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**(2013) 08 DEL CK 0019**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 4841 of 2013**

Amanat Ullah Khan

APPELLANT

Vs

Election Commission of India

RESPONDENT

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**Date of Decision :** 02-08-2013

**Acts Referred:**

Representation of the People Act, 1951 — Section 10A, 11, 77, 78

**Citation :** (2013) 10 AD 228 : AIR 2013 Delhi 204 : (2013) 203 DLT 495

**Hon'ble Judges :** Rajiv Sahai Endlaw, J

**Bench :** Single Bench

**Advocate :** M.N. Siddiqui and Mr. Aditya Gaur, for the Appellant; Y.R. Sharma, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the order dated 7th June, 2011 of the respondent Election Commission of India (ECI) made in exercise of powers u/s 10A of the Representation of the People Act, 1951 and declaring the petitioner to be disqualified from being a member of either House of the Parliament or Legislative Assembly or Legislative Council of a State (Union Territory of Delhi) for a period three years from the date of the order. The reason for the long delay of over two years has been enquired.

2. The counsel for the petitioner states that the delay of over two years in preferring the petition has occurred because the petitioner has in the interregnum been representing to the respondent ECI and was compelled to approach this Court since the respondent ECI failed to act. Upon further enquiry as to what was the jurisdiction of the respondent to re-consider, attention is invited to Section 11 of the Act authorizing and empowering the respondent ECI to, for reasons to be recorded, remove any disqualification or reduce the period of any such disqualification.

3. However the only representations made by the petitioner and annexed to this

petition are the representation dated 29th February, 2012 i.e. after eight months of the order and a representation dated 30th April, 2013, i.e. after more than one year of the first representation. This petition has been filed after three months of the second representation.

4. The petitioner has been so disqualified for the reason of having failed to, in accordance with Section 77 of the Act lodge an account of the election expenses.

5. The counsel for the petitioner contends that the order dated 7th June, 2011 is bad and illegal because no notice prior to the issuance thereof was given to the petitioner and also because the petitioner in fact had filed account of the election expenses. Attention in this regard is invited to statements of account Annexure P-3 to the petition and which are shown to have been acknowledged by Shri B.D. Gupta, OSD/Dy. Secretary on 20th November, 2008. It is thus contended that the order is bad.

6. Section 78 of the Act requires the contesting candidates at an election to, within thirty days from the date of election of the returned candidate, lodge with the District Election Officer an account of the election expenses.

7. The counsel for the petitioner is unable to say whether Shri B.D. Gupta, OSD/Dy.

Secretary who has acknowledged the accounts filed as Annexure P-3, was the District Election Officer. The counsel for the petitioner on further enquiry states that the date of the election was 28th November, 2008.

8. Section 78 as aforesaid requires the lodging of the accounts within 30 days from the date of the election. The Statement of Accounts Annexure P-3 stated to be submitted on 20th November, 2008, even if to the District Election Officer, is of a date prior to the date of the election and does not appear to be in compliance of Section 78 of the Act.

9. The counsel for the respondent appearing on advance notice also invites attention to the representation dated 29th February, 2012 where the petitioner has admitted having not furnished the accounts of election expenses and purporting to submit the accounts undercover of that letter. The petitioner in the said representation dated 29th February, 2012 did not state that he had submitted the accounts earlier; rather he admitted his default. In fact the petitioner in the said representation did not even complain that he had been disqualified without hearing.

10. Notice in this regard may be taken of the Rule 89 of the Conduct of Election Rules, 1961, sub Rule (5) whereof requires the Election Commission to upon coming to the conclusion from the report of the District Election Officer that a contesting candidate has failed to lodge his account of election expenses within the time and in the manner required by the Act, to by notice in writing call upon the candidate to show cause why he should not be disqualified u/s 10A for the failure. Sub Section (6) enables such contesting candidate who has been called

upon to show cause, to submit a representation with a complete account of his election expenses if he had not already furnished such an account. Sub Section (8) empowers the Election Commission to after considering the said representation and if satisfied that the candidate has no reason or justification for the failure to lodge his account, to declare him disqualified u/s 10A for a period of three years from the date of the order. The Division Benches of the High Courts of Punjab & Haryana and Andhra Pradesh in Capt. Chanan Singh Sidhu Vs. The Election Commission of India, New Delhi and others, and Keshav Jadhav Vs. Election Commission of India, Delhi and Others, have held that the action of declaring the candidate disqualified is not an adjudication of any dispute but is a automatic result flowing from the non-observance of the statutory provisions which stand incorporated in the Act by Parliament; that it is therefore not the Election Commission which disqualifies the candidate but he has himself incurred the disqualification under the statute. It was further held that a citizen contesting an election is supposed to comply with the election laws and under which by acts of omission a disqualification follows; then the candidate himself is to blame for the same and none else and all that the ECI in exercise of powers u/s 10A is required to do, is to invite the attention of the candidate to the statutory provision of Section 10A which are mandatory in nature and no separate reasons are required to be recorded in the order. It was yet further held that the reason for disqualification is inbuilt in the order of disqualification and beyond that the Parliament never intended the ECI to record any reasons. The Courts further held that since the disqualification is a necessary consequence flowing from the failure of the candidate himself in lodging account of election expense within stipulated period and in the prescribed manner, no question of the order u/s 10A being punitive or stigmatic arose and no civil rights of the candidate were effected for an opportunity of hearing being required to be given by the ECI before passing any order.

11. The Division Bench of this Court in Madhu Kora Vs. Election Commission of India relying on L.R. Shivaramagowda, Etc. Vs. T.M. Chandrashekar Etc., held that if an account is found to be untrue or incorrect by the ECI after enquiry under Rule 89, it could be held that the candidate has failed to lodge account within the meaning of Section 10A.

12. Even otherwise that is no explanation for the delay of over two years in preferring the petition and which delay considering the nature of the order, is found to be fatal. Notice in this regard may be taken of Mahinder Kumar Bansal Vs. The State Election Commission Govt. of NCT of Delhi, where on an examination of the Scheme of Rules 89 & 92 it was held that even though no time limit is prescribed for passing an order of disqualification but the Election Commission is to act within a reasonable time; the order of disqualification was quashed inter alia on the ground of having been made after a delay of two years. Though the order impugned in the present case also has been issued after three years of the election, but the petitioner has filed this petition after another two years and of which delay as aforesaid, there is no explanation.

13. As far as the argument of the petitioner having approached the respondent u/s 11 of the Act is concerned, admittedly in the representation dated 29th February, 2012 the petitioner did not seek recall of the order dated 7th June, 2011 or reduction of the period of his disqualification, though in the subsequent representation dated 30th April, 2013 such a relief was sought. However the challenge in the present petition is not to the inaction of the respondents to exercise power u/s 11 of the Act and this petition is confined to the challenge to the order dated 7th June, 2011.

14. If the petitioner intends to invoke the jurisdiction of respondent u/s 11 of the Act, he has to make a requisite application therefor and this petition as far as challenging the two years old order, is found to be barred by laches, acquiescence and waiver.

15. No merit is thus found in the petition which is dismissed. Nothing contained in this order shall however come in the way of the petitioner approaching the Election Commission u/s 11 of the Act.