REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1200 OF 2018
(@ S.L.P. (C) No. 20768 of 2017)

Sitaram **Appellant (s)**

VERSUS

Radhey Shyam Vishnav & Ors. **Respondent(s)**

J U D G M E N T

Dipak Misra, CJI

The singular issue that arises for consideration in this appeal by special leave is whether the High Court of Judicature for Rajasthan at Jaipur Bench is justified in dismissing S.B. Civil Writ Petition No. 8238 of 2017 thereby affirming the order dated 23.05.2017 passed by the learned Additional District Judge, Kishangarh, District Ajmer (herein after referred to as "the Election Tribunal") in Election Petition No. 55 of 2016 whereunder the Election Tribunal had rejected the application preferred under Order VII Rule 11(d) and (e) read with Order

XIV Rule 2 read with Section 151 of the Code of Civil Procedure (CPC) seeking rejection of the election petition on the foundation that there had been non-compliance of the Rajasthan Municipalities Election Petition Rules, 2009 (herein after referred to as "the 2009 Rules") which are mandatory in character.

2. Bereft of unnecessary details, the facts requisite to be stated are that the appellant and the 1st respondent were elected to Municipal Ward Nos. 28 and 45 respectively of Municipal Council, Kishangarh. The election to the post of Chairperson of the Municipal Corporation is to be made from amongst the 45 Ward Members and the said post has been reserved for the OBC category. There is no dispute that both the appellant and the 1st respondent belong to the OBC category. The election was held on 21.08.2015. The appellant, as per the votes counted by the returning officer, received 23 votes and the 1st respondent secured 18 votes as a consequence of which the appellant was declared elected. Challenging the election, Election Petition No. 180 of 2015 was filed by the 1st respondent alleging that the votes in favour of the elected candidate had been erroneously counted though

they deserved to be rejected on the ground that 11 voters had left such marks on the ballot papers that could identify them. Apart from the said allegation, certain other aspects were also pleaded. It was also set forth in the petition that a sum of Rs. 1,000/- had been deposited before the Election Tribunal as per law.

3. After filing a reply to the election petition, the appellant filed an application under Order VII Rule 11 read with Section 151 CPC for rejection of the election petition because of non-compliance of Rule 3(d) of the 2009 Rules. In addition to the aforesaid, certain other grounds were also urged to reject the election petition but as the said grounds have not been canvassed before us, we need not dwell upon the same.

4. It was contended before the Election Tribunal that as required by the 2009 Rules, an election petition may be filed by a candidate who has been defeated or whose nomination has been rejected to challenge the election by filing an election petition which is required to be accompanied by a treasury challan of Rs. 1,000/- and the Judge hearing the election petition as per Rule 7(3) of the 2009 Rules is obligated to dismiss the election petition which does not comply with the

provisions of the said Rules. It was pleaded that though the 1st respondent had filed the election petition on 09.09.2015, yet it was not accompanied by treasury challan of Rs. 1,000/- and to substantiate the same, reliance was placed on the order dated 16.09.2015 passed by the Election Tribunal wherein it had allowed the election petitioner to deposit the amount. The same is also perceptible from the order dated 17.9.2015. The application for rejection was resisted by the election petitioner on the ground that he had filed an application before the court to file the receipt of challan of Rs. 1,000/- and the amount was subsequently deposited and, therefore, the application for rejection of the election petition did not merit consideration.

5. The Election Tribunal took note of the fact that the amount was deposited on 16.08.2015 and further as the election petitioner had filed an application in the court and had, under the direction of the court, deposited the said amount and filed the receipt thereof in the court, the ground raised under Order VII Rule 11 was sans substratum and did not deserve acceptance.

6. Aggrieved by the aforesaid order, the appellant filed Writ Petition before the High Court and reiterated the grounds urged

before the Election Tribunal. The High Court, as is discernible from the impugned order, did not advert to the question of nature of the provision as engrafted in the 2009 Rules and noted that the issue whether the election petition was liable to be rejected despite the subsequent submission of the challan within the period of limitation was not required to be gone into as the application under Order VII Rule 11(d) CPC on the ground agitated therein was not maintainable and mis-directed. Being of this view, the High Court dismissed the Writ Petition. The High Court further directed that the writ petitioner would be free to agitate all the defences in his written statement as available to him in law against the election petition including its maintainability.

7. We have heard Mr. Mahavir Singh, learned senior counsel for the appellant, and Mr. Sushil Kumar Jain, learned senior counsel for the 1st respondent.

8. As the controversy rests upon the interpretation of the 2009 Rules, it is necessary to scan and understand the nature and character of the said Rules. Rule 3 of the 2009 Rules deals with the election petition. Rule 3(3) provides the grounds on which the election of any person as Chairperson or

Vice-Chairperson or member of a municipality can be questioned. Rule 3(5) of the said Rules provides for the requirements of an election petition. The said Rule, being pertinent, is extracted below:-

> "Rule 3(5). An election petition –
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> (a) shall contain a concise statement of the material facts on which the petitioner relies;
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> (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including names of the person alleged to have committed such corrupt practice and the date and place of the commission of such practice;
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> (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Central Act V of 1908) for the verification of pleadings. Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition, and
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> (d) shall be accompanied by a treasury challan of rupees one thousand."
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> [Emphasis added]

9. Rule 7 of the 2009 Rules deals with the decision of the Judge. As we are only concerned with sub-rule (3) of Rule 7, it is reproduced below:-

> "Rule 7. **Decision of the Judge**.-
> (3) The Judge shall dismiss an election petition, which does not comply with the provisions of these rules."
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> [Underlining is ours]

10. It is submitted by Mr. Singh, learned senior counsel appearing for the appellant, that as per Rule 3(5)(d), it is mandatory that an election petition is required to be accompanied by a treasury challan of Rs. 1,000/- and if the said requirement is not complied with, it is obligatory on the part of the Judge to dismiss the election petition. He would urge that the factum of non-deposit is a matter of record and the language employed in the relevant Rule is mandatory in character and, therefore, the Election Tribunal completely erred in rejecting the petition and the High Court failed to exercise the jurisdiction vested in it by not correctly adverting to the same.

11. Mr. Jain, learned senior counsel appearing for the 1st respondent, would contend that the 2009 Rules stipulate filing of treasury challan for the making of a deposit and there is a distinction between filing of a treasury challan and making the deposit. He would submit that the order of the Court is necessary to make a deposit in the court as per the General Rules (Civil), 1986 (hereinafter referred to as “the 1986 Rules”) which is prevalent in the State of Rajasthan. Apart from other decisions, he has commended us to the judgment dated

08.08.2016 passed by the learned single Judge of the High Court of Rajasthan in Civil Writ (CW) No. 7637 of 2016.

12. Before we proceed to deal with the manner of deposit and the mode provided under the 1986 Rules, it would be apt to refer to certain authorities that have dealt with the prescriptions pertaining to the presentation of an election petition.

13. In ***Charan Lal Sahu v. Nandkishore Bhatt and others***[1], the Court was dealing with the provisions contained in Section 117 of the Representation of People Act, 1951 (for short, "the 1951 Act") which requires that 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 and it also confers power on the High Court to call upon the election petitioner to give such further security for costs as it may direct. It was contended before the High Court that Section 117 of the 1951 Act is only directory and not mandatory and that the deposit of Rs. 2000/- is only to secure the costs in the course of the trial of the election petition. The

[1] (1973) 2 SCC 530

said plea was negatived by the High Court. The two-Judge Bench referred to 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. Proceeding further, the Court observed:-

> "3. ... 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* [2] 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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[2] 1952 SCR 218 : AIR 1952 SC 64

14. The command in the provision, the Court opined, of the deposit of the security along with the election petition as required under Section 117 of the 1951 Act leaves no option with the court but to reject the election petition. It is worthy to note here that the Court distinguished the authority in ***K. Kamaraja Nadar v. Kunju Thevar and others***[3] where the election petitioner under the unamended provision of Section 117 of the 1951 Act had deposited the amount in Government treasury but had neither 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 provided in the aforesaid Section. The Court in ***K. Kamaraja Nadar*** (supra), interpreting the unamended Section 117, had expressed thus:-

> "31. … 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

[3] 1959 SCR 583 : AIR 1958 SC 687

> 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.
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> 32. If, therefore it can be shown by evidence led before the Election Tribunal that the Government Treasury receipt or the chalan which was obtained by the petitioner and enclosed by him along with his petition presented to the Election Commission was such that the Election Commission could on a necessary application in that behalf be in a position to realise the said sum of rupees one thousand for payment of the costs to the successful party it would be sufficient compliance with the requirements of Section 117. No such literal compliance with the terms of Section 117 is at all necessary as is contended for on behalf of the appellant before us."

15. As stated earlier, the said decision was distinguished and the distinction is vivid from the analysis made in the above quoted paragraphs.

16. In this context, reference to the decision by the Constitution Bench in ***Charan Lal Sahu v. Fakruddin Ali***

Ahmed and others[4] is instructive. In the said case, the nomination of the petitioner was rejected on the ground of non-compliance with Sections 5-B and 5-C introduced in the Presidential and Vice-Presidential Elections Act, 1952 by an amendment made by Act 5 of 1974. Section 5-C(1) requires that a candidate shall not be deemed to be duly nominated for election unless he deposits or causes to be deposited a sum of two thousand five hundred rupees. Section 5-C(2) lays down that the sum required to be deposited under sub-section (1) shall not be deemed to have been deposited under that sub-section unless at the time of presentation of the nomination paper under sub-section (1) of Section 5-B, the candidate has either deposited or caused to be deposited that sum with the Returning Officer in cash or enclosed with the nomination paper a receipt showing that the said sum has been deposited by him or on his behalf in the Reserve Bank of India or in a Government Treasury. The petitioner in the said case had sent a cheque for Rs. 2500/- to the Returning Officer along with his nomination paper. Interpreting Section 5-C, the Court held that enclosing a cheque for Rs. 2500/- did not comply with the

[4] (1975) 4 SCC 832

mandatory requirement of sub-section (2) of Section 5-C. The Court took note of the fact that the provision expressly states that a candidate has to either deposit in cash or enclose with the nomination paper a receipt showing that the said sum had been deposited by him or on his behalf in the Reserve Bank of India or in a Government Treasury. Relying on the said decision, Mr. Mahavir Singh, learned senior counsel, would submit that the concept of treasury challan would clearly mean deposit in the treasury and filing the receipt of the amount that has been deposited at the time of presentation of the election petition but not to file a challan before the Court seeking permission to deposit. The said submission has been controverted by Mr. Jain, learned senior counsel, on two counts, namely, seeking permission is imperative and as long as there has been a deposit, the election petition cannot be rejected treating it as not maintainable. We shall deal with the said facet at a later stage.

17. In ***Aeltemesh Rein v. Chandulal Chandrakar and others***[5], the Court opined that Section 117 of the 1951 Act has been enacted having the source of power under Article 329(b) of

[5] (1981) 2 SCC 689

the Constitution which provides that an election petition has to be presented to such authority and in such manner as may be provided for by or under law made by the appropriate legislature. In the said case, admittedly, the appellant stated in the election petition that he had deposited the security amount of Rs. 2000/- along with the petition as required under Section 117 of the 1951 Act but, in fact, no such deposit was made. Dealing with the same, the Court expressed:-

> "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. Nandkishore Bhatt*** (supra) 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 Section 81, 82 or 117. In that view of the matter, the High Court was right in dismissing the election petition summarily."

18. From the aforesaid authority, it is clear as crystal that there has to be compliance with the provision relating to deposit failing which the Court has no option but to reject an election petition. Be it noted with profit that the said decision

dealt with a situation where the election petition had to be accompanied by payment of security deposit.

19. Mr. Jain, learned senior counsel appearing for the 1st respondent, has advanced the contention with regard to substantial compliance. To bolster the said submission, immense inspiration has been drawn from a three-Judge Bench decision in ***Chandrika Prasad Tripathi v. Shiv Prasad Chanpuria and others***[6]. In the said case, the Court was dealing with the unamended provision of Section 117 of the 1951 Act. The Court referred to the earlier decision in ***K. Kamaraja Nadar*** (supra) and opined that Section 117 should not be strictly or technically construed and that wherever it is shown that there has been a substantial compliance with its requirement, the Tribunal should not dismiss the election petition on technical grounds. Scanning the language employed in Section 117, the Court ruled:-

> "… Indeed it is clear that the receipt with which this Court was concerned in the case of *Kamaraj Nadar*, (supra) was perhaps slightly more defective than the receipt in the present case. The argument based on the use of the word "refundable" ignores the fact that the security in terms has been made in respect of the election petition in question and it has been duly credited as towards the account of the Election

[6] 1959 SUPP (2) SCR 527 : AIR 1959 SC 827

> Commission. Therefore, there can be no doubt that if an occasion arises for the Election Commission to make an order about the payment of this amount to the successful party, the use of the word "refundable" will cause no difficulty whatever. We hold that the security has been made by Respondent 1 as required by Section 117 of the Act and would be at the disposal of the Election Commission in the present proceedings."

20. On a perusal of the aforesaid dictum, we are inclined to state that the aforesaid decision has to be distinguished on the principle laid down by this Court in ***Charan Lal Sahu (I)*** (supra).

21. In ***M. Karunanidhi v. Dr. H.V. Hande and others***[7], a two-Judge Bench was interpreting Section 117 of the 1951 Act wherein the question arose as to whether the High Court was justified in expressing the view that the factum of making deposit of Rs. 2,000/- as security for costs in the High Court was mandatory and the manner of making the deposit was directory. It was contended before this Court that the provisions of sub-section (1) of Section 117 of the 1951 Act are mandatory and, therefore, non-compliance with the same has to entail dismissal of the election petition *in limine* under sub-section (1) of Section 117 of the 1951 Act. The Court

[7] (1983) 2 SCC 473

adverted to the issue as to whether the provision is mandatory or not and, in that context, held:-

> "20. It is well established that an enactment in form mandatory might in substance be directory and that the use of the word "shall" does not conclude the matter. The general rule of interpretation is well-known and it is but an aid for ascertaining the true intention of the legislature which is the determining factor, and that must ultimately depend on the context. The following passage from *Crawford on Statutory Construction* at p. 516 brings out the rule:
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> > 'The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other.'
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> This passage was quoted with approval by the Court in *State of U.P.* v. *Manbodhan Lal Srivastava*[8], *State of U.P.* v. *Babu Ram Upadhya*[9] and *Raza Buland Sugar Co. Ltd.* v. *Municipal Board, Rampur*[10]. The Court in *Manbodhan Lal case* where Article 320(3)(c) of the Constitution was held to be directory and not mandatory, relied upon the following observations of the Privy Council in *Montreal Street Railway Company* v. *Normandin*[11]:
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> > 'The question whether provisions in a statute are directory or imperative has very

[8] AIR 1957 SC 912
[9] AIR 1961 SC 751
[10] AIR 1965 SC 895
[11] 1917 AC 170

> frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at. The cases on the subject will be found collected in *Maxwell on Statutes*, 5th Edn., p. 596 and following pages. When the provisions of a statute relate to the performance of a public duly and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.'"

22. After so stating, the two-Judge Bench referred to Rule 8 of the Madras High Court (Election Petitions) Rules, 1967. Be it noted, the said Rule prescribes the mode of deposit. The contention was advanced before the Court that it is paradoxical to say that deposit of money into the Reserve Bank to the credit of the Registrar, High Court, Madras is a sufficient compliance of sub-section (1) of Section 117 when Rule 8 provides that the money should be deposited in the High Court in cash, and that is the only mode prescribed under sub-section (1) of Section 117.

23. Repelling the said submission, the Court held:-

"We are afraid, we are unable to accept this line of argument. A literal and mechanical interpretation of Rule 8 would lead to manifest absurdity as it would imply that in every case the election petitioner shall have to pay to the Registrar a sum of Rs 2000 in cash towards security for costs as required by sub-section (1) of Section 117 of the Act and obtain a receipt from him therefor. Rule 8 is silent as to how the cash is to be handled. It cannot ordinarily be expected that the Registrar of a High Court would accept the amount of security deposit in cash. The procedure adopted by II Assistant Registrar in directing that the money be deposited to the credit of the Registrar of the High Court in the Reserve Bank of India was in conformity with the requirements of Rule 8 of the Election Petitions Rules. Inasmuch as Rule 8 does not lay down the procedure regulating the manner of deposit of cash, the matter falls to be governed by Rule 2 of Order 31 of the Madras High Court (Original Side) Rules, 1956 by reason of Rule 12 of the Election Petitions Rules. Although Order 31 Rule 2 does not in terms apply because Order 31 relates to "Payment into Court of moneys to the credit of civil court deposits and account of suitors' money", and though no lodgment schedule can be prepared under Rule 2 except in pursuance of a decree or order passed by the High Court i.e. in relation to some proceeding pending, or disposed of, by the High Court, still by virtue of Rule 12 of the Election Petitions Rules that is the procedure to be adopted for deposit of Rs 2000 in the High Court in cash i.e. by crediting the amount on the strength of a pre-receipted challan prepared by the Accounts Department on the basis of a lodgment schedule. That was the only procedure applicable and there was nothing wrong in the procedure adopted in making the deposit. When the amount was so deposited with a pre-receipted challan issued by the Accounts Department to the credit of the Registrar of the High Court and the Reserve Bank of India made the endorsement "Received in Cash", it must be

> regarded that the payment was made in the High Court and the pre-receipted challan bearing the endorsement of the Reserve Bank of India must be treated as the receipt of the Registrar in terms of Rule 8, the Reserve Bank acting as an agent of the High Court."

Be it noted, the Court relied on the authorities in ***K. Kamaraja Nadar*** (supra), ***Chandrika Prasad Tripathi*** (supra), ***Om Prabha Jain v. Gian Chand and another***[12] and ***Budhi Nath Jha v. Manilal Jadav***[13] to opine that Section 117 of the 1951 Act should not be strictly or technically construed and substantial compliance with its requirement shall be treated as sufficient. The decisions in ***Charan Lal Sahu (I)*** (supra) and ***Aeltemesh Rein*** (supra) were discussed. The two-Judge Bench took note of the fact that there is no provision to absolve the election petitioner of payment of security for costs.

24. As we are only concerned with the deposit, we may usefully refer to a three-Judge Bench decision in ***M.Y. Ghorpade v. Shivaji Rao M. Poal and others***[14]. In the said case, the security as required under Section 117 of the 1951 Act was deposited in the High Court by the Respondent No.5 and not by the election petitioner who was the 1st respondent

[12] AIR 1959 SC 837 : 1959 SUPP (2) SCR 516
[13] (1960) 22 ELR 86
[14] (2002) 7 SCC 289

before this Court. The High Court came to hold that as the deposit in question had been made by the petitioner, and the same had to be treated as security for the costs of the election petition. For the said purpose, the High Court had placed reliance on the decision in ***Chandrika Prasad Tripathi*** (supra) and other decisions and the authority in ***M. Karunanidhi*** (supra). It was urged before this Court that on the foundation of ***Charan Lal Sahu (I)*** (supra) and ***Aeltemesh Rein*** (supra), the view expressed by the High Court was absolutely erroneous, for the deposit made by the Respondent No.5 could never be construed as the deposit by the election petitioner. The three-Judge Bench, analyzing the object of Section 117 of the 1951 Act, held that the purpose of Section 117 is to discourage entertaining frivolous election petitions and make provision for costs in favour of the parties who ultimately succeed in the election petition. The Court further observed that sub-section (2) of Section 117 authorises the High Court to call upon an election petitioner during the course of the trial of an election petition to give such further security which may be necessary depending upon the facts and circumstances of the case. The decision in ***Charan Lal***

Sahu (I) (supra) was distinguished as it was a case of non-deposit. The authority in ***Aeltemesh Rein*** (supra) was also distinguished as no such deposit had been made though it was stated in the petition that the security amount was being deposited. The Court placed reliance on ***M. Karunanidhi*** (supra) and eventually ruled:-

> "This Court relied upon the earlier decision of this Court in the case of *K. Kamaraja Nadar* v. *Kunju Thevar* which was a case under the provisions of Section 117 of the Act, as it stood prior to its amendment, wherein also the receipt showed that the deposit had been made but did not show that the deposit had been made in favour of the Secretary to the Election Commission. <u>One of the questions that arose was whether the expression "in favour of the Election Commission", contained in Section 117, as it stood then, was mandatory in character or not, and this Court held that the first part of Section 117 though was mandatory, but not the later part</u>. It is not necessary to multiply authorities on the point, but suffice it to say, that the sum of Rs 2000 must be deposited while filing an election petition and that is undoubtedly mandatory, but through whom the amount will be deposited etc. cannot be held to be mandatory."
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> (Underlining is ours)

From the aforesaid passage, it is luculent that deposit at the time of presentation is mandatory but not the mode.

25. Many an authority has been commended to us with regard to substantial compliance and the doctrine of curability. We may refer to some of them.

26. In ***T.M. Jacob v. C. Poulose and others*** [15] , the Constitution Bench was dealing with the defects pertaining to true copy of the affidavit as has been held to be mandatory in ***Dr. Shipra and others v. Shanti Lal Khoiwal and others***[16]. The larger Bench expressed thus:-

> "40. In our opinion it is not every minor variation in form but only a vital defect in substance which can lead to a finding of non-compliance with the provisions of Section 81(3) of the Act with the consequences under Section 86(1) to follow. The weight of authority clearly indicates that a certain amount of flexibility is envisaged. While an impermissible deviation from the original may entail the dismissal of an election petition under Section 86(1) of the Act, an insignificant variation in the true copy cannot be construed as a fatal defect. It is, however, neither desirable nor possible to catalogue the defects which may be classified as of a *vital* nature or those which are not so. It would depend upon the facts and circumstances of each case and no hard and fast formula can be prescribed. …"

27. Be it stated, the Court in the said case referred to the Constitution Bench decision in ***Murarka Radhey Shyam Ram***

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[15] (1999) 4 SCC 274
[16] (1996) 5 SCC 181

Kumar v. Roop Singh Rathore and others[17] and opined that the tests laid down therein are sound and did not require a repetition.

28. In ***G.M. Siddeshwar v. Prasanna Kumar***[18], the three-Judge Bench after referring to ***T.M. Jacob*** (supra) came to hold that the defect in verification of affidavit is not fatal to the election petition and it could be cured. Reference was made to a passage from ***Anil Vasudev Salgaonkar v. Naresh Kushali Shigaonkar***[19] wherein it has been held:-

> "*50.* The position is well settled that an election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with."

29. After so stating, the three-Judge Bench ruled :-

> "52. The principles emerging from these decisions are that although non-compliance with the provisions of Section 83 of the Act is a curable defect, yet there must be substantial compliance with the provisions thereof. However, if there is total and complete non-compliance with the provisions of Section 83 of the Act, then the petition cannot be

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[17] AIR 1964 SC 1545 : 1964 (3) SCR 573
[18] (2013) 4 SCC 776
[19] (2009) 9 SCC 310

> described as an election petition and may be dismissed at the threshold."

30. We may immediately clarify that the aforesaid cases dealt with substantial compliance relating to 'true copy', 'verification', 'affidavit' and applicability of the principle of curability. In ***G.M. Siddeshwar*** (supra), the Court made a difference between total and complete non-compliance with the provision of Section 83 of the 1951 Act whereupon the election petition cannot be described as an election petition and may be dismissed at the threshold. In the instant case, we are concerned with the deposit by treasury challan which shall accompany the election petition. The Rule prescribes in categorical terms that the tribunal shall dismiss the petition in case of non-compliance. We have referred to the authorities relating to security deposits under Section 117 of the 1951 Act. The present rules refer to municipal election. It is worthy to note that the election petition in para 15 has stated thus:-

> "15. That necessary Court fee has been paid with this petition. Rs. 1000/- has been deposited before this Hon'ble Court as per Law. A copy of this petition has already been sent to the District Returning Officer."

31. As stated earlier, the petition was filed on 09.09.2015 but the treasury challan was not filed on that day. The Election Tribunal had passed an order on a later date permitting the deposit. It is submitted by Mr. Jain that the election petitioner could not have deposited the amount without obtaining the permission of the Court. To substantiate the said stand, he has placed reliance on the 1986 Rules. We have been commended to Rules 252, 253, 260, 261 and 262. We think it appropriate to reproduce the said Rules:-

> "252. **Appointment of a Receiving Officer.**- (1) Every civil court or where two or more courts have a single account with the Treasury, every such group of courts, shall have an official entrusted with the receipt of money deposited in the Court.
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> (2) Such official shall be called as the Receiving Officer and shall be appointed by the presiding officers of the Civil Court or where two or more courts have single account with the Treasury, he shall be appointed by the presiding officer of the highest court subject to instructions if any, of the District Judge concerned.
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> (3) In a court where no official is appointed specifically to perform the duties of the Receiving Officer or during the absence on leave or otherwise of the person appointed as the Receiving Officer, the presiding officer of the civil court or the presiding officer of the high court as the case may be, shall appoint any other official of his court to carry on the duties of the Receiving Officer.

253. **Head of account**.- The following are the head of account under which the money received and paid under these Rules are classified:-

(1) Deposits;

(a) Civil Court deposits, including:

(i) sums paid under decrees and orders;

(ii) sums deposited under Order XX, Rule 14 and Order XXIV, Rule 1 of the Civil Procedure Code and Section 83 of the Transfer of Property Act;

(iii) Sums deposited under Order XXII, Rule 84 or paid under Order XXI, Rule 85 of the Code;

(iv) Sums deposited under Section 379(1) of the Indian Succession Act;

(v) Sums deposited in lieu of security;

(vi) Sums deposited under any law relating to the Land Acquisition;

(b) petty cash deposits, including deposits for:-

(i) Travelling and other expenses of witnesses;

(ii) Subsistence money for judgment debtors;

(iii) Incidental charges of Commissions, Amins and Arbitrators etc.;

(iv) Commission fees;

(v) Postage and registration fees;

(vi) Cost of publication of proclamation and orders;

(2) Other Administrative Services.

A. Administration of Justice.

(a) Services and Service fees;

(i).....

(ii) Civil and Sessions and Judicial Courts;

(b) Fines and forfeitures;

(i).....

(ii) Civil and Sessions & other Judicial Court.

(c) Other Receipts.

I. Sale proceeds of unclaimed and escheated property

(i)....

(ii) Civil and Sessions & other Judicial Courts.

II. Legal Aid to poor.

III. Recoveries of over payments.

(i).....

(ii) Civil and Sessions & Other Judicial Court.

IV. Other Receipts.

(i)....

(ii) Civil and Sessions & Other Judicial Court.

(d) Stamp duties and penalties.

Note:- Sub-heads (a),(b) &(c) have been classified in the State Account under the major head "065" Other Administrative Services and sub-head(d) under the major head "0.30" Stamps & Registration fees". These major heads and sub-heads will automatically be deemed to have changed whenever they are changed in the Budget,
(3) Departmental cash including:-

(i) Salary of establishment.

(ii) Travelling allowance.

(iii) Contingencies.

260. **Mode of payment of money into court**. - Payment of money into court shall ordinarily be made by means of a tender upon a printed triplicate

form. The applicants shall enter in the court language the particulars required in columns 1 to 4 of the triplicate form of tender (F. 23). The applicant shall then hand over the tender to the Munsarim or the Reader of the Court concerned, as the case may be.

261. **Office report by the official-in-charge of the record**. - The Munsarim or the Reader of the court concerned, as the case may be, shall then call upon the official-in-charge of the record of the case for an office report as to whether the amount and nature of the payment tendered and the number of the suit, or proceeding, if any are correct, and whether the payment is due from the person on whose account it is tendered. Any necessary corrections shall be made and the munsarim or the Reader of the Court concerned, as the case may be, shall then sign the tender and enter it in the register of challans prior to the order for receipt of payment being passed.

262. **Preparation of the order for payment**. – The order to receive payment shall be prepared in the office of the Court and shall be enfaced upon the duplicate and triplicate forms of the tender, and shall run in the name of or Receiving Officer as prescribed in Rules 255, 256, 257. The order shall be signed by the presiding officer for all amount payable under Head of Account (1)(a) and (2) of Rule 253 and by the Munsarim or the Reader of the court concerned; as the case may be for all amounts payable under shall send the tender forms to the Munsarim or the Reader of the Court concerned, as the case may be. The third form of tender shall be retained in custody by the Munsarim or the Reader of the court concerned, as the case may be, and then he shall return the second copy of the tender to the applicant and the original copy shall be sent to the concerned court for keeping it in the concerned case file."

32. In this regard, our attention has also been invited to the General Financial and Accounts Rules Volume I & Volume II. Rule 54 of the said Rules deals with the payment into treasury. Rule 56 deals with Signing of Challan by Departmental Officer. The said Rules read as follows:-

> "Rule 54: (1) Payments of money into the treasury or bank may be made in cash, by E-payment, cheques, bank draft, Banker's cheque and Postal Orders.
>
> (2) Challan : Subject as otherwise provided in these Rules, or unless the Government in relation to any particular class of transactions direct otherwise any person paying money into a treasury or the Bank on Government accounts shall present a challan in Form G.A. 57 showing distinctly the nature of the payment, the person or Government officer on whose account it is made, and all the information necessary for the preparation of the receipt to be given in exchange, for the proper account classification of the credit and, where necessary for its allocation between Government and departments concerned. Separate challans shall be used for moneys creditable to different head of accounts.
>
> Note: However, in case of E-payment, physical challan will not be required. Instead, prescribed details usually received through physical challan, will be incorporated into a scroll of E-payments which will be provided by the Bank duly authenticated on each page to the treasury for classification of credit and preparation of accounts of the Government.
>
> xxx xxx xxx
>
> Rule 56: **Signing of Challan by Departmental Officer**: When money is paid by a private person into

> a treasury located in the same place as the departmental officer concerned with the payment, the challan shall before presentation to the Bank, Treasury or Bank be signed by the officer to whose account the money is to be credited. The departmental officer shall particularly check classification before it is given to the depositor. Such challans shall be received direct at the Bank without the intervention of Treasury Officer.
>
> Note: Challans may also be signed by non-Gazetted Government servants as may be authorized by the Government. Presently Excise Inspector, Balotra and Insurance Assistants are authorized to sign challan for excise revenue and for deposits by the Panchayat Samiti or local bodies on account of State Insurance, etc."

33. In this context, we may also refer to Rule 83 and Rule 86 of the Rajasthan Treasury Rules, 2012 (hereinafter referred to as "the 2012 Rules") . They read as follows:-

> "83. No item should be credited as a deposit save under the formal order of a Competent Authority. Besides, no sum shall be credited in any deposit register which can be carried to any other head of account, for example, revenue paid to Government on account of a demand not yet due should at once be credited to the proper revenue head, instead of treating it as a deposit.
>
> xxx xxx xxx
>
> 86. All kinds of revenue deposits under this category shall be separately paid into treasury linked agency bank with challans/System Generated Challans and other prescribed documents setting forth all the particulars necessary for entries to be made in Revenue Deposit

> Register. Each item of revenue deposit, other than security deposit relating to election of Lok Sabha received, should at once be properly entered with unique identification number. There should be a separate series of numbers for each register, beginning afresh each year. All deposits must be separately paid into the treasury with challans or other documents setting forth all the particulars necessary for the entries to be made in the register of deposit receipts. The treasury officer should carefully check the amount and particulars of each entry and then set his initials in the proper column against each. The format for Revenue Deposit Register is appended in form No. TY-2.
>
> Notes: 1. Revenue deposit registers need not necessarily be opened every year but if there are a sufficient number of pages available in the old registers, they should be utilized, a separate series of numbers being given every year for each class of deposit.
>
> 2. The entry in the columm "Nature of deposit" should be sufficient to explain why the amount is deposited.
>
> 3. In system driven environment, the treasury officer shall create new account for each revenue deposit received. The unique deposit ID shall be generated at the time of creation of account which will provide link to original deposit at the time of refund of deposit."

34. Mr. Jain has referred to Form G.A.-57. The said form relates to cash challan. It provides for the signature of the person who deposits and in whose favour the deposit is being made and the permission for deposit. The Form also provides

for the amount and certain heads or categories. The submission, in essence, is that the cumulative reading of the 1986 Rules and the 2012 Rules clearly show that there cannot be any deposit without the permission of the concerned Court or authority. Support has been drawn from the judgment passed by the learned Single Judge in ***Ashok Kumar v. Learned A.D.J. No. 2 Chittorgarh and others***[20] wherein the High Court was dealing with Rule 85 of the election of Sarpanch of Gram Panchayat. The action was challenged under Section 43 of the Rajasthan Panchayati Raj Act, 1994 and the issue arose with regard to the interpretation of the provisions contained in the Rajasthan Panchayati Raj Election Rules, 1994 (for short, "the 1994 Rules"). Rule 81(2) of the 1994 Rules provides that no petition shall be deemed to have been presented under the election rules unless the petitioner deposits a sum of Rs. 50/- along with the petition by way of security deposit for the costs of the opposite party. In the said case, the election petition was filed on 28.02.2015 but costs were not deposited along with the petition and the same were deposited on 12.03.2015. It was contended before the learned

[20] Civil Writ (CW) No.7637 of 2016 decided on 8.8.2016

single Judge that the election petitioner had submitted the challan/tender for the deposit on 28.02.2015 itself but the Election Tribunal had not passed any order for depositing the costs with the treasury and, therefore, the same could not have been deposited on that day and the deposit was made after the order was passed. The learned single Judge took note of Rule 85 of the Election Rules which provides that the procedure provided in the CPC with regard to suits is made applicable in so far as can be made applicable and came to hold that if the deposit exceeds Rs. 25/-, the same can only be deposited in the treasury if an order is passed by the Court or by the Munsarim or the Reader of the Court concerned, as the case may be.

35. In this regard, Mr. Singh has placed reliance on an earlier decision of the Rajasthan High Court in ***Gulab Singh v. The Munsif and Judicial Magistrate 1st Class and others***[21]. In the said case, the learned single Judge was dealing with the security deposit as provided under Rule 79(2) & (3) of the Rajasthan Panchayat and Nyaya Panchayat Election Rules, 1960. In the said case, the deposit was made subsequently. It was contended that the same was fatal to the case as the

[21] 1981 WLN (UC) 78

provision is mandatory. Rule 79(2) of the said Rules read as follows:-

> "79(2) No petition shall be deemed to have been presented under these rules unless the petitioner deposits a sum of Rs.50/- along with the petition by way of security for the costs of the opposite party."

36. The learned single Judge placed reliance on ***Charan Lal Sahu (II)*** (supra) and came to hold that Rule 79(2) in relation to the deposit of the security along with the petition is mandatory and since on facts it is not in dispute that on 21st February, 1978 when the election petition was filed, it was not presented along with a deposit of Rs. 50/- as required for the costs of the opposite party, the legal and logical consequences would be that the election petition could not be deemed to have been presented under the Rules as per the mandate of Rule 79(2) of the Rajasthan Panchayat and Nyaya Panchayat (Election) Rules,1960. Being of this view, the learned single Judge opined that there was no valid election petition before the Election Tribunal.

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***[22] 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

[22] RLW 2007 (2) Raj 1551

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.

39. In view of the aforesaid analysis, we allow the appeal and set aside the order passed by the High Court that has affirmed the order of the Additional District Judge as a result of which the election petition shall stand rejected. There shall be no order as to costs.

……,CJI
(Dipak Misra)

……,J.
(A.M. Khanwilkar)

……,J.
(D.Y. Chandrachud)

New Delhi;
March 06, 2018