

(1999) 07 GAU CK 0022
In the Gauhati High Court
Case No : Civil Rule No. 2623 of 1997

Bhadreswar Tanti

APPELLANT

Vs

Election Commission of India and Others

RESPONDENT

Date of Decision : 01-07-1999

Acts Referred:

Conduct of Elections Rules, 1961 — Rule 86, 87, 88, 89, 89(1)
Constitution of India, 1950 — Article 226
Representation of the People Act, 1951 — Section 10A, 11, 77, 78, 8A

Citation : (1999) 3 GLT 19

Hon'ble Judges : D.N. Chowdhury, J

Bench : Single Bench

Advocate : D.C. Mahanta and B. Devi, for the Appellant; P.N. Choudhury and T.C. Chutia, for the Respondent

Judgement

D.N. Chowdhury, J.—This is an application under Article 226 of the Constitution of India challenging the Order No. 76/AS/96-2258 dated 7th March, 1997 issued by the Secretary, Election Commission of India, New Delhi, u/s 10-A of the Representation of the People Act, 1951 and Rules and Orders made thereunder, declaring the Petitioner along with other defaulting candidates (Petitioner's name shown at serial No. 64) to be disqualified for being chosen as Member of either House of Parliament or of the Legislative Assembly of the State for a period of three years.

2. The Petitioner was a former Member of the 8th Lok Sabha from the Kaliabor Parliamentary Constituency in the year 1985. He lost the General Election in the year 1996 from the Bokakhat Assembly Constituency No. 93. It was averred in the petition that the Petitioner incurred a sum of Rs. 27,527.70 towards the election expense. The election agent of the Petitioner who used to maintain the books of account submitted statement of expenditure in the office of the Respondent No. 3, the Returning Officer, Bokakhat in the month of June, 1996. It was pleaded that the Petitioner was sick and that prevented the Petitioner in submitting the required Affidavit along with the said account of expenditure. It

was further stated that the Respondent No. 3 was duly informed about the cause of the delay in submitting the affidavit, which was apparently received by the Head Assistant of the office of the Respondent No. 3 on 8.1.97. According to the Petitioner, the said Head Assistant acknowledged the receipt of the said letter addressed to the Respondent No. 3, requesting him to refer the same to the Election Commission. In the meanwhile, the impugned order of the Election Commission was announced declaring the Petitioner together with sixty-eight other candidates from the State of Assam as disqualified for being chosen as a Member of either House of Parliament or of the State Legislative Assembly for a period of three years from the date of the order on their failure to lodge account of election expenses u/s 10-A of the Representation of People Act, 1951.

3. In the petition, several issues were raised assailing the propriety, legitimacy as well as the competency of the order of the Respondent No. 1, Election Commission, communicated by the Respondent No. 2, Secretary, Election Commission.

4. Mr. D.C. Mahanta, learned senior Counsel, appearing with Mr. T.J. Mahanta and Smti Bharati Devi, in his usual candour, fairly submitted that in the facts and circumstances of the case, the impugned order dated 7.3.97, may not perhaps be labelled as illegal and without jurisdiction. Referring to the gamut of the relevant Statutory provisions vis-a-vis part XV of the Constitution of India, Mr. Mahanta, the learned senior Counsel, submitted that the Election Commission is vested with enormous functions including the powers, duties and functions quintessentially administrative peripherally wedded with adjudicatory as well as legislative power. An order passed u/s 10-A of the Act, 1951 is the spontaneous result occasioned on the failure of the contesting candidate in lodging an account of his election expense in the matter prescribed. The learned senior Counsel however submitted that the same law also empowered the Election Commission the power of removal or reduction of period of disqualification. Mr. Mahanta, learned senior Counsel, submitted that the Parliament while bestowing power on the Election Commission to disqualify a person on being satisfied that a person has failed to lodge an account of election expenses within the time and in the manner required by or under the Act, and has no good reason or justification for the failure. The provision is intended as a mechanism for enforcement of the Statute. It is a curative measure and is not to be used as a lethal and ruinous tool, submitted the learned senior Counsel Mr. Mahanta.

5. Mr. Prashant N. Choudhury, learned Counsel appearing on behalf of the Election Commission argued the case at length supporting the decision making process that led to the impugned order and submitted that the Commission discharged its Constitutional and Statutory obligation lawfully and with utmost good faith. Mr. Choudhury, the learned Advocate for the Respondents referring to the Affidavit of the Respondents Nos. 1 and 2, submitted that the action of the answering Respondents are free from any infirmity requiring interference from this Court under Article 226 of the Constitution of India. Mr. Choudhury, the

learned Counsel for the Commission, also pointed out that the Statute provided an alternative and efficacious remedy enjoined in Section 11 of the Act which could have been availed by the Petitioner instead of rushing to the Court by way of an application u/s 11 of the Act, 1951.

6. The desideratum of keeping a separate and correct account of all expenditure in connection with the election incurred or authorised by the candidate or his election agent between the date on which he has been nominated and the date of declaration of the result, lodging on account of the election expenses before the authorised officer (District Election Officer) are all laid down in Sections 77 and 78 of the Representation of the People Act, 1951 (hereinafter referred to as the Act).

7. Rule 86 of the Conduct of Election Rules, hereinafter referred to as the Rules, speaks on account of election expenses. The duty of the District Election Officer to cause a notice to be affixed on his notice board specifying the date on which the account has been lodged, the name of the candidate and time and place on which such account can be inspected, are specified in Rule 87 of the Rules. The provision as well as procedure for inspection is specified in Rule 88 and the methodology of reporting by the District Election Officer to the Election Commission as to the lodging of account of election expenses and the decision of the Election Commission thereon are specified in Rule 89 of the Rules. As per the scheme indicated in Rule 89 of the Rules, the Election Commission is entrusted with the duty to consider the report by the District Election Officer referred to in Sub-rule (1) and decide as to whether any contesting candidate has failed to lodge the account of the election expenses within the time and in the manner required by the Act and the Rules. In a case where the Election Commission decides that a contesting candidate has failed to lodge his account of election expenses within the time and in manner required by the Act and the Rules, the Commission is obligated to call upon the candidate to show cause as why he should not be disqualified u/s 10-A of the Act, 1951 for the failure, by notice in writing. Any contesting candidate who has been called upon to show cause under Sub-rule (5) of Rule 89, is to submit a representation in writing to the Commission within the period specified in Sub-rule (6) and is to send at the same time a copy of the representation together with the complete account of his election expenses if he already had not furnished such account. Sub-rule (8) of Rule 89 speaks that if after consideration of the representation submitted by the candidate and the comments made by the District Election Officer and after such enquiry made as it thinks fit, the Election Commission is satisfied that the candidate has no good reason or justification for the failure to lodge his account of election expenses, it shall declare him to be disqualified u/s 10-A of the Act, 1951 for a period of three years from the date of the order and cause the order to be published in the Official Gazette. Similar is the term and so is the tenor of the provisions mentioned in Section 10-A of the Act, 1951. Section 10-A of the Act, 1951 read with Sub-rule (8) of Rule 89 of the Rules, clothed the Commission with the power to disqualify or disable a person in the situation where a person

has failed to lodge an account of his election expenses within the time and in the manner required by or under Act and has no good reason or justification for the failure. By good reason, it envisage a reason justifying the failure to submit the account of election expenses within the time and in the manner required by or under the Act, 1951. Negligence cannot be termed to be a good reason. Good reason means a good reason or justifiable reason for doing something which should be acceptable to a right thinking person as a sound and tolerable reason for so doing. The term "justification" speaks of affirmative disposition showing good reason which prevented one to lodge an account of election expenses.

8. The Election Commission is entrusted with the duty to exercise that power on the grounds specified above. It is absolutely an area in which the Commission is free to exercise its power in terms of the Statute. On that count, in fact there is no controversy. Mr. Mahanta, the learned senior Counsel in his submissions, mainly emphasised on the scope and effect of the power mentioned in Section 11 of the Act, 1951 which reads as follows:

11. Removal or reduction of period of disqualification.--The Election Commission may, for reasons to be recorded, remove any disqualification under this Chapter (except u/s 8A or reduce the period of any such disqualification).

9. Mr. Mahanta, learned senior Counsel, submitted that the power conferred on the commission u/s 11 of the Act, 1951 is wholesome and is to be interpreted meaningfully. Section 11 of the Act conferred a wide power on the Election Commission to remove any disqualification under Chapter III, Part II of the Act, 1951. It is an accepted principle of law that if the language of a Statute is capable of more than one interpretation, the one which is capable of causing mischievous consequences, is to be avoided. "Language is capable of more than one interpretation, we ought to discard the most natural meaning if it leads to most unreasonable result and adopt that interpretation which leads to a reasonable, practical result." (Maxwell in Interpretation of Statute, 12 Edn. Page 105). Needless to say that the legal policy is directed to the well being of the community, the underlying policy is the welfare of the inhabitants--"Salus populi suprema lex" (Good of the people is the object of the law). A primary aim of legal policy is to do justice and the Court presumes that the Parliament does not intend to injustice.

10. Looking to the provisions of Section 11 of the Act, 1951, it appears that the Parliament desired to cure the mischief and accordingly, the enactment was made designed to remedy the situation. Section 11 of the Act, 1951 has thus clothed the Commission to assess and make a balancing exercise in the facts and situation of the case. The Commission is conferred with the power to remove any disqualification under the Chapter (i.e. Ch. III) or reduce the period of such disqualification. The word "Remove" is a verb which means to eliminate, abolish, annihilate, cancel, etc. The word "Reduce" is also a verb meaning to abbreviate, abridge, compress, cut down, diminish, etc. The above provision of law thus entrusted the Commission with the power to eliminate, eradicate, withdraw or

cancel the disqualification attached or to minimise, shorten or lessening the period of disqualification for reasons to be recorded. The Statute has given a free hand to the Election Commission to exercise the aforesaid power in the interest of justice, to avoid inconvenience and injustice.

11. In the aforesaid facts and circumstances of the case, therefore, I am of the view that ends of justice will be met if a direction is issued to the Petitioner to make an appropriate application before the Election Commission narrating the factual situation in this setting within a month from the date of receipt of certified copy of this order. If such an application is made, the Election Commission should take into consideration the application, examine the same as per law and pass necessary orders thereon in the light of the attending facts and circumstances, as expeditiously as possible preferably within a month from the date of receipt of certified copy of this order alongwith the application.

Subject to the observation made above, the writ petition stands disposed. There shall be no order as to costs.