for rejection/dismissal of the election petition. Vide the impugned order, the Tribunal granted permission to respondent No.1 to deposit Rs.250/- and dismissed the application filed under Rule 79 of the Election Rules, 1978 read with Order 7 Rule 11 CPC. Aggrieved by the said order, the present revision petition has been preferred.

Learned counsel for the petitioner contends that he limits his prayer and would press the present revision petition only to the limited extent that the provisions of Rule 77 of the Election Rules, 1978 were mandatory in nature and no permission post filing of the election petition could have been accorded for deposit of the amount. In support of his contentions, learned counsel for the petitioner has relied upon the judgments in the cases of **Charan Lal Sahu Vs. Nandkishore Bhatt & Ors. [1973 (2) SCC 530]**; **Aeltemesh Rein Vs. Chandulal Chandrakar & Ors. [1981 (2) SCC 689]**; **Sugan Chand Saini Vs. Senior Sub Judge, Narnaul [1996 (3) RCR (Civil) 625]** and **Sitaram Vs. Radhey Shyam Vishnav & Ors. [2018 (4) SCC 507]**.

Per contra, learned counsel appearing on behalf of respondent No.1 has contended that the e-challan could not be generated without filling in the election petition number on the E-GRASS Portal and hence, the necessity of filing the election petition along with an application. It is further the contention that the same is a mere technicality and the election petition

ought not to be dismissed on hyper-technicalities. In support of his contentions, learned counsel for respondent No.1 has relied upon the judgments in the cases of **A. Manju Vs. Prajwal Revanna @ Prajwal R. & Ors. [2022 (3) SCC 269]**; **T. Phunzathang Vs. Hangkhanlian [2001 (8) SCC 358]**; **Ashick Mallick Vs. West Bengal State Election Commissioner & Ors. [2019 (3) Cal. HCN 777]** and **Radhakrishna Pillai Vs. Sasidharan Nair & Ors. [AIR 1983 Kerala 236]**.

Heard.

In the present case, admittedly at the time of filing of the election petition the amount as contemplated under Rule 77 of the Election Rules, 1978 was not deposited. However, an averment was made in the election petition that the amount had been deposited and the receipt was attached. Yet along with the election petition, an application was filed for permission to deposit the said amount.

Rule 77 of the Election Rules, 1978 reads as under :

“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 as 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”.

In the case of **Sugan Chand Saini** (supra), Rule 77 of the Election Rules, 1978 was held to be mandatory in nature and it was held that the consequences of non-compliance of the provisions of Rule 77 of the Election Rules, 1978 were provided in Rule 79 of the said Rules and that the election petition filed without the requisite security was liable to be dismissed. Their Lordships held as under :

“4. The controversy in this case lies in a short compass as to whether the order Annexure P-1 can be endorsed by this Court or not. Rule 77 of the Election Rules makes every petitioner who intends to give challenge to the election petitioner to deposit a sum of Rs.250/- by way of security along with the election petition. This provision has been made mandatory. For the sake of our convenience Rule 77 of the Election Rules is reproduced as follows :

“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 as 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.”

5. The consequences are provided in Rule 79 of the said Rules, if there is a non-compliance of the provisions of Rule 77 and the only consequence is that

such election petition which has been filed without requisite security is liable to be dismissed. Again we intend to reproduce Rule 79, which is as follows :

“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.”

6. A perusal of the combined reading of Rules 77 and 79 gives no option to the Tribunal-respondent No.1 but to pass an order of dismissal of election petition and the impugned order Annexure P-1 to the effect that “the plaint and documents be returned to the petitioner” was passed in an illegal manner and such an order could not be passed by respondent No.1 being beyond its jurisdiction. The learned counsel for respondents while justifying the order Annexure P-1 submitted that this order could be passed by respondent No.1 as the petitioner had not been served in the main petition on 21.1.1995 and there was no notice of the petition to him. He further submitted that Rule 82 of the said Rules permitted the petitioner to move an application to the Tribunal for withdrawal of the petition. The argument raised by the learned counsel for respondent No.2 to our mind is without any force. Rule 82 would come into play

only if a petition is filed along with the security and thereafter a notice is issued to the opposite party. When a petition has been filed without deposit of the requisite security, it is not a valid presentation of the petition and the non-deposit of the security entails fatal consequence as provided under Rule 79. Rule 82 we also intend to reproduce as follows in order to appreciate the argument which has been raised by the learned counsel for respondent No. 2 :

“82. Withdrawal of petition - (1) An election petition may be withdrawn only by leave of the Tribunal. (Ins. vide notification dated 19.8.1994)

(2) If there were more petitioners than one, no application to withdraw a petition shall be made except with the written consent of all the petitioners.

(3) No application for withdrawal shall be granted if in the opinion of the Tribunal such application has been induced by any bargain or consideration which ought not be allowed. (Ins. vide notification dated 19.8.1994)

(4) When an application for withdrawal is made to the Tribunal (Sub. vide notification dated 19.8.1994) -

(a) a notice thereof fixing a date for the hearing of the application shall be given to all other parties

to the petition and shall be published by being posted at the office of the Tribunal, the Deputy Commissioner and the Committee; (Sub. vide notification dated 19.8.1994)

(b) any person who might himself have been a petitioner may, within fourteen days from the date of such publication, apply to be substituted as petitioner in place of the party withdrawing. Upon compliance with the conditions as to the security under rule 77, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Tribunal may think fit; (Sub. vide notification dated 19.8.1994).

(c) the petitioner shall be ordered to pay the costs of the respondent thereof incurred or such portion thereof as the Tribunal may think fit. (Sub. vide notification dated 19.8.1994)

(5) When an election petition is allowed by the Tribunal to be withdrawn, the file of the proceedings shall be forwarded to the State Government for information. (Sub. vide notification dated 19.8.1994)”

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10. We derive force from the two authorities. There is no provision in the Haryana Municipal Act brought to our notice empowering us to absolve the petitioner from

giving any security deposit or reduce the amount required to be deposited under the Rules. We do not agree with the argument raised by the learned counsel for the respondent that the Tribunal was justified in returning the petition to respondent No. 2 because the trial in the main election petition had not commenced as the powers have not been conferred upon the Tribunal under the Haryana Municipal Act.”

Section 117 of the Representation of the People Act, 1951 (hereafter referred to as ‘the Act of 1951’) reads as under :

“117. Security for costs - (1) 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.

(2) During the course of the trial of an election petition, the High Court may, at any time, call upon the petitioner to give such further security for costs as it may direct.”

It would be apt to note that there is a provision of depositing two thousand rupees as security under Section 117 of the Act of 1951, similar to the provision of Rule 77 of the Election Rules, 1978. While dealing with Section 117 of the Act of 1951, in the case of **Charan Lal Sahu** (supra), their Lordships held that non-deposit of the security along with the election petition as required under Section 117 of the Act of 1951

leaves no option to the Court but to reject it. Para Nos.3 and 6 of the judgment read as under :

“3. The right to challenge an election is a right provided by Article 329 (b) of the Constitution of India, which provides that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature. The right conferred being a statutory right, the terms of that statute had to be complied with. There is no question of any common law right to challenge an election. Any discretion to condone the delay in presentation of the petition or to absolve the petitioner from payment of security for costs can only be provided under the statute governing election disputes. If no discretion is conferred in respect of any of these matters, none can be exercised under any general law or on any principle of equity. This Court has held that the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it. In N. P. Ponnuswami v. Returning Officer, Namakkal Constituency 1952 SCR 218 it was pointed out that strictly speaking, it is the sole right of the Legislature to examine and determine

all matters relating to the election of its own members, and if the Legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it.

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6. *We are clearly of the view that the non-deposit of the security along with the election petition as required under Section 117 of the Act leaves no option to the Court but to reject it. The appeal is accordingly dismissed with costs.”*

In the case of **Aeltemesh Rein** (supra), yet again their Lordships while dealing with Section 117 of the Act of 1951 held as under :

“2. The only question which survives is as to what is the consequence of non-compliance with Section 117 of the Act. That question has been settled by the decision of this Court in Charan Lal Sahu v. Nand Kishore Bhatt, (1974) 11 SCR 294, 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. Section 86 (1) of the Act provides that the High Court shall dismiss an 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”.

The same view was reiterated in the case of **Sitaram** (supra) by their Lordships holding as under :

“37. The discussion hereinabove can be categorized 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 (I) (supra) and Aeltemesh Rein (supra) pertaining to non-deposit will have full applicability. The principle stated in M. Karunanidhi (supra), K. Kamaraja Nadar (supra), Chandrika Prasad Tripathi (supra) and other decisions will not get

attracted. The interpretation placed on the 1986 Rules by the learned single Judge in Ashok Kumar (supra) 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 and others, RLW 2007 (2) Raj 1551 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.

38. 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”.

The argument of learned counsel for the respondent No.1 that for generating an e-challan on E-GRASS Portal, it is necessary to put in the election petition number was found to be incorrect. This Court had asked the State counsel to get instructions and it was categorically stated by learned State counsel that there was no such requirement. Learned counsel for the respondent No.1 has not been able to substantiate his argument that the portal requires the mentioning of the election petition number. Further, this argument has been raised for the first time before this Court inasmuch as the application filed along with the election petition is bereft of any reasoning as to why the e-challan could not be generated prior to the filing of the election petition. Learned counsel for the respondent No.1 is also unable to explain the statement made in the election petition in para 7 wherein it has been stated that the amount of Rs.250/- had been deposited in the Treasury as court fees and that the Treasury receipt was attached. The judgments relied upon by learned counsel for the respondent No.1 do not pertain to Rule 77 of the Election Rules, 1978 or to any similar provisions in the Act of 1951. The judgment in the case of **A. Manju** (supra) was regarding the rejection of an election petition at the outset on the ground that the same was not supported by an affidavit in Form 25. In the case of **T. Phunzathang**

(supra), the defect in the petition was held to be curable. The judgment relied upon by learned counsel in the case of **Ashick Mallick** (supra) would not come to the aid of learned counsel inasmuch as the same is contrary to the law laid down by Hon'ble Supreme Court in the cases of **Charan Lal Sahu** (supra) and **Sitaram** (supra). Learned counsel for the respondent No.1 also cannot get any benefit from the judgment in **Radhakrishna Pillai** (supra) in view of the law laid down in the cases of **Charan Lal Sahu** (supra), **Aeltemesh Rein** (supra), **Sugan Chand Saini** (supra) and **Sitaram** (supra).

In view of the above, the present revision petition is allowed, the impugned order is set aside and the election petition filed by respondent No.1 stands rejected. Pending applications, if any, also stand disposed off.

30.11.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO