

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

GIAN CHAND,—*Petitioner.*

versus

THE RETURNING OFFICER AND OTHERS,—*Respondents.*

Civil Writ No. 1032 of 1965

1965
November, 15th

Punjab Agricultural Produce Markets (Election to Market Committee) Rules (1961)—Rule 7(3)—To what extent mandatory or directory—Obtaining of requisite certificate on prescribed form not possible—Candidate filing original licence with his nomination paper—Nomination paper—Whether liable to be rejected on this score—Interpretation of Statutes—Statutory provision—Whether mandatory or directory—How to be determined—Difference between the two pointed out.

Held, that the provisions of sub-rule (3) of rule 7 of The Punjab Agricultural Produce Markets (Election to Market Committee) Rules, 1961 are mandatory to the extent that the Returning Officer must be satisfied about the candidate being a licensee under section 10 of the Punjab Agricultural Produce Markets Act (XXIII of 1961) at the relevant time or being a duly authorised representative of a licensee firm; but the said rule is directory as to the manner in which the Returning Officer has to be satisfied about the above said requirement. The rule is vital and goes to the root of the matter only to the extent that the candidate must be a licensee under section 10.

Held, that if it is impossible to obtain the requisite certificate on the prescribed form and, therefore, in place of the certificate the original licence signed by the Chairman of the Market Committee (the person who had to sign the certificate) is itself produced and the said original licence and the relevant entry in the electoral roll are before the Returning Officer and he peruses the same and does not doubt their authenticity and is indisputably satisfied about their contents, the nomination paper of the candidate cannot be rejected merely on account of the secondary evidence consisting of a certificate not having been produced in the face of the primary evidence of the original licence having been placed before the Returning Officer.

Held, that a statutory provision is required to be obeyed whether it is mandatory or directory. The only difference between the two sets of provision is that in the case of a mandatory requirement, it has to be obeyed under the penalty of having the proceedings involving non-compliance with it declared void. It is as difficult as improper to attempt to lay down any inflexible general rule for deciding whether a provision of law is mandatory

or directory. The following propositions, however, can be safely deduced from decided cases on the point:—

- (i) In deciding whether a provision of law is mandatory or directory, it is the substance of the matter which should be the decisive criterion and not questions of mere form.
- (ii) When the relevant provision of a statute or rule is the very essence and life of the thing required to be done and is vital for fulfilling the object of the provision and goes to the root of the matter, it is usually mandatory and its non-fulfilment is fatal to the act done without complying with the requirement of the said provision or the rule.
- (iii) When the provision or the rule in question merely relates to form and manner of doing a certain thing, the provision is, in the absence of a statutory indication to the contrary, merely directory and the breach of some part of such a provision can and should be overlooked provided there is substantial compliance with the intended purposes of the provision as a whole and provided further that no prejudice has ensued from the technical breach or omission.
- (iv) When the intention of the Legislature or of the rule making authority as to whether a particular provision or rule is mandatory or directory is not clear, it is for the Court to pronounce on the same after examination of all the relevant circumstances, e.g., the language of the provision, the scheme and object of the Legislative enactment, the benefit to the public which may be likely to accrue by the strict adherence to the rule or the loss to the public which might ensue from its breach and other such considerations.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, mandamus, or any other appropriate writ, order or direction be issued quashing the order dated 19th March, 1965, and directing the Returning Officer to consider the material before him after giving an opportunity to the petitioner of being properly heard.

CH. ROOP CHAND AND SUBHASH CHAUDHRY, ADVOCATES, for the Petitioner.

L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE-GENERAL, WITH MANMOHAN SINGH, AND K. L. SACHDEVA, ADVOCATES, for the Respondents.

ORDER

Narula, J.

NARULA, J.—This judgment will dispose of Civil Writ Petitions Nos. 1032 of 1965 and 1033 of 1965. I will give the detailed facts of C.W. No. 1032 of 1965—Gian Chand v. The Returning Officer and others.

M/s. Aroora Mal-Labhu Ram are a firm duly licenced by the Market Committee, Talwandi Bhai, Tehsil and District Ferozepore in accordance with the provisions of section 10 of the Punjab Agricultural Produce Markets Act, 23 of 1961, hereinafter called the Act. The licence of this firm had admittedly been renewed and was valid at the time for the period ending 31st March, 1966. It is also not disputed that Gian Chand, petitioner had been duly authorised by all the partners of the above-named firm to represent it as required by the proviso to rule 7(4) of the Punjab Agricultural Produce Markets (Election to Market Committee) Rules, 1961, hereinafter referred to as the election rules.

To constitute a market committee for the market area of Talwandi Bhai an election programme was published under rule 5 of the election rules according to which the nomination papers had to be filed on March 16, 1965, the date of scrutiny was fixed as 18th March, 1965, the candidates could withdraw their nominations by 22nd March and the polling had to be done on the 4th of April, 1965. The result of the election was to be declared on the following day, i.e., on the 5th of April, 1965. 18th of March was, however, declared a holiday and so the date of scrutiny was advanced to March 19, 1965. Two members from amongst the persons licensed under section 10 of the Act in the market area in question had to be elected to the said market committee. On March 16, 1965, the following persons filed their nomination papers for the above-said two seats. These papers were filed in the office of the Returning Officer, who was the S.D.O., Ferozepore:—

- (1) Gian Chand, son of Labhu Ram, Proprietor of Messrs Aroora Mal-Labhu Ram, petitioner in C.W. No. 1032 of 1965.
- (2) Nisha Ram, petitioner in C.W. No. 1033 of 1965.
- (3) Sohan Lal.
- (4) Des Raj, respondent No. 2.
- (5) Mehar Chand, respondent No. 3.

Admittedly all the above-said candidates had made the requisite deposit under rule 8 of the election rules within time and had filed their nomination papers in Form 7-E prescribed under the election rules. The prescribed forms were issued from the office of the Returning Officer. This form had to be used as required by rule 7(2) of Election Rules for nomination of candidates for election from licensees under section 10 of the Act. The proposer had to sign the proposal contained in the form wherein he had to give the name of the candidate, the name of the market committee for which his name was being proposed, the full address and electoral number of the proposer, the name of the candidate's father or husband, the name of the firm which the candidate represented, the licence number and address of that firm and the signatures of the proposer. Under the proposal duly signed by the proposer, the candidate had to sign a declaration to the effect that he was duly authorised representative of the firm in question, that his firm was a licensee under section 10 of the Act and that the candidate agreed to his nomination. The next part of the prescribed form contains the following certificate which, according to the form, had to be signed by the Chairman of the Market Committee under his, dated signatures:

Gian Chand
v.
The Returning
Officer and
others

Narula, J.

"I do hereby certify that Shri ———(name of the candidate) son of Shri ——— is a licensee of the Committee under section 10 or he is a duly authorised representative of M/s ——— which is a licensee of the Committee under section 10."

Then follows, in the prescribed form, the certificate of delivery which had to be serially numbered, dated and signed by the Returning Officer. Below the above-said form is appended the form for the certificate of scrutiny wherein the Returning Officer had to state whether he was accepting the nomination or rejecting it and the reasons for such rejection. In case the nomination form was accepted, the symbol assigned to the candidate was to be noted by the Returning Officer.

On the 19th of March, 1965 the Returning Officer scrutinised the nomination papers of the above-said candidates and rejected those of Gian Chand, petitioner, Nisha Ram and Sohan Lal, on the ground that the certificate reproduced above had not been signed by the Chairman of

Gian Chand
v.
The Returning
Officer and
others
Narula, J.

the Market Committee. The requisite certificates on the respective nomination papers of respondents Nos. 2 and 3 were found to be duly signed by respondent No. 4, Shri Gurdit Singh, Chairman of the Market Committee, Talwandi Bhai. As a result of this rejection of the nomination papers of Gian Chand, petitioner, and the above-named other two persons, (i.e., Nisha Ram and Sohan Lal), Des Raj and Mehar Chand, respondents Nos. 2 and 3 were, in due course, declared to be elected unopposed to the Market Committee in question as representatives of the licensees under section 10 of the Act. A copy of the impugned order of rejection passed by Shri Gurnam Singh, Sub-Divisional Officer (Civil), Ferozepore on March 19, 1965 is attached to the writ petition. On March 27, 1965, Gian Chand, petitioner, filed this writ petition for an appropriate writ, order or direction to set aside and quash the above-said order of the Returning Officer. Similarly, Nisha Ram, filed C.W. No. 1033 of 1965, for the same relief. The following further facts are admitted in this case:—

1. That the Returning Officer did have with him an electoral roll of the licensees of the area in question under section 10 of the Act wherein entry No. 17 was to the following effect:—

| Serial No. | Name of the licensee and that of father husband | Name of the firm if any | No. of the licence and the date of issue | No. of the shop | Permanent Address |
|------------|---|-------------------------|--|-----------------|-------------------|
| 17 | Gian Chand, son of Labhu Ram | Aroora Mal, Labhu Ram | 236, 13-3-51 45 | 14 | Talwandi Bhai." |

2. That not having been able to secure the signatures of the Chairman of the Market Committee in the circumstances hereinafter detailed the petitioner had appended to the nomination paper the original licence (under section 10 of the Act) of his firm showing that the petitioner's firm was a licensee, that its licence had been validly extended till 31st March, 1966 and that the petitioner represented the firm.

- | | |
|--|---|
| <p>3. That no objection in writing was made to the nomination paper of the petitioner.</p> <p>4. That the objection, which was raised to the petitioner's nomination paper was put before the Returning Officer by an Advocate, who was appearing for Shri Des Raj and not by Des Raj himself.</p> | <p>Gian Chand v. The Returning Officer and others <hr/>Narula, J.</p> |
|--|---|

Separate written statements have been filed in this case by Shri Gurnam Singh, the Returning Officer, respondent No. 1, by M/s Des Raj and Mehar Chand, respondents Nos. 2 and 3 and by Shri Gurdit Singh, respondent No. 4, the Chairman of the Market Committee. A reference to the relevant parts of those written statements will be made at the appropriate places where the questions to which those extracts relate are discussed.

At the hearing of the writ petition Ch. Roop Chand, Advocate has stressed only the following facts in support of his client's case:—

- (1) That the provisions of rule 7(3) of the Election Rules, which require the certificate in question being appended to the nomination paper, are merely directory and not mandatory. If for any reason it becomes impossible to obtain the requisite certificate, the nomination paper should not be rejected, if other authentic evidence of the facts sought to be certified by the Chairman of the Market Committee is available before the Returning Officer and he is satisfied from that evidence that the candidate is a licensee or is the duly authorised representative of a licensee under section 10 of the Act.
- (2) If for any reason technicality rather than substance has to be allowed to prevail in this matter of election, then the objection raised by the Advocate, for Des Raj could not have been taken cognizance of by the Returning Officer as he has no jurisdiction to entertain and adjudicate upon an objection raised by any one through an Advocate. Rule 9 of the Election Rules requires that an objector can raise an objection to a nomination only in person and not through a counsel.

Gian Chand
 v.
 The Returning
 Officer and
 others

 Narula, J.

- (3) That a Returning Officer has the jurisdiction to reject a nomination paper only on the ground of non-eligibility of a candidate and on no other ground. Want of the requisite certificate does not render a candidate to be non-eligible.
- (4) that the petitioner as well as the Tehsildar having been misled by a copy of the rules which did not show that anyone other than the Chairman of the Market Committee could sign the requisite certificate and the Tehsildar having declined to sign the certificate in question though approached for the purpose on the solitary ground that he was not authorised in law to do so, the petitioner should not suffer for no fault of his and on account of the mistake of the Government office.
- (5) that the action of Gurdit Singh, respondent No. 4, in avoiding to sign the requisite certificate was deliberate and *mala fide* and was motivated by a desire to get Des Raj and Mehar Chand, respondents Nos. 2 and 3 elected unopposed. The election of respondents Nos. 2 and 3 and the rejection of the nomination paper of the petitioner brought about by such *mala fide* action tainted with fraud should not be allowed to hold the field.

In order to have a correct and detailed factual perspective of the whole case it appears to be more convenient to deal with the last point raised by the learned counsel for the petitioner, in the first place. This point no doubt involves a somewhat disputed question of fact. But on the facts and in the circumstances of this case it is necessary that the said disputed question of fact relating to the alleged *mala fides* of respondent No. 4, should be decided in this case. Moreover on the record before me it does not at all appear to be difficult to decide that question.

I may first take up the story of the petitioner as given in the writ petition. He says that in order to obtain the requisite certificate, the petitioner along with Shri Kanwar Sain, son of L. Lakhpat Rai of M/s Kanwar Sain-Lal Singh of Talwandi, went to the office of the Market

Committee on 16th March, 1965, and after having made the requisite deposit under rule 8 of the Election Rules wanted to get the certificate in question from the Chairman, but was informed by the Secretary that the Chairman was not in his office. Thereafter the petitioner went to the house of the Chairman in the town of Talwandi Bhai, along with Kanwar Sain, above-named. It is stated that the Chairman was found at his house and was requested to sign the certificate, but he directed the petitioner to proceed to the office of the Sub-Divisional Officer, Ferozepore and that the Chairman would be following him there and would sign the certificate at Ferozepore. Thereupon, it is alleged by the petitioner, he proceeded along with Kanwar Sain to Ferozepore and reached the office of the Returning Officer and waited there up to 12 noon, but Gurdit Singh, Chairman, did not turn up. The petitioner then went to the District Courts to find out if Gurdit Singh was there. The petitioner was able to locate Gurdit Singh in the District Courts, but he was again directed to go to the office of the Sub-Divisional Officer, where the Chairman promised to reach very soon to sign the certificate. When the petitioner was waiting in the precincts of the office of the Sub-Divisional Officer, one Shri Handa, who was admittedly the Tehsildar at Ferozepore, happened to come there at about 2-30 p.m. One Shri Mohinder Singh Hans, son of Arjun Singh, who was a member of the Block Samiti Ghall Khurd and also wanted to file his own nomination paper for election to a seat for a producer, requested the Tehsildar to sign the certificate on the petitioner's nomination form also as the Chairman had not turned up in spite of his promise. Mohinder Singh Hans was known to the Tehsildar and to the petitioner both and, therefore, endorsed the nomination paper of the petitioner in token of establishing the identity of the petitioner. At the request of Mr. Hans, the Tehsildar offered to sign the certificate provided it was permissible for him to do so under the rules. Thereupon the Tehsildar saw a printed copy of the rules which was with the Reader in the S.D.O.'s Office, but found that according to rule 7(3) of the election rules as printed therein the certificate in regard to the candidate of a licensed firm under section 10 could only be signed by the Chairman of the Market Committee. The name of any Magistrate or Tehsildar as an alternative was not mentioned in rule 7(3) of the Election Rules. Consequently, it is alleged by the petitioner, the Tehsildar expressed his inability to do the needful. It

Gian Chand
v.
The Returning
Officer and
others

Narula, J.

Gian Chand v. The Returning Officer and others

 Narula, J.

was in the above circumstances that the petitioner was obliged to attach the original licence of his firm (which had been issued to him under the signatures of Gurdit Singh, respondent No. 4, as Chairman of the Market Committee) to the nomination papers. The petitioner did not attach any copy of the electoral roll to the nomination paper as the relevant electoral roll containing all the necessary information was admittedly available with the Returning Officer. A copy of the entry as it occurred in the said electoral roll, which was with the Returning Officer, has been filed with the writ petition and marked annexure A-2. This also shows that Gian Chand, petitioner was the authorised representative of the firm named above which was duly licensed under section 10 of the Act. Gurdit Singh, respondent had signed the nomination papers of respondents Nos. 2 and 3 on the same date, i.e., on 16th March, 1965, but had put off the petitioner and Nisha Ram in the manner indicated above. According to the petitioner the Chairman had acted in this manner fraudulently in active collusion with respondents Nos. 2 and 3. Affidavits of Kanwar Sain and Mohinder Singh Hans, named above, have been filed with the writ petition supporting that part of the above-mentioned story in which they are expected to have participated.

It is then alleged by the petitioner that since Gurdit Singh had played the above fraud in collusion with Des Raj respondent, the said opposing candidate knew that the requisite certificate on the nomination paper of the petitioner had not been signed by the Chairman and, therefore, the Advocate for Des Raj, respondent immediately raised an objection to that effect before the Returning Officer at the time of scrutiny. The counsel for Des Raj argued before the Returning Officer that the requirements of sub-rule (3) of rule 7 were mandatory and that in the absence of the requisite certificate the nomination paper of the petitioner had to be rejected. The Returning Officer agreed with the said contention raised by the counsel for the objector and turned down the argument of the petitioner to the effect that the production of the original licence read with the relevant entry in the electoral roll amounted to a substantial compliance with the requirements of law under rule 7(3) of the election rules. At the time of the scrutiny the petitioner admittedly filed an affidavit before the Returning Officer to the effect that the Chairman of the Market Committee had refused to

give the requisite certificate to the petitioner. The Returning Officer observed in his impugned order that if the Chairman had refused to oblige the petitioner, he should have got the certificate in question from a Magistrate or a Tehsildar. He held that the production of the affidavit of the petitioner and the original licence before the Returning Officer did not serve the required purpose.

Gian Chand
v.
The Returning
Officer and
others
—
Narula, J.

Thereupon the petitioner and his fellow-sufferers sent a telegram to the Deputy Commissioner, Ferozepore and also followed it up by a confirmatory letter on the same day, copies of which have been produced as annexures 'C' and 'B' to the writ petition. In those communications, the petitioner complained of the deliberate refusal of the Chairman to sign the certificate and also mentioned the fact of having attached his original licence with the nomination paper. In the complaint the petitioner also prayed for necessary action being taken against the Chairman.

In his affidavit in reply Shri Gurnam Singh, the Returning Officer, has admitted practically the entire relevant part of the petitioner's story, which related to the proceedings before him. He also admitted that the name of the petitioner was mentioned in the list of persons licensed under section 10 of the Act at serial No. 17 of the list. He, however, justified the rejection of the petitioner's nomination paper by him in the following words:—

“In sub-rule (3) of rule 7 of the Punjab Agricultural Produce Markets (Election to Market Committee) Rules 1963 (should be 1961), it is clearly provided that the nomination paper under sections 10 and 13 shall bear a certificate by the Chairman of the Committee concerned, or a Magistrate or a Tehsildar, that the candidate is a licensee of the Committee under section 10 or under section 13 is a duly authorised representative of the firm which is a licensee of the Committee under section 10 or 13 as the case may be. An omission in the printed form could not override the provisions of the said rule.”

Regarding the raising of the objection by the counsel for Des Raj and not by Des Raj himself the Returning Officer has stated that Des Raj was present in person at

Gian Chand
 v.
 The Returning
 Officer and
 others

 Narula, J.

the time of scrutiny, but he had given a *vakalatnama* in favour of his counsel. As for the allegation of the petitioner that no counter-affidavit about the facts covered by the petitioner's affidavit before the Returning Officer was filed by anyone, it is stated by the Returning Officer in his written statement, dated 6th July, 1965, that it was not thought necessary to ask the other party to file any counter-affidavit since the petitioner could have produced a certificate from a Magistrate or a Tehsildar, which he had not done. The Returning Officer has further added in his affidavit as below:—

“In fact the contention put forth by the petitioner was duly considered and the proof adduced by him in support of it was also examined carefully. Since he had not been able to show why he could not get a certificate from the Magistrate or the Tehsildar and in the absence of a certificate from the Chairman his nomination paper was rejected. There is no question of giving any unnecessary adjournment for this purpose.”

Respondents Nos. 2 and 3, who were elected unopposed, have filed a separate written statement, dated June 29, 1965, wherein they have submitted that according to the rules the certificate in question could be obtained from the Chairman or from a Tehsildar or a Magistrate and have further added as follows:—

“As a matter of fact the petitioner never contacted him (Gurdit Singh), at all on the 15th or on the 16th March, 1965. On 15th March, 1965, there was a meeting of the Market Committee at Talwandi and he was present there almost throughout the day. On the next day viz., on 16th March, 1965, the Chairman went to the District Courts, Ferozepore, in the morning for some personal work and returned in the afternoon. During this entire period the petitioner never contacted the Chairman. The whole story as alleged by the petitioner is a pure figment of his imagination. It may be stated that the nomination papers had to be filed by 16th March, 1965. There was no point for the petitioner to wait till the last day to obtain the requisite certificate from the authority concerned.”

It is significant to note that the prescribed forms for the nomination papers had been issued to all the candidates by the office on 16th March, 1965, that the nomination papers of respondents Nos. 2 and 3 had also been signed, certified and filed on 16th March, 1965 and that it was nobody's case that anything was or could be done on the 15th day of that month. It is also important to note that corroboration of the story of the petitioner is found in this affidavit of the contesting respondents to the extent that they admit that in the earlier part of the day Gurdit Singh, Chairman, had gone to the District Courts, Ferozepore and, therefore, was admittedly not available at the office of the Market Committee till the afternoon when he is supposed to have returned to the town. It is, therefore, clear that the petitioner is correct in stating that the Chairman was not in the office of the Market Committee in the morning of the 16th of March, that the Chairman had gone to the District Courts and it is very probable that the petitioner had located him in the District Courts and that the Chairman had returned from the District Courts in the afternoon and had not gone to the office of the S.D.O. The averment of respondents Nos. 2 and 3 to the effect that "during this entire period" the petitioner never contacted the Chairman indicates the collusion between these two persons and the Chairman. The two contesting respondents could not be expected to be with the Chairman during the entire forenoon of 16th March, 1965 and could not be in a position to make the above assertion on oath. If, by any chance it can be assumed that they were with the Chairman throughout the time, it further proves the collusion between them. The averment of the contesting candidates about there being no point in the petitioner having waited till the last day to obtain the requisite certificate is wholly devoid of force as it is nobody's case that the nomination papers had been issued prior to 16th March, 1965. Moreover, respondents Nos. 2 and 3, themselves got the certificates signed on the 16th of March, 1965, from Gurdit Singh.

It is then contended in the written statement of respondents Nos. 2 and 3, that the petitioner could have obtained the requisite certificate from the Tehsildar or the Magistrate. The circumstances in which this was not done have already been referred to above in the version of the petitioner. The petitioner's version, regarding the refusal of the Tehsildar appears to be wholly truthful. The

Gian Chand
v.
The Returning
Officer and
others

Narula, J.

Gian Chand Election Rules were published by the Punjab Government
 v. notification, dated August 30, 1961, (1961, Lahore Law
 The Returning Officer and Times, Part V, page 61). Rule 7(3) as contained therein
 others reads as follows:—

Narula, J.

“The nomination paper shall bear a certificate by a Magistrate or Lambardar or Panch or Sarpanch that the candidate is a producer and resident of the notified market area or is a licensee under section 10 or section 13, as the case may be.”

The above rule is stated to have been subsequently amended. The Government publication of the Election Rules printed by the Controller of Printing and Stationery, Punjab, as amended up to 1st November, 1962, contains rule 7(3) of the aforesaid rules in the following words:—

“The nomination paper shall bear a certificate in the case of a producer by a Magistrate, Lambardar, Panch or Sarpanch, that the candidate is a producer and resident of the notified market area, and, in the case of a licensee under section 10 or 13, by the Chairman of the Committee concerned that the candidate is a licensee of the Committee under section 10 or section 13 or is a duly authorised representative of the firm which is a licensee of the Committee under section 10 or section 13, as the case may be.”

The prescribed form ‘E’ under rule 7 had been officially published and was in conformity with the above-quoted rule and did not indicate that there was any alternative authority, who could sign the requisite certificate other than the Chairman of the Market Committee. When the respondents, at the hearing before me insisted that a Magistrate or a Tehsildar also had the authority to sign the requisite certificate, further research was made and it was found that sub-rule (3) of rule 7 of the Election Rules had been subsequently amended by the Punjab Government notification, dated 9th August, 1963, wherein the alternative authority had been given to the Tehsildar to sign such a certificate. Even the copy of the rules in the High Court Library, which was provided to me at the hearing of this writ petition, during September, 1965, did not contain the above-said amendment. It could, therefore, be safely presumed that the copy of the rules, which was

shown to the Tehsildar, was like the copy that was in the office of this Court and the Tehsildar would naturally have declined to sign the certificate which, according to the rules shown to him, could be signed only by the Chairman of the Market Committee.

Gian Chand
v.
The Returning
Officer and
others

Narula, J.

When this writ petition came up before Dua, J. and myself at the Motion stage on April 21, 1965, we directed that the petitioner should apply for impleading the above-named Tehsildar in question as a party to this case. We gave the above direction after perusing the writ petition as there would be no fault attached to the conduct of the petitioner if the story about the petitioner having approached the Tehsildar and the Tehsildar having declined to sign the certificate was found to be correct. If the Tehsildar could recollect the facts ascribed to him, it could have furnished conclusive evidence of the truth or otherwise of that part of the petitioner's story. We, therefore, admitted the writ petition with the above-said direction.

In pursuance of the orders of the Motion Bench the petitioner submitted C.M. No. 190 of 1965, under order 1, rule 10 of the Code on May 21, 1965, for impleading Shri Handa, Tehsildar, Ferozepore as a respondent in the case. The application was granted by me on July 12, 1965. Notice of the writ petition returnable for July 15, 1965, was thereupon issued to Shri Handa. The notice was received back unserved with the report that the Tehsildar was on leave, for the period 14th July, 1965 to 23rd July, 1965. I, therefore, passed a detailed order on July 15, 1965, to the effect that it was necessary to effect service on the Tehsildar and, therefore, adjourned the hearing of the case to August 3, 1965, and directed actual date notice to be issued to the Tehsildar for that date. A specific direction was ordered to be given in the notice, which was to be sent to the Tehsildar that he had to file his written statement in this Court on or before 1st August, 1965. The notice of the case was then duly served on Shri Krishan Gopal Handa, Tehsildar, Ferozepore. Mr. Agnihotri, Advocate, appeared for Mr. Handa, before me on August 30, 1965 and prayed for time to enable his client to file an affidavit in reply to the main petition. In pursuance of the request made on behalf of the Tehsildar three weeks' time was allowed to him and the hearing of the case was adjourned to September 27, 1965. During the course of

Gian Chand
 v.
 The Returning
 Officer and
 others

 Narula, J.

hearing of the writ petition on 27th September, 1965, I indicated to the learned counsel appearing for the respondents that I would presume the petitioner's version of what happened before the Tehsildar, Ferozepore, on 16th March, 1965 to be correct if a detailed affidavit of the Tehsildar to the contrary was not produced. At the conclusion of the hearing on 29th September, 1965, I expressed an inclination to call the Tehsildar personally to depose about the facts before me. Thereupon Shri Lachhman Dass Kaushal, the learned Deputy Advocate-General, was informed by his junior counsel that possibly an affidavit of the Tehsildar had been received in his office and he would produce the same before me. On that very afternoon half a sheet of paper on which the affidavit of Shri Krishan Gopal Handa, Tehsildar, Ferozepore attested by the S.D.M., Ferozepore on 15th September, 1965 is engrossed in the following words was produced before me:—

“I Krishan Gopal Handa, solemnly affirm that what is stated in my No. 276/Teh., dated 31st July, 1965 is stated according to my knowledge and belief and on the basis of information derived from the official record and I believe the same to be true.”

I immediately pointed out to the learned Deputy Advocate-General that the above-quoted affidavit of the Tehsildar was wholly useless in the absence of a copy of the communication, dated 31st July, 1965, referred to therein being furnished to me. I was told that the judgment may be reserved and that the copy of the communication in question would be given to me within a week or two. On 3rd November, 1965, Shri L. D. Kaushal, the learned Deputy Advocate-General handed over to me a copy of the communication in question, dated 31st July, 1965, duly attested by the Naib Tehsildar, Ferozepore with a covering letter of the Tehsildar. The facts sworn to by Shri Krishan Gopal Handa as contained in the said communication may best be reproduced in Mr. Handa's own words:—

“Reference your honour's order in connection with writ mentioned above, I beg to submit that Shri Gian Chand met me in the office of Sub-Divisional Officer (Civil), Ferozepore. He was identified by Sh. Mohinder Singh Hans, member Block Samiti, Ghall Block, Tehsil Ferozepore.

He wanted me to issue a certificate so that he could contest the election of Market Committee, Talwandi Bhai. I demanded the rules in this connection. A book was shown to me wherein only Chairman of the Committee was authorised to issue such certificate. On this I regretted my inability to issue the required certificate because according to rules shown to me I had no authority to issue such certificate. After this Gian Chand went away. I do not know what happened afterwards."

Gian Chand
v.
The Returning
Officer and
others
Narula, J.

It is, therefore, obvious that the version of the petitioner as to what happened before the Tehsildar is correct in its entirety. This written statement of the Tehsildar completely knocks out the bottom of the case of respondents Nos. 2 to 4. It also proves that the petitioner was not wanting in going even to a Tehsildar for getting the requisite certificate and it was only due to the Government's inefficiency in providing an unamended book of the rules to the office of the Sub-Divisional Officer, Ferozepore, that the Tehsildar could not oblige the petitioner.

Gurdit Singh, respondent No. 4, has filed a brief affidavit in reply to the writ petition. It appears to have been prepared on the same typewriter by which the written statement of respondents Nos. 2 and 3 has been typed. He denies that the petitioner contacted him either on the 15th or 16th of March, 1965. The allegation about the 15th of March, appears to have been made only to support the argument of respondents Nos. 2 and 3 as the petitioner has nowhere mentioned that he ever made any attempt to contact the Chairman on that day. Relating to the contents of the writ petition, of which Gurdit Singh, respondent had notice, he has merely stated as below in paragraphs 3 and 4 of his affidavit, dated 12th July, 1965:—

"3. That on 16th March, 1965, the deponent went to the District Courts, Ferozepore in the morning and came back in the afternoon. On that day too the petitioner never contacted the deponent either in Talwandi or in the District Courts compound.

4. That it is incorrect that the deponent did not sign the nomination paper of the petitioner—Gian Chand, for any ulterior reason."

Gian Chand
 v.
 The Returning
 Officer and
 others

 Narula, J.

This also shows that the version of the petitioner about Gurdit Singh, Chairman having gone to the District Courts, Ferozepore, on 16th March, 1965 and having remained away from Talwandi till the afternoon of that day is perfectly correct. The averment of Gurdit Singh about the petitioner not having contacted him on 16th March, 1965 at any time either in Talwandi or in the District Courts at Ferozepore is, in the above circumstances, absolutely false.

The Deputy Commissioner, Ferozepore, respondent No. 5, has filed a separate written statement, dated 22nd July, 1965. There is nothing of importance in the said reply except the following facts:—

- (1) The Deputy Commissioner admits that the telegram, dated 16th March, 1965 (copy annexure 'C' to the writ petition) was received by him at 15-35 hours on 16th March, 1965.
- (2) The letter of the petitioner, dated 16th March, 1965, confirming the telegram was also received by the Deputy Commissioner's Office on 19th March, 1965.
- (3) There was no denial about the petitioner being duly authorised representative of the licensee firm, which held a valid licence under section 10 of the Act at the relevant time; and
- (4) The prescribed printed form under rule 7 of the Election Rules supplied to the candidates did not contain the above-mentioned amendment in it, but that "an omission in the printed form could not override the provisions in the said rule".

After a careful consideration of all the facts and circumstances of the case as brought out from the record before me referred to above and the original record of the office of the Returning Officer, which is before me, I conclude:—

- (i) that the petitioner did approach Gurdit Singh, respondent, for obtaining his signatures on the requisite certificate on the morning of 16th

March, 1955, but was told to follow the Chairman to the office of the Sub-Divisional Officer, Ferozepore;

- (ii) that the petitioner accompanied by Kanwar Sain did wait in the office of the Sub-Divisional Officer and having exhausted his patience went to the District Courts to search for the Chairman and the Chairman did put off the petitioner on that occasion again;
- (iii) that at the instance of Mohinder Singh Hans, Shri Krishan Gopal Handa, Tehsildar, respondent No. 6, was approached by the petitioner for signing the requisite certificate;
- (iv) that the Tehsildar, rightly tried to look up the rules and was certainly shown a copy of the unamended rules which he had no reason to believe to be incorrect;
- (v) that in view of the rules seen by the Tehsildar, he rightly declined to sign the requisite certificate as according to the rules as well as the contents of the officially prescribed form it was only the Chairman of the Market Committee, who could sign the certificate in question;
- (vi) that Gurdit Singh, respondent No. 4, deliberately avoided signing the requisite certificate on the nomination form of the petitioner in collusion with respondent No. 2 with a view to have respondents Nos. 2 and 3 elected unopposed and to oust the petitioner and the other candidates by an easy trick;
- (vii) that the above-said action of Gurdit Singh, respondent, was fraudulent and *mala fide*.

Gian Chand
v.
The Returning
Officer and
others

Narula, J.

Even if my findings on the other contentions raised by the petitioner could be against him, I would hold that the rejection of the petitioner's nomination paper having been brought about by *mala fide* and fraudulent action of respondent No. 4, the impugned order has to be set aside. In *S. Partap Singh v. State of Punjab* (1), the famous dictum of Lord Denning in *Lazarus Estates Ltd. v. Barseley* (2) was cited with approval:—

“No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud.”

(1) A.I.R. 1964 S.C. 72.

(2) (1956) 1 All. E.R. 341.

Gian Chand
 v.
 The Returning
 Officer and
 others

 Narula, J.

This is now an appropriate and convenient stage for dealing with the 4th contention of the petitioner. I have already found that the Tehsildar declined to sign the requisite certificate under a mistaken impression of the legal position inasmuch as by an amendment of which he had no knowledge he had been authorised to do the needful, but he thought that he had no such power. It is settled law that no suit or litigant should suffer on account of any fault of a Court or a Tribunal. I, therefore, find great force in this contention of the learned counsel for the petitioner and hold that the impugned order is also liable to be set aside on this additional ground. It has been argued by the learned counsel for the respondents that the impugned order does not show that the petitioner made any grievance about the Tehsildar's denial at the time of the hearing before the Returning Officer. In the circumstances enumerated above it is clear that in the presence of the petitioner the Tehsildar had seen the rules and told the petitioner that he could not sign the certificate. The petitioner could not in the nature of things doubt the correctness of that view. This being the case it would have been wholly futile for the petitioner to complain about the Tehsildar's denial before the Returning Officer.

This takes me to the main legal contention in the case which is covered by the first point urged by the learned counsel for the petitioner. The question is whether the provision contained in sub-rule (3) of rule 7 of the Election Rules is mandatory or merely directory. A statutory provision is required to be obeyed whether it is mandatory or directory. The only difference between the two sets of provisions is that in the case of a mandatory requirement, it has to be obeyed under the penalty of having the proceedings involving non-compliance with it declared void. In *Banwarilal Agarwalla v. State of Bihar and other* (3), it has been authoritatively held that no general rule can be laid down for deciding whether any particular provision in a statute is mandatory (meaning thereby that non-observance thereof involves the consequence of invalidity) or only directory (i.e., the direction the non-observance of which does not entail the consequence of invalidity, whatever other consequences may occur). But, in each case the Court has to decide the legislative intent. Their Lordships of the Supreme Court have further laid

down in that case that in order to decide whether a provision is mandatory or directory, we have to consider not only the actual words used, but the scheme of the statute, the intended benefit to public of what is enjoined by the provisions and any material danger to the public by the contravention of the same.

Gian Chand
v.
The Returning
Officer and
others
Narula, J.

In *Pratap Singh v. Shri Krishna Gupta and others* (4), it was held that distinction must be made between a certain set of rules which are vital and go to the root of the matter on the one hand and those rules breach of which can be overlooked provided there is substantial compliance with them.

It appears to me that it is as difficult as improper to attempt to lay down any inflexible general rule for deciding whether a provision of law is mandatory or directory. At the same time the following propositions can be safely deduced from the above-said and other decided cases on this point:—

- (i) In deciding whether a provision of law is mandatory or directory, it is the substance of the matter which should be the decisive criterion and not questions of mere form.
- (ii) When the relevant provision of a statute or rule is the very essence and life of the thing required to be done and is vital for fulfilling the object of the provision and goes to the root of the matter, it is usually mandatory and its non-fulfilment is fatal to the act done without complying with the requirement of the said provision or the rule.
- (iii) When the provision or the rule in question merely relates to form and manner of doing a certain thing, the provision is, in the absence of a statutory indication to the contrary, merely directory and the breach of some part of such a provision can and should be overlooked provided there is substantial compliance with the intended purpose of the provision as a whole and provided further that no prejudice has ensued from the technical breach or omission.

(4) A.I.R. 1956 S.C. 140.

Gian Chand
v.
The Returning
Officer and
others

Narula, J.

(iv) When the intention of the Legislature or of the rule making authority as to whether a particular provision or rule is mandatory or directory is not clear, it is for the Court to pronounce on the same after examination of all the relevant circumstances, e.g., the language of the provision, the scheme and object of the legislative enactment, the benefit to the public which may be likely to accrue by the strict adherence to the rule or the loss to the public which might ensue from its breach and other such considerations.

Keeping in view the scheme of the Election Rules, the object which they are likely to fulfil and the above-quoted settled principles of law, I hold that the provisions of sub-rule (3) of rule 7 are mandatory to the extent that the Returning Officer must be satisfied about the candidate being a licensee under section 10 of the Act at the relevant time or being a duly authorised representative of a licensee firm; but the said rule is directory as to the manner in which the Returning Officer has to be satisfied about the above-said requirement. The rule is vital and goes to the root of the matter only to the extent that the candidate must be a licensee under section 10. But if it is impossible to obtain the requisite certificate on the prescribed form and, therefore, in place of the certificate the original licence signed by the Chairman of the Market Committee (the person, who had to sign the certificate) is itself produced and the said original licence and the relevant entry in the electoral roll are before the Returning Officer and he peruses the same and does not doubt their authenticity and is indisputably satisfied about their contents, the nomination paper of the candidate cannot be rejected merely on account of the secondary evidence consisting of a certificate not having been produced in the face of the primary evidence of the original licence having been placed before the Returning Officer.

In the circumstances of this case it is clear that more than a substantial compliance with the requirement of rule 7(3) of the election rules had been achieved and no prejudice at all ensued to anyone by the technical breach of the formal part of that rule.

Shri L. D. Kaushal, the learned Deputy Advocate-General, has referred to the judgment of the Supreme

Court in *Shri Baru Ram v. Smt. Prasanni and others* (5) and the judgment of their Lordships of that Court in *V.V. Giri v. D. Suri Dora and others* (6) as also to the principles laid down in *Banwarilal Agarwalla v. State of Bihar and others* (3). Reference has also been made to the judgment of the Supreme Court in *Brijendralal Gupta and another v. Jwalaprasad and others* (7) and to the judgment of the Rajasthan High Court in *Balji v. Murarka Radheyshyam-Ramkumar* (8). Mr. Kaushal also cited the judgment of the Madhya Pradesh High Court in *Kamalnarain Sharma v. Pt. Dwarka Prasad Hishra and others* (9) and a judgment of the Gujarat High Court in *Laljibhai-Jodhabhai Bar v. Vinodchandra-Jethalal Patel* (10). The last case cited by the counsel for the State was the judgment of the Mysore High Court in *Kadethotada Gulappa Basappa v. Election Officer, Naregal Town Panchayat and others* (11). A careful study of all the cases cited by the learned counsel for the respondents supports what has been held above and nothing to the contrary is deducible from any of these judgments.

Gian Chand
v.
The Returning
Officer and
others

Narula, J.

In these circumstances, I hold that the mandatory part of the relevant rule had been duly complied with by the petitioner and it was only a matter of form which lacked fulfilment. The matter of the form contained in the rule is only directory and its breach can be and should be overlooked in the circumstances where substantial compliance with the pith and substance of the rule had in fact been achieved and no prejudice had been caused to anyone by the same.

This takes me to the third contention of the petitioner. Rule 9 of the Election Rules provides that the Returning Officer has to examine the nomination papers at the time of scrutiny and to hear objections, if any, raised by any objector. The scope of the objections, which he can hear

(5) A.I.R. 1959 S.C. 93.

(6) A.I.R. 1959 S.C. 1313.

(7) A.I.R. 1960 S.C. 1049.

(8) A.I.R. 1965 Raj. 23.

(9) A.I.R. 1965 M.P. 15.

(10) A.I.R. 1963 Guj. 297.

(11) A.I.R. 1965 Mysore 62.

Gian Chand
v.
The Returning
Officer and
others

Narula, J.

and allow is, however, limited by that rule. The objections, which can be given effect to, must relate to the eligibility of any candidate. The eligibility of the candidate depended in this case on the proof of the necessary qualifications of candidature being given by the petitioner. The rule does not say that the Returning Officer is authorised to reject a nomination paper merely because it lacks in some formality.

Rules 8 and 9 of the Election Rules require the nomination paper of a candidate to be rejected by the Returning Officer in certain circumstances. But non-furnishing of the certificate in question is not mentioned as any one of the eventualities in which a duty is cast on the Returning Officer to reject the nomination paper. I, therefore, hold that there is great force even in the third point urged by Ch. Roop Chand.

In the view that I have taken of the above-said four contentions of the learned counsel for the petitioner, it is not necessary to decide the second point raised by him. *Prima facie*, however, it appears that if the petitioner could be ousted on a technicality like the one used against him, it can be fairly argued on the basis of a hypertechnicality that the Advocate of Des Raj had no authority to raise any objection under rule 9.

This writ petition, therefore, succeeds and is allowed. The impugned orders of the Returning Officer, dated 19th March, 1965, rejecting the nomination papers of Gian Chand and Nisha Ram, petitioners and all proceedings based thereon as well as the election of Shri Des Raj and Mehar Chand, respondents Nos. 2 and 3, based on the said illegal order are set aside and quashed. As respondents Nos. 1 and 5, the Returning Officer, Ferozepore, and the Deputy Commissioner, Ferozepore, are merely *pro forma* respondents, there will be no order as to costs against them. Shri Krishan Gopal Handa, Tehsildar, Ferozepore, the added respondent, will also bear his own costs and will not be liable to pay the costs of the petitioner as he has not opposed the writ petition. Respondents Nos. 2 to 4 would, however, pay the costs of each of the petitioners in the two respective cases.

K. S. K.