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**(2006) 05 MP CK 0036**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 10505 of 2005**

Bharti Batham

APPELLANT

Vs

State of M.P. and another

RESPONDENT

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**Date of Decision :** 02-05-2006

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Madhya Pradesh Municipal Corporation (Election Petition) Rules, 1963 — Rule 19(2)  
Madhya Pradesh Municipal Corporation Act, 1956 — Section 441

**Citation :** (2006) 3 MPLJ 487

**Hon'ble Judges :** Dipak Misra, J; Deepak Verma, J

**Bench :** Division Bench

**Advocate :** Shekhar Sharma, for the Appellant; R.S. Jha, Dy. Advocate General, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Dipak Misra, J.

In invocation of the extraordinary and inherent jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner has sought for declaration of sub-rule (2) of Rule 19 of Madhya Pradesh Municipal Corporation (Election Petition) Rules, 1963 (hereinafter referred to as "the Rules") as ultra vires the Municipal Corporation Act, 1956 (for brevity "the Act").

The requisite facts which are imperative to be stated for the appreciation of challenge by the petitioner are that the petitioner was elected as a Councillor of Ward No. 35 of the Municipal Corporation Bhopal, and his election was notified on 7-12-2004 as per Annexure P-1. One Naffees Qureshi called his election in question u/s 441 of the Act, before the learned IInd Additional District Judge, Bhopal in case No. 5-A/2005 and the said Election Tribunal by order dated 2-7-2005 allowed the election petition as a consequence of which, the election of the petitioner was set at naught.

Being dissatisfied with and aggrieved by the aforesaid order the petitioner preferred Revision No. 437/05 u/s 441-F of the Act on 8-7-2005. At the time of presentation of the Revision Petition, the petitioner had not deposited the security amount of Rs. 250/- but did so thereafter. The opposite party to the Revision Petition raised the issue of maintainability on the ground that the amount having not been deposited as required under the Rule, the Revision Petition deserved to be dismissed. As is manifest, nothing has been mentioned as to what has happened to the Revision Petition. The present petition has been filed assailing the constitutional validity of the Rule in question.

It is contended in the petition that section 441 of the Act provides for presentation of Election Petition and section 441-B provides for decision of the Election Petition. Sub-section (2) of section 441-F provides for finality of decision. It is contended that a set of rules have been framed in exercise of power conferred u/s 433 read with section 441-C of the Act and in sub-rule (2) of Rule 19, a provision has been incorporated that at the time of presentation of the petition for revision, the petitioner shall deposit with the High Court a sum of Rs. 250/- as security for the costs of the revision and if the provisions of the rules are not complied with, then the High Court shall dismiss the Revision Petition. It is urged that Rule 19 framed by the respondent is without any competence as it suffers from excessive delegation inasmuch as there is no provision in the Act empowering the authority to make such Rules and in the absence of conferral of such power, the said rule is vitiated being in transgression of the provisions of the Act.

We have heard Mr. Shekhar Sharma, learned counsel for the petitioner and Mr. R. S. Jha, learned Deputy Advocate General for the respondent State.

It is contended by Mr. Shekhar Sharma that section 441 of the Act, which deals with Election Petition, provides for limitation and deposition of security deposit but section 443-F that provides for a revision to be filed before the High Court, does not make any stipulation for payment of any security deposit and in the absence of such a postulate the same cannot be introduced in the rules. Learned counsel has further put forth that Rule 19 of the Rules which provides for such security amount to be deposited is beyond the rule making power inasmuch as such a power has not been conferred by the Act and further the provision which enables the State Government u/s 433 of the Act to make Rules, does not encompass/cover such requirement. It is highlighted by Mr. Sharma that a rule can be sustained if it does not supplant the Act and further is in consonance with the rule making power.

Mr. R. S. Jha, learned Deputy Advocate General, resisting the aforesaid submissions, contended that the conception of excessive delegation is not attracted to the case of the present nature, as Rule 19(2) falls within "general rule making power" as it lays down a condition which is permissible to be provided under the Rules. The learned counsel for the State submitted that the deposition of security amount may not have been provided in the provision which

deals with rule making power but as it pertains to general rule making power the same cannot be found fault with by inviting the principle of supplant.

To appreciate the rivalised submissions urged at the Bar, it is appropriate to refer to certain provisions of the Act. Section 441 of the Act deals with the Election Petitions. Section 441(3) deals with the conditions precedent to be satisfied before an Election Petition is admitted. Section 441-A stipulates the reliefs that may be claimed by the petitioner. Section 441-B enumerates the grounds for declaring the elections or nominations to be void. Section 441-C mandates the procedure to be followed in the disposal of the Election Petitions. Section 441-F deals with finality of decision. Sub-section (2) of the said section provides that any person aggrieved by the decision of the Court on the petition, may, within 30 days from the date of such decision, apply to the High Court for revision on certain grounds.

The Madhya Pradesh Municipal Corporation (Election Petition) Rules, 1963 have been framed in exercise of power conferred under Sub-section (1) of section 433 read with section 441 of the Act. Section 433 of the Act reads as under:

Power of State Government to make rules.- (1) The State Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for the following matters, namely :-

(a) the manner of making applications for permission to borrow money; the enquiries to be made in relation to loans and the manner of conducting such enquiries; the inspection of any works carried out by means of loans and the utilization of unexpanded balances of loans, etc;

(b) the returns, statements and reports to submitted by the Corporation;

(c) any other matter which is to be or may be prescribed.

(3) All rules made under the Act shall be laid on the table of the Legislative Assembly.

Section 441-C of the Act reads as under :-

441-C. Procedure to be followed in disposal of election petition.- An election petition shall be enquired into and disposed of according to such summary procedure as may be prescribed by rules made under this Act.

Section 441-F is as under :

441-F. Finality of decisions.- (1) No appeal shall lie against the decision of the Court on petition.

(2) Any person aggrieved by the decision of the Court on the petition may within thirty days from the date of such decision apply to the High Court for revision on any of the following grounds -

(a) that the decision is contrary to law;

(b) that the Court has exercised jurisdiction not vested in it by law or has failed to exercise jurisdiction vested in it by law;

But subject to such orders as the High Court may pass thereon, such, decision shall be final.

In exercise of the aforesaid provisions, the rules have been framed. Rule 19 of the aforesaid rules reads as under :-

Revision. - (1) No petition by way of revision shall lie against any interlocutory order passed by the Court.

(2) At the time of presentation of the petition for revision under subsection (2) of section 441-F against the decision of the Court the petitioner shall deposit with the High Court a sum of Rs. 250/- as security for the costs of the revision. If the provisions of the rule are not complied with the High Court shall dismiss the petition.

Submission of Mr. Sharma is that section 441-C does not deal with revision and section 433 does not prescribe any fee for the revision preferred before the High Court and. therefore, condition to the extent that the security amount has to be deposited along with the petition could not have been provided by the rules.

Section 433, as has been reproduced above, deals with general rule making power. Mr. Shekhar Sharma commended us to the decision rendered in the case of M/s. Lilasons Breweries (Pvt.) Ltd. and another Vs. State of Madhya Pradesh and others, . In the aforesaid case the Apex Court overturned the view of the High Court which had expressed the opinion that Rule 22 of the Madhya Pradesh Brewery Rules, 1970 had no statutory support u/s 62(2)(h) of the Madhya Pradesh Excise Act. In the said case, the Apex Court held that the payment of salary to Excise Officers is a matter between the Government and the Officers and the attempt to make up the excess of charges beyond 5% of excise duty gives it a colour and the condition of deposit of excise duty for which there was no statutory support.

In this context we may refer with profit to the decision rendered in the case of K. Ramanathan Vs. State of Tamil Nadu and Another, In the said case Their Lordships while adverting to T. N. Paddy (Restriction on Movement) Order, 1982 expressed the view that the source of power to issue an order under clause (d) of sub-section (2) of section 3 of the Act being relatable to the general powers of the Central Government under sub-section (1) of section 3, there is no reason to give a restricted meaning to the word "regulating" in clause (d) of sub-section (2) of section 3 of the Act so as not to take in "prohibiting".

While dealing with the subject of quota and penalty, this Court, in the case of R.K. Traders Vs. State of Madhya Pradesh and Others, in paragraph 14 distinguished the decision rendered in the case of M/s Lilasons Breweries Pvt.

Ltd. (supra) on the ground that the scheme of quota and penalty cannot be regarded as an attempt to collect excise duty on unlifted liquor.

In this context we may refer with profit to the decision rendered in the case of *Om Prakash and Others Vs. State of U.P. and Others*, wherein Their Lordships were considering the two provisions enumerated under sections 241 and 298 of the LLP. Municipalities Act, 1916 which empower the Municipality to frame bye-laws. Their Lordships while dealing with the prohibition to sale of eggs within the municipal limits expressed the view that notwithstanding the non-mention of "eggs" in the said provisions such a bye-law is within the bye-law making power of the Municipality. It is appropriate to extract paragraph 11 of the said decision :

IT. It is clear that u/s 298(1) a municipality has the power to make bye-laws consistent with the Act and Rules for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the municipal area and for the furtherance of the municipal administration under the Act. Sub-section (2) of the same section states in particular, and without prejudice to the generality of the power conferred by sub-section (1) that the municipality can make any bye-law described in List I.

It would not be out of place to state here that true it is, a general power to make rules to carry out or giving effect the purposes of the enactment is strictly ancillary in nature and cannot enable the authority on whom the power is conferred to extend the scope of general operation of the Act. In the case of *Bharathidasan University vs. All India Council for Technical Education*, AIR 2001 SC 2861 it was ruled that when the All India Council for Technical Education Act, 1987 defines "Technical Institution" to exclude university and empowers the All India Council for Technical Education u/s 10(1) to grant approval for starting new technical institution that power cannot be extended by making a regulation to require a university to seek approval for starting department for imputing a course in terminal education to carry out the purposes of the Act.

From the aforesaid pronouncement of law it is clear as crystal that if power is conferred to make subordinate legislation in general terms, the particularization of topics is to be construed as merely illustrative and does not limit the scope of the general power.

On a studied scrutiny of section 433(1) of the Act the language used is "may make rules for the purpose of carrying into effect the provisions of this Act". The provision empowers the State Government to make rules for the purpose of carrying into effect the provisions of the Act. Sub-section (2) of the said section stipulates that in particular and without generality of the foregoing power what rules can provide.

Submission of Mr. Sharma is that the Act does not provide for making rules for deposit as security for the costs of revision. It is his submission that the relevant rule does not flow from the enactment and in fact it is a supplant. On a perusal of the Act we do not notice any provision to which the present rule runs counter

to. As has been indicated earlier because of enumeration of certain particulars there cannot be restriction because of certain facets have been particularized. We do not perceive that the said provision has been utilized to extend the scope of the general operation of the Act. It is not such a provision by which what has been excluded in the Act has been included in the Rules. The Statute provides for filing of a revision u/s 441-F. Rule 19(2) only provides for deposit of security for the costs of the revision. Such a stipulation does not run contrary to the provisions of the statute. There is a purpose behind the same. It has nexus with the statute. It is, in a way, necessary to ensure not to have frivolous revisions. It cannot be said that it is unnecessary for giving effect to the purposes of the Act. It is extremely difficult to opine that the said condition is alien to the enactment. Indubitably such a condition, a requisite postulate, can be encapsulated within the ambit and sweep of the power that has been conferred on the authority u/s 433 of the Act. Ergo, we have no hesitation in holding that Rule 19(2) of the Rules is intra vires.

In view of the aforesaid, we do not find any substance in the submissions raised by Mr. Sharma and we have no hesitation in repelling the same and the inevitable result of the same is the dismissal of the writ petition and we so direct. There shall be no order as to costs.