

---

**(1999) 10 BOM CK 0002**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 2077 of 1997**

Govind Punjaji Kute

APPELLANT

Vs

Additional Commissioner and Others

RESPONDENT

---

**Date of Decision :** 04-10-1999

**Acts Referred:**

**Citation :** (2000) 102 BOMLR 448 : (2000) 1 MhLj 486

**Hon'ble Judges :** R.M. Lodha, J

**Bench :** Single Bench

---

## Judgement

R.M. Lodha, J.—The question, an important one, that arises for consideration in this Writ Petition is whether in absence of any order or direction by the Commissioner directing Election Petitioner to deposit the amount towards costs not exceeding Rs. 500/- u/s 144-U of the Maharashtra Cooperative Societies Act, 1960 (for short Act of 1960) and the Maharashtra Specified Co-operative Societies Elections to Committee Rules, 1971 (for short Rules of 1971) and in absence thereof no deposit of costs being made by the Election Petitioner at the time of presentation of Election petition challenging the election to the Management Committee of the Specified Cooperative Societies, the Election Petition is liable to be summarily dismissed.

2. The aforesaid question arises from the following facts:

The elections of Managing Committee of Niphad Sahakari Karkhana Ltd., (for short Specified Society) took place on 25th January, 1997. The present Petitioner Govind Punjaji Kute (for short "Election Petitioner") contested the said election but lost. The Election Petitioner filed an Election Petition u/s 144-T of the Act of 1961 challenging the elections of Managing Committee of the Specified Society held on 25th January, 1997 before the concerned Additional Commissioner. The Election Petition filed by the Election Petitioner was within time but the Election Petitioner did not enclose any receipt showing the deposit of Rs. 500/- towards costs. Since admittedly the Election Petitioner did not deposit the sum of Rs. 500/- as costs at the time of presenting the Election Petition to the concerned

Additional Commissioner, the Additional Commissioner did not entertain the Election Petition and dismissed the same on the ground that the Election Petitioner had not produced the challan showing deposit of Rs. 500/- towards costs and since the provisions contained u/s 144-U of Act of 1961 was treated as mandatory, the Additional Commissioner rejected the Election Petition on that day itself. It appears that the Election Petitioner deposited a sum of Rs. 500/- on next day and also made a Review Application before the concerned Additional Commissioner seeking review of the Order rejecting the Election Petition. The Review Application was rejected by the Additional Commissioner on that very day i.e. 26th March, 1997 holding that such Review Application was not maintainable in law.

3. Upset by the Order of the Additional Commissioner Nashik, rejecting the Election Petition presented by the Election Petitioner on 25th March, 1997 i.e. within time on the ground that the amount of Rs. 500/- was not deposited at the time of presentation of Election Petition, the Election Petitioner has filed the present Writ Petition.

4. By the Maharashtra Co-operative Societies (Second Amendment) Act, 1970, Chapter IX-A dealing with the elections to certain societies was inserted in the Act of 1961. By insertion of Chapter IX-A comprehensive provisions regarding elections to Committees of Co-operative Societies belonging to categories specified in Section 73-G were made including the holding of elections, conduct of elections, costs of conducting elections, disqualifications for membership, account of election expenses and disqualification for failure to lodge account of election expenses, penalty for disorderly conduct in or near polling stations and penalty for misconduct at the polling station, election offences and penalties there for and resolution disputes relating to elections by the Commissioner by way of election petition, deposit towards costs of hearing and power to award costs in such election petition. In short Chapter IX-A introduced by way of amendment made provisions regarding election and election disputes in the Act of 1961, comprising Sections 144-A to 144-X providing for the procedure to be followed in the conduct of elections of specified society through the collectors, payment of costs, etc. and provisions regarding disqualification for membership of committees, corrupt practices, etc.

5. Section 144-T provides for filing of an election petition by the aggrieved party within a period of two months from the date of declaration the result of the election to the Commissioner, the Commissioner trying election petition has the same powers as are vested in Court in respect of proof of facts by affidavit; summoning and enforcing the attendance of any person and examining him on oath, compelling discovery or the production of documents and issuing commissions for the examination of witnesses. Sub-section (4) of Section 144-T provides that the order passed by the Commissioner or for that matter the specified officer shall be final and conclusive and shall not be called in question in any Court. For the purpose of question involved in the present petition Section

144-U is most relevant and the said section reads thus:

144-U. Deposit towards costs for hearing and power to award costs. - A petitioner presenting an Election Petition under the last preceding section shall pay a deposit not exceeding Rs. 500/- as the Commissioner may direct towards the costs for hearing the petition. Unless the petitioner deposits the same as aforesaid, the petition shall be summarily dismissed. Subject to such conditions as may be prescribed, at the time of deciding the petition, the Commissioner shall assess the costs of the hearing of the petition and shall require, the petitioner or the respondents, or both as the case may be, to defray the whole or in such proportion as he thinks fit, the costs of the petition including the deposit so made. The Commissioner shall credit to Government such sum as he assesses as the cost to Government of hearing the petition (but not exceeding Rs. 500/- in any case).

6. Section 144-X empowers the State Government to make rules consistent with the Act of 1960 generally to provide for and to regulate all or any other matters relating to the various stages of elections and in exercise of the said power, the State Government framed the Rules of 1971. Rules 74, 76, 88 and 89 which are relevant for the present purposes may be reproduced which read thus: ;

74. Presentation of election petitions. - (1) An election petition calling in question any election may be presented by any candidate or any voter within two months from the date of declaration, of the result of the election.

(2) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and one spare copy for the use of the Commissioner and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

76. Trial of election petitions. (1) Every election petition shall be tried by the Commissioner:

Provided that, the Commissioner shall have the discretion to refuse for reasons to be recorded in writing, to examine any witness or witnesses if he is of the opinion that evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The Commissioner may dismiss an election petition which does not comply with the Provisions of Rule 74.

(3) Any candidate not already a respondent shall, upon application made by him to the Commissioner within fourteen days from the date of the commencement of the trial and subject to the provision of Rule 90, be entitled to be joined as a respondent.

(4) The Commissioner may, upon such terms as to costs and otherwise as he may deem fit, allow the particulars of any corrupt practice alleged in the petition

to be amended or amplified in such manner as may in his opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

88. Security for costs.? The petitioner shall enclose with the petition a Government treasury receipt showing that a deposit of Rupees five hundred or such lesser amount as the Commissioner may direct has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Commissioner as security for the cost of the petition.

89. Further security for costs.? During the course of the trial of an election petition, the Commissioner may at any time call upon the petitioner to give such further security for costs as he may direct.

7. Section 144-U which has been quoted above deals with deposit towards costs for hearing and power to award costs by the Commissioner. The section is definitely not happily worded. The expression "Pay a deposit" occurring in Section 144-U does not make sense literally and since it created doubt in my mind about actual reproduction of section in some of the text books. Mr. Sonawane, the Assistant Government Pleader was asked to check from official gazette the exact language of Section 144-U and on verification he did submit that Section 144-U is in the language which has been quoted above by me. Section 144-U accordingly, provides that an Election Petitioner presenting an Election Petition u/s 144-T aggrieved by the election to the specified society shall deposit not exceeding Rs. 500/- as the Commissioner may direct towards the costs for hearing the petition. The consequence of non deposit entails in summary dismissal of election petition. It further provides that at the time of deciding the election petition, the Commissioner shall assess the costs of hearing of the petition and shall require the election petitioner or the respondent or both as the case may be to defray the whole or in such proportion as he thinks fit, the costs of the petition including the deposit so made. The power is given to the Commissioner to order credit to State Government not exceeding Rs. 500/- as costs to Government for hearing the election. Mr. Pramod N. Joshi, the Learned Counsel appearing for the Election Petitioner Urged that from plain reading of Section 144-U what transpires is that upon presentation of election petition by an election petitioner u/s 144-T in accordance with law, the Commissioner has to order or direct the election petitioner to deposit a sum not exceeding Rs. 500/- towards costs for hearing the petition and if after such order or direction of the Commissioner, the election petitioner does not deposit the amounts ordered or directed, the election petition shall stand summarily dismissed. In other words the argument of Mr. Joshi is that unless an order is passed or direction is given by the Commissioner for deposit of the amount not exceeding Rs. 500/- it is not incumbent upon election petitioner to deposit the sum of Rs. 500/- at the time of presentation of the election petition. He submits that Rule 88 of Rules of 1971 has also to be read in the light of Section 144-U. On the other hand Mr.

Sonawane, the Learned Assistant Government Pleader would urge that deposit of Rs. 500/- by election petitioner before presentation of election petition is mandatory and non-compliance thereof shall result in summary dismissal of election petition.

8. If what the Additional Commissioner has held that deposit of Rs. 500/- towards costs of election petition at the time of presentation of election petition is mandatory is treated to be correct and that is what is contended by the learned Assistant Government Pleader then certain expressions occurring in Section 144-U shall be rendered otiose and meaningless. The Legislature in Section 144-U has used the expression, "A petitioner presenting an election petition under the last preceding section shall pay a deposit not exceeding Rs. 500/- as the Commissioner may direct towards the costs for hearing the petition" and if by that it was intended that an amount of Rs. 500/- shall be deposited at the time of presentation of election petition, there was no necessity of using the expressions "not exceeding" and "as the Commissioner may direct" in Section 144-U. The Legislature could have then enacted Section 144-U in the language, "A petitioner presenting an election petition under the last preceding section shall deposit Rs. 500/- towards costs for hearing the petition". The use of expression, "not exceeding" before the words, "Rs. 500/-" and the use of expression, "as the Commissioner may direct" after the word "Rs. 500/-" clearly indicate that a discretion has been given to the Commissioner to direct the election petitioner for deposit of costs for hearing of the election petition not exceeding Rs. 500/-. How can an election petitioner anticipate the amount that shall be ordered to be deposited towards the cost for hearing the petition at the time of presentation of election petition. At the time the election petition is presented in conformity with Rule 74, the Commissioner has to direct the election petitioner to deposit an amount not exceeding Rs. 500/- towards the costs for hearing the petition. The expression, "towards the costs for hearing the petition" is pointer to the fact that the amount not exceeding Rs. 500/- is required to be deposited by election petitioner as costs for hearing the petition and not for presentation of election petition. Section 144-U does not provide for deposit of costs of Rs. 500/- at the time of presentation of election petition but provides for deposit of costs not exceeding Rs. 500/- by the petitioner presenting an election petition as may be directed by the Commissioner towards the costs for hearing the petition. Upon order or direction by Commissioner for deposit of an amount not exceeding Rs. 500/- towards the costs for hearing the petition. If the petitioner does not deposit the same, the election petition has to be summarily dismissed. What has been intended by the Legislature in enacting Section 144-U is that an election petitioner should, as per direction of the Commissioner, deposit the costs for hearing the petition not exceeding Rs. 500/- to defray the costs of election petition and what is mandatory is deposit of an amount by the election petitioner towards costs of election petition as may be directed by the Commissioner. Rule 88 of Rules of 1971 which provides that election petitioner shall produce the proof of deposit of Rs. 500/- or such lesser amount as the Commissioner may

direct with the election petition is also indicative that the deposit towards security for costs has to be made as per the Order of the Commissioner. If Rule 88 is read along with Rules 84 and 76 of Rules of 1971 it is seen that an election petition may be presented by an aggrieved party, either by a candidate or a voter within two months from the date of declaration of the result; such election petition has to be accompanied by as many copies thereof as there are respondents mentioned in the petition and one spare copy for the use of the Commissioner and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. If the presentation of election petition is not in accord with Rule 74, Commissioner has been given power to dismiss such petition which does not comply with the provisions of Rule 74. The Commissioner has to order or direct the election petitioner to deposit an amount not exceeding Rs. 500/- towards costs for hearing the election petition and if such direction of the Commissioner is not complied with by election petitioner, the consequence is summary dismissal of election petition. Whether the provision is a mandatory or directory has to be resolved keeping in view the language used in the statute, its purpose, object and facts and circumstances. Every word used by Legislature has to be given definite meaning and it cannot be assumed that Legislature has used superfluous words. The intention of Legislature primarily has to be gathered from the language used and the Court must give effect to each and every word employed by Legislature and has to ensure that each word used therein is given its due meaning in the context it has been used. As I have already rioted, if the argument of the learned Assistant Government Pleader to the effect that the election petitioner shall deposit Rs. 500/- towards the costs for hearing the petition at the time of presentation of the election petition is accepted, the words "not exceeding" and the words "as the Commissioner may direct" are rendered superfluous and meaningless which cannot be the intention of the Legislature. The object of the Legislature in enacting Section 144-U is that for hearing of the petition, the election petitioner must deposit, the costs as may be directed by the Commissioner and if he does not deposit, the election petition shall be summarily dismissed. This object can be achieved by reading Section 144-U together with Rules 74, 76 and 88 of Rules, 1971 to mean that if election petition has been presented by election petitioner in accordance with Rule 74 and the Commissioner does not dismiss the same under Rule 76(2) having been presented in accordance with Rule 74, the Commissioner may direct the election petitioner to deposit an amount not exceeding Rs. 500/- towards costs for hearing the petition and upon such direction having been given. It is then mandatory for election petitioner to deposit the amount so directed and if the election petitioner does not comply with the said direction, that entails in dismissal of election petition summarily. The mandatory provision of deposit by use of expression "shall" comes into play only after the direction has been given by the Commissioner to election petitioner to deposit the amount towards the costs of hearing of petition not exceeding Rs. 500/-. The use of expression "or such lesser amount as the Commissioner may direct" occurring in Rule 88 supplements the statutory provisions of Section 144-U.

9. The learned Assistant Government Pleader heavily relied upon a Division Bench judgment of this Court in Krishnaran Anandran Dhayagude and Others Vs. Khandala Taluka Shetkari Sahakari Kharedi Vikri Sangh Ltd., Lonand and Others, in support of his contention that deposit of Rs. 500/- towards costs of election petition by election petitioner at the time of presentation of election petition is mandatory. Specifically the learned Government Pleader relied upon the following observation made by the Division Bench in paragraph 22 of the report:

22. Before passing final order, however, we must examine other submissions made by the petitioners' counsel. Petitioners' counsel contended that the order passed by the learned Additional Commissioner, holding that election petition was liable to be dismissed because of defect of serious nature inasmuch as each of the petitioners had not separately credited Rs. 500/- by way of security deposit, is bad and unsustainable in the eyes of law is well founded. Under the provisions of Section 144-U of the said Act, it is provided as follows:

144-U. Deposit towards costs for hearing and power to award costs.

A petitioner presenting an election petition under the last preceding section shall pay a deposit not exceeding Rs. 500/- as the Commissioner may direct towards the costs for hearing the petition. Unless the petitioner deposits the same as aforesaid, the petition shall be summarily dismissed. Subject to such conditions as may be prescribed at the time of deciding the petition, the Commissioner shall assess the costs of the hearing of the petition and shall require the petitioner or the respondents or both as the case may be, to defray the whole or in such proportion as he thinks fit, the costs of the petition, including the deposit so made. The Commissioner shall credit to Government such sum as he assesses as the costs 10 Government of hearing the petition (but not exceeding Rs. 500/- in any case).

In other words, a petitioner presenting an election petition u/s 144-T of the said Act has to deposit an amount not exceeding Rs. 500/-. If this deposit is not made by the petitioner, the petition is liable to be summarily dismissed. The Additional Commissioner at the time of hearing of the petition shall assess the costs of hearing and shall require both the parties to deposit the whole or in such proportion as he thinks fit the costs of the petition including the deposit so made. In other words, the security deposit is made for defraying the costs to be assessed by the Additional Commissioner at the conclusion of the trial of the petition. It is a well known rule of construction that singular includes plural, and therefore, even though the word used in Section 144-U is "A petitioner" it shall include petitioners. Therefore, the expression "A petitioner shall deposit an amount not exceeding Rs. 500/-" is to be read to mean that by ordinary rule of construction that the singular in this section would include plural, and therefore, where there are two petitioners, the section would be read to include more than one petitioner. Such a construction is warranted upon the provisions of the General Clauses Act itself. In such a case even though there are more than one petition as long as one deposit is made for the election petition, it would be

deemed to be made on behalf of all the petitioners and the only inescapable inference that would follow is that all the petitioners have complied with the requirement of Section 44-U."

10. It is true that the Division Bench in Krishnarao's case (supra) did observe that the petitioner presenting an election petition u/s 144-T of the Act, 1961 has to deposit an amount not exceeding Rs. 500/- and if this deposit is not made by the petitioner, the petition is liable to be summarily dismissed, it cannot be lost sight of that the aforesaid observation came to be passed generally because before the Division Bench the question was not whether a deposit of Rs. 500/- by election petitioner at the time of presentation of election petition was mandatory since admittedly a sum of Rs. 500/- stood deposited at the time of presentation of election petition but the question was whether each of the election petitioner was mandatorily required to deposit security deposit of Rs. 500/- at the time of election petition since there were four election petitioners and the Division Bench held that since an amount of Rs. 500/- was already deposited by one of the petitioners, by not depositing separately security deposit of Rs. 500/- by other petitioners, at the time of presentation of election petition, the election petition would be maintainable and was not liable to be summarily dismissed as was held by the Additional Commissioner. The observation aforequoted by the Division Bench, therefore, has to be read in the context of the arguments advanced and from the aforesaid observations, it cannot be said that Division Bench ruled that in the absence of any direction by the Additional Commissioner directing election petitioner to deposit an amount not exceeding Rs. 500/- towards costs of election petition, if the amount of Rs. 500/- is not deposited by election petitioner at the time of presentation of election petition, the election petition shall be summarily dismissed. The judgment of the learned Single Judge of this Court in Shivnarayan Amarchand Paliwal v. Vasantrao Vithalrao Gurjar and Ors. 1992 (2) M.L.J. 1052 : 1992 C.T.J. 606 also not very relevant for consideration of the question involved in the present Writ Petition since in that case the learned Single Judge of this Court was dealing with the question whether the use of word "may" in Sub-rule (2) of Rule 76 means "shall" or not.

11. In my view, therefore, the Additional Commissioner was not justified in rejecting the election petition on the date of presentation itself on the ground that it did not bear a challan of Rs. 500/- deposit without there being any order made directing the election petitioner to deposit the said amount or the less amount which he would have thought fit towards costs of election petition.

12. For what has been stated above by me, I have no hesitation in quashing the Order dated 25th March, 1997 passed by the Additional Commissioner and accordingly quash the said Order dated 25th March, 1997. The election petition filed by the election petitioner is restored to the file of the concerned Additional Commissioner and since the election petitioner had already deposited costs of Rs. 500/- on 26th March, 1997, the concerned Additional Commissioner is directed to proceed with the hearing of the election petition in accordance with

law. It would be open to the Additional Commissioner to pass further order towards costs as provided under Rule 89 if he thinks fit. No Costs.

Since it is election dispute it is expected that the Additional Commissioner would hear and dispose of the election petition expeditiously.