

CASE NO.:
Appeal (civil) 1734 of 2001.

PETITIONER:
M. Y. GHORPADE

Vs.

RESPONDENT:
SHIVAJI RAO M. POAL & ORS.

DATE OF JUDGMENT: 04/09/2002

BENCH:
G.B. PATTANAIK, DORAISWAMY RAJU & S.N. VARIAVA.

JUDGMENT:

PATTANAIK, J.

This appeal is directed against the order dated 28.11.2000 of the Karnataka High Court passed in an Interlocutory Application No. 31 of 1999. The appellant was declared elected to the Karnataka Legislative Assembly from 35-Sandur Assembly Constituency in the Election held during September 1999. Respondent No. 5, Heroji Lad had also contested the said election and had secured the second highest number of votes. Shivaji Rao Poal, who was the Election Agent of said respondent no. 5, filed the Election Petition under Section 81 of the Representation of People Act, 1951 (hereinafter referred to as 'The Act') challenging the election of the appellant on various grounds including the ground of commission of corrupt practice. In accordance with the prescribed procedure, the appellant on being served with the notice of the Election Petition, appeared before the High Court and filed an application for dismissal of the Election Petition under Section 86 of the Act on the ground that there has been non-compliance of Section 117 of the Act. The High Court by the impugned order having rejected the preliminary objection and having held the Election Petition to be maintainable, the present appeal has been preferred. The only question that arises for consideration in the appeal is whether there has been non-compliance of Section 117 of the Act? Section 86 of the Act in Chapter III deals with the trial of Election Petition and Section 86(1) states The High Court shall dismiss Election Petition which does not comply with the provisions of Section 81 or Section 82 or Section 117. Section 117 of the Act deals with the security for cost and reads thus:-

117. Security for costs.(1) at the time of presenting an election petition, the petitioner shall deposit in the High Court in accordance with the Rules of the High Court a sum of two thousand rupees as security for the costs of the petition.
(2) During the course of the trial of an

election petition, the High Court may, at anytime call upon the petitioner to give such further security for costs as it may direct."

There cannot be any dispute that if the High Court comes to the conclusion that the Election Petition had not complied with the provisions of Section 117, then that Election Petition has to be dismissed.

The appellant alleged that a sum of Rs.2,000/- had been deposited in the High Court of Karnataka by Heroji Lad, Respondent No.5, and not by Shivaji Rao Poal, the Election Petitioner and, therefore, there has been non-compliance of Section 117 of the Act, inasmuch as under the aforesaid provision the requirement of law is that the petitioner shall deposit in the High Court in accordance with the Rules of the High Court a sum of Rs.2,000/- as security for the cost of the petition. The High Court considered the averments made in the Election Petition to the effect that the petitioner had deposited the cost of Rs.2,000/- in the name of respondent no.5 and also the evidence of respondent no. 5 indicating that he had never deposited the security amount of Rs.2,000/-, and it is the Election Petitioner who had deposited, and considered the provisions of the Rules of Karnataka High Court as well as the document Exhibit P-5, which had been enclosed to the Election Petition, and came to hold that the deposit in question had been made by the Petitioner and the same has to be taken as security for the cost of the Election Petition, and as such there has been compliance of Section 17 of the Act. In coming to this conclusion the High Court relied upon the decisions of the Court in the cases of Chandrika Prasad, Budhinath Jha, Kamraja Nadar and M. Karunanidhi.

Mr. S.S. Javali, learned senior counsel appearing for the appellant contended with force that the conclusion of the High Court is wholly erroneous and by no stretch of imagination the amount deposited as cost under Exhibit P-5 can be construed to be a deposit made by the Election Petitioner Shri Shivaji Rao Poal, and therefore, the Election Petition ought to have been dismissed for non-compliance of the mandatory requirements of Section 117 of the Act as provided in Section 86(1). Mr. Javali, the learned senior counsel relied upon the decisions of this Court in the case of Aeltemesh Rein vs. Chandulal Chandrakar & Others 1981 (3) Supreme Court Reports 142, Charan Lal Sahu vs. Nandkishore Bhatt & Ors. 1974(1) Supreme Court Reports 294, Rajendra Singh & Ors. Etc. vs. Smt. Usha Rani & Ors. Etc. 1984 (3) Supreme Court Reports 22 and M. Karunanidhi Etc. vs H.V. Hande & Ors. Etc. 1983 (2) Supreme Court Reports - 629. Mr. Srinivcasan, learned counsel appearing for the respondent, on the other hand contended, that the Act having provided for deposit of Rs. 2,000/- as security for the cost with the sole purpose of discouraging frivolous Election Petition and for compensating the parties on the basis of the result of the Election Petition, and there being no requirement of law as to who could deposit the said amount, in the case in hand the amount having been deposited by the Election Petitioner himself the High Court rightly came to the conclusion

that there has been compliance of Section 117 of the Act, and therefore, the same need not be interfered with by this Court. According to the learned counsel the conclusion of the High Court is fortified by the evidence of respondent no. 5 who unequivocally indicated that he had never deposited the sum of Rs.2,000/- though ostensibly his name appears to be on the receipt Exhibit P-5.

Before examining the different decisions of this Court on which the parties have relied upon and looking at the provision of Section 117 of the Act, it is crystal clear to us that the aforesaid provision requires deposit of Rs. 2,000/- as security for the cost has to be made at the time of presenting an Election Petition. The object of having aforesaid provision could be to discourage entertaining frivolous Election Petitions and to make provision for cost in favour of the parties who ultimately succeed in the Election Petition. Sub-section (2) of Section 117 authorises the High Court to call upon an Election Petitioner during the course of the trial of an Election Petition, to give such further security which may be necessary, depending upon the facts and circumstances of the case. It would, therefore, be apparent that the requirement of making a security deposit of Rs.2,000/- is mandatory and the same has to be made while presenting an Election Petition, but the mode of deposit as well as the person who could make a deposit has to be complied with in accordance with the rules of the High Court in question and, as such has been held to be directory in several decisions of this Court.

In Charan Lal Sahu vs. Nandkishore Bhatt & Ors. 1974 (1) Supreme Court Reports 294, the appellant while presenting the Election Petition had not deposited the cost of Rs.2,000/-, as required under Section 117 of the Act. The Election Petition having been dismissed by the High Court on that ground, the matter had been carried to this Court and this Court held that the provisions of Section 117 of the Act are mandatory and the High Court is not competent to reduce the amount of security deposited or to dispense with it, and consequently the non-deposit of security amount along with the Election Petition leaves no option to the Court but to reject the Election Petition. We fail to understand how this decision is of any assistance to the case in hand where it is not disputed, that a sum of Rs.2,000/- had been deposited by the Election Petitioner, as is apparent from the evidence of the Election Petitioner as well as the evidence of respondent no.5.

In Aeltmesh Rein vs. Chandulal & Ors. 1981 (3) Supreme Court Reports 142 the Election Petitioner had stated in the Petition that the security amount of Rs.2,000/- was being deposited, but in fact no such deposit had been made and on that score the High Court dismissed the Petition for non-compliance of the provisions of Section 117. On an appeal being carried, this Court upheld the order of the High Court on a conclusion that under Section 86(1) there is no option left for the High Court but to dismiss an Election Petition which does not comply with the provisions of Section 117. In our considered opinion, this decision also is of no application to the case in hand unless it is held that even though the amount was deposited by the

Election Petitioner yet that would not enure to his benefit since the deposit had been made in the name of somebody else.

The next decision relied upon by Mr. Javali is the case of Rajendra Singh & Ors. Etc. vs. Smt. Usha Rani & Ors. Etc. 1984) 3 Supreme Court Reports 22. In this case the provisions of Section 117 of the Representation of People Act had not come up for consideration and on the other hand the allegation was that there has been an infraction of Section 81 (3) of the Act since the copy of the petition served upon the applicant was neither attested to be a true nor a correct copy of the original petition. Since this contention had not been raised by Mr. Javali, learned counsel appearing for the appellant we need not delve into the ratio of the aforesaid case.

In M. Karunanidhi etc. vs. H.V. Hande & Ors. etc. 1983 (2) Supreme Court Reports 629, provisions of Section 117(1) of the Representation of People Act directly came up for consideration. In this case the Assistant Registrar of the High Court directed that the amount of security be deposited to the credit of the Registrar of the High Court in the Reserve Bank of India and in pursuance to the direction, the Election Petitioner deposited the sum of Rs.2,000/- with a pre-receipted challan issued by the Accounts Department to the credit of the Registrar of the High Court and the Reserve Bank of India had made the endorsement that it has received in cash. The contention of the applicant assailing the maintainability of the Election Petition was that there has been non-compliance of Section 117(1) of the Act inasmuch as Rule 8 of the Election Petition's Rules provides that money should be deposited in the High Court in cash and that Rule must be held to be forming a part of sub-section (1) of Section 117. It was thus contended that the deposit of money to the Reserve Bank of India to the credit of the Registrar High Court cannot be construed to be a compliance of the mandatory requirements of Section 117(1) of the Act. This contention was repelled by this court and it was held that there was nothing wrong in the procedure adopted in making the deposit and when the amount so deposited with a pre-receipted challan issued by the Accounts Department to the credit of the Registrar High Court and the Reserve Bank of India made the endorsement (received in cash), it must be regarded that the payment was made in the High Court and the pre-receipted challan bearing the endorsement must be treated as the receipt of the Registrar. This Court relied upon the earlier decision of this Court in the case of K. Kamraja Nadar vs. Kunju Thevar & Ors. 1959 Supreme Court Reports 583, which was a case under the provisions of Section 117 of the Act, as it stood prior to its amendment, wherein also the receipt showed that the deposit had been made but did not show that the deposit had been made in favour of the Secretary to the Election Commission. One of the questions that arose was whether the expression 'in favour of the Election Commission', contained in Section 117, as it stood then, were mandatory in character or not, and this Court held that the first part of Section 117 though mandatory, but not the later part. It is not necessary to multiply authorities on the point, but

suffice it to say, that the sum of Rs.2,000/- must be deposited while filing an Election Petition and that is undoubtedly mandatory, but through whom the amount will be deposited etc. cannot be held to be mandatory. That being the position, and in the case in hand the evidence of the Election Petitioner as well as the evidence of Respondent No. 5 unequivocally pointing out that it is the Election Petitioner who deposited the amount of Rs.2,000/-, we see no infirmity with the conclusion of the High Court that there has been compliance of Section 117 of the Act and consequently the Election Petition has been rightly held to be maintainable and could not have been dismissed under Section 86 on the ground of non-compliance of Section 117 of the Act. We, therefore, do not find any merit in the appeal, which is accordingly dismissed. There will be no order as to costs.

