

**HIGH COURT OF MADHYA PRADESH : JABALPUR**

**SINGLE BENCH : JUSTICE MS.VANDANA KASREKAR**

**Civil Revision No.74/2015**

Smt. Kanchan Khattar

**Vs.**

Rakesh Dardwanshi and others

**Whether approved for reporting : Yes**

Shri Mohd. Ali, learned counsel for the petitioner  
Shri Ashok Lalwani, learned counsel for respondent  
No.1.

**ORDER  
(20/01/2016)**

The petitioner has filed this revision challenging the order dated 14/11/2014 and the order dated 16/10/2014 passed by learned District Judge, Umaria in Election Petition No.02/2013.

2. Brief facts of the case are that the petitioner is the elected as a President of Municipal Council, Umaria on 18/01/2013. The election was held on 16/1/2013. The notification for election was published on 26/6/2012 and the date of nomination was 2/1/2013. The petitioner has submitted nomination paper which was accepted and her name was included in the list of contesting candidate. The

election was held on 16/1/2013 and the result was declared on 18/1/2013 in which the petitioner was declared elected by margin of 978 votes. Against the election of the petitioner on the post of President, Municipal Council, Umaria, two election petitions were filed and out of which one is about caste certificate of the petitioner which was registered as Election Petition No.02/2013 and the another petition was filed by one Seema which was registered as Election Pletition No.01/2013.

3. In Election Petition No.02/2013, the Election Tribunal has framed issues on 19/4/2014 and Issue No.6 was with respect to deposit of election petition fee. The said issue was decided by the election tribunal by an order dated 16/10/2014 and the Tribunal has held that the fee is duly paid. The petitioner thereafter filed an application under Order 7 Rule 11 of CPC for dismissal of the election petition for want of payment of requisite deposit under the legal and proper head. Election Tribunal by its order dated 14/11/2014 has dismissed the said application on the ground that the issue has already been decided by an order dated 16/10/2014. Being aggrieved by this order, the petitioner has filed the present revision under Section 26 of the M.P. Municipalities Act, 1961

(hereinafter referred to as 'the Municipalities Act').

4. Learned counsel for the petitioner argued that the order passed by the Election Tribunal is illegal and arbitrary. He submitted that the Tribunal has failed to exercise its jurisdiction vested in it by law. He further argued that respondent No.1 has made payment of requisite deposit through challan. He further submitted that as per Section 20(3)(ii) of the Municipalities Act, election petition should be accompanied by a Government Treasury receipt showing a deposit of two hundred rupees. He also submits that in the present case, respondent No.1 has filed a copy of the Treasury challan under the head of purchase of judicial stamps and, thus, the election petition is liable to be dismissed for want of proper Government Treasury receipt. He relied upon the judgments passed by the Apex Court in the case of **Charan Lal Sahu Vs. Nandkishore Bhatt and others** reported in **1974 MPLJ 398**, **Aeltemesh Rein Vs. Chandulal Chandrakar and others**, reported in **AIR 1981 SC 1199**, **Sarla Tripathi (Smt.) Vs. Smt. Kaushilya Devi and others**, reported in **2004 (2) JLJ 263** and **Bal Veer Singh Vs. Secretary, Madhya Pradesh State Election**

**Commission, Bhopal and others**, reported in **2014(1) MPLJ 461**. He, therefore, prayed that the revision be allowed and the orders passed by the Election Tribunal be set aside.

5. On the other hand, learned counsel for respondent No.1, supports the orders passed by the Election Tribunal and submitted that the Tribunal has rightly held that the election petition is accompanied by a Government Treasury receipt of depositing security cost of Rs.200/- and, thus, the Tribunal has not committed any error in dismissing the application filed by the petitioner under Order 7 Rule 11 of CPC.

6. I have heard learned counsel for the parties and perused the record. Section 20(3)(ii) of the Municipalities Act reads as under :

**"20(3)(ii)**. It is accompanied by a Government Treasury receipt showing a deposit of two hundred rupees, in the case of election or nomination to Municipal Councils and one hundred rupees, in the case of election or nomination to Nagar Parishads."

7. Section 20(3)(ii) of the Municipalities Act is in parameteria with Section 117 of the Representation of People Act, which 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".

8. As per the aforesaid provisions, the election petition should be accompanied with a Government Treasury receipt showing the deposit of Rs.200/-, in the case of election or nomination to the Municipal Councils. The Supreme Court in the case of **Charan Lal Sahu (supra)** in para-4 has held as under :

"4. On behalf of the appellant the case of *K. Kamaraja nadar V. Kunju Thevar and others* has been relied upon in

support of the submission that the provisions of Section 117 of the Act are directory and not mandatory in their character. An examination of this decision does not support this contention of the appellant. That was a case under the unamended Section 117 of the Act under which the petitioner was required to enclose with the petition a Government Treasury receipt showing that a deposit of one thousand rupees had been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for the costs of the petition. The petitioner therein had deposited Rs.1000/- but had not mentioned the complete head of account in the Government Treasury receipt nor was the deposit made in favour of the Secretary to the Election Commission as laid down in the aforesaid section. The Election Commission discussed this defect and left the question to the Tribunal to decide after hearing the parties whether the defect could be treated as fatal or one that could be cured by fresh deposit or

otherwise so as to secure the costs of the candidate if eventually awarded to him. The Tribunal held that there was no defect in the matter of the head of account and was further of opinion that non-mention of the fact that the deposit was made in favour of the Secretary to the Election Commission was immaterial in that it was taken to have been made in favour of the Election Commission at whose disposal the fund was placed and accordingly there was sufficient compliance with the requirements of Section 117 of the Act. In that case this Court after examining in detail the procedure relating to the filing of the election petition observed as p.606 :

“It would be absurd to imagine that a deposit made either in a Government Treasury or in the Reserve Bank of India in favour of the Election Commission itself would not be sufficient compliance with the provisions of Section 117 and would involve a dismissal of the petition under Section 85 or Section 90(3). The above illustration is sufficient to demonstrate 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."

This decision, therefore, cannot come to the rescue of a petitioner who has failed to deposit the security as required under Section 117 of the Act or has paid less than the amount specified therein. The



decision in *Lalaram V. The Supreme Court of India and others* has no relevance to the matter in issue because as pointed out by the High Court that case relates to security being furnished for filing a review petition under the Supreme Court Rules, which stands on a different footing.”

As per the said judgment, the provisions of Section 117 of the Act are mandatory in nature and if these provisions are not complied, then the election petition is liable to be dismissed.

9. The Apex Court in the case of **Aeltemesh Rein (supra)**, has taken the similar view in para-3, which reads as under :

“3. 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) 1 SCR 294 : (AIR 1973 SC 2464)*, 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. Sec.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.”

10. The Division Bench of this Court in the case of **Sarla Tripathi (Smt.) (supra)**, has held that if the security deposit is not accompanied with the election petition then the election petition cannot be entertained and liable to be dismissed under Rule 8. It has been further held that the provisions of Rule 7 are mandatory in nature. Similarly in the case of **Bal Veer Singh (supra)**, Single Judge of this Court has held that for admission of the election petition, security amount of Rs.200/- was required to be deposited in treasury and since the petitioner has paid the Court fee of Rs.200/- as security cost, that cannot be equated with deposit of security amount and, therefore, the election petition is liable to be dismissed for non-compliance of the provisions of Section 20(3)(ii) of the Municipalities Act.
11. in the present case, from perusal of the record, it is

found that the petitioner has deposited the security amount under the head No.01-102 of the Sangh Tatha Rajyon Ke Mukhya Tatha Laghu Lekha Shirsho Ki Suchi which is related to the judicial stamps, is not under the head of the Government Treasury. Thus, the election petition was not accompanied with the receipt of security deposit and, thus, respondent No.1 has failed to comply with the mandatory provisions of Section 20(3)(ii) of the Municipalities Act. Hence, the Election Tribunal has committed an error in rejecting the application filed by the petitioner.

12. In the light of the aforesaid judgments passed by the Apex Court as well as by this Court and in the light of the aforesaid discussion, this revision is liable to be and is hereby allowed. The impugned orders 14/11/2014 and 16/10/2014 passed by learned District Judge, Umaria in Election Petition No.02/2013 are hereby set aside. Consequently, Election Petition No.02/2013 is hereby dismissed.

(Ms. Vandana Kasrekar)  
JUDGE

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