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at any earlier or subsequent point of time. This is what the learned Magistrate in fact did. On a consideration of the material placed before him by the parties, he came to the conclusion that on the date of the preliminary order, i.e., 2nd January, 1962, the property in dispute was in the possession of the respondents and not that of the petitioner, and, accordingly he declared the respondents in possession, prohibiting the petitioner from interfering with the same.

So far as the decision on the question of possession is concerned, the finding of the trial Court is supported by material on the record, and sitting as a Court of revision I do not find any justification for interfering with that finding. In these circumstances, the order of the Magistrate cannot be interfered with and the reference made by the learned Additional Sessions Judge is declined.

The petition for revision is dismissed..

K.S.K.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

PURAN SINGH,—*Petitioner.*

versus

BHARTU AND ANOTHER,—*Respondents.*

Civil Writ No. 366 of 1963.

1963

Oct., 21st.

Punjab Gram Panchayat (Amendment) Act (XXVI of 1962) S. 13-C—Punjab Gram Panchayat Election Rules—Rule 44—Whether mandatory or directory—Security for costs of an election petition deposited with the Prescribed Authority and not in the Treasury, it being closed—Whether substantial compliance of the Rule.

Held, that the provisions of section 13-C of the Punjab Panchayat (Amendment) Act, 1962 read with Rule 44 of the Punjab Panchayat Election Rules are directory and not

mandatory particularly with regard to the deposit of security for costs. The object of the provision is that money should be available to the Prescribed Authority for costs of the respondent in an election petition in the event of the petition being dismissed. The best way to secure compliance with the rule is, as has been laid down in the rule, that the petition should be accompanied by a treasury receipt. If this cannot be done, the treasury being closed, the next best course is to hand over the amount to the Prescribed Authority. This is a substantial compliance of the Rule as the intention of the Legislature is that the money should be in the custody of the Prescribed Authority for the costs of the respondent in case the election petition fails.

Petition Under Articles 226/227 of the Constitution of India praying that a writ of certiorari or any other appropriate writ, order or direction be issued directing respondent No. 2 to enable this court to scrutinise the legality and validity of these proceedings.

D. N. AWASTHY, ADVOCATE, for the Petitioner.

PREM CHAND JAIN, ADVOCATE, for the Respondent.

ORDER

MAHAJAN, J.—By this petition under Articles 226/227 of Constitution, the petitioner prays that the order of the Prescribed Authority passed under the Punjab Gram Panchayat (Amendment) Act, 1962, (No. 26 of 1962) be quashed. Mahajan, J.

The relevant facts are that the respondent sought to challenge the election of the petitioner to the Gram Sabha of village Kathura, tehsil Gohana, district Rohtak, under section 13-B and 13-C of the Act. This right was conferred on the respondent by the amending Ordinance and the petition had to be filed within 30 days of the notification of the Ordinance. The last date on which such a petition could be filed was the 26th October, 1962. It may be mentioned that according to section 13-B of the Punjab

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Act, no election can be called in question except by an election petition presented in accordance with the provisions of this Chapter, this Chapter being Chapter 11-A of the Act. Section 13-C (1) provides that any member of the Sabha may, on furnishing the prescribed security in the prescribed manner, present on one or more of the grounds specified in sub-section (1) of the section 13-O to the prescribed authority an election petition in writing against the election of any person as a Sarpanch or Panch. The prescribed manner is laid down in rule 44 of the Punjab Gram Panchayat Election Rules, 1960—hereinafter referred to as the Punjab Rules—Published in the Government Gazette Extraordinary, 22nd September, 1960. Rule 44 is in these terms:—

> "44. (1) At the time of, or before, presenting an election petition, the petitioner or petitioners shall deposit in the treasury or sub-treasury a sum of rupees one hundred in cash or in Government promisory notes of equal value, as security for all costs that may become payable by him or them.
>
> (2) * * * * * * * * * *'..

The respondent when he filed the election petition did not attach the required treasury receipt of Rs. 100. He, however, deposited the sum of Rs. 100. with the Prescribed Authority on the ground that the treasury had closed by 11.00 a.m. on the 26th October, 1962 and, therefore, he could not make the deposit and that the deposit be made and the receipt be obtained the next day on which the treasury was to open. The treasury was closed on the 27th and 28th October, 1962, both being holidays (Diwali holidays). On the 29th October, 1962, the amount was deposited in the treasury and the requisite receipt was obtained and attached to the election petition.

An objection was taken before the Prescribed Authority to the effect that the election petition should be rejected under section 13-E of the Punjab Act because it was not filed in accordance with section 13-C, the substance of the objection being that the treasury receipt was filed after the period of limitation and the election petition though filed within limitation was no petition in the eye of law as it was not accompanied by a treasury receipt. This objection was negatived by the Prescribed Authority with the following observations:—

> "The requisite security of Rs. 100 was deposited in the Court along with the election petition, as the time of the Sub-treasury was over, the amount of the security was then deposited in the treasury on the next working day, i.e., on 29th October, 1962, by the order of the Court. As the requisite security was deposited with the Court within time and along with the election petition in cash, by the petitioner, I do not think any contravention of the rules has taken place. I, therefore, dismiss the preliminary objection regarding issue No. 2 raised by the counsel for the respondent."

As already stated, it is against this order that the present petition under Articles 226/227 of the Constitution is directed.

The contention of the learned counsel for the petitioners is that the order of the Prescribed Authority is patently erroneous in law. The argument is that the requirements of section 13-C read with rule 44 of the Rules are mandatory and not directory. It is common ground that if the requirements are mandatory, the contention must be sustained, but if the requirements are held to be directory it must be rejected.

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Learned counsel for the respondent has also raised an alternative contention that even if it be held that the requirements are mandatory, the petition must fail because on the 26th October, 1962, the respondent was entitled to present the petition up to 4-30 p.m. and as the treasury had closed by 11-00 a.m. he could not effectively exercise that right and, therefore, the presenting of the petition on the 29th October, 1962, would be in order. For this proposition reliance is placed on section 8 of the Punjab General Clauses Act, and on *Mahbub Ali* v. *B. Bishan Singh,* (1) and *Rakhadoo Issoo Kohari* v. *Narayan* (2).

In my view, it is not necessary to decide the alternative contention of the learned counsel for the respondent because I am of the view that the provisions of section 13-C of the Punjab Act, read with rule 44 are directory and not mandatory particularly, the matter with regard to the deposit of Rs. 100. If there has been a substantial compliance with these provisions of law, it would not be fatal so far as the respondent is concerned. In support of my conclusion I propose to set out my reasons, apart from the authorities that have been cited before me to support the respective contentions of the parties.

The object of the provision is that money should be available to the prescribed Authority for costs of the respondent in an election petition in the event the petition is dismissed. The best way to secure compliance with the rule is as has been laid down in the rule that the petition should be accompanied by a treasury receipt. In the present case this could not be done because the treasury had closed. Therefore, the next best course was adopted, that is, the respondent parted with the amount of Rs. 100 and handed it

(1) A.I.R. 1944 Lah. 470.
(2) A.I.R. 1959 Madh. Prad. 352.

over to the Authority. So far as the respondent was concerned he was divested of Rs. 100 and by the order of the Court the money was deposited in the treasury on the 29th October, 1962, and the challan was attached to the election petition. Therefore, insubstance what the Legislature intended was complied with. In the decided cases stress has always been laid on what was the intention of the Legislature and, in my view, from the reading of the relevant provisions it is patent that the intention was that the money should be in the custody of the Prescribed Authority for the costs of the respondent in case the election petition fails.

Coming to the decided cases, the authorities in point are those under the Representation of the People Act, 1951. The relevant provisions of this Act are section 85 and 117 and for facility of reference they are reproduced hereunder:—

"85. If the provisions of section 81 or section 82 or section 117 have not been complied with, the Election Commission shall dismiss the petition:

Provided that the petition shall not be dismissed without giving the petitioner an opportunity of being heard."

"117. The petitioner shall enclose with the petition a Government Treasury receipt showing that a deposit of two thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Election Commission as security for the costs of the petition."

Section 81 deals with the method of presentation of an election petition and section 117 provides that

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if the provisions of sections 81 and 82 (that is, parties to the petition) and 117 are not complied with, the Election Commission shall dismiss the petition.

It will be noticed that section 117 provides that the petitioner shall enclose with the petition a Government Treasury receipt showing that a deposit of Rs. 2,000 has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Election Commission as security for the costs of the petition. Therefore, both under the Punjab Act and under the Central Act, the requirement is almost identical, though the phraseology is different. In either event, non-compliance with the form in either of the cases would entail the dismissal of the petition. Under the Central Act, the matter directly came up before their Lordships of the Supreme Court in *K. Kamaraja Nadar* v. *Kunju Thever* (3) *and Chandrika Prasad Tripathi* v. *Shiv Prasad Chanpuri* (4). In *Kamaraja's* case, the deposit was not made in the name of the Secretary to the Election Commission. It was made in the name of the Election Commission and the objection raised was that as the provisions of section 117 had not been complied with, the petition must be rejected under section 85 of the Act. This contention was not accepted by their Lordships of the Supreme Court. While dealing with the matter, at page 696 their Lordships observed as follows:—

> "The extreme case illustrated above has been taken by us only in order to demonstrate to what lengths a literal compliance with the provisions of section 117 can be pushed. The petition is to be presented to the Election Commission, the security for the costs of the petition has to be given to the

(3) A.I.R. 1958 S.C. 687.
(4) A.I.R. 1959 S.C. 827.

Election Commission and section 121 provides for an application to be made in writing to the Election Commission for payment of costs by the person in whose favour the costs have been awarded and yet, even though the deposit may have been made by a petitioner in favour of the Election Commission and a Government Treasury Receipt evidencing the same be enclosed along with his petition the provisions of section 117 of the Act can be said not to have been complied with merely because the deposit was made in favour of the Election Commission and not in favour of the Secretary to the Election Commission. The relationship between the Election Commission on the one had and the Secretary to the Election Commission on the other need not be scrutinized for the purposes of negativing the contention. It is enough to say that such a contention has only got to be stated in order to be negatived. 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 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 petitioner should furnish security for the costs of the petition, and should enclose along with the petition a

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Government Treasury receipt showing that a deposit of one thousand rupee 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."

In *Chandrika Prasad Tripathi's case,* the matter arose in somewhat similar circumstances. The objection in that case was that in the form of the security deposited, it was stated that the amount was refundable by order of the Election Commission implying thereby that it could not be utilised by the Election Commission for the purpose for which it was deposited. Their Lordships followed their earlier decision in *Kamaraj's case* and observed as follows:—

"* *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 requirements the tribunal should not dismiss the election petition under section 90, sub-section (3) on technical grounds".

Therefore, there is a clear authority for the view that the provisions with regard to deposit of security, if substantially complied with, shouuld be construed as directory and not mandatory, though they are couched in a mandatory language.

Mr. Avasthy, learned counsel for the petitioner, vehemently contended that the decisions in the cases of *Kamaraja and Chandrika Prasad Tripathi* cannot apply to the facts of the present case. His contention

is that the phraseology in the Punjab Act is different from that in the Representation of People Act. That is so, but then the substance of both the provisions in both the Acts is the same and both the provisions are directory and I see no point of distinction between the two.

On the other hand, Mr. Avasthy has strongly relied on the decision of the Supreme Court in *Hari Vishnu Kamath* v. *Ahmad Ishaque* (5), wherein rule 47 of the Representation of People (Conduct of Elections and Election Petitions) Rules, 1951, fell for interpretation by their Lordships of the Supreme Court. The contention was that the non-compliance with rule 47 (1) (c) would not cause rejection of the ballot-paper because it was directory and not mandatory. Their Lordships repelled this contention because rule 47 read as a whole led to the irresistible conclusion that the entire rule was mandatory and not directory. Once it is held that a particular rule is mandatory, there can be no question of substantial compliance. The other case relied upon by Mr. Avasthy was *Collector of Monghyr* v. *Keshav Prasad Goenka* (6). Both the decisions in *Hari Vishnu Kamath* and *Collector of Monghyr's cases* are of no assistance to the learned counsel for the petitioner, particularly in view of the decision of their Lordships of the Supreme Court in *Kamarja's and Chandrika Prasad Tripathi's cases*. I have no doubt that the Prescribed Authority in the present case came to the right conclusion in the matter.

For the reasons given above, this petition fails and is dismissed, but in view of the difficult nature of the question involved, there will be no order as to costs.

B.R.T.

(5) A.I.R. 1955 S.C. 233.
(6) A.I.R. 1962 S.C. 1964.