

HIGH COURT OF MADHYA PRADESH : JABALPUR.**Writ Petition No.16641/2015**

Smt. Kalpana Singh

Vs.

The State of Madhya Pradesh and others

Present: Hon'ble Shri Justice K.K. Trivedi

For Petitioner: Shri P.S. Gaharwar, Advocate
For Resp No. 1 to 4: Shri Arvind Singh, learned PL.
For Resp. No.7: Shri A.S. Baghel, Advocate.

ORDER**(27/10/2015)**

The petitioner, a returned candidate and a respondent in the election petition, filed by the respondent No.7, has visited this Court by these proceedings under Article 226 of the Constitution of India, calling in question the order dated 11.9.2015 passed by the respondent No.3, the Additional Collector, Rewa in Election Petition No.08-A-89 MUL/14-15 rejecting the preliminary objection raised by the petitioner in respect of the maintainability of the election petition.

2. The petitioner and the respondent No.7 both were candidates for election as Member of the Janpad Panchayat Hanumana, District Rewa, which election was held on 9.3.2015. In the said election, the petitioner herein was elected, the result was declared and, therefore, an election petition was filed by the respondent No.7 under the provisions of Section 122 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as 'the Act') as also under the provisions of M.P. Panchayat (Election Petition, Corrupt Practices and Disqualification for Members) Rules, 1995 (hereinafter referred to as 'the Rules'). The aforesaid election

petition was entertained and the notice of the same was issued to the petitioner herein.

3. Upon service of the notice of the election petition, the petitioner herein filed an objection regarding maintainability of the election petition on the ground that the required security deposit in terms of the provisions of Rule 7 of the Rules was not made before the competent authority and as such the election petition was liable to be dismissed in terms of the provisions of Rule 8 of the Rules. The prayer made in that respect was opposed by the respondent No.7 contending inter-alia that the deposit of the security amount was made in the Bank and as such the election petition was not liable to be dismissed. It is contended that since the mandatory requirement of deposit of security amount has been complied with, therefore, the election petition would not be liable to be dismissed.

4. The Election Tribunal, after examining the provisions, came to the conclusion that since the security deposit was already made by the election petitioner, the respondent No.7 herein, as such the election petition would not be liable to be dismissed. The objection raised by the petitioner has been rejected vide impugned order dated 11.9.2015. Hence, this writ petition.

5. It is vehemently contended by the learned counsel for the petitioner that the settled provisions of law is that the security deposit is to be made with the specified officer i.e. the Presiding Officer of the Election Tribunal only, unless otherwise provided. Since under the Rules no procedure is prescribed for such deposit else-where nor any provisions are otherwise made for deposit of the security amount in the Banks or in other places, the amount is required to be deposited with the Presiding Officer of the Election Tribunal, which is competent to issue a receipt for the said deposit. This particular aspect has been considered by this Court in the case

of **Mohan Singh vs. Santosh**¹ wherein the findings have been given that if the deposit of security amount is not made with the specified officer of the Election Tribunal, the election petition is liable to be dismissed under the provisions of Rule 8 of the Rules. Despite that, the Election Tribunal has rejected the application of the petitioner. Therefore, the order impugned is bad in law.

6. It is further submitted that the very same Election Tribunal has held by order dated 11.8.2015 passed in yet another election petition filed by one Smt. Manjulata Saket against the election of one Lalita Saket that mandatory deposit of security amount is required to be made before the specified officer, as no other procedure is prescribed for such deposit under the Rules and having failed to do so, the election petition filed by Smt. Manjulata Saket has been dismissed under the provisions of Rule 8 of the Rules. Thus, it is contended that the very same Election Tribunal has expressed two different opinions in respect of the very same procedure of deposit of the security amount and as such the order impugned is bad in law and is liable to be set aside.

7. Per contra, it is contended by the learned counsel for the respondent No.7 that the deposit of security amount is mandatory, but the manner of deposit is not mandatory. If the deposit is made in terms of the provisions made, in the Bank, under the appropriate head, the compliance of provisions of Rule 7 of the Rules has been done by the election petitioner and as such the election petition was not liable to be dismissed. Reliance in that respect has been placed in the case of **M.Y. Ghorpade vs. Shivaji Rao M. Poal and others**². Thus, it is contended that the order passed by the Election Tribunal is just and proper. No error of law is committed by the Election Tribunal in rejecting the preliminary objection of the

1 2011 (1) MPWN 125

2 (2002) 7 SCC 289

petitioner. It is contended that the writ petition being devoid of any substance deserves to be dismissed at this stage itself.

8. Heard learned counsel for the parties at length, perused the record and examine the law.

9. First of all it has to be examined as to what are the mandatory provisions made in respect of the deposit of the security amount by an election petitioner and whether any manner of deposit is prescribed under the Rules or not. Undisputedly, the procedure of filing of the election petition is made under the Rules. Rule 3 of the Rules prescribes presentation of election petition. Rule 4 of the Rules prescribes the manner of attestation of and supply of petition to parties to the petition. Rule 5 deals with the contents of the petition and Rule 6 deals with the relief that may be claimed by an election petitioner. The deposit of the security amount for filing of election petition is prescribed in Rule 7 of the Rules. Since the presentation of the election petition and the deposit of security amount is mandatory requirements, both the provisions are quoted hereinbelow.

“3. Presentation of election petition.-(1) An election petition shall be presented to the specified Officer during the office hours by the person making the petition, or by a person authorised in writing in this behalf by the person making the petition.

(2) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

7. Deposit of security.- At the time of presentation of an election petition, the petitioner shall deposit with the specified officer a sum of Rs. Five hundred as security, where the election of more than one candidate is called in question, a separate deposit of an equivalent amount shall be required in respect of each such returned candidates.”

10. The manner of presentation of the election petition is specifically prescribed that **it shall be presented to the specified officer during the office hours by the person making the**

petition or by a person authorized in writing in that behalf by the person making the election petition. This makes it clear that the presentation of election petition is to be made before the specified officer. Now if the manner of deposit of the security amount for filing of such an election petition as prescribed under Rule 7 is examined, it will be clear that **at the time of presentation of election petition, the election petitioner shall deposit with the specified officer a sum of Rs.500/- as security.** This makes it clear that the deposit is to be made with the specified officer and not otherwise.

11. The entire scheme of the Rules nowhere prescribes any procedure for deposit of the security amount by an election petitioner in any manner with any other authority or institution. That makes it clear that the intention of Rule Making Authority was that the security amount should be deposited with the specified officer of the Election Tribunal. Notably the said specified officers are gazetted officers of the State having power to receive the amount on behalf of the State and to credit the same in the treasury. Such powers are given to those officers under the Financial Code of the State. That makes it further clear that in case a deposit of security is made before the specified officer, he can immediately issue a receipt of the said deposit in MPTC. Had it been a case that deposit of the security amount is also made permissible in the Bank, a provision for the same with a head under which the deposit is to be made in the Bank could have been prescribed by issuing instructions in that respect in the Rules. No procedure in that respect is prescribed under the Rules and, therefore, the security deposit is to be made only and only before the specified officer and not by any other mode.

12. This takes this Court to consider the law laid down by the

Apex Court in the case of **M.Y. Ghorpade** (*supra*). The distinguishable features are that the Apex Court was dealing with a case where the deposit of security amount was made under the provisions of Section 117 of the Representation of People Act, 1951 (hereinafter referred to as 'the R.P. Act'). The said provisions of R.P. Act prescribes that at the time of presentation of an election petition the **election petitioner shall deposit in the High Court in accordance with the Rules of the High Court a sum of Rs.2000/- a security amount for the cost of the petition.** The interpretation of the said provision was done by the Apex Court holding that the deposit of security amount was the mandatory compliance, but mode of deposit was directory as that was left with the High Courts to prescribe in their rules as to how the deposit of security was to be made. Here it is not the case. Specific provisions for deposit of security amount is made and it is not left open even for the Presiding Officer of Election Tribunal to prescribe any provision for such deposit. Of course, how and where the amount is to be deposited after its acceptance by the specified authority from the election petitioner, would be directory and it would not be necessary for the specified officer of the Election Tribunal to keep the amount with him. It can be credited in the appropriate manner in the Treasury of the State, but at least the same cannot be directly credited in the Treasure or even in the Bank by the election petitioner.

13. Having considered such, if the law laid down by this Court in the case of **Bina Pandey vs. Mamta Devi & Ors.**³ heavily relied by the learned counsel for the respondent No.7 is tested, it would be clear that since there was no arrangement of receiving the amount, the same was to be deposited with the Tehsildar, who was authorized to accept the said amount on behalf of the Presiding

3 ILR [2012] MP, 861

Officer. In that circumstances, this Court has held that since deposit was made before the Tehsildar of the same Sub Division where the Sub Divisional Officer was to function as Election Tribunal, it was held that the compliance of provisions of Rule 7 was done and as such the objection raised by the returned candidate in the said case with respect to the maintainability of the election petition was rightly rejected. Here in the case in hand the deposit of security amount was neither made before the specified officer or any other person working under him, who could be authorized to accept the security deposit on behalf of the specified officer of the Election Tribunal, but the deposit was made in a Bank, which was not authorized to receive such a deposit alongwith a challan.

14. In view of the aforesaid, the reliance placed by the respondent No.7 in the aforesaid decision is wholly misconceived and misplaced. The same is required to be negated. The manner in which the decision is rendered in the case of ***M. Karunanidhi v. H.V. Hande***⁴ is equally not applicable in the present case as the said case was also dealing with the deposit of security amount under Section 117 of the RP Act, as distinguishable features have been pointed out hereinabove.

15. The petitioner has placed his reliance in the case of ***Mohan Singh*** (*supra*). This Court has considered the aspect of Rule 7 of the Rules and has recorded its findings in paragraph 5, which reads thus:

"5. Mr. S.K. Sharma, learned counsel appearing on behalf of the petitioner has argued that the petitioner had deposited election petition fee of Rs.500/- by way of challan in the treasury as per Annexure P/3 and therefore according to him, the election petition could not have been dismissed on technical ground that the election petition fee was required to be deposited with the specified officer mentioned in Section 122 of the Act. I am sorry, I have not been able to persuade myself to agree with this

4 (1983) 2 SCC 473

submission made on behalf of the petitioner. The provision for deposit of election petition fee with the specified officer contained in section 122 read with Rule 7 of the Act are mandatory in nature. The petitioner could not have been changed the course of procedure prescribed for filing of election petition provided in section 122 of the Act and take advantage of his own fault since the election petition fee deposited by the petitioner in the treasury cannot be treated as deposit with the authority specified in Section 122 of the Act and therefore the election petition filed by the petitioner was rightly dismissed as not maintainable by the Election Tribunal. There is no infirmity or illegality in the impugned order that may call for an interference by this Court in exercise of its supervisory writ jurisdiction over the Tribunals. Accordingly, this writ petition fails and is therefore dismissed *in limine*.

From the aforesaid, it is clear that the deposit of security amount is to be made before the competent authority as prescribed under Rule 7 of the Rules, which fact was proved negatively against the respondent No.7, as he has not deposited the security amount with the prescribed or specified officer of the Election Tribunal in the manner discussed hereinabove.

16. The provisions of Rule 8 prescribes that if the provisions of Rule 3 or Rule 7 of the Rules have not been complied with, the petition shall be dismissed by the specified officer. The proviso only says that before passing the order, opportunity of hearing is to be given to the election petitioner. This particular aspect and scope of maintainability of such a election petition has been tested by the Division Bench of this Court in the case of ***Sarla Tripathi (Smt.) Vs. Smt. Kaushalya Devi and others***⁵ wherein it has been held by the Division Bench that the consequence of non-compliance of the provisions of the aforesaid Rules is nothing but the dismissal of the election petition at the initial stage.

17. In view of the aforesaid law, it was not even open for the Election Tribunal to continue with the election petition in any manner as it was proved that the deposit of security amount was

⁵ (2004) 2 JLJ 263

not made by the election petitioner before the specified officer or before any authorized authority in terms of the Rules. The order impugned, therefore, cannot be sustained.

18. In view of the aforesaid discussion, the order dated 11.9.2015 is hereby set aside. The election petition filed by the respondent No.7 before the specified officer stands dismissed for non-compliance of the mandatory provisions of Rule 7 of the M.P. Panchayat (Election Petition, Corrupt Practices and Disqualification for Members) Rules, 1995. Ordered accordingly.

19. The writ petition stands allowed and disposed of. However, there shall be no order as to cost.

(K.K. Trivedi)
J U D G E

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