

(g) is a whole-time salaried servant of any local authority or State of the Union of India;

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Pandit, J.

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* * * * *

The idea behind this seems to be that a person, who is going to be elected to a Panchayat, should not be in arrears of a tax imposed by that very Panchayat. As I have already mentioned above, in the present case, it is admitted that no *chulha* tax was due from Gudar Singh to the Gram Panchayat of village Palla Megha. His nomination paper had, therefore, been wrongly rejected. It is undisputed that an improper rejection of a nomination paper materially affects the result of an election. The order passed by the Prescribed Authority, therefore, was perfectly correct and I see no ground to interfere with the same.

The present petition, therefore, fails and is dismissed. There will, however, be no order as to costs in this Court as well.

B.R.T.

CIVIL MISCELLANEOUS

Before Inder Dev, Dua, J.

DHARAM CHAND,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 1267 of 1961

Municipal Election Rules (1952)—Rule 7(g)—Service of special demand in respect of arrears—Whether necessary to be served before incurring disqualification—Interpretation of statutes—Directory and mandatory nature of the provisions of law—How to be determined.

1961

December, 1st.

Held, that plain reading of rule 7(g) of Municipal Election Rules makes it abundantly clear that in order to entail disqualification on the ground that the person concerned is in arrears, a special demand in this behalf is necessary to be served upon him by the Committee. The service of a special demand appears to have been provided by the rule-making authority with some deliberate and conscious purpose; and it obviously seems to contemplate something more than the mere existence of some arrears claimed by the Municipal Committee to be due from him to his knowledge. The provision contained in rule 7(g) is imperative and must be strictly complied with both in letter and spirit before the disqualification contemplated can be attracted.

Held, that no general rule can be laid down for deciding whether a given provision of law is mandatory or only directory. In each case, the question is one of legislative intent and in order to ascertain it, one must consider the actual words used, the scheme of the statutory instrument in question, the intended purpose to be achieved by enacting a particular provision and the consequences which must flow from treating it as mandatory or directory.

Petition under Article 226 of the Constitution of India praying that an appropriate writ, direction or order be issued quashing the impugned order, dated 11th September, 1961, passed by the Respondent No. 2.

H. L. SARIN AND K. K. CUCCRIA, ADVOCATES, for the Petitioner.

H. S. DOBIA, ADDITIONAL ADVOCATE-GENERAL, for the Respondent.

ORDER

Dua, J.

DUA, J.—This is an application under Article 226 of the Constitution filed by Dharam Chand, son of Shri Gian Chand, of Ward No. 6, Abohar, district Ferozepur, claiming to be a registered voter No. 684 in the said Ward of the Municipal Committee, Abohar. On 15th August, 1961, according to his allegations, the Deputy Commissioner in:

pursuance of Rule 3 of the Municipal Election Rules, 1952, published the election programme of the above Municipal Committee. 29th of August, 1961, was the last date for making nominations and 30th August, 1961, was the date for preparation and publication of the list of nominations. Scrutiny was to take place on 4th September, 1961 and receipt of applications for revision of the scrutiny decisions was fixed for 7th September, 1961. The last date for the withdrawal of candidature was 13th September, 1961 and the final list of nominations was to be prepared and published on 14th September, 1961. On 18th September, 1961, list of polling stations was to be published and the poll, if any, was to take place on 24th September, 1961. Immediately after the close of the poll, votes were to be counted to be followed by the declaration of result.

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On 26th August, 1961, the petitioner filed his nomination papers before Shri K. L. Nagpal, P.C.S., acting as Returning Officer. On 4th September, 1961, at the time of scrutiny, Shri Munshi Ram, respondent No. 3 in this Court, raised two objections with respect to the petitioner's nomination papers. The first objection related to his age and the second one to the alleged contravention of rule 7(g) of the Municipal Election Rules, 1952. The contention being that the petitioner was in arrears of *tehbazari* fee and, therefore, ineligible for Municipal election. The returning officer, after hearing the objections and considering the evidence and pleas of the parties, overruled the said objections on 4th September, 1961, holding them not to have been substantiated. He also held that the objection regarding the non-payment of arrears of taxes could not be established under rule 7(g) which required service of a Special Demand Notice on the alleged defaulter. The Returning Officer further observed that the petitioner was not even proved to be a defaulter.

Against this order, Munshi Ram, respondent No. 3, filed a revision under rule 16(3) of the

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Municipal Election Rules. Shri R. D. Joshi, S.D.O., Fazilka, respondent No. 2 exercising the powers of the Deputy Commissioner, by his order dated 11th September, 1961, accepted the revision and eliminated the petitioner's name from the list of candidates for the election of the Municipal Committee, Ward No. 6.

In the meantime, on 1st September, 1961, an application was filed by the petitioner's father with the Secretary, Municipal Committee, Abohar on behalf of Messrs. Narain Dass-Gian Chand, Timber Merchants, Abohar (sole concern of the petitioner's father). On receipt of this application, the Land and Licensing Officer, Abohar Municipal Committee, passed an order addressed to the Secretary, Municipal Committee, in the following terms:—

“The case of Lakar Mandi where the khata of M/s. Narain Das-Gian Chand is under dispute has been entrusted to you for effecting recovery. The applicant wishes to make the payment at old rate, i.e., Rs. 3 per mensem for 15 months and promises to pay the balance if any after final decision is made. Submitted for orders.”

No orders were, however, passed on this application.

On 4th September, 1961, the petitioner filed an affidavit before respondent No. 2, the revising authority, affirming that he was a partner of Messrs. Narain Das-Gian Chand and Messrs. Jai Lal-Ram Chand. The petitioner's father Shri Gian Chand, son of Shri Narain Das, had also filed his nomination papers from Ward No. 6 for contesting the Municipal Election and Munshi Ram, respondent No. 3, had also raised an objection to his nomination papers under rule 7(g) and the Returning Officer had overruled that objection as well. The Returning Officer had, while overruling that objection, passed the following order:—

“Objection overruled. No bill or special demand notice was issued as confirmed

by Secretary, M.C., Abohar to Shri Gian Chand for payment of arrears of tax by M.C. Nomination paper admitted".

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The petitioner's case is that he was neither a member of the joint Hindu family Narain Das-Gian Chand nor of Jai Lal-Ram Chand on 26th August, 1961, as the joint Hindu family had disrupted with effect from 31st March, 1961 and the business known and styled as Narain Das-Gian Chand had fallen exclusively to the share of Shri Gian Chand (Petitioner's father) along with the premises, on the basis of the partition effected between the erstwhile joint family.

The order passed by respondent No. 2 on revision has been assailed in the present writ petition on the ground that rule 7(g) of the Election Rules has no applicability to the facts of the present case inasmuch as no arrears of any kind are due from the petitioner and that the respondent No. 2 has acted illegally, arbitrarily, capriciously and without jurisdiction in rejecting the petitioner's nomination papers. It has also been stressed that no notice of special demand, as required by law, was served in the present case. The order passed by respondent No. 2 has also been alleged to be tainted with *mala fides* and is described to have been passed under political pressure to please the ruling party. In the petition, a reference has also been made to the decision of D.K. Mahajan, J., in *Babu Ram versus Punjab State Civil Writ No. 907 of 1961* decided on 14th July, 1961. It is prayed that the impugned order dated 11th September, 1961, should be quashed and it be declared that the petitioner is entitled to contest the forthcoming election of the Municipal Committee, Abohar, from Ward No. 6.

Respondents 1, 2 and 4 have admitted paragraphs 1 to 6 of the petition relating to the facts in connection with the proposed Municipal Election. The allegations of *mala fides* on the part of respondent No. 2 have been denied and it

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is asserted that the petitioner was apparently in arrears of *tehbazari* fee. The order of respondent No. 2 is thus pleaded to be legal and in accordance with rule 7(g). In view of the admission that the family in question was a Joint Hindu family up to 31st March, 1961, the liability for *tehbazari* fee accruing since 31st May, 1960 up to 31st March, 1961, has been asserted to be joint and several; it has further been averred that in view of the applications of Gian Chand and others dated 26th August, 1960 and 1st September, 1961, no special demand notice was called for, the petitioner and his father being conscious and aware of the claim with respect to the arrears. The decision given by D.K. Mahajan, J., was distinguished on the ground that the said case related to arrears of house taxes to which provisions of section 80 of the Punjab Municipal Act were applicable.

On behalf of Munshi Ram, respondent No: 3, it has been pleaded that after the measurement had been held by the Land and Licensing Officer, it was found that there was an encroachment on the Municipal area by the petitioner and that the *tehbazari* dues were rightly payable by him. According to this written statement, the special demand notice, so far as the petitioner is concerned, would be a mere formality and it is emphasised that in effect and substance, demands have been made upon him and he has persisted in refusing to pay. It is desirable at this stage to reproduce rule 7(g) of the Municipal Election Rules:—

7. "No person shall be eligible for election as *** () a member of a Municipal Committee, who—

(a) is not a qualified voter for any constituency of the Municipal Committee under rule 6, and has not attained the age of 25 years; or,
* * * * * (g) is an undischarged insolvent;

* * * * * () or "is in arrears of any kind of
* * * * *

due from him (otherwise than as a

trustee) to the Committee when a special demand in this behalf has been served upon him by the Committee; or

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Provided that the Punjab Government may exempt any person or class of persons from the disqualification contained in clauses (c), (d), (e), (f), (g), (i) or (j) except in case of disqualification as the result of removal from membership of any District Board, Municipal or Notified Area Committee or Cantonment Board, of this sub-rule.

* * * *

A plain reading of the rule makes it abundantly clear that in order to entail disqualification on the ground that the person concerned is in arrears, a special demand in this behalf is necessary to be served upon him by the Committee. The service of a special demand appears to have been provided by the rule-making authority with some deliberate and conscious purpose; and it obviously seems to contemplate something more than the mere existence of some arrears claimed by the Municipal Committee to be due from him to his knowledge. A literal import of the language used in this rule seems *prima facie* to suggest the service of a special demand in respect of the arrears in question as a condition precedent for attracting the disqualification.

When the learned counsel for the respondents was confronted with this provision, he attempted to get over this *prima facie rigor* by submitting in substance that this provision was merely directory and not mandatory and that a special demand in respect of the dues in question need not have been served on the petitioner. This is how I understood his contention particularly when he developed his argument by eloquently submitting that

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the petitioner knew that the Municipal Committee had been claiming this amount from him and that he was fully aware of the claim. Emphasis was also laid on the argument that as a matter of fact, the amount was actually due from him.

Here, it may be necessary to say a few words about the distinction between directory and mandatory provisions of law. It has repeatedly been stated that no general rule can be laid down for deciding whether a given provision of law is mandatory or only directory. In each case, the question is one of legislative intent and in order to ascertain it, one must consider the actual words used, the scheme of the statutory instrument in question, the intended purpose to be achieved by enacting a particular provision and the consequences which must flow from treating it as mandatory or directory. In the present case, the language does seem to me to express an anxiety on the part of the law-giver that it is only when a special demand has been actually served that disqualification on account of default in the payment of arrears due from the person concerned is attracted. But then it is contended that when a person is in fact in arrears and has refused or omitted to pay the dues of the Municipal Committee, he is not a fit person to be elected as a member of that Committee and, therefore, the impugned provision must be so construed as to effectuate this purpose.

It is no doubt true that a person who deliberately and consciously refuses to pay the dues, which he owes to the Municipal Committee, may not be an ideal or a very suitable person for being elected to the trusted position of a member of a Municipal Committee, but then from the point of view of suitability, one can think of quite a few other defects and failings which might equally—if not more seriously—tell against the suitability of a person for being elected to a Municipal Committee. In the instant case, however, we are not concerned with the tests to be applied for determining as to who is an ideal or a desirable person

to be elected a Municipal Commissioner; we are merely concerned with the scope and effect of rule 7(g) of the Municipal Election Rules for the purposes of determining whether or not omission to serve a special demand by the Committee on the petitioner is not fatal to the applicability of this provision. It appears to me on plain reading of rule 7(g) that unless the person in question is specially called upon to pay the arrears due from him and he persists in spite of such special demand to remain in arrears, the disqualification under rule 7(g) cannot be attracted, for this disqualification is of no mean consequence to the citizens of this Republic. As I understand this provision, it seems to be based on the recognition of the supreme importance of the right of franchise and also of the elected local bodies in our democracy, and it is for this reason that the rule has been given a mandatory form. The exercise of the right of franchise must, therefore, be jealously guarded by the Courts and the provision depriving an elector of such right must be strictly complied with. I would, therefore, unhesitatingly hold that the provision contained in rule 7(g) is imperative and must be strictly complied with both in letter and spirit before the disqualification contemplated can be attracted. Special demand having admittedly not been served on the petitioner, he can hardly be considered to have incurred the disqualification in question. The ratio of the decision by D. K. Mahajan, J., in *Babu Ram v. Punjab State* C.W. 907 of 1961, also seems to me to lend support to the petitioner's contention.

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Before parting with the case, I should like to notice a preliminary objection raised on behalf of the respondents. It was contended that after the election, it would be open to the petitioner to file an election petition and, therefore, this Court should not in its discretion interfere on the writ side at this stage. Some cases dealing with taxation matters have been cited at the Bar. It is unnecessary to deal with them in detail, for an alternative remedy has never been held to be an absolute bar to a writ petition and it is a matter

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for consideration in each case whether in the circumstances disclosed, this Court should or should not interfere on the writ side. In the present case, after considering all the circumstances, I have not the least doubt that if the petitioner has under the law not entailed disqualification, it is eminently a fit case in which this Court should interfere at this stage. It is undeniable that an election process is an expensive affair both for the State and the candidates, and the writ petition having actually been admitted and the parties being before the Court, it would require very strong reasons to persuade me to refuse to go into the merits of the controversy. No such strong or compelling reason has been brought to my notice.

In the result, the writ petition succeeds and allowing the same, I quash the order of Shri R. D. Joshi, S.D.O., Fazilka, dated 11th September, 1961. The petitioner is entitled to his costs of these proceedings.

K.S.K.

APPELLATE CIVIL

Before Prem Chand Pandit, J.

UNION OF INDIA,—Appellant

versus

SHEELA DEVI AND ANOTHER,—Respondents

Execution First Appeal No. 334 of 1960

1961

 December, 1st.

*Code of Civil Procedure (Act V of 1908)—Order XLI—
 Rule 5—Appeal against a decree awarding future interest
 till payment filed and application for stay of the execution
 made—Court ordering execution to continue but amount
 not to be paid to decree-holder till she furnished security
 for restitution—Amount deposited in executing Court by
 the judgment-debtor which was withdrawn by decree-
 holder after furnishing security after a month—Decree-
 holder—Whether entitled to interest for that month.*