Before A. D. Koshal and P. S. Pattar, JJ.

DHARAM SINGH AND ANOTHER,—*Petitioners.*

versus

THE EXECUTIVE MAGISTRATE IST CLASS, PANIPAT AND OTHERS,—*Respondents.*

C.W. 884 of 1972

September 9, 1974.

Haryana Gram Panchayat Election Rules (1971)—*Rules* 6 *and* 7—*Panchayat elections—Provision of security deposit under rule* 7—*Whether mandatory—Filing of a receipt of such deposit along with nomination papers—Whether directory—Nomination papers without the receipt—Whether liable to be rejected.*

Held, that rule 7 (1) of Haryana Gram Panchayat Election Rules 1971 requires that each candidate to a Panchayat election shall, at or before the time of delivery of his nomination paper (i) make a deposit, and (ii) produce a receipt evidencing the deposit, but despite the use of the word "shall" in relation to both the requirements of making the deposit and producing the receipt, these two requirements have been placed by the rule-making authority on two different pedestals in so far as the consequences flowing from a non-compliance with them are concerned. A failure to make the deposit results in the serious consequence of the nomination being invalidated. No such penalty is, however, stated to be the desert of a candidate who merely fails to produce the receipt. Obviously, the requirement of making the deposit was regarded as the substance of what the rule seeks to accomplish and a non-compliance with it as a material irregularity entailing a serious penalty; while the requirement of the production of the receipt is not considered to be of any real importance so that no penalty is declared to flow from its non-observance. The provision regarding security deposit must, therefore, be held to be mandatory requirement of the rule and non filing of the receipt of such deposit with the nomination papers only a directory one. Thus, a nomination paper not accompanied by a receipt evidencing the security deposit is not a ground for invalidity of the nomination. because it is the deposit which the rule seeks to ensure, the production of the receipt is provided for merely as a method of proof of the deposit. Now if a deposit is made but for one reason or the other the candidate making it is careless enough not to obtain or is not given a receipt or having obtained it mis-places it and on that account cannot produce it, it would not be just to visit him with the same consequences as would follow from a failure to make the deposit itself. Again, if the deposit is made to the Returning Officer at the time of delivery of the nomination paper, he

would have personal knowledge of the deposit having been made and the production of the receipt would be a surplusage and serve no useful purpose. The distinction appears to have been advisedly made. Hence a nomination paper without a receipt of security deposit is not liable to be rejected.

Case referred by Hon'ble Mr. Justice S. S. Sandhawalia on 24th September, 1972 to a larger bench for deciding an important question of law. ..The larger .bench .consisting .of .Hon'ble Mr. Justice A. D. Koshal and Hon'ble Mr. Justice Pritam Singh Pattar has finally decided the case on 9th September, 1974.

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of Certiorari or any other appropriate writ, order or direction be issued quashing the order of respondent No. 1, dated 20th January, 1972 and further praying that pending the final decision of the writ petition, the operation and implementation of the impugned order in the form of fresh election be stayed.

Surinder Sarup, Advocate, *for the petitioner.*

H. N. Mehtani, Assistant Advocate-General (Haryana), *for respondent No.* 1.

Jinendra Kumar Sharma, Advocate with Shri Y. K. Sharma, Advocate, *for respondent* 2.

JUDGMENT

KOSHAL, J.—(1) The facts giving rise to this petition under Articles 226 and 227 of the Constitution of India are not in dispute and may be shortly stated. The seven petitioners and respondent No. 2 (hereinafter referred to as the respondent) were candidates for election as Panches to the Gram Panchayat in village Seenkh, Tahsil Panipat, district Karnal. All of them deposited the requisite amount of security with the village Lambardar, who however did not issue any receipt to anyone of them, and on that account no such receipt was attached to any of the nomination papers filed by them with the Returning Officer, before whom no objection was taken by any of the contestants that any nomination paper was invalid for the reason that the receipt for the security deposit was not appended thereto. All the eight nomination papers were accepted by the Returning Officer and in the resultant contest of the ballot which was held on the 29th June, 1971, the seven petitioners were declared elected while the respondent remained unsuccessful.

The respondent filed an election petition under section 13-B of the Punjab Gram Panchayat Act, 1952 (hereinafter referred to as the Act). The same was allowed by the Executive Magistrate 1st Class, Panipat (respondent No. 1) on the ground that the election of the petitioners was void inasmuch as none of them had attached the receipt for the deposit of security with his nomination paper in accordance with the requirement of Rule 7(1) of the Haryana Gram Panchayat Election Rules, 1971 (hereinafter referred to as the Rules). Reliance by the learned Magistrate was placed on *Nasib Singh* vs. *J. S. Puri and others* (1) in which Tuli, J., interpreted Rule 7(1) of the Gram Panchayat Election Rules, 1960, which is in terms identical with Rule 7(1) of the Rules, to mean that if the receipt evidencing the deposit of security was not produced along with a nomination paper, such paper must be rejected.

(2) The case was originally laid before Sandhawalia, J., who on a detailed consideration of Rule 7(1) of the Rules and the judgment in *Nasib Singh's case* (supra), expressed the opinion that the law laid down in that case was not correct and that the production of the receipt evidencing the deposit of security by a candidate along with his nomination paper could at best be regarded as a direction, non-compliance with which would not be fatal to the validity of the nomination paper. It was at his instance that the case was referred to a larger Bench, and is before us.

(3) Rules 6 and 7(1) of the Rules may be reproduced here with advantage:—

"6. *Nomination of Candidates.*

"(1) Any person who is not disqualified under sub-section (5) of section 5 of the Act may nominate himself as a candidate for election as Panch; provided that on the date, time and place fixed under rule 3, he delivers in person to the Returning Officer a nomination paper completed in the prescribed form.

(2) The nomination of each candidate shall be made on a separate nomination paper in Form I and must be subscribed by the candidate himself as assenting to the nomination.

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(1) 1969 P.L.R. 340.

(3) The nomination papers of a member of the Scheduled Castes shall also be accompanied by a declaration verified by a Magistrate, Kanungo, Patwari, Lambardar or a member of a local authority or the Haryana State Legislature that the candidate is a member of the Scheduled Castes, specifying the particular caste to which the candidate belongs.

"7. *Deposits.*

"(1) Each candidate nominated under the provisions of rule 6, shall, at or before the time of delivery of his nomination paper, deposit, or cause to be deposited, a sum of Rs. 50 and in the case of a Scheduled Caste candidate a sum of Rs. 20 either in the treasury or sub-treasury or with the local Lambardar or the Returning Officer and produce a receipt obtained from the treasury or sub-treasury or from the Lambardar, or the Returning Officer, as the case may be, and no candidate shall be deemed to be duly nominated unless such deposit has been made."

In holding that the production of the receipt along with the nomination paper was a *sine qua non* for the letter's validity under the corresponding rule 7(1) of the Gram Panchayat Election Rules, 1960, Tuli, J., observed in *Nasib Singh's case*:

"The question arises whether the provisions of Rule 7 are mandatory or merely directory. The bare reading of this rule shows that its provisions are mandatory. The receipt has to be appended to the nomination paper in order to prove that the security deposit has been made and the only mode to prove that fact has been prescribed in this rule, that is, the production of the receipt obtained from the person with whom the deposit is made and no other mode of proof of deposit of security is allowed. Since admittedly no receipt proving the deposit of security had been produced with the nomination papers by Respondents 2 and 3, their nomination papers were improperly accepted and the improper acceptance of their nomination papers has prejudicially affected the result of the election."

With all respect, we cannot subscribe to this view. It is to be noted that the form in which a nomination paper is to be filed and the

documents which must accompany it are the subject-matter of Rule 6. Rule 7(1) does not talk of any such documents. On the other hand, it requires that each candidate shall, at or before the time of delivery of his nomination paper—

(i) make a deposit, and

(ii) produce a receipt evidencing the deposit, and further declares that—

"no candidate shall be deemed to be duly nominated unless such deposit has been made".

It is clear that despite the use of the words "shall, at or before the time of delivery of his nomination paper" in relation to both the requirements of making the deposit and producing the receipt, these two requirements have been placed by the rule-making authority on two different pedestals in so far as the consequences flowing from a non-compliance with them are concerned. A failure to make the deposit results in the serious consequence of the nomination being invalidated. No such penalty is, however, stated to be the desert of a candidate who merely fails to produce the receipt. Obviously, the requirement of making the deposit was regarded as the substance of what the rule seeks to accomplish and a non-compliance with it as a material irregularity entailing a serious penalty; while the requirement of the production of the receipt was not considered to be of any real importance so that no penalty was declared to flow from its non-observance. The former must, therefore, be held to be a mandatory requirement of the rule and the latter only a directory one. Had the rule-making authority intended not to make any such distinction and to invalidate the nomination in the event of non-compliance with either requirement, it would have stated so in explicit terms, and the relevant clause in Rule 7 would have been—

"and no candidate shall be deemed to be duly nominated unless such deposit has been made and such receipt has been produced".

(4) We are further of the opinion that there are good reasons for a failure to produce the receipt not being declared to be a ground for the invalidity of the nomination. While it is the deposit which the rule seeks to ensure, the production of the receipt is

provided for merely as a method of proof of the deposit. Now, if a depsit is made but for one reason or the other the candidate making it is careless enough not to obtain or is not given a receipt or having obtained it mis-places it and on that account cannot produce it, it would not be just to visit him with the same consequences as would follow from a failure to make the deposit itself. Again, if the deposit is made to the Returning Officer at the time of delivery of the nomination paper, he would have personal knowledge of the deposit having been made and the production of the receipt would be a surplusage and serve no useful purpose. The distinction appears to have been advisedly made.

(5) The contentions raised by learned counsel for the respondent in support of the proposition that both the requirements formed the essence of Rule 7(1) of the Rules and that non-compliance with either would invalidate the nomination may now be examined. The first one was based on *Baru Ram* v. *Smt. Prasanni and others* (2), *Narbada Prasad* v. *Chhaganlal and others* (3), *Nand Kishore Prasad Singh* v. *Member, Election Tribunal, Patna and others,* (4), and *Jagannath Dalai* v. *Rama Chandra Nahak and others,* (5). In the two cases decided by the Supreme Court it was held that the failure of a candidate to produce the documents which he is required to produce in pursuance of the provisions of sub-section (5) of section 33 of the Representation of the People Act, 1951, attracts the penalty of the rejection of the nomination paper which is rendered invalid by reason of such failure. The decision in each of these cases is based on the provisions of clause (b) of sub-section (2) of section 36 of the Act last-mentioned, which may be reproduced:

> "36(1) — — — — — —
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> (2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds :—
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> (a) — — — — — —

(2) A.I.R. 1959 S.C. 93.
(3) A.I.R. 1969 S.C. 395.
(4) A.I.R. (1958) Pat. 306.
(5) A.I.R. (1959) Orissa 26.

(b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or

(c) — — — — — —

These provisions lay down in unmistakable terms that if a candidate fails to comply with any of the provisions of Section 33 including sub-section (5) thereof, the Returning Officer would have to reject his nomination paper. Now sub-section (5) of Section 33 mentioned above says that where a candidate is an elector of a constituency different from the one from which he contests, a copy of the relevant part of the electoral roll of that constituency shall be produced before the Returning Officer at the time of scrutiny unless it has been filed along with the nomination paper. In holding that the failure of a candidate to produce the relevant part of the electoral roll in accordance with the provisions of Section 33(5) above-mentioned would invalidate his nomination paper, their Lordships observed in *Baru Ram's case* (supra) :

> "Where, however, the statute requires specific facts to be proved in a specific way and it also provides for the consequence of non-compliance with the said requirement it would be difficult to resist the application of the penalty clause on the ground that such an application is based on a technical approach."

and then in Narbada Prasad's case (supra) :

> "Ram Kishen had two alternatives before him. One was to produce any of the documents mentioned before the returning Officer or to have filed it earlier with his nomination paper. He did neither. — — —
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> — — — — —
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> There was no compliance with the provisions of Section 33(5) of the Representation of the People Act and there was no power in the Court to dispense with this requirement. — — — —
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> The rejection of the nomination paper of Ram Kishen by the Returning Officer was thus justified."

In the Patna case it was held that where a person challenges the election of another under the provisions of the Representation

of the People Act, 1951 but does not append to the petition a Government treasury receipt showing that he has deposited the necessary security in accordance with the provisions of Section 117 of that Act, his petition was liable to be dismissed. The case was decided in pursuance of the provisions of Section 90(3) of the Representation of the People Act, 1951, which stated in unequivocal terms that if the provisions of Section 117 were not complied with, the petition was liable to dismissal.

The Orissa case was similar and therein also a non-compliance with Section 117 of the Representation of the People Act, 1951, was held to entail a dismissal of the election petition in view of the provisions of Section 90(3).

All these authorities are clearly distinguishable and in fact go against the contention raised on behalf of the respondent. In each of them there was a statutory provision for the imposition of a specific penalty for a specific non-compliance with another statutory provision which is not the situation here. The specific provision in Rule 7(1) of the Rules is, as already stated, for a nomination to be invalidated only in case a deposit is not made and none declaring a nomination to be invalid in case of failure to produce the receipt. Thus, the language of the rule is, in our opinion, susceptible only of that interpretation which we have placed on it.

(6) Another contention raised for the respondent was that the words "such deposit" occurring in Rule 7(1) of the Rules should be construed to mean "deposit evidenced by the receipt". There is no rule of construction which would enable us to accept this interpretation of the expression "such deposit" which obviously means the deposit earlier referred to in the section and the same is a deposit of "a sum of Rs. 50/- and in the case of a Scheduled Caste candidate a sum of Rs. 20/- either in the treasury or sub-treasury or with the local Lambardar or the Returning Officer". The clause giving the particulars of the deposit and the one mentioning the receipt are connected with the conjunctive "and", and refer to two separate things so that the particulars of the one cannot be read into those of the other and the only relation between the two is that the receipt is a receipt for the deposit and not that the deposit becomes a deposit only when it is evidenced by the receipt.

(7) For the reasons stated, we accept the petition and set aside the order of respondent No. 1. The matter, however, does not

rest there because issues Nos. 2 and 3 framed by him were left undecided in view of the fact that he accepted the election petition before him on the ground of the nomination papers filed by the petitioners being invalid for the reason that they had not produced the receipts in respect of the security deposited by them. He shall, therefore, decide the said two issues after hearing the parties who have been directed to appear before him on 7th October, 1974. No order as to costs.

Pattar, J.—I agree.

Before R. S. Narula, C.J. & M. R. Sharma, J.

BALBIR SINGH,—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

C.W. No. 4333 of 1973.

September 12, 1974.

Constitution of India (1950)—*Articles* 16, 162 *and* 187—Appoint*ments to promoted ranks—Whether can be made by the Government with restrospective effect—Executive instructions issued by the Government—Whether have to be published in the official Gazette for conferring a binding status on them—Chances of promotion of a Government servant—Whether can be regarded as a condition of service.*

Held, that when public functionaries have to perform some statutory functions under the provisions of an Act, their actions can be considered to be valid only if they are taken after the appropriate powers have been conferred upon them under the provisions of a particular Act. Such functionaries in most cases decide the conflicting rights of the parties in a *quasi judicial* manner. Decisions given by them, while they were not invested with statutory powers, cannot be subsequently rendered legal by conferring these powers, on them with restrospective effect. The same considerations, however, do not apply when the competent authority after hearing the representation of an employee confers upon him the status to which he was entitled. In a given case the promotion of an employee may have to be deferred because of the pendency of some complaint