

(2010) 04 MAD CK 0106
In the Madras High Court
Case No : C.R.P. (PD) No. 481 of 2010

N. Gokula Krishnan

APPELLANT

Vs

S.A. Thirumani Nadar, The Returning Officer Election
Cantonment Board, The President and The Director General
Defence Estates Ministry of Defense

RESPONDENT

Date of Decision : 29-04-2010

Acts Referred:

Cantonments Electoral Rules, 1945 — Rule 44
Cantonments Electoral Rules, 2007 — Rule 55, 56, 56(1)
Civil Procedure Code, 1908 (CPC) — Section 11, 21(2)
Constitution of India, 1950 — Article 227, 329
Representation of the People Act, 1951 — Section 117, 117(2), 52(3), 7, 81
Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Section 12(2), 54(1)

Citation : (2010) 04 MAD CK 0106

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : N. Jothi, for S.V. Vijay Prasanth, for the Appellant; R. Gandhi, for G. Headweige, for R1 and C. Mohan, for King and Partridge for R3 and R4, for the Respondent

Final Decision : Allowed

Judgement

M. Jaichandren, J.—This Civil Revision Petition has been filed against the order, dated 13.10.2009, made in the memo in the election

original petition in O.P. No. 85 of 2008, on the file of the the learned Principal District Judge, Changalpattu.

2. The petitioner in the present Civil Revision Petition is the fourth respondent in the Election petition in O.P. No. 85 of 2008, pending on the file of

the learned Principal District Judge, Changalpattu. The first respondent in the present Civil Revision Petition is the petitioner in the Election Original

Petition in O.P. No. 85 of 2008. The Election Original Petition has been filed by

the first respondent herein to set aside the declared result of ward

No. III in the Cantonment Board Election, St. Thomas Mount-cum-Pallavaram 2008, as null and void and order the first respondent functioning

under the second respondent to conduct immediate re-counting of votes polled for ward No. III in an unbiased and democratic way.

3. The election original petition had been filed by the first respondent stating that he had contested in ward No. III of the St. Thomas Mount-cum-

Pallavaram Cantonment Board Election 2008 held, on 18.5.2008. After the polling was over, the counting of the votes numbering 2268 out of the

total number of votes of 3215 in the ward No. III, had commenced at 8.00 a.m., on 19.5.2008. The counting of the votes for Ward Nos. I and II

had started at 8.00 a.m., on 18.5.2008, and it had been completed after nearly 4 hours. Thereafter, the results of the election were announced.

However, with regard to Ward No. III, the counting of the votes had commenced after lunch, on 19.5.2008 and it had been hastily completed

within 45 minutes after the counting had commenced, in spite of the demand made by the petitioner to the second respondent Returning Officer to

count the votes slowly and properly.

4. After the counting was over, the Returning Officer had announced that Gokulakrishnan, of the congress party, the petitioner in the present Civil

Revision Petition, had secured 897 votes whereas the first respondent had secured 895 votes. In such circumstances, the first respondent had

demanded immediate recounting of the votes polled in the election for ward No. III. However, the second respondent Returning Officer, instead of

recounting the votes polled, had verified the invalid votes polled and added 3 more votes to the total votes polled in favour of the petitioner. Thus,

the petitioner was declared elected with 900 votes polled in his favour. In such circumstances, the first respondent had filed an election original

petition on the file of the learned Principal District Judge, at Changanassery, in O.P. No. 85 of 2008, stating that he had paid the requisite security

deposit along with the petition, as per the requirements of Rule 44 of the Cantonment Electoral Rules, 1945. Thereafter, the first respondent had

filed a memo in which it had been stated that the election original petition had been numbered on payment of Rs. 2,500/-, as deposit money.

5. As per Rule 56 of the amended Cantonment Electoral Rules, 2007, the

petitioner in the election original petition had to deposit Rs. 3,000/- as deposit money. Therefore, the petitioner therein, the first respondent in the present Civil Revision petition, had prayed that he may be permitted to deficit deposit money of Rs. 500/- into Court. The petitioner herein had filed his objections to the memo filed by the first respondent stating that as per Rule 56 of the Cantonment Electoral Rules, 2007, the election petitioner had to deposit a sum of Rs. 3,000/- on the date of the filing of the election original petition. Since the first respondent had not deposited the said amount at the time of the filing of the election original petition, the said petition was liable to be rejected, in limine.

6. It had also been stated that the application filed by the petitioner in I.A. No. 84 of 2009, for rejecting the election original petition was still pending, on the file of the learned Principal District Judge, Changalpattu, and therefore, the memo filed by the counsel for the first respondent for permission to deposit a sum of Rs. 500/- being the balance deposit amount is improper and contrary to law.

7. It had also been stated that as per Rule 56 of the Cantonment Electoral Rules, 2007, it is mandatory for to deposit Rs. 3,000/- at the time of the presentation of the election original petition. Therefore, the filing of the memo after the lapse of 17 months from the date of the filing of the election original petition, on 16.4.2009, cannot be permitted.

8. By an order passed by the learned Principal District Judge, Changalpattu, dated 13.10.2009, permission had been granted to the first respondent to deposit the deficit deposit money of Rs. 500/- into Court. The learned Principal District Judge, Changalpattu, had accepted the contentions raised on behalf of the first respondent in granting the permission sought for by the first respondent. The first respondent had stated that it is the discretionary power of the court to allow the payment of deficit payment of money into Court, as it is paid only as security for the costs likely to be incurred during the proceedings of the election petition as per Rule 56 of the amended Cantonment Electoral Rules, 2007. He had also relied on the decisions of the Division Bench of the Bombay High Court in S.W.V. Fredricks Vs. Krishna Sopanrao Kamble and Others, to state that the election petitioner is entitled to pay a deficit of money into Court at any time before the main election original petition is taken up for

hearing. Since the election original petition filed by the first respondent was not ripe for enquiry, the first respondent had been permitted to deposit into Court the deficit amount of Rs. 500/-.

9. Against the order passed by the learned Principal District Judge, Changalpattu, in the memo filed by the first respondent in the election original

petition No. 85 of 2008, dated 13.10.2009, the present Civil Revision petition has been filed, under Article 227 of the Constitution of India.

10. The learned Counsel appearing on behalf of the petitioner had submitted that the order of the learned Principal District Judge, Changalpattu,

dated 13.10.2009, is against the mandatory provisions in Rule 56 of the Cantonment Electoral Rules, 2007. Further, the Election Original Petition

had been filed by the first respondent, on 26.5.2008, and the learned Principal District Judge, Chengalpattu, had passed the impugned order, on

13.10.2009, permitting the first respondent to deposit into Court the deficit deposit money, after a lapse of nearly 17 months. As per Rule 56 of

the Cantonment Electoral Rules, 2007, it is mandatory for the petitioner therein to deposit Rs. 3,000/- into Court along with the election original

petition. Since the first respondent, who had filed the election original petition, had not complied with the mandatory provisions of Rule 56 of the

Cantonment Electoral Rules, 2007, the election original petition ought to have been rejected, in limine, without being taken on the file of the learned

Principal District Judge, Changalpattu. As Rule 56(1) of the Cantonment Electoral Rules, 2007, states that "every petition shall be accompanied

by a deposit of Rs. 3,000/- in cash as security for the costs likely to be incurred", the election original petition filed by the first respondent before

the learned principal District Judge, Chengalpattu, on 26.5.2008, is defective in nature. Such a basic defects cannot be cured later by paying the

deficit deposit money, as the defects in the filing of the original election petition is incurable.

11. The learned Counsel appearing on behalf of the petitioner had also submitted that the first respondent cannot claim that he was ignorant of the

Cantonment Electoral Rules, 2007, as it had already come into force at the time of the filing of the petition. The payment of Rs. 3,000/-, as security

for the costs likely to be incurred, under Rule 56(1) of the Cantonment Electoral Rules, 2007, is mandatory. The initial amount of Rs. 3,000/- to be

deposited by the election petitioner as security for the costs likely to be incurred is mandatory. It is only the payment of further amounts to be paid,

as directed by the Courts concerned, which could be discretionary.

12. The learned Counsel had also compared the provisions of Rule 56 of the Cantonment Electoral Rules, 2007, with Section 117 Representation

of the People Act, 1951, to highlight the mandatory nature of Rule 56(1) of the Cantonment Electoral Rules, 2007.

13. The learned Counsel appearing for the petitioner had also stated that the election original petition filed by the first respondent is defective on

various counts. The petition, which had been filed on the last date of the limitation period, had been numbered without any payment being made as

security deposit. It had been filed under Rule 44 of the Repeal Rules of the year, 1945. The decision of the Bombay High Court, which deals with

Section 117 of the Representation of the People Act, cannot be applied to the present case, as many changes had been brought forth in the said

enactment, thereafter. As the defect in the filing of the election petition is incurable in nature, it cannot be cured by way of payment of the balance

security deposit amount based on an order asked in memo filed by the first respondent. Further, the first respondent had not chosen to add all the

candidates, who had participated in the election held, on 18.5.2008. The order passed by this Court, on 5.1.2010, in C.R.P (PD) No. 3725 of

2009, cannot be applicable to the defective filing of the election original petition under Rule 56(1) of the Cantonment Electoral Rules, 2007. The

order of this Court, dated 5.1.2010, was made in respect of the order, dated 13.10.2009, passed by the the learned Principal District Judge,

Changalpattu, in I.A. No. 84 of 2009, in Election Original Petition No. 85 of 2009. Therefore, the issue of res judicata would not arise for the

consideration of this Court in the present Civil Revision Petition. Since, the election original petition filed by the first respondent, in O.P. No. 85 of

2009, is truncated in character, it cannot be proceeded with by the learned Principal District Judge, Changalpattu. Therefore, this Court has

sufficient powers, under Article 227 of the Constitution of India to mould the reliefs.

14. Per contra, the learned Counsel for the first respondent had submitted that the Civil Revision Petition filed by the petitioner is not maintainable,

as it is hit by principle of *res judicata*. Both the memorandum, dated 16.4.2009, filed by the first respondent and the application in I.A. No.

84 of 2009, had been filed at the same time. The second and the third respondents in the election original petition had made a no objection

endorsement to the memo filed on behalf of the first respondent herein. Since the petitioner had already raised the issue regarding the deficient

payment of security deposit in ground No. XIV in C.R.P. (PD) No. 3725 of 2009, it would operate as constructive *res judicata* and therefore, the

present Civil Revision Petition cannot be maintained by the petitioner. Further, the Order passed by this Court in C.R.P. (PD) No. 3725 of 2009,

has become final. The petitioner ought to have raised his objections at the earliest point of time. It cannot be done when the election original

petition is at the stage of the trial.

15. The learned Counsel had also submitted that the word *shall* in Clause 1 Rule 56 of the Cantonment Electoral Rules, 2007, should be

read as *may*. Therefore, the Rule cannot be said to be mandatory in nature. Since the first respondent had already paid a substantial sum of

Rs. 2,500/-, he had filed the memo only for the payment of Rs. 500/- as the balance security deposit money. The learned principal District Judge,

Changalpattu, had rightly permitted the first respondent to pay the balance amount. Therefore, the election original petition filed by the first

respondent in O.P. No. 85 of 2008, cannot be said to be defective in nature. Since the condition prescribed in Rules 55 and 56 of the Cantonment

Electoral Rules, 2007, had been complied with, the learned principal District Judge, Changalpattu, had started the proceedings of the election

original petition and it is under the stage of the trial. The learned Counsel had relied on the following decisions:

16. The learned Counsel appearing for the respondents 3 and 4 had submitted that the main issue to be decided in the present Civil Revision

Petition is whether the word "shall" in Clause 1 of the Rule 56 of the Cantonment Electoral Rules, 2007, should be read as "may". The

interpretation given to Section 117 of the representation of the people Act, may be relevant in interpreting Rule 56 of the Cantonment Electoral

Rules, 2007, as both the materials are *para materi*. For the principle of *res judicata* to apply, as stated by the learned Counsel for the first

respondent, it has to be seen as to whether the issues arising for consideration for this Court had already been finally decided in C.R.P. (PD) No.

3725 of 2009.

17. The learned Counsel for the petitioner had relied on the following decisions in support of his contentions:

17.1. In Charan Lal Sahu Vs. Nandkishore Bhatt and Others, , the Supreme Court had held that ""there is no question of any common law right to

challenge an election. Any discretion to condone the delay in presentation of the petition or to absolve the petitioner from payment of security for

costs can only be provided under the statute governing election disputes. If no discretion is conferred in respect of any of these matters, none can

be exercised under any general law or on any principle of equity. The right to vote or stand as a candidate for election is not a civil right but is a

creature of statute or special law and must be subject to the limitations imposed by it. The right conferred by Article 329(b) being a statutory right,

the terms of that statute have to be complied with.

Presentation of the petition under the repealed Section 81 beyond the period prescribed for its presentation could be condemned by the Election

Commission in its discretion under the proviso to the repealed Section 85 of the Act, but there is nothing in Section 85 which permits the Election

Commission to condone the non-compliance with the provisions of Section 117. The reference to trial is in a larger sense and deals with the steps

in a trial rather in a narrower sense of trial commencing after the notice of the petition is directed to be served on the respondent. The marginal note

of Section 86, namely, ""Trial of election petitions"" does not indicate that under Sub-section (1) of Section 86 an election petition cannot be

dismissed for non-compliance with the provisions set out therein unless notice is issued to the respondent. Where the language is clear and can

admit of no other meaning such as is evident from Sub-section (1) of Section 86 the marginal note cannot be read to control that power.

17.2. In Govindlal Chhaganlal Patel Vs. The Agricultural Produce Market Committee, Godhra and Others, , the Supreme Court had held that the

governing factor is the meaning and intent of the legislature, which should be gathered not merely from the words, used by the legislature but from a

variety of other circumstances and considerations. In other words, the use of the

word "shall" or "may" is not conclusive on the question whether the particular requirement of law is mandatory or directory. But the circumstances that the legislature has used a language of compulsive force is always of great relevance and in the absence of anything contrary in the context indicating that a permissive interpretation is permissible, the statute ought to be construed as peremptory.

17.3. In *Mohan Kumar Singhania v. Union of India* : AIR 1992 SC 1, the Supreme Court had held that while interpreting a statute the

consideration of inconvenience and hardships should be avoided and that when the language is clear and explicit and the words used are plain and

unambiguous, the Court is bound to construe them in their ordinary sense with reference to other clauses of the Act or Rules as the case may be,

so far as possible, to make a consistent enactment of the whole statute or series of statute/Rules/Regulations relating to the subject matter. Added

to this, in construing a statute, the Court has to ascertain the intention of the law making authority in the backdrop of the dominant purpose and the

underlying intendment of the said statute and that every statute is to be interpreted without any violence to its language and applied as far as it

explicit language admits consistent with the established rule of interpretation.

17.4. In *M/s. Oswal Agro Mills Ltd. Vs. Collector of Central Excise and others etc. etc.*, , the Supreme Court had held that where the words of

the statute are plain and clear, there is no room for applying any of the principles of interpretation which are merely presumption in cases of

ambiguity in the statute. The court would interpret them as they stand.

17.5. In *M.Y. Ghorpade Vs. Shivaji Rao M. Poal and Others*, , the Supreme Court had held that ""Section 117 of the RP Act requires deposit of

Rs. 2000 as security for the cost which has to be made at the time of presenting an election petition. The object of having the 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.

2000 is mandatory and the same has to be made while presenting an election petition. 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 u/s 86(1). 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 the same is directory.

Thus there is no infirmity with the conclusion of the High Court that there has been compliance with Section 117 of the Act and consequently the election petition has been rightly held to be maintainable and could not have been dismissed u/s 86 on the ground of non-compliance with Section 117 of the Act. The sum of Rs. 2000 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, in the case in hand the evidence of the election petitioner as well as the evidence of respondent 5 unequivocally point out that it was the election petitioner who deposited the amount of Rs. 2000.

17.6. In *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, , this Supreme Court had held that two principles of construction

are ½ one relating to *casus omissus* and the other in regard to reading the statute as a whole ½ appear to be well settled. Under the first principle a

casus omissus cannot be supplied by the Court by judicial interpretative process, except in the case of clear necessity and when reason for it is

found in the four corners of the statute itself, but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of

a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses

thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if

literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature.

The court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language

employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation

must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said.

While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary.

17.7. In *State of Jharkhand v. Govind Singh*, the Supreme Court had held that "reading into Section 52(3) the power to direct release of vehicle

alleged to be involved in forest offence by imposing fine in lieu of confiscation was not proper. The finding by the High Court that though the power

to levy fine in lieu of confiscation is not there u/s 52(3), same has to be read into the statute to fully effectuate the legislative intent, it was a case of

casus omissus, held, was against the settled principles relating to statutory interpretation. The legislative *casus omissus* cannot be supplied by

judicial interpretative process.

17.8. In *Karam Thamarjit Singh v. Md. Allauddin Khan* AIR 2008 Gau 457 (GAU), it has been held that while the attestation of copies of election

petition is mandatory, plain signatures of the election petitioner in the copies within pre-fixing the words "true copy" or certified to be true copy

can be accepted as substantial compliance of Section 81(3) of the ROP Act. If election petitions are to be dismissed on such hyper-technical

objection by over stretching the provisions of law, it would certainly be against the intention and objective of the law. If such unfounded objections

are entertained by the Courts, it would also amount to gagging the process of justice. Miscellaneous application, raising preliminary objection about

the maintainability of the election petition, alleging non-compliance of Section 81(3) of the ROP Act was filed nearly after more than 3 1/2 months.

This conduct of the returned candidate is also reprehensible and it can be safely inferred that the technical objection, which is also found to be

totally unfounded in law, has been raised only with an oblique motive to delay the hearing of the election petition on merit.

18. The learned Counsel for the respondent had relied on the following decisions in support of his contentions:

18.1. In *Laxmi Sahu Vs. Ganeshi Sahu*, it was held that where in an eviction suit filed for eviction under the provisions of a Rent Act, the

defendant denied the title of the plaintiff and set up his own title on the basis of adverse possession, the suit would be governed by Section 7(xi)

(cc) and only one year rent had to be valued and, hence, remitting of the case for hearing on the question of valuation of suit property with the

direction to obtain ad valorem duties would not be justified. It would be more so in view of provisions of Section 21(2) of Civil Procedure Code,

when the question of valuation was not even put in issue at the trial stage and even the question of Court-fee was also not put in issue.

18.2. In R.C. Sundaravalli Vs. T.D. Shakila, , this Court had held that it was open to the petitioner to raise this question by his written statement or

even by an affidavit supported by petition. But Section 12(2) of the Tamil Nadu Court fees and Suits Valuation Act clearly lays down that this

objection should be raised before the first hearing of the suit or before evidence is recorded on the merits of the claim. The words ""first hearing of

the suit"" may extend to any date until the issues are actually settled. In this case, the issues have been settled, therefore, the first stage before which

the defendant could have raised this objection has passed. The Section provides for another stage when a defendant could plead as above. This is

before the evidence is recorded on the merits of the claim. Therefore, after evidence is commenced on the merits of the claim, a reading of the

Section indicates that the defendant does not have any further opportunity to plead either that the suit has not been properly valued or that the fee

paid is not sufficient. In this case, both the stages have passed. The issues have been settled and even as per the admission of the petitioner, the

additional issues have also been framed and it is also seen from a perusal of the judgment that trial had already started. P.W.1's evidence has been

recorded. So, it is clear that it is belated. The court sees no reason to interfere with the order of the Court below dismissing the application.

18.3. In D. Ram and D. Shyam, rep. by father and natural Guardian, Dr. D. Balasubramanian Vs. Jawaharlal Institute of Post Graduate Medical

Education and Research, , this Court had held that there is a distinction between issue estoppel and res judicata. Res judicata debars a Court from

exercising its jurisdiction to determine the lis if it has attained finality between the parties whereas the doctrine of issue estoppel is invoked against

the party. If such an issue is decided against him, he would be estopped from raising the same in the latter proceeding. The doctrine of res judicata

creates a different kind of estoppel viz. Estoppel by Accord.

18.4. In PPN Power Generating Company Limited Vs. PPN (Mauritius) Company and Others, , it was held that no man should be vexed twice

for the same cause of action. Principle of res judicata is based on the need to give finality to judicial decisions. It can be applied even when Section

11 does not, per se, apply. Plea of res judicata will apply only if orders of the Court or forum, having concurrent jurisdiction, was directly in point

and on same subject matter. Such order should be conclusive upon same parties, even if the issue goes to another Court.

18.5. In Employers, Management of Central P and D Inst. Ltd. Vs. Union of India (UOI) and Another, , the Supreme Court had held that the

principle of res judicata is based on the need of giving finality to judicial decisions. The principle which prevents the same case being twice litigated

is of general application and is not limited by the specific words of Section 11 of CPC in this respect. Res judicata applies also as between two

stages in the same litigation to this extent that a Court, whether the trial Court or a higher Court having at an earlier stage decided a matter in one

way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings.

18.6. In Om Sakthi Rennergies Limited Vs. Megatech Control Limited and A.P. Transco, , it has been held that in order that an objection to the

place of suing may be entertained by an appellate or revisional Court the fulfillment of the following three conditions are essential: (i) the objection

was taken in the Court of first instance; (ii) it was taken at the earliest possible opportunity, and in cases where issues are settled, at or before such

settlement; and (iii) when there has been a consequent failure of justice. All these three conditions must co-exist. Now, in the present case, though

objection to the jurisdiction was raised in the counter it was not pressed at the time of hearing. If a party does not press the objection to the

jurisdiction and allows trial to go on in the usual course on merits, he would be bound by his own conduct, and he should be deemed, in such

circumstances to have waived his objection as to jurisdiction.

18.7. In Govindaraj v. Ponnammal (2006) 3 M.L.J. 35, it was held that the provisions contained in Section 21(2) CPC and Section 54(1) of the

Tamil Nadu Court Fees and Suits Valuation Act, contemplate raising of objection

as to the valuation of the suit or appeal for jurisdictional

purposes, prior to the settlement of issues. The emphasis of both the Sections is that the objection must have been taken in the Court of the first

instance at the earliest possible opportunity and there must have been a consequent failure of justice.

In the absence of any plea of material prejudice caused to the defendant regarding pecuniary jurisdiction the appellate Court cannot interfere. The

defendant did not raise any preliminary issue on this question but allowed the trial to proceed. On the basis of stray answer given by an illiterate

lady in evidence that the house was built by her husband by spending about one lakh of rupees, the Court cannot fix the value and find fault with

the finding of the trial Court on the question of valuation when the defendant failed to adduce any evidence regarding the market value of the

property. No plea that the defendant had been, prejudiced had been made.

19. In view of the contentions raised on behalf of the petitioner and the respondents in the present Civil Revision Petition and on a perusal of the

records available, and on considering the decisions cited supra, this Court is impelled to state that the election original petition filed by the first

respondent in O.P. No. 85 of 2008, on the file of Principal District Court, Changanassery, is defective in nature.

20. The contentions raised on behalf of the first respondent that Rule 56(1) of the Cantonment Electoral Rules, 2007, is not mandatory in nature,

cannot be countenanced. When it has been stated that every petition shall be accompanied by a deposit of Rs. 3,000/-, in cash as security

for the costs likely to be incurred, the mandatory nature of the word shall cannot be diluted by reading it as may. When the provision

is dealing with the procedure to be followed to challenge a election of a democratically elected candidate, it would be an appropriate to employ

strict constructions of the words used in such provision. Rule 56(1) of the Cantonment Electoral Rules, 2007, could be seen to be reflected the

anxiety of the makers of law to prevent frivolous litigation being initiated to thwart the democratic process of elections to elect the suitable

candidates to represent the community at large.

21. It is also seen that at the time of the filing of the election original petition, on 26.5.2008, the necessary deposit had not been made as

prescribed by Rule 56(1) of the Cantonment Electoral Rules, 2007. Thereafter, the counsel for the first respondent had filed a memo, on

16.4.2009, seeking permission of the learned Principal District Judge, Changalpattu, to deposit the deficit deposit amount in Court. Thus, it is clear

that the election original petition had been filed by the first respondent in O.P. No. 85 of 2008, was defective in nature. Such a defect cannot be

cured thereafter by an order of the learned Principal District Judge, dated 13.10.2009, made in the memo filed on behalf of the first respondent.

From the decisions relied on by the learned Counsel for the petitioner, it is clear that the defect is incurable in nature. Accordingly, the Civil

Revision Petition is allowed accordingly. No costs. Consequently, connected M.P. No. 1 of 2010 is closed.