

(2018) 10 CHH CK 0089
In the Chhattisgarh High Court
Case No : Writ Appeal No. 747, 749 of 2018

Commissioner, State Election Commission D.K.S. Bhawan
@APPELLANT@Hash Smt. Fohara Bai Miri

Date of Decision : 31-10-2018

Acts Referred:

Chhattisgarh Municipalities Act, 1961 — Section 32A, 32B, 32C, 32C(b)
Representation of the People Act, 1951 — Section 40

Citation : (2018) 10 CHH CK 0089

Hon'ble Judges : Ajay Kumar Tripathi, CJ; Parth Prateem Sahu, J

Bench : Division Bench

Advocate : Ranbir Singh Marhas, Tridib Bhattacharya, Bharat Rajput, UNS Deo

Final Decision : Allowed

Judgement

Ajay Kumar Tripathi, CJ.

1. Heard counsel for the parties.

2. The appeal has been preferred by the State Election Commission of Chhattisgarh against the decision dated 14.08.2018 passed in a writ application

where the learned Single Judge allowed the writ application, set aside the statutory disqualification for failing to lodge the account of election expenses,

within the statutory specified time, on the ground and defence taken by the returned candidate that she was illiterate and therefore, did not know the

obligation created under law.

3. Private Respondent No.1 filed the writ application with the basic pleadings that she was elected as the President of Nagar Panchayat Maro,

District Bemetara on 31.12.2015 and the election was notified on the official gazette on 04.01.2016. She was not aware that there was an obligation

upon her to submit her election expenses within 30 days from the date of election or else she could earn a disqualification, for failure to lodge account

of election expenses.

4. The Chhattisgarh Municipalities Act, 1961 (hereinafter referred to as 'the Act of 1961') deals with various facets relating to municipal law including

elections to the posts available for election. In the present dispute, the relevant sections which come into play and are vital for adjudication is Section

32-B and 32-C of the Act of 1961. The two Sections are reproduced for ready reference:-

32-B. Lodging of account of election expenses.- Every contesting candidate at an election of President shall, within thirty days from the date of

election of the returned candidate lodge with the officer notified by the State Election Commission an account of his election expenses which shall be

a true copy of the account kept by him or by his election Agent under Section 32-A.

32-C. Disqualification for failure to lodge account of election expenses.- If the State Election Commission is satisfied that a person--

(a) has failed to lodge an account of election expenses within the time and in the manner required by or under this Act; and

(b) has no good reason or justification for the failure, the State Election Commission shall, by order published in the Official Gazette, declare him to be

disqualified and any such person shall be disqualified for being chosen as, and for being a [Councillor or President] of the Municipal Council or Nagar

Panchayat, as the case may be [for a period not exceeding five years] from the date of the order.]

5. From a reading of a Section 32-B of the Act of 1961, there is a duty cast on every contesting candidate for the post of President of the Municipality

to lodge the election expenses with the State Election Commission within 30 days either by the returned candidate or his/her election Agent under

Section 32-A of the Act of 1961. The failure to comply has rigors which is evident from reading of Section 32-C of the Act of 1961. This Section talks

of disqualification of a candidate for failure to lodge account of election expenses. A reading of Section 32-C of the Act of 1961 indicates that the

primary ingredients is failure to lodge an account of election expenses within the time and the manner required under the Act and that there are no

good reasons or justifications for the failure. If the Election Commission fails to be satisfied for the reason of non-compliance, there is a mandate to

publish in the official gazette and declare such a candidate to be disqualified, for a period of five years from the date of the order.

6. Pleadings of the private Respondent in the writ application was that she is a Scheduled Caste women, had studied only upto Class-II and she did not

have any technical and legal knowledge of lodging expenses after the election was over within 30 days. She took a stand that since she is an illiterate

lady, she was not aware of the legal provision regarding the mandate of lodging the election expenses within 30 days, however, she did do so on a

subsequent date on 29.02.2016, for which she had evidence.

7. The Election Commission on the basis of the show-cause or explanation offered by the private Respondent, was of the opinion that the defence of

illiteracy and lack of knowledge, was no good reason or justification, published the name of the private Respondent disqualifying her for a period of

five years.

8. The learned Single Judge though accepting the basic facts and recording his finding of non-compliance by the returned candidate, relied on the

certain decisions to accept the explanation that illiteracy or lack of knowledge keeping in mind the background of the said candidate was a good

justification and therefore, the decision of the Election Commission to disqualify her from the post of President of the Nagar Panchayat Maro, District

Bemetara was erroneous and therefore, quashed the same and issued a direction to restore her back on the post forthwith.

9. Aggrieved by such a decision, the State Election Commission of Chhattisgarh has decided to file appeal alongwith yet another candidate namely,

Smt. Chandramani Koshle, who became the In-charge President after the returned candidate was disqualified.

10. Before proceeding with the matter, taking note of the fact that Smt. Chandramani Koshle was neither a party to the writ proceeding nor did she

intervene, her removal was a natural corollary or fallout of the judicial adjudication so made, therefore, her appeal (Writ Appeal No.749 of 2018), in

our opinion, was misplaced and is fit to be dismissed.

11. Coming back to the question whether some of the principles on which reliance has been placed by the learned Single Judge like M/s. Motilal

Padampat Sugar Mills Co. Ltd. v. The State of Uttar Pradesh and others reported in AIR 1979 SC 621 or the case of Sital Prasad Saxena (dead) v.

Union of India and others reported in AIR 1985 SC 1 or for that matter of Ravi Yashwant Bhoir v. District Collector, Raigad and others reported in

(2012) 4 SCC 407 could have any bearing on the factual or legal matrix involved in the dispute or the adjudication, which was required to be made by the learned Single Judge.

12. With due respect to the learned Single Judge, the reliance which have been placed by him or by the returned candidate i.e. the Petitioner before

the writ Court, were all quoted out of context and had no similarity to the facts on the statutory provisions, which were under consideration before him.

In the case of Ravi Yashwant Bhoir (supra), the issue before the Hon'ble Supreme Court was whether removal of an elected office bearer on the

ground of proven misconduct was a quasi judicial proceeding or whether principles of natural justice was required to be given full play. In the present

case, there is no argument that the returned candidate was not given an opportunity before the rigors of law set in. So far as the case of M/s. Motilal

Padampat Sugar Mills Co. Ltd. (supra) is concerned, the same primarily related to the principle of promissory estoppel. The Hon'ble Supreme Court

explained in so many words as to what the Doctrine of promissory estoppel meant and when it will come into play.

13. The requirement of lodging account of election expenses in terms of Section 32-B of the Act of 1961 is mandatory. The disqualification is

consequential which again is mandated in terms of Section 32-C(b) of the Act of 1961. The statute however does give a window to a returned

candidate to offer good reasons or justifications and if found so could be accepted by the State Election Commission. But failure imposed an obligation

upon the Election Commission to publish the name in the official gazette to declare such candidate to be disqualified.

14. Shri Ranbir Singh Marhas, learned counsel representing the Chhattisgarh State Election Commission submits that if the view so taken by the

learned Single Judge is allowed to stand, then there will be serious consequences in the working of such legislation and especially, the obligation which

is cast upon a contesting candidate under the enactment. If illiteracy and lack of knowledge can be accepted as a good reason or justification to not

file returns of election expenses, the same analogy can also be drawn for whole lot of other duty cast upon a contesting candidate to shake off the

rigors of law or consequences of such violation, on the ground of illiteracy and lack of knowledge.

15. As a factual matrix, the Court does not dispute that in the Indian context where illiteracy is prevalent, there could be occasions where such

candidate can offer herself/himself for a post to be elected. But once such a candidate takes a plunge into the electoral arena, then he/she has to play

the game in terms of the rule of the game and here the word 'game' stands for the Statue. The concept of filing returns of election expenses is not

unique to a Nagar Panchayat. Even members of Parliament, Legislative Assemblies or Councils and many other elected posts have to file their

election expenses because there is a ceiling on expenses imposed by the law and that ceiling cannot be breached. There is no other way to verify

whether candidate has violated the electoral expenses embargo by splurging money and bribing the electorate to get himself/herself elected.

Therefore, filing of return within the specified time has to be followed, in strict terms and within the time frame fixed, under the various statues

including the present law.

16. Reverting to the issue of illiteracy or knowledge as a defence, the Court is reminded of a celebrated Constitutional Bench decision rendered by the

Hon'ble Supreme Court way back in the year 1965, which was the case of State of Maharashtra v. Myer Hans George reported in AIR 1965 SC 722.

The Constitutional Bench while dealing with an issue of violation of Foreign Exchange Regulation Act, 1947 was called upon to decide whether mens

rea in the sense of actual knowledge of the act being done contrary to law is an essential ingredient for the offence under the Foreign Exchange

Regulation Act, 1947. We are not required to go into all the facets of the adjudication made by Constitutional Bench, but we would be failing in our

duty if we do not take notice of Paragraph-40 of the said decision, which may throw some light on the correctness or otherwise of the defence or

explanation of the returned candidate, as well as the view having been accepted by the learned Single Judge. Paragraph-40 of the said judgment reads

hereinbelow:

â??40. In our opinion, the very object and purpose of the Act and, its effectiveness as an instrument for the prevention of smuggling would be entirely

frustrated if a condition were to be read into Section 8(1) of Section 23(1-A) of

the Act qualifying the plain words of the enactment, that the accused should be proved to have knowledge that he was contravening the law before he could be held to have contravened the provision.â??

17. When the Constitution of India was adopted and the Country became independent and adopted democracy as one of the essence of the Preamble, adult suffrage was one of them. We were a new Nation and the legislatures were also aware of the fact that many a candidate including voters were illiterate. It was for the said reason that in our opinion, they allowed and permitted an election Agent to be appointed by a candidate under the Representation of the People Act, 1951. An election Agent was given legal status under Section 40 of the said Act. Section 40 empowers a candidate at an election to appoint any person other than himself to be his election Agent. Once appointed and notified, there is no distinction between the act done by the candidate or election Agent. The reason why the Court has talked about the concept of election Agent in the present case is that the candidate may be illiterate, but an election Agent is not.

18. Under Section 32-B of the Act of 1961, the duty is cast upon the returned candidate or his/her election Agent. There is no defence or pleading that the candidate did not have an election Agent. Therefore, this Court will not allow for maintenance of purity of election, especially a returned one from for shaking of his/her statutory duty, by taking a defence of illiteracy or lack of knowledge. If such a defence is entertained, it will be pregnant with all kinds of possibilities, having a detrimental effect in enforcement of the requirements of law.

19. We therefore hold that the judgment and order of the learned Single Judge accepting the defence or explanation as good reasons or justifications for failure to file the return was a totally erroneous view to take. The State Election Commission was justified in taking a view that a breach was committed, for the explanation offered by the returned candidate was neither good nor justified. If that was so, then there was duty cast upon the State Election Commission to notify such a candidate in default to be disqualified for a period of five years, from the date of the order.

20. The appeal (Writ Appeal No.747 of 2018) therefore stands allowed and the impugned order dated 14.08.2018 is quashed. The notification issued by the State Election Commission disqualifying the returned candidate i.e.

Respondent No.1 to this appeal, shall revive forthwith.