

(2008) 05 AP CK 0017

In the Andhra Pradesh High Court

Case No : C.R.P. No's. 4283 and 4284 of 2002

Mohammed Izhar Ali

APPELLANT

Vs

Smt. Olive Founseca (died) per L.Rs. and Others

RESPONDENT

Date of Decision : 02-05-2008

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10, 10(2), 11, 11(1), 11(2)
Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1961 — Rule 16, 17, 5, 5(1), 5(2)
Civil Procedure Code, 1908 (CPC) — Section 148
Constitution of India, 1950 — Article 141

Citation : AIR 2008 AP 196 : (2008) 4 ALD 254 : (2008) 4 ALT 147

Hon'ble Judges : V.V.S. Rao, J;G. Yethirajulu, J;G. Bhavani Prasad, J

Bench : Full Bench

Advocate : K.K. Waghray, for the Appellant; M. Basith Ali Yavar, Spl. G.P., for the Respondent

Judgement

G. Bhavani Prasad, J.—Rule 5 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1961 (for brevity "the Rules") is only directory and not mandatory as Section 8 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short "the Act") is only directory and not mandatory, according to the tenant unsuccessful before the Rent Controller and in appeal.

2. The two Civil Revision Petitions in C.R.P. Nos. 4283 and 4284 of 2002 by the tenant primarily advancing such a contention came up before a learned single Judge, who considered a conflict of views to be existing in the decisions of this Court and the Apex Court on the question. Consequently, a reference was made formulating the following questions:

(1) When Section 8 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 is directory, can Rule 5 of the Rules framed for working out the said provisions be treated as mandatory?

(2) Whether deposit of rent into Court is sufficient compliance and can be treated as payment to the landlord?

(3) Whether failure to deposit rent challans into court automatically amounts to wilful default?

(4) Whether Rule 5 of the Rules goes contra to the provisions of Section 10(2)(i) and proviso of the Act?

3. A Division Bench to which one of us (Justice G. Bhavani Prasad) is a party, to which the cases were referred, considered that the questions involved of frequent recurrence need a more authoritative pronouncement, and consequently, the cases came up before us.

4. Sri K.K. Waghray, learned Counsel for the petitioner and Sri M. Basith Ali Yavar, learned Counsel for the respondents are heard in extenso. The learned Counsel referred to a number of precedents, which will be referred to in due course. In short, it was argued for the tenant that Rule 5 Sub-rule (4) of the Rules is merely directory and any noncompliance, per se, cannot be considered as wilful default, more so, in the light of Section 10(2)(i) and proviso thereunder of the Act. The same is repelled for the landlord, in brief, contending Rule 5 Sub-rule (4) of the Rules to be mandatory, once the tenant opted for taking recourse to Section 8 of the Act and any non-compliance with the statutorily prescribed procedure will, ex facie, make the tenant a wilful defaulter and that Section 10(2)(i) and proviso thereunder of the Act and Rule 5 of the Rules governed different situations and are not mutually conflicting.

5. The principles governing interpretation of statutes with particular reference to the mandatory or directory nature of statutory provisions are well settled and in Thakur Pratap Singh Vs. Shri Krishna Gupta and Others, , the Apex Court deprecated the tendency of the Courts towards technicality and pointed out that substance must take precedence over mere form.

6. One of the well-accepted tests for determining whether a provision is directory or mandatory is to see whether the enactment provides for the consequence flowing from non-compliance with the requirement prescribed, said the Supreme Court in Administrator, Municipal Committee, Charkhi Dadri and another Vs. Ramji Lal Bagla and others, .

7. Similarly, in Kailash Vs. Nanhku and Others, , it was reiterated that in an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation and unless compelled by express and specific language of the statute, the provisions of any procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. A provision not prescribing any penal consequences was considered to be not mandatory in nature. Notwithstanding that the rule under consideration by the Apex Court is a part of procedural law, and hence, directory, still it was held that ordinarily the

time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. However, it was pointed out that in no case shall the defendant be permitted to seek extension of time when the court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his counsel.

8. In *M.P. Purushothaman v. Govt. of A.P. and Ors.* (2004) 11 SC 547 it was held that normally a statutory directive to comply with a direction is ordinarily not construed to be a mandatory provision and even if any provision is mandatory, in certain circumstances, strict compliance therewith is not to be insisted upon.

9. In *Matu Subba Rao and Others Vs. Ramalayam Trust Board and Others*, , dealing with a case of failure to comply with the earlier direction of the Court by the tenant under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, it was held that such failure should not necessarily visit the tenant with the consequence of his defence being struck off because there might be myriad situations in which default may be committed and the Court should adopt such a construction as would not render the court powerless in a situation in which ends of justice demand relief being granted. This construction was on the principle that where the court fixes a time to do a thing, the Court always retains the power to extend the time for doing so like u/s 148 of the Code of Civil Procedure.

10. In *Matu Subba Rao and Others Vs. Ramalayam Trust Board and Others*, it was pointed out that merely because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions and the courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form. It was pointed out that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice.

11. While the above principles illuminate the path of interpreting the relevant provisions of the Rent Control Law herein, the manner in which precedents need to be understood and followed was made clear in *Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another*, wherein it was held that judgments of courts are not to be construed as statutes and courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. The observations of the Courts must be read in the context in which they appear to have been stated. The note of caution of Lord Denning was reiterated that precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches, else you will find yourself lost in thickets and branches.

12. The provisions of the Act and the Rules and the precedents arising therefrom need to be understood and given effect to accordingly.

13. Section 8 of the Act provides a right to the tenant paying rent or advance to a duly signed receipt from the landlord or his authorized agent. If a landlord refuses to accept or evades the receipt of any rent, the tenant can require the landlord by a notice in writing to specify a bank for deposit of rent within ten days and on such specification, the tenant can deposit the rent in such bank and can continue to do so. If a bank is not so specified, the tenant can send the rent to the landlord by money order deducting the money order commission until the landlord gives a notice of his willingness to receive the rent or to have the rent deposited in a specified bank. Sub-section (5) of Section 8 provides the procedure to be followed, if such money order also is refused enabling the tenant to deposit and continue to deposit the rent in the prescribed manner on an application made to the Rent Controller, which may be withdrawn by the person entitled to the same.

14. Rule 5 of the Rules details the procedure for such deposit of rent under Sub-section (5) of Section 8. The challan accompanying the deposit of the rent with the permission from the Rent Controller has to be in triplicate specifying the details prescribed. One copy of the challan has to be delivered in the office of the Controller or the appellate authority taking an acknowledgment for its receipt in the copy of the challan retained by the tenant. The Rent Controller or the appellate authority, as the case may be, will take necessary action for service of the notice of deposit on the person or persons concerned within seven days of such delivery in a mode specified in Rule 16, which lays down the procedure for service of notices and orders on the person concerned. The Rent Controller or the appellate authority have to maintain proper accounts of such rents deposited.

15. Section 10(2)(i) proviso of the Act empowers the Rent Controller to give the tenant a reasonable time not exceeding fifteen days to pay or tender the rent due up to date to the landlord, if the Rent Controller is satisfied that the tenant's earlier default to pay or tender the rent was not wilful.

16. While the right of the tenant to deposit the rent in contingencies specified by Section 9 or the liability of the tenant to deposit rent during the pendency of proceedings for eviction u/s 11 and any consequences that flow from non-compliance with the said provisions are not directly the subject matter of the present consideration, the enabling procedure under Sub-section (5) of Section 8 and the enabling concession to make up any default u/s 10(2)(i) proviso operate in different fields and govern distinct fact situations. The procedure u/s 8, more particularly Sub-section (5) thereof, enables the tenant to avoid any default in payment of rent, event if the landlord refuses to accept or evades the receipt of any rent lawfully tendered. Even if the landlord defaults in naming a bank in spite of being required and refuses to receive the rent remitted by money order, the tenant has been enabled to take recourse to deposit of rent under Sub-section (5) of Section 8 read with Rule 5 of the Rules. In contrast, the payment or the

tender of the rent u/s 10(2)(i) proviso arises only subsequent to a landlord making an application for eviction against a tenant, more particularly on the ground of wilful default. The power of the Controller to act under the proviso to Section 10(2)(i) to give a reasonable time not exceeding fifteen days to the tenant to pay or tender rent is subject to his satisfaction about the default being not wilful, only in a case falling u/s 10(2)(i). Thus, Section 8 enacts a measure of "prevention", while Section 10(2)(i) proviso embodies a "cure".

17. While Sub-rule (6) of Rule 5 may appear superficially to be an omnibus provision in respect of any application for eviction in which the tenant can deposit all the arrears of rent within a reasonable time not exceeding fifteen days, the duty of the Rent Controller in such an event being confined only to the specification of reasonable time for deposit not exceeding fifteen days, a reading together of the provisions of the Act and the Rules makes Sub-rule (6) of Rule 5 referable to Sub-section (2) of Section 11, which prescribes that the deposit of rent under Sub-section (1) of Section 11 shall be made within the time and in the manner prescribed. Sub-rule (6) of Rule 5, hence, cannot be made relatable to Section 10(2)(i) proviso under which a tenant can pay or tender rent due up to date only subject to the Rent Controller granting a reasonable time on satisfaction of the default being not wilful. The payment or tender as permitted results in rejection of the application for eviction under the provision, whereas the deposit under Sub-rule (6) of Rule 5 read with Section 11 only enables the tenant to avoid the adverse consequences of stoppage of all further proceedings and direction to the tenant to put the landlord in possession in case of default in payment or deposit of the rent including the arrears of rent under Sub-sections (1) to (3). In short, Section 10(2)(i) proviso speaks of payment or tender, and no deposit, which Sub-rule (6) of Rule 5 speaks of deposit and no payment or tender, clearly signifying the absence of any inter relationship in their operation. That is why Rule 5 specifically refers to Sections 8, 9 and 11 only and not to Section 10.

18. The effect of a reading together of all the relevant provisions of the Act and Rules is that a tenant has the option to take recourse to Section 8 in case of refusal or evasion by the landlord to receive the rent and if the landlord were to (sic. would) not name a bank or refuse even the money order of the rent, the tenant can deposit the rent in accordance with Rule 5 Sub-rules (1) to (3). The notice to the person entitled to rent and the proper maintenance of accounts of such deposits under Sub-rules (4) and (5) of Rule 5 are solely dependent on compliance with Sub-rule (3) by the tenant. The payment or deposit of rent u/s 11 read with Sub-rule (6) arises only in respect of a tenant who did not take recourse to Section 8 or Section 9 before an application for eviction has been made against him in respect of any rent in arrears by the date of that application, whereas in respect of the rent that becomes subsequently due since the date of the application for eviction, the tenant is bound to pay or deposit regularly until the termination of the proceedings in order to enable him to contest the application. Any violation of Section 11 Sub-sections (1) to (3) and

Sub-rule (6) makes the tenant liable for the adverse consequences under Sub-section (4) of Section 11. Thus, the provisions of Section 11 and Sub-rule (6) of Rule 5 are intended only to ensure the payment and deposit of rent including arrears during the pendency and till the termination of the proceedings for eviction. The forfeiture of the right of the tenant to contest in case of default is to protect the rights and interests of the landlord pending such an application for eviction, but not to confer any right on the tenant to plead that all defaults committed by him prior to the application for eviction can never be considered wilful, if he were to deposit all the arrears of rent due within fifteen days under Sub-rule (6) of Rule 5 read with Sub-section (1) of Section 11. The object and effect of Section 11 and Sub-rule (6) of Rule 5 are different from Section 8 and Sub-rules (1) to (5) of Rule 5, the former being for the protection of the landlord during pendency of the eviction proceedings and the latter being for the protection of the tenant to avoid any liability for eviction on the ground of wilful default.

19. It is a tenant, who had not taken recourse to Section 8 or Section 9 read with Sub-rules (1) to (5) of Rule 5 or who had taken recourse to those provisions but did not comply with the procedure that may attempt to satisfy the Rent Controller that his default in paying or tendering the rent was not wilful within the meaning of the proviso to Section 10(2)(i) of the Act due to which he should be permitted to pay or deposit such rent within a reasonable time not exceeding fifteen days, on which the application for eviction shall be rejected. While such a request of a tenant, who did not opt for the procedure u/s 8 or Section 9 read with Sub-rules (1) to (5) of Rule 5, will be considered by the Rent Controller on the facts and circumstances making or not making the default wilful, where the tenant opted for the procedure u/s 8, but did not comply with Sub-rules (1) to (3) of Rule 5 making observance of Sub-rules (4) and (5) of Rule 5 impossible, he makes himself susceptible to the absence of satisfaction for the Rent Controller about his default being not wilful consequently disentitling him to any reasonable time to pay or tender the arrears of rent entitling him to have the application for eviction rejected u/s 10(2)(i) proviso. Consequently, while taking recourse to Section 8 by the tenant is optional, once that option is exercised, compliance with Rule 5 Sub-rules (1) to (5) becomes mandatory in the sense that any non-compliance with the prescribed procedure will positively indicate the wilful nature of the default committed in paying or tendering the rent as prescribed.

20. The above analysis of the effect of the provisions of the Act and the Rules finds support from the precedential law cited by both the learned counsel.

21. In *Vemuri Somisetti v. Vagicherla Guravaiah and Sons* 1975 (2) An.W.R. 370, Section 8 of the Act was held to be an enabling provision which does not make it obligatory on the part of the tenant to have recourse to the procedure prescribed by it, but once the tenant resorts to the procedure prescribed therein, he has to abide by the procedure. The learned Judge held that once the tenant takes steps

u/s 8, he has to follow the procedure prescribed therein and non-compliance with the requirements of Section 8 may well qualify him to be designated as a defaulter. But, the tenant does not straightaway become a wilful defaulter, defaulter though he may be, as the Rent Controller may be satisfied u/s 10(2)(i) proviso that the non-payment of rent was not wilful. The learned Judge concluded that:

...Section 8 no doubt is an enabling provision. The tenant may take advantage of the said provision. If he chooses to take advantage of that provision and initiates proceedings, then it becomes obligatory on him to observe the requirements of the section. If he does not do so, he will then be a defaulter, subject to the determination by the Rent Controller whether he is a wilful defaulter. It is of course for the tenant to show that the default is not wilful....

22. In *Nagula Konda Marayya v. P.V.G. Raju* 1985 (1) An.W.R. 433 : 1985 (1) APLJ (HC) 375 repelling the contention that Section 8(5) ousts the application of Section 10(2)(i), it was held following the decision in *Vemuri Somiseti v. Vagicherla Guravaiah and Sons* (8 supra) that the tenant is under an obligation to explain the delay in depositing the rent on due dates in the court and the question whether the default was wilful default or not will have to be examined with reference to such explanation. While holding that the pendency of any Rent Control proceeding does not entitle the tenant to deposit the rent in court at his ipse dixit, in the absence of any cause shown for the delay in making the deposits of rent, the default on every occasion with long delays involved in payment over a period of 28 months was held to justify the conclusion of wilful default.

23. A Division Bench of this Court to which one of us (Sri Justice V.V.S. Rao) is a party was considering the scope of wilful default vis-a-vis Section 8 in *Nimmagadda Krishna Hari and Another Vs. Manepalli Mangamma*, . While referring to *Vemuri Somiseti v. Vagicherla Guravaiah and Sons* (8 supra) and *M. Venkateswara Rao v. Smt. K.V. Subbamma* 1978 (1) ALT 503 and so on, to the effect that it is not obligatory for the tenant to follow the procedure of depositing the rent u/s 8 of the Act, it was held that if, however, the tenant chooses to adopt the procedure of depositing the rent u/s 8, he should continue to deposit the rents regularly and within the time as and when the rent falls due. Consequently, it was held that it is open to the tenant to opt for the procedure u/s 8(2) of the Act which is not mandatory, but only directory, but having opted for the procedure contemplated u/s 8, the tenant has to follow diligently the steps stated under Sub-sections (3) to (5) of Section 8. The Division Bench, of course, answered the reference stating that not following the procedures stated u/s 8(2), 8(3) and 8(5) of the Act will not automatically enure to the benefit of the landlord to substantiate the ground of wilful default, as Section 8 is only directory and not mandatory.

24. In *Hari Prasad Badruka Vs. Tellukunta Laxmi and Others*, it was reiterated that when a tenant takes recourse to Section 8 of the Act for deposit of rents into

court, he has to follow the procedure prescribed therein and if he fails to deposit the challans into court and give notice of deposit or fails to deposit the process to enable the court to cause service of notice of deposit on landlord under Rule 17 of the Rules for a considerably long time, it cannot but be held that he becomes a wilful defaulter. It was explained that though Rule 5 of the Rules does not stipulate any time within which the tenant should file the challans evidencing the deposit of money in the bank into the Court, by necessary implication, it should be taken that he should file the challans into the court within a reasonable time from the date of deposit. It was pointed out that unless and until duplicate copy of the challan evidencing deposit of the money into the bank is filed into court, amount deposited by the tenant into bank will not be reflected in the ledgers maintained by the Court and consequently, the landlord cannot have the benefit of the amounts so deposited by the tenant, as he cannot withdraw the said amount. It was further held that if the tenant himself gives a notice to the landlord, or if the landlord is appearing through a counsel to the counsel for the landlord, there is no further need for the Rent Controller to serve notice of deposit on the landlord. If not, Sub-rule (4) of Rule 5 read with Rules 16 and 17 has to be complied with. Noting that by reason of the failure of the tenant in depositing the challans into court for a long time after deposit of money in bank and for not issuing notice of deposit to him, the landlord is deprived of the benefit of the money deposited. It was held that it is as good as the rent not being tendered till the challan is filed into the court and notice thereof is given to the landlord, which should be construed as "wilful default" in payment of rent.

25. This decision was followed by one of us (Sri Justice V.V.S. Rao) in *Arnavaz Rustom Printer Mumbai and another Vs. N.D. Thadani and another*, . That was also a case where the challans of deposit of rents into bank were not filed before the Rent Controller. Referring to Section 10(2)(i) and Section 11(4) and Rule 5, the learned Judge concluded that a tenant, who failed to pay the rents regularly as required under the Act, but still seeks protection of the Act, should be treated as habitually in arrears of rent which cannot be justified on the ground that the tenant was not aware of the procedure for delivering the copies of the bank challans and a presumption should be drawn without any further proof that such a tenant must be held to have committed wilful default.

26. In *J.M. Benedict Vs. Mithileswari Jaiswal*, the above referred to two decisions were relied on to conclude that where there was non-payment of process to issue notice to the landlord and the challans were submitted after a period of more than one and half years from the dates on which the rent became due, there was absolutely no compliance with the procedure stipulated under the Rules in the matter of payment of rents and as a necessary corollary, consequences have to follow. The learned Judge also referred to *Nagula Konda Marayya v. P.V.G. Raju* (9 supra), which was followed in *Kamala Bai and Others Vs. E. Rajeswari*, and held that the payment into court u/s 8 of the Act can be said to have been made only when the challans are submitted into court. The learned Judge concluded that there cannot be a better example of a wilful default than submission of

challans for January, 1991 till the eviction petition only in October, 1993. The Full Bench decision reported in Vinukonda Venkata Ramana Vs. Mootha Venkateswara Rao and Another, was distinguished by the learned Judge.

27. The above Full Bench to which again one of us (Sri Justice V.V.S. Rao) is a party, struck a note of caution in observing that while it is open to a Legislature to give wide protection to even defaulting tenants, it does not follow from it that whenever it gives protection, it must be deemed to have given him the protection of the widest amplitude. It is also observed that the question of wilful default to pay or tender rent to a landlord by a tenant is a mixed question of law and fact. Payment and acceptance of rent before institution of the proceeding for eviction making, any cause of action for seeking eviction on the ground of wilful default vanish was the principle arrived at by the Full Bench due to unequivocal acceptance of rent and the other conduct of the landlord therein. The question in issue before the Full Bench was not any justification or otherwise for ignoring the non-compliance with the procedure for deposit, making the deposit unknown to the Rent Controller or the landlord, in construing any default to be not wilful or wilful for the purpose of Section 10(2)(i) or the proviso thereunder. There is absolutely no conflict between the three decisions of the learned Judges above referred to and the Full Bench, more so, as so distinguished in J.M. Benedict v. Mithileswari Jaiswal (13 supra).

28. In Fakruddin Ali Tarwala Vs. Ved Prakash Mishra and Others, , also, the tenant deposited the rents into the bank but did not deposit the challan into the court for about 6 months. The learned Judge, referring to Hari Prasad Badruka v. T. Laxmi (11 supra) and J.M. Benedict v. Mithileswari Jaiswal (13 supra) and also relying on Nimmagadda Krishna Hari v. Manepalli Mangamma (10 supra), concluded that mere deposit of the rents into the bank without depositing the challans into the Court so as to enable the landlord to withdraw the same amounts to wilful default on the part of the tenants to pay the rents.

29. To the same effect is Munnalal (died) and Others Vs. Englarg Pershad, , wherein it is held that when the tendering of rents was not communicated by way of a notice in terms of Rules 5(4) and 16 of the Rules, it was a case of wilful default.

30. This view reflected, thus, at least in five decisions of the learned Single Judges of this Court, received the seal of approval of the Supreme Court in B. Rama Swamy Vs. B. Ranga Swamy, which arose from Smt. Arnavaz Rustom Printer, Mumbai and Anr. v. N.D. Thadani and Anr. (12 supra). The Supreme Court noted that no particulars as to challans by which the rent was deposited with the Controller were furnished by the tenant even in his reply to the notice from the landlord to furnish such details and the tenant made available the challan for deposit only during his cross-examination keeping with himself till then. The Supreme Court, after extracting Rule 5 of the Rules observed that the rule making authority has taken care to meticulously frame the rule and lay down a detailed procedure so as not to leave room for any controversy to arise

between the landlord and the tenant as to the payment of the rent. The Supreme Court observed that a failure to comply with the provisions of the rule will result either in the deposit being lost in the jumble of hundreds of transactions which take place in the treasury or bank everyday, or would result in failure by the Controller in maintaining the accounts and giving notice to the landlord and whatever be the situation, the landlord would be deprived of the opportunity of receiving the rent regularly in spite of the tenant having deposited the same. The Apex Court, therefore, held that the whole purpose behind enacting the Rule will be frustrated because of the tenant's negligence. The Supreme Court noted that even after the court mandated the tenant to clear all the arrears of rent within two months and thereafter to deposit the rent month by month, the tenant did not comply with the provisions of Rule 5. The deposits were not regularly made. The tenant did not keep the landlords informed of the deposits either directly or by complying with the provision of the Rule. The legal notices served by the landlords were not responded to in the desired manner and a claim for eviction founded on the simple ground of default in payment remained pending for years, obviously because of the reluctance and the procrastinating tactics of the tenant. The Supreme Court was emphatic that the obligation of the tenant to pay or tender the rent cannot be said to have been discharged unless and until the landlords were posted with the information along with particulars enabling them to withdraw the amount and if not, the same is wilful default and cannot be anything else.

31. This decision of the Apex Court directly on the point should have put a lid on the controversy, if any, and as pointed out in *Suganthi Suresh Kumar v. Jagdeeshan* 2002 (1) ALT (CrL.) 250 : 2002 (1) ALD (CrL.) 417 it is impermissible for the High Court to overrule the decision of the Apex Court on the ground that the legal position was laid down without considering any other point. It is not only a matter of discipline but also a mandate of the constitution as provided in Article 141.

32. However, before the said decision, a reference was made in C.R.P. No. 142 of 2001 by a learned single Judge by the order dated 9-9-2003, wherein the learned Judge considered the legal position to be obligating the Rent Controller to see whether it is a case of mere default of depositing the challans or it is a wilful default without any cogent explanation on the part of the tenant for not depositing the challans in time as prescribed under Rule 5. That appeared to be the clear legal position to the learned Judge from *Vemuri Somisetti v. V. Guravaiah* (8 supra), *N.K. Marayya v. P.V.G. Raju* (9 supra) and *Nimmagadda Krishna Hari and Anr. v. Manepalli Mangamma* (10 supra) etc., and the learned Judge found *Hari Prasad Badruka v. T. Lakshmi and Ors.* (11 supra), *Arnavaz Rustom Printers v. N.D. Thadani* (12 supra), *J.M. Benedict v. Mithileswari Jaiswal* (13 supra) and *Fakruddin Ali Tarwala v. Ved Prakash Mishra* (15 supra) to be laying down a consistent view that the failure on the part of the tenant to deposit the challans in conformity with the procedure enjoined under Rule 5 read with Rule 16 of the Rent Control Rules would amount to wilful default. The learned

Judge, while making the reference also referred to his earlier decision in *Ameena Bee Vs. Noorjahan Begum and others*, wherein he distinguished *Hari Prasad Badruka v. T. Laxmi* (11 supra) and rightly so as there was no finding of the existence of the jural relationship of landlord and tenant, which was in issue, before making the tenant susceptible to eviction on the ground of wilful default due to non-compliance with Rules 5(4) and 16. While that case is, therefore, totally on a distinguishable factual premise with different legal consequences, the opinion of the learned Judge that the provisions of Section 8 cannot override Section 10(2)(i) of the Act may not be germane in determining the possibility of construing consistent non deposit of challans as wilful default by the tenant.

33. In answering the reference on the clear-cut cleavage in the conclusions of the four judgments on either side in the view of the learned Judge, a Division Bench by the order dated 22-4-2004 straight away noted that the view taken in *Arnavaz Rustom Printers v. Thadani* (12 supra) was confirmed in *N.D. Thadani v. Arnavas Rustom Printer* (17 supra) and that Rules 5 and 16 of the Rules are, hence, mandatory.

34. Another Division Bench of this Court to which one of us (Dr. Justice G. Yethirajulu) is a party had also dealt with the same question of Rule 5 being mandatory or directory, referred by another learned Judge, in *Linga Pentamma and Others Vs. T. Jagadishwar Rao and Others*, . The Division Bench referred to the answer to the reference by the other Division Bench in C.R.P. No. 142 of 2001, extracted the ratio decidendi of the Supreme Court in *N.D. Thadani* (17 supra) and reiterated the conclusions of the earlier Division Bench.

35. Still this reference had arisen due to *Nimmagadda Krishna Hari* (10 supra) being considered to be in conflict with the decisions of the learned single Judges, the principle whereof was confirmed by the Supreme Court in *N.D. Thadani* (17 supra). As already stated, *Nimmagadda Krishna Hari* (10 supra) is with reference to a different fact situation about the mandatory nature of the different Sub-sections of Section 8, but not about the effect of the non-compliance with the procedure under Rule 5 by a tenant who took recourse to Section 8(5). Even if *Nimmagadda Krishna Hari* (10 supra) and *Vinukonda Venkata Ramana* (14 supra) were to be considered in any manner to be inconsistent with the consistent view of the learned single Judges of this Court, the seal of approval by the Apex Court in *N.D. Thadani* (17 supra) clears all lingering doubts. The earlier perception that non-compliance with Section 8 to which the tenant opted makes him only a defaulter with the further requirement to show him to be a wilful defaulter gradually evolved into the considered view that compliance with Rule 5 is mandatory, if the directory Sub-section (5) of Section 8 was taken advantage of by the tenant. The same should be so as the tenant cannot approbate and reprobate, for the reasons stated by the apex Court in *N.D. Thadani* (17 supra).

36. In *E. Palanisamy v. Palanisamy* 2002 (7) Supreme 574, also, the tenant made an application u/s 8 of the Tamil Nadu Rent Control Act, which is in pari materia with the provision herein and the sole question under consideration was

whether the provisions of the said Section 8 are to be strictly complied with by the tenant before he can seek benefit under the said provision regarding deposit of rent into Court. Following two earlier decisions of the Supreme Court, it was held that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance of the statutory provisions and equitable consideration have no place in such matters. It was made clear that the tenant has to observe the procedure as prescribed in the statute and a strict compliance of the procedure is necessary. This view of the Apex Court finds its echo in N.D. Thadani(17 supra) later.

37. In Balwanth Singh and Ors. v. Anand Kumar Sharma and Ors. 2003 (6) ALD 69 : 2003 (3) ALT 17.3 following E. Palanisamy v. Palanisamy (21 supra), it was pointed out that it is a well settled principle that if a thing is required to be done by a private person within a specified time, the same would ordinarily be mandatory and it was held that any non-payment of rent by the, tenant within the time specified by the Bihar Rent Control Act is not a mere technical default but a wilful default.

38. The approach in N.D. Thadani (17 supra) is thus the result of conscious evolution of such a view in similar circumstances under different Rent Control Laws.

39. Coming to the other precedents, cited in Lakhan Rai Vs. Ram Kumar Aggarwal, the question was whether the deposit of rent into court is equal to payment to landlord and it was held that the same depends upon expression of willingness by landlord to receive rent from tenant and if the landlord did not signify such willingness, deposit into court tantamounts to payment to landlord. The principle is so even in respect of Section 8 and Rule 5 and the question herein is not whether the deposit amounts to payment but whether the deposit to amount to payment has to be in tune with the prescribed procedure making the deposit known to the landlord and the court.

40. In Duli Chand Vs. Maman Chand (Dead) by Lrs., , the tenant informed the landlord at the first hearing that he could receive the arrears of rent, interest and costs deposited into Court, and thus, substantially complied with the relevant statutory provision. The situation herein is exactly reverse.

41. In Rakapalli Raja Rama Gopala Rao Vs. Naragani Govinda Sehararao and Another, : Duli Chand Vs. Maman Chand (Dead) by Lrs., the Apex Court was dealing with the proviso to Section 10(2) of the Act vis-a-vis the tenant defaulting in payment of rent or the plea of an oral agreement of sale but not a question similar to the one arising herein.

42. So also in M. Bhaskar v. J. Venkatarama Naidu (1996) 6 SCC 278 : 1996 (4) ALT 32 (DN) the question was about a tenant not opting for Section 8 and the landlord not availing the procedure u/s 11, but the landlord still having the right to seek eviction for wilful default.

43. Similarly in *Kanigalupula Subbamma v. Jangala Venkata Ramamma* 1965 (2) An.W.R. 381 , the Division Bench was dealing with Section 11 read with Sub-rule (6) of Rule 5 and held that the time that the Controller should give is reasonable time not exceeding fifteen days in case of all subsequent rents falling due during pendency of the petition also.

44. In *Ciscons Consulting Engineers and Contractors Vs. The Vijayawada Municipal Corporation*, willful default was not upheld in view of tendering the entire amount due before the suit and the tenant cannot claim to have exhibited any such bona fides when there was deliberate non-compliance with Section 8 and Rule 5.

45. In *Maiku v. Vilayat Hussain through LRs.* AIR 1986 SC 1945 the Apex Court observed that mere application for permission to deposit the arrears of rent being allowed by the Court will not absolve the tenant from establishing in the suit for eviction that the landlord had refused to accept the rent lawfully tendered. Though not directly on the point, the decision shows the necessity for the tenant also to justify his conduct vis-a-vis the landlord in such proceedings.

46. Similarly, *Kuldeep Singh Vs. Ganpat Lal and another*, , a legal fiction created by the statutory provision about the legal payment or tender of the rent in case of remittance of deposit in the manner prescribed was held to be limited to the purpose for which it is created not to be extended beyond that legitimate field. The Apex Court held that for the tenant to avail the benefit of the legal fiction, the conditions laid down in the provision have to be satisfied. The principle reinforced the need for strict observance of the procedure under Rule 5.

47. In *Inter-State Transport Agency Vs. Bibi Habiba Khatoon (Dead) by Lrs.*, , the arrears of rent deposited by the tenant, though late, was withdrawn by the landlady and later, the landlady sought for eviction on the ground of default during that period, which was negated by the Apex Court. The facts situation has no relevance to the question in issue here.

48. To conclude, N.D. Thadani (17 supra) by the Apex Court declaring the law vis-a-vis Section 8 and Rule 5 set at rest all controversies relating to the nature, scope and effect of Section 8 and Rule 5. Though the earlier cases from this Court appeared to be leaving some scope for fact finding by the Rent Controller or the appellate authority as to whether any default in compliance with the procedure under Rule 5, after the tenant opted for Section 8 was wilful or not, the consistent view that later evolved "is that opting for the directory Section 8 makes it mandatory for the tenant to comply with Rule 5 in both letter and spirit and any non-compliance makes the tenant a wilful defaulter. While the respective fields in which Sections 8, 9 and 10(2)(i) and proviso thereunder and Section 11 operate are distinct and different without transgressing into each other"s limits though capable of creating an illusion of overlapping at times, there is no conflict between the provisions of the Act inter se or with any Rule, more particularly Rule 5.

49. Therefore, the reference has to be and is answered accordingly in the following terms:

(1) Though Section 8 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 is directory and optional, a tenant taking advantage and benefit of the said provision has to strictly and mandatorily comply with the procedure prescribed under Rule 5 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1961.

(2) While deposit of rent in terms of the provisions of the Act and the Rules amounts to valid tender of rent to the landlord, the failure to comply with Sub-rule (3) of Rule 5 requiring delivery of a copy of the challan for the deposit of rent in the office of the Controller or the appellate authority, as the case may be, so as to enable the Controller or the appellate authority to cause maintenance of proper accounts under Sub-rule (5) and give notice of deposit to the person or persons concerned within seven days of such delivery of copy of the challan in one or the other of the modes specified in Rule 16 (paying within a reasonable time the prescribed fee as per Rule 17 for service of such notice, if the tenant himself did not serve such notice directly on the landlord or the advocate appearing for the landlord) under Sub-rule (4), amounts to wilful default in making valid payment or lawful tender of the rent by the tenant to the landlord;

(3) Sub-rule (1) and/or Sub-rule (3) of Rule 5 of Rules do not prescribe any time limit for depositing rent after obtaining permission for such deposit from Rent Controller u/s 8(5) of the Act. A perusal of Sub-rules (2) and (3) of Rule 5 of Rules, however, shows that after obtaining permission a tenant has to deposit rent every month and as required under Sub-rule (3) of Rule 5 of the Rules shall deliver rent challan in the office of Rent Controller or appellate authority as the case may be. A perusal of Section 10(2)(i) of the Act would show that in the absence of any agreement, rent has to be paid by the last day of month next following that for which rent is payable or if there is agreement of tenancy within 15 days after expiry of time fixed in the agreement. This indicates some guidance as to reasonable time for deposit of rent. Thus, where a tenant obtains an order to deposit rent, same shall be deposited at least by the last day of the month following that for which rent is payable and rent challan shall be delivered in the office of Controller within a reasonable time so that Rent Controller can take necessary action for service of notice of deposit under Sub-rule (4) of Rule 5 of the Rules within seven (7) days of such delivery. In the absence of compliance in so depositing rent and delivering challan in the office of Controller, tenant shall be deemed to have committed wilful default, as per conclusions on question Nos.1 and 2 above.

(4) There is no conflict between Section 10(2)(i) and Section 10(2) proviso on one hand and Rule 5 on the other.

The Civil Revision Petitions shall revert back to the appropriate bench as per roster for adjudication and determination in accordance with law.