

HIGH COURT FOR THE STATE OF TELANGANA

C.M.A.No.472 OF 2023

Between :

Raghavendra Raju Chaluvagali,
S/o. Papa Raju,
Age: 42 years, Occ: Business,
R/o. H.No.14-5-189/6, B.K. Reddy Colony,
Mahabubnagar.

...Petitioner

and

K. Narasimhulu, S/o. Nagaiah,
Age: 57 years, Occ: Municipal Chairperson,
R/o. Yenugonda Village,
Mahabubnagar Mandal and District and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED : 09.01.2024

HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

*** HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY**

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Age: 42 years, Occ: Business,
R/o. H.No.14-5-189/6, B.K. Reddy Colony,
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Vs.

\$ K. Narasimhulu, S/o. Nagaiah,
Age: 57 years, Occ: Municipal Chairperson,
R/o. Yenugonda Village,
Mahabubnagar Mandal and District and others.

.... Respondents

!Counsel for the Petitioner : Sri K. Venkata Mayur

Counsel for the Respondents : Sri K. Venkatesh Gupta.

<Gist :

>Head Note:

? Cases referred:

1. AIR 2018 SC 1298
2. 2001 (1) ALD 77 (DB)
3. 2015 (4) ALD 394
4. AIR 1965 BOMBAY 58

HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY**C.M.A.No.472 of 2023****JUDGMENT:**

This appeal is filed challenging the order and decree dated 16.08.2023, passed by the Principal District Judge, Mahabubnagar, in I.A.No.1157 of 2022 in E.O.P.No.4 of 2020.

2. The facts of the case, in brief, are that the appellant herein filed Election Petition in E.O.P.No.4 of 2020 under Section 233 of the Telangana Municipality Act, 2019, to declare the election of the respondent No.1 as Ward Member (Municipal Councilor) from 2nd Ward of Mahabubnagar Municipality as void and set aside the same, and further declare him as returned candidate. The respondent No.1 has filed counter in the Election Petition stating that the appellant has not complied with the required procedure for filing the Election Petition and that the Election Petition is not maintainable on the said ground.

3. Pending adjudication of the Election Petition, the respondent No.1 filed I.A.No.1157 of 2022 under Order 7 Rule 11 (a)(d) CPC r/w Section 151 CPC and Rule 8(2) of the Telangana

Municipalities (Electing Petitions) Rules, 2020 (for short, 'the Rules'), to reject and dismiss the Election Petition filed by the appellant.

4. It is stated by the respondent No.1 that the appellant filed the Election Petition without complying with the mandatory provisions; that the appellant was required to deposit an amount of Rs.5,000/- towards Security Deposit at the time of presenting the Election Petition before the Tribunal as per Rule 8 (2) of the Rules and that in case of non-deposit of the said amount on the date of presentation of the Election Petition, the Election Petition has to be dismissed. It is further stated that the Election Petition was filed on 24.02.2020 without depositing Rs.5,000/- towards Security Deposit before the Tribunal, along with the Election Petition. The appellant filed Lodgment Schedule along with the Election Petition without tendering or paying cash and without submitting any Demand Draft, but sought to issue Lodgment. As per the Lodgment issued by the Tribunal, the appellant has deposited the amount in the Bank on 25.02.2020 i.e., one day after presenting the Election Petition.

5. It is further stated that the appellant shall pay cash of Rs.5,000/- to the Tribunal at the time of presentation of the Election Petition towards Security Deposit or obtain a Demand Draft for Rs.5,000/- in the name of the Tribunal on the date of presentation of the Election Petition in compliance of Rule 8(2) of the Rules. But, the appellant neither paid the cash nor submitted Demand Draft for Rs.5,000/- in the name of the Tribunal on the date of filing the Lodgment Schedule along with the Election Petition on 24.02.2020.

6. The appellant filed counter in the said Interlocutory Application denying the averments made therein and stating that the election for Mahabubnagar Municipality was held on 22.01.2020 and the election was declared on 25.01.2020; that the Rules relating to disposal of Election Petitions were framed on 11.02.2020 and that the Election Petition was presented on 24.02.2020, but, by that time, the Rules were not available. The Rules and the Act are silent with regard to the mode and manner of payment.

7. It is further stated that the appellant came to know that in an Election Petition filed by one Md. Imran, at the time of presentation of his Election Petition, he deposited the security amount in the District Court Account and counterfoil thereof was filed in the Court. It is also stated that as the office has raised an objection with regard to the payment of Security Deposit and advised the appellant to deposit the same through lodgment schedule, he filed lodgment schedule along with the Election Petition and the office of the Court issued the lodgment schedule and accordingly, he deposited the amount on 25.02.2020. It is further stated that as the Rules do not prescribe the manner of deposit of Security Deposit amount, he followed the Court orders and deposited the said amount. It is also stated that when the Election Tribunal was satisfied with his compliance as prescribed under Rule 8(3) of the Rules and proceed with the trial, the respondent No.1 is precluded from raising issue of Security Deposit and seeking the relief of dismissal of the Election Petition. Therefore, he prayed to dismiss the I.A.

8. The trial Court, after hearing both sides and considering the entire material available on record and also the judgment of the Hon'ble Supreme Court in *Sitaram v. Radhey Shyam Vishnav*¹, held that there cannot be a separation or segregation of the Election Petition and deposit and they have to be filed simultaneously and accordingly allowed the I.A by rejecting the Election Petition vide impugned order dated 16.08.2023. Hence, this appeal.

9. The learned counsel for the appellant has stated that the trial Court ought to have seen that there is no mode of payment prescribed under the Rules; that the trial Court erred in rejecting the Election Petition on the ground that the Security Deposit amount was not deposited within the time and that the trial Court ought to have seen that the Election Petition was at the stage of cross examination of P.W.1. It is further stated that the new Rules were framed on 11.02.2020 i.e., just 13 days prior to the filing of the Election Petition and thus, the appellant was unaware of the same, as much as, the Office did not take any

¹ AIR 2018 SC 1298

objection and numbered the Election Petition. Therefore, rejection of the Election Petition three years after its filing is contrary to law, and thus, prayed to set aside the impugned order.

10. On the other hand, the learned counsel for the respondent No.1 vehemently argued that the appellant has not deposited the Security Deposit amount of Rs.5,000/- with the Election Tribunal, as prescribed under Rule 8(2) of the Rules, which is mandatory and therefore, the trial Court has rightly allowed the I.A by rejecting the Election Petition. In support of the said contentions, the learned counsel has relied upon the judgments of the Hon'ble Supreme Court in *Sitaram v. Radhey Shyam Vishnav (1 supra)*, the erstwhile High Court of Andhra Pradesh in *Anjamma v. S. Pushpamma²*, *Bangaru Sankaraih v. Talari Pothalaih³* and the judgment of the Bombay High Court in *Satyanarayan Shrivallabh v. Bhagwantrao Marotirao⁴*.

² 2001 (1) ALD 77 (DB)

³ 2015 (4) ALD 394

⁴ AIR 1965 BOMBAY 58

11. Before dealing with the appeal, it is apt to refer to Rule 8 of the Rules, which reads as under:

“8. Deposit of Security: (1) At the time of presentation of the petition, the petitioner shall deposit with the Election Tribunal, as security for the cost of the same,-

(i) a sum of ten thousand rupees in the case of election of Chair person or Vice Chairperson or Mayor or Deputy Mayor; and

(ii) a sum of five thousand rupees in the case of ward member.

Explanation: Where the election of more than one returned candidate is called in question, a separate deposit shall be made in respect of each such returned candidate.

(2) If the provisions of sub-rule (1) are not complied with, the Election Tribunal shall dismiss the petition.

(3) Upon compliance with the provisions of sub-rule (1), the Election Tribunal shall proceed to inquire into the petition.”

12. In *Sitaram v. Radhey Shyam Vishnav (1 supra)*, which was taken into consideration by the trial Court while allowing the I.A., the Hon’ble Supreme Court held that *firstly*, the deposit is mandatory and the mode of deposit is directory; *secondly*, the non-deposit will entail dismissal and irregular deposit is curable and *thirdly*, in other areas like verification, signature of parties, service of copy, etc., the principle of substantial compliance or the

doctrine of curability will apply. There cannot be a separation or segregation of the Election Petition and the deposit.

13. In *Anjamma v. S. Pushpamma (2 supra)*, a Division Bench of the erstwhile High Court of Andhra Pradesh had referred to the judgments of the Hon'ble Supreme Court in *Aeltemesh Rein v. Chandulal*⁵, *Narayanaswamy v. C.P. Thirunavukkarasu*⁶ and *Karunanidhi v. H.V. Hande*⁷ and ultimately held that an Election Petition filed without depositing the Security Deposit, as required under Rule 5(i) of the Rules, 1955, is liable to be dismissed in limine.

14. In *Bangaru Sankaraih v. Talari Pothalaih (3 supra)*, a learned Single Judge of the Composite High Court of Telangana and Andhra Pradesh, had followed the judgment in *Anjamma v. S.Pushpamma (2 supra)* and reiterated the above principle.

15. A perusal of Rule 8(1) of the Rules clearly discloses that at the time of presentation of the Election Petition, the petitioner shall deposit the prescribed Security Deposit along with the

⁵ AIR 1981 SC 1199

⁶ (2000) 2 SCC 294

⁷ (1983) 2 SCC 473

Election Tribunal. Rule 8(2) of the Rules clearly discloses that if the provisions of sub-rule (1) are not complied with, the Election Tribunal *shall* dismiss the petition. Therefore, Rule 8(2) of the Rules is mandatory in nature and the same has to be complied with while filing the Election Petition.

16. In the instant case, the Election Petition was presented on 24.02.2020, whereas, the security deposit was paid on 25.02.2020 i.e., subsequent to the filing of the Election Petition, which is in clear violation of Rule 8(2) of the Rules.

17. In the light of the above discussion, more particularly, Rule 8(2) of the Rules, and the above legal position, the Election Petition filed by the appellant is not maintainable. Therefore, the trial Court is right in allowing the I.A. rejecting the Election Petition filed by the appellant and this Court finds no irregularity in the impugned order passed by the trial Court. In the considered opinion of this Court, the appellant failed to make out any case warranting interference by this Court with the impugned order dated 16.08.2023.

18. Hence, the appeal is liable to be dismissed and the same is accordingly dismissed. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

LAXMI NARAYANA ALISHETTY, J

Date: 09.01.2024

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