(2020) 03 BOM CK 0065

In the Bombay High Court

Case No : Writ Petition No. 3639, 3640, 3641, 3642, 3643, 3644, 3645 Of 2020

Bhamabai Kanifnath Lawande APPELLANT

Vs

Additional Commissioner Nasik Division And Others RESPONDENT

Date of Decision : 06-03-2020

Acts Referred:

Maharashtra Village Panchayats Act, 1959 — Section 14B(1), 14B(1)(b)
Representation Of The People Act, 1951 — Section 38, 77
Maharashtra Village Panchayats Election Rules, 1959 — Rule 11, 12, 13, 14, 15, 15(1), 15(2)
Bombay High Court Appellate Side Rules, 1960 — Rule 8
Bombay Provincial Municipal Corporations Act, 1949 — Section 14(4)
Maharashtra Municipal Councils, Nagar Panchayats And Industrial Townships Act, 1965 — Section 10A(4), 16(1D)
Maharashtra Zilla Parishads And Panchayat Samitis Act, 1961 — Section 10A(4), 15B(1)
Bombay Village Panchayats Act, 1958 — Section 10A(4)
City Of Nagpur Corporation Act, 1948 — Section 9B(4)

Citation : (2020) 03 BOM CK 0065

Hon'ble Judges : Ravindra V.Ghuge, J

Bench : Single Bench

Advocate : R. S. Kasar, S. K. Tambe

Judgement

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 These identically placed Petitioners seek to challenge the order dated 17/04/2018, passed by the District Collector, Ahmednagar, by which, the Petitioners have been disqualified under Section 14B(1) of the Maharashtra Village Panchayats Act for having failed in submitting the accounts of election expenses. The Petitioners are also aggrieved by the order dated 10/12/2019 delivered by the Divisional Commissioner, Nashik, by which, the Appeals preferred by the Petitioners, have been rejected and the disqualification for a period of five years, has been sustained.

3 Having considered the strenuous submissions of the learned Advocates for the respective sides, I find it apposite to record the sequence of events as under :-

(a) These Petitioners have tendered their nomination forms for contesting elections to the village Panchayat, Parewadi, Taluka Pathardi, District Ahmednagar, on 04/08/2015.

(b) At the time of scrutiny of the nomination forms, there were only seven nomination forms and all of them were found to be valid.

(c) As there were only seven positions to the Membership of Village Panchayat Parewadi, there was no contest between the aspiring candidates and all of them, therefore, were declared elected unopposed on 06/08/2015.

(d) They all failed to tender their accounts of election expenses.

(e) These Petitioners have made a two-fold submission. Firstly, that they are not required to tender their accounts of election expenses under Section 14B(1) as they have been elected unopposed. Secondly, they claimed that they tendered their accounts of election expenses on the date on which they filed their nomination forms, with the returning ofcer.

(f) On 20/11/2015, the District Collector, Ahmednagar initiated proceedings for disqualification of the candidates, who have not tendered their accounts of election expenses within 30 days from the date of the ofcial declaration of the election results.

(g) All these Petitioners were initially disqualified by the first order passed by the District Collector dated 14/07/2016 for a period of five years.

(h) These Petitioners approached the Divisional Commissioner, Nashik by filing their individual Appeals. By orders dated 28/02/2017, their Appeals were allowed, the order of disqualification passed by the District Collector was set aside and the matter was remitted to the District Collector for a re-hearing.

(i) These Petitioners then once again tendered their accounts of election expenses on 19th July 2017 alongwith specific afdavits.

(j) The Tahsildar Pathardi, tendered his report in each of these cases contending that none of these Petitioners had submitted their accounts of election expenses at the time of the filing of their nomination forms with wps.odt and there is no ofcial record to indicate that these Petitioners had done so.

(k) These Petitioners canvassed before the District Collector that as they are elected unopposed, there is no necessity to file accounts of election expenses since they had incurred expenses only for the preparation of their nomination forms.

(l) In the alternative, they contended that they have filed their accounts of elections expenses alongwith proper afdavits again on 19/07/2017.

(m) By the impugned order dated 17/04/2018, the District Collector concluded that these Petitioners had violated Section 14B(1) and, therefore, deserve to be disqualified.

(n) By the impugned order dated 10/12/2019, the Divisional Commissioner concluded that as there is no evidence of these Petitioners having tendered their accounts at the time of the filing of the nomination forms, the conclusions drawn by the District Collector are sound and proper.

4 The issue, therefore, raised in these Petitions is that a candidate elected unopposed, is not required to tender the accounts of election expenses since he has not incurred any expenditure. In the alternative, these Petitioners have contended that they had declared their accounts of election expenses to the extent of the filing of the nomination forms and as the Tahsildar has misplaced such accounts, they have once again tendered such accounts on 19th July 2017.

5 The Petitioners, therefore, rely upon the judgment delivered by this Court at the Nagpur Bench in the matter of Dipmala w/o Ravindra Chachane

Vs. Additional Commissioner, Nagpur, 2020(1) Mh.L.J. 900, wherein this Court has concluded that a candidate elected unopposed, was not required to campaign and incur expenses towards contesting the election.

6 The learned AGP appearing on behalf of the statutory authorities submits that he has gone through the facts and the conclusions drawn by this Court in Dipmala (supra) and submits that the following aspects were not canvassed before the Court in Dipmala (Supra) :-

(a) Section 77 of the Representation of the People Act, 1951 mandates that every candidate at an election shall have to keep the accounts of all expenditure incurred in connection with the election and such accounts had to be maintained from the stage of the nomination of a candidate till the date of the declaration of the election results, both days inclusive.

(b) The Government Resolution dated 15/10/2016 issued by the State Election Commission, Maharashtra with regard to submission of election expenses for elections held to the Lok Sabha, Vidhan Sabha and the Local bodies (Local Self Government).

(c) The said G.R. has been issued with a specific object. Clause 5 of the said G.R. prescribes the sources of collecting money for election expenses.Clause- 3(ii) prescribes that the candidates must submit their daily accounts of election expenses, failing which, the results of the election could be reserved.

(d) Clause 3(iii) indicates that such accounts of election expenses, besides being tendered on day to day basis, mandates a candidate to submit the total accounts within 30 days from the date of the declaration of the results.

(e) Clause 13 of the said G.R. indicates that as per Sub Clause (a), the terms and conditions set out in the said G.R. will be applicable to all the candidates participating in all types of elections held even by the Local Bodies.

(f) Clause 9.2 of the said G.R., prescribes that the daily election expenses shall begin from the expenditure incurred for tendering the nomination forms and daily expenditure incurred will be accounted for, till the date on which the result of the election is declared.

(g) Therefore, Clause 9.2 is the commencement point of incurring expenditure for contesting an election. Filing of the nomination papers is the starting point and, therefore, expenditure incurred even for tendering the nomination form, being in relation to the candidate contesting for an election, would amount to election expenditure.

(h) These aspects and the said G.R. dated 15/10/2016 as well as Section 77 of the Representation of People Act, 1951 were not brought to the notice of the learned Court who delivered the judgment in Dipmala (supra).

(i) The Order dated 07.02.1995 issued by the State Election Commission (published in Maharashtra Government Gazette dated 10.02.1995) has provided as under :-

"2. The contesting candidate shall maintain accounts of expenditure and submit the details of expenditure which may generally be on the items of expenditure specified in the proforma in Annexure I, and the account of such expenditure shall be submitted in detail in that Annexure as directed in paragraph 7 herein."

"3. The contesting candidate for an election as a councillor to a Municipal Corporation, Municipal Council or Zilla Parishad or a member to a Panchayat Samiti shall maintain day to day account of expenditure in the proforma in Annexure II and submit the same to the Returning Ofcer concerned on the following day by 2-00 p.m.."

"4. The contesting candidate shall, either by himself or by his authorised election agent, keep separate and correct accounts of all expenditure in connection with the election between the date he has been nominated and the date of declaration of results, both dates inclusive. The total of such expenditure shall not exceed the limit laid down hereinabove."

"7. The statement of accounts maintained in Annexure I by the contesting candidate shall be submitted by him within thirty days of the declaration of the result, in the case of a contesting candidate as councillor of Municipal Corporation, to the Municipal Commissioner concerned and the Municipal Commissioner or an ofcer not below the rank of Deputy Municipal Commissioner authorised by the Municipal Commissioner in this behalf, shall give an acknowledgment for receipt of the statement. In any other case, such statement of accounts shall be submitted by the contesting candidate, within the period aforesaid, to the Collector of a District concerned and the Collector or an ofcer not below the rank of Deputy Collector authorised by the Collector in this behalf shall give acknowledgment for receipt of the statement."

"10. The statement of account of expenditure in Annexure I, submitted by the contesting candidate shall be accompanied by an afdavit on oath sworn in by him in the format in Annexure III. The afdavit shall inter alia recite specifically that the expenditure against each item has been completely and unexceptionally included in the statement of accounts in Annexure I and that no expenditure whatsoever has remained to be disclosed."

(j) Annexure I (Abstract Statement of Election Expenses), which is the format provided by the State Election Commission, provides 31 heads of expenditure and serial Nos.1, 2 and 3 read as under :-

"1. Cost of nomination forms"

"2. Expenditure on security deposit"

"3. Expenditure on purchase of copies of electoral rolls/ list of voters."

(k) It is obvious from the above that the cost of nomination forms, expenditure on security deposit and expenditure on purchase of copies of electoral rolls/ list of voters, also has to be tendered by every candidate, who enters the election fray.

7 The learned Advocate for the Petitioners submits by relying upon Dipmala (supra), that paragraphs 7, 8 and 9 of the said judgment would indicate that this Court has held that only if there is a contest for a particular post between two or more candidates, it would amount to a contest and the candidates incurring expenditure for being in such contest, are obliged to tender their accounts of election expenditure.

8 I find it apposite to reproduce paragraphs 7, 8 and 9 of Dipmala (supra), as under :-

"7. Under the provisions of the Maharashtra Village Panchayats Election Rules, 1959 (for short, 'the said Rules') the manner in which the elections are to be held has been stipulated. After scrutiny of nomination papers under Rules 11 and 12 of the said Rules, the eligible candidates have an option of withdrawing their candidature under Rule 13. Under Rule 14 the list of contesting candidates and a notice of election is required to be prepared and published. Rule 15 refers to uncontested elections and Rule 15(1) stipulates that where the number of candidates duly qualified to be chosen is equal to the number of candidates so qualified, the Returning Ofcer shall declare such candidate to be duly elected. As per Rule 15(2) similar provision is made insofar as reserved seats are concerned. The said Rules further indicate that after this stage is over, symbols are allotted to the contesting candidates under Rule 16 and thereafter the ballot paper is required to be prepared. The subsequent Rules refer to further stages prior to recording of votes and thereafter declaration of results.

From the aforesaid provisions, it can be seen that if under Rule 15 it is found that number of candidates duly nominated as eligible to contest the elections is equal to the number of seats to be filled in then the Returning Ofcer has to declare the candidates so nominated to be duly elected without any votes being taken. In other words, a candidate who is elected unopposed under Rule 15 is not required to canvass his candidature as he is declared elected at that stage itself. The allotment of symbols is only in case of eligible candidates being larger in number than the posts to be filled in through elections. It is thus obvious that if a candidate is elected unopposed under Rule 15, no further steps are required to be taken and such candidate is not required to undertake any canvassing for his election. A candidate would be required to canvas his candidature only if he is required to contest the election.

8. When the facts of the present case are considered in the light of the aforesaid provisions, it becomes clear that since inception the petitioner had taken a stand by filing her reply to the notice issued by the Additional Collector that as all seven members of the Gram Panchayat were elected unopposed, the statement of account of election expenses was not submitted. The fact that all members of the Panchayat were elected unopposed is even admitted by the Tahsildar who was the Returning Ofcer. The only reason put forth by the Authorities is that in view of the directions issued by the State Election Commission it was mandatory for the petitioner to have submitted a statement of account of election expenses. The efect of this stand is that though the petitioner was elected unopposed and it was her case that she was not required to canvas for being so elected, there is an insistence for submission of account of election expenses in view of the directions issued by the State Election Commissioner.

This would be an insistence on compliance with the said requirements despite there being a good reason as well as justification for not submitting the account of election expenses.

A reference in passing could be made to the observations in Kacho Mohd. Ali Khan Vs. Kushok Bakula, 34 ELR 323. The respondent therein was elected unopposed. In the election petition challenging his election, the question raised was the efect of his not furnishing election expenses within the prescribed period. After referring to the provisions of Section 38 of the Representation of the People Act, 1951 and the relevant Rules it was observed that the word "contest" indicates resistance, opposition or confict. To a candidate who had been elected unopposed, the term "contest" would not apply.

9. It is to be noted that under the provisions of Section 14-B of the said Act, if there is any good reason or justification for failure on the part of a person to lodge account of election expenses within time, the State Election Commissioner 'may' direct disqualification of such person. A discretion has been conferred on the State Election Commissioner that if it is satisfied that there is a good reason or justification for failure to lodge an account of election expenses, it may not disqualify such person. As stated above, since all the members of the Gram Panchayat were elected unopposed as per the provisions of Rule 15 of the said Rules, further election process was not required to be undertaken. Since there

was no contest or election, the petitioner was not required to canvas and undertake expenses towards contesting the election. These were good reasons as well as the justification for not submitting the account of election expenses. This aspect was brought to the notice of the Authorities immediately by filing reply after receiving the show cause notice. Said explanation as furnished has not been considered in the light of the aforesaid provisions of the said Act and the Rules. Judicial notice of the fact can be taken that very often with the consensus amongst the villagers, the members of the Gram Panchayat are elected unopposed with a view to maintain healthy atmosphere in the Gram Panchayat. If undisputedly there was no contest for electing the members of the Gram Panchayat, there was no reason on the part of the respondents to insist upon the petitioner to submit the account of election expenses. This relevant aspect of the matter has not been taken into consideration by the Authorities while directing disqualification of the petitioner. The facts of the present case indicate the reason for not lodging an account of election expenses which reason is found to be good for the purposes of Section 14-B of the said Act.''

(Emphasis supplied).

9 It is obvious that the G.R. dated 15/10/2016, was specifically issued by the State Election Commission in relation to the election expenditure incurred by the candidates, seeking election to the Local Bodies / Local Self Government. The purpose of introducing the said G.R. was to eradicate corrupt and evil practices and to eliminate the use of money power. Limitations were imposed on the election expenditure and the candidates were mandated to maintain their election expenditure accounts. The books / bills / vouchers etc. were also directed to be maintained separately and to be tendered to the competent authorities, if called upon to do so.

10 I find from Clause 5 of the said G.R. that the types of expenditure to be maintained in the accounts have been prescribed and they have not been restricted to an elected candidate. The language in Clause 5 indicates that a candidate (Umedwar) is mandated to maintain accounts of election expenditure. In Clause 8 it was prescribed that such election expenditure has to be maintained by the candidates, who are in the fray of elections to the Local Self Government / Bodies. Clause 9.2 clearly indicates that the expenditure incurred for filing the nomination forms would also be considered as election expenses. These aspects were not brought to the notice of my learned brother. In Dipmala (supra), this Court has held that the word 'contest' would indicate a resistance or opposition or confict. If a candidate is elected unopposed, the term 'contest' would not apply.

11 In my view, if Clause 5, 9.2 and 13 of the G.R. Dated 15/10/2016 are to be considered, these provisions do not make a distinction between a candidate entering the election fray and two or more than two candidates contesting the election to a single position. As such, by virtue of the said G.R., the starting point of the election expenses is considered to be the expenses incurred by a candidate, who files a nomination form so as to enter a contest. The picture as

regards an actual election battle / contest would not be clear until two stages in the election programme have been cleared. Firstly, the scrutiny of the nomination forms wherein some forms are likely to be rejected and secondly, the last date prescribed for withdrawal of the nomination forms. It is known to the public at large that these days, candidates travel to the competent ofce to tender their nomination forms in a procession and road show. Expenditure is naturally incurred even by travelling to file such nomination forms. The State Election Commission, in its wisdom, found it appropriate to fix the starting point of the election expenditure from the filing of the nomination form and the concluding stage would be the declaration of the election results.

12 The order dated 07.02.1995 issued by the State Election Commission was not cited before my learned Brother in Dipmala (supra). The said order was the first step taken by the State Election Commission towards curbing the increasing role of money power in election, which has a pernicious infuence on the Society, resulting into the malady which tends to reduce the process of election into a mere farce. This places some privileged candidates with strong financial resources in a distinctly advantageous position in comparison to other candidates with meagre resources. The State Election Commission was also of the view that it is necessary and expedient in the interest of purity of elections to a Panchayat or a Municipality and in the interest of conduct of such election in a free, fair and efcient manner, to provide for limit of expenditure to be incurred by a candidate at an election. The powers conferred by Articles 243-K and 243-ZA of the Constitution of India r/w Section 18A(4) of the Bombay Municipal Corporation Act, Section 9B(4) of the City of Nagpur Corporation Act, 1948, Section 14(4) of the Bombay Provincial Municipal Corporations Act, 1949, Section 10A(4) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, Section 10A(4) of the Bombay Village Panchayats Act, 1958 and Section 10A(4) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, were exercised by the State Election Commission while introducing the order dated 07.02.1995.

13 In view of the above, as the provisions of the Order dated 07.02.1995 and G.R. dated 15/10/2016, which have been brought to my notice and were not cited before my learned brother in Dipmala (supra), I am, with utmost respect, unable to agree with the view taken in Dipmala (supra). I am, therefore, of the view that a larger bench could resolve this confict of views between Dipmala (supra) and these cases.

14 The learned Advocate for the Petitioners has prayed for relief against the impugned orders, notwithstanding a reference to a Larger Bench, on the ground that even if it is presumed that a candidate declared elected unopposed is mandated to file his accounts of election expenses and these Petitioners may not have done so, the fact remains that they have tendered such accounts on 19th July-2017 which is after about 23 months from the date of the declaration of election results. 30 days period is the time frame within which such expenses

have to be accounted. He, therefore, submits that these Petitioners can be said to have tendered their election expenses after a delay of 22 months.

15 He further contends that the G.R. dated 15/10/2016 was issued after the elections of these Petitioners. They were declared unopposed on 06/08/2015. He, therefore, submits that these Petitioners should be given the benefit of such 'grey area' in law since the picture was not clear as in 2015, as to whether election expenditure would include the expenditure for purchasing and filing nomination forms.

16 I find from the G.R. dated 15/10/2016 that the provision under the first G.R. dated 07/02/1995 brought out by the State Election Commission after its formation in 1994, makes a provision for filing of the accounts of election expenses. Though the language of the 1995 G.R. is not very clear, Clause (iii) indicates that the accounts of election expenses include the entire expenses incurred by a candidate for electioning. It would be apposite to reproduce Clause (iii) of 1995 G.R.:-

"(iii) ,dw.k fuoM.kwd [kpZ o 'kiFki= %& fuoM.kqdhpk fudkykuarj 30 fnolkaP;k vkr ,dw.k [kpkZpk fg"kksc o R;klkscr ^fuoM.kqdhoj >kysY;k loZ [kpkZpk fg'kksc o ri"khy ns.;kr vkysyk vkgs vkf.k dks.krkgh [kpZ yifo.;kr vkysyk ukgh' ;k vk"k;kps "kiFki= izR;sd mesnokjkus ns.;kph rjrwn vkgs".

17 It, thus, indicates that the candidate has to account for the entire expenses incurred by him on the said election which does not qualify whether he was a contestant or was elected unopposed.

18 The Honourable Apex Court has recently delivered a judgment in the matter of Laxmibai Vs. The Collector, Nanded & Ors., 14/02/2020 concluding therein that Section 14B(1)(b) gives discretion to the District Collector to consider whether just and proper reasons have been cited by the candidate for failing to tender the accounts of election expenses. It is concluded that the moment a candidate fails to file his accounts within 30 days, would not mean that he should be straight way disqualified for the maximum period prescribed for such disqualification. The District Collector has to exercise discretion by assessing the reasons cited by a candidate in support of his failure to tender such accounts. It was further held that if it is noticed that a just and proper cause is shown, the Collector can reduce the disqualification period or may even exonerate a candidate.

19 In the light of Laxmibai (supra), this Court has delivered a judgment on 27/02/2020 in the matter of Abhishek Vinod Patil Vs. The Divisional Commissioner and another - Writ Petition No. 11477/2018, at Aurangabad, wherein it was held that the delay of two months in tendering such accounts would entail a disqualification for a period of one year. However, in the said case, the candidate had totally overlooked the mandate of tendering his accounts and even after he received the notice of the Tahsildar, he entered the accounts after about 15 days.

20 In the instant case, it appears that these Petitioners have tendered their accounts after a delay of 22 months. The submission is that they had tendered their accounts to the Returning Ofcer while filing the nomination forms. Neither does the Tahsildar have any such account in his records, nor do the Petitioners have any acknowledgment or a copy of the said accounts purportedly submitted to the Returning Ofcer. In these circumstances, I do not find that the impugned orders, concluding that these Petitioners have incurred a disqualification, could be branded as being perverse or erroneous.

21 These Petitioners were initially disqualified on 14/07/2016. Thereafter, the Divisional Commissioner, Nashik set aside their disqualification on 28/02/2017, after 7 months and remitted the matter to the District Collector. After the passage of one year, the District Collector delivered the impugned order dated 17/04/2018 disqualifying these Petitioners and since then, they stand disqualified, for about 23 months.

22 I deem it appropriate to consider one more crucial aspect in this case, which is, that the entire Grampanchayat consisting of seven elected members, has been disqualified and if this disqualification is continued for a period of five years from the date of the order of the District Collector which is 17/04/2018, they would not be able to contest elections which would be scheduled in August/ September 2020. In my view, it would, therefore, be appropriate to disqualify these Petitioners upto the ensuing elections. Their disqualification sufered earlier from 14/07/2016 to 28/02/2017 and from 17/04/2018 till the ensuing elections would be a commensurate punishment.

23 In view of the above, these Petitions are partly allowed. The impugned orders stand modified and the disqualification period of these Petitioners would be operable till the elections to be held in August-September 2020. To avoid confusion, it is made clear that if the Election Commission declares the election programme for such elections, may be in June-July or August 2020, these Petitioners would be eligible to contest the elections.

24 Rule is made partly absolute in the abovesaid terms.

25 The State Government shall initiate steps to appoint an Administrator, in the light of the above, till the next elections.

26 As such, the learned Registrar (Judicial) of this Bench is directed to place this matter before the Honourable the Chief Justice of the Bombay High Court under Chapter I Rule 8 of the Bombay High Court Appellate Side Rules, 1960 for considering a reference to a Larger Bench for a decision.

27 I find that the following issue would be more advantageously considered and decided by a Larger Bench :-

"Whether a candidate elected unopposed, is required to tender his accounts of election expenditure under Section 14B(1), of the Maharashtra Village Panchayat Act, Section 16(1-D) of the Maharashtra Municipalities Nagar Panchayat and

Township Act 1965 and Section 15B(1) under the Maharashtra Zilla Parishad and Panchayat Samitis Act,1961, in view of the order dated 07.02.1995 and the Government Resolution dated 15.10.2016 ?"

