

(2013) 01 CHH CK 0050
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 5593 of 2011

Govind Singh Rajput

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 30-01-2013

Acts Referred:

Chhattisgarh Municipal Act, 1961 — Section 32A, 32A(1), 32B, 32C, 32C(a)
Madhya Pradesh Municipal Corporation Act, 1956 — Section 14C

Citation : (2013) 1 CGBCLJ 493 : (2013) 3 MPJR 85

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Naushina Ali, for the Appellant; Pankaj Shrivastava, Panel Lawyer for the State/Respondent No. 1, Shri R.S. Marhas and Shri B.D. Guru, Advocate for the Respondent Nos. 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—Being dissatisfied, the petitioner questions the legality and validity of the order dated 08.09.2011 (Annexure P/1) and order dated 10.05.2011 (Annexure P/2) passed by the State Election Commission. The facts, in brief, are that the petitioner was elected as President of Nagar Panchayat, Chhurikala, District Korba, in the result declared on 27.12.2009. Under the provisions of section 32-B of the Chhattisgarh Municipalities Act, 1961 (for short "the Act, 1961"), the petitioner was required to lodge with the officer notified by the State Election Commission, an account of his election expenses within a period of 30 days from the date of the election of the return candidate i.e. the petitioner. The petitioner lodged the account of his election expenses on 10.02.2010 with the respondent No. 2, after a delay of 13 days. Thereafter, the petitioner received a show cause notice dated 26.02.2010 (Annexure R/2-2) by the Secretary, State Election Commission under clause (10) of the Election Expenses (Maintenance and Lodging of Account) Order, 1997 (for short "the Order"). The petitioner did not submit any representation in writing to the election commission and also to the District Election Officer with complete

account of election expenses and also no response to the show cause notice was filed.

2. The Election Officer, by order dated 10.05.2011 (Annexure P/2) held that all the candidates including the petitioner had failed to lodge the account of election expenses u/s 32-A(1) of the Act, 1961 read with section 32-B of the Act, 1961 with the officer notified by the State Election Commission, and also not filed any response to the show cause notice dated 26.02.2010 and accordingly, under the provisions of section 32-C(b) of the Act, 1961, the petitioner was disqualified for a period of four years and four months from the date of the order i.e. 10.05.2011 to hold the post of President. It was also thereafter notified in the official gazette on 23.05.2011. Subsequent thereto, the petitioner made representations on 13.06.2011, 17.06.2011 and 02.08.2011. The petitioner also filed a writ petition being W.P. (C) No. 4418/2011 contending that the date of hearing was fixed on 25.08.2011, however, the petitioner could not make himself available, thus a new date should have been given so that he could appear in person and put forward his case. The said petition was disposed of directing to give a new date of hearing i.e. 05.09.2011 for appearance of the petitioner. The respondent No. 2 having considered the representations of the petitioner and his case as put forward by him, on the next date of hearing, held that considering the representation of the petitioner filed u/s 32-D of the Act, 1961, the petitioner is not entitled to any relief. As provided under clause (10) of the Order, 1997, the petitioner has not submitted any representation, report or response pursuant to the show cause notice dated 20.06.2011 as indisputably the petitioner had failed to lodge the account of election expenses within the statutory period of 30 days and also no proper reasons in response to the show cause notice seeking condonation of delay in lodging the account of election expenses, belatedly, was made.

3. Ms. Ali, learned counsel appearing for the petitioner submits that since the petitioner had already lodged the account of election expenses before the show cause notice was issued and as such, it was thought not necessary to file reply to the show cause notice dated 20.06.2011 and accordingly, neither the reply was filed nor any representation was made. The respondent No. 2, without affording any opportunity decided his case ex-parte on 10.05.2011 and disqualified the petitioner for holding the post of President, as aforestated. The petitioner made representation u/s 32-D of the Act, 1961 for reduction of the period of disqualification. The respondent No. 2, afforded an opportunity of appearance pursuant to the order dated 30.08.2011 passed by this Court in W.P. (C) No. 4418/2011, however, the case of the petitioner was not considered in its proper perspective and dismissed the application.

4. It is next contended by Ms. Ali that once the account of election expenses as required u/s 32-A(1) read with section 32-B of the Act, 1961, has been filed though belatedly, the respondent No. 2 ought to have considered the same and passed an order removing the order of the disqualification. The delay was on

account of bonafide belief as not being aware of the legal position.

5. Ms. Ali further submits that the subsequent notice was pre-decisional and it could not have been issued. The petitioner had filed representation which was not duly considered. It is further contended that the time limit of 30 days for lodging the account of election expenses is not with the objective to destroy the rights of the candidate. It is next contended that the delay in lodging the account of election expenses ought to have been condoned. In support of her contention, she relies on various decisions viz. I.J. Rao, Asstt. Collector of Customs and Another Vs. Bibhuti Bhushan Bagh and Another, Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, Canara Bank and Others Vs. Shri Debasis Das and Others, Viveka Nand Sethi Vs. Chairman, J and K Bank Ltd. and Others, State of Punjab and Others Vs. Constable Avtar Singh (dead) through LRs., Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, Smt. Prabha v. Ramprakash Kalara [, (1987) Supp SCC 339), O.P. Kathpalia Vs. Lakhmir Singh (Dead) and Others, , Amrit Lal Berry and Another Vs. Collector of Central Excise, New Delhi and Others, Dev Dutt Vs. Union of India (UOI) and Others, Commissioner of Sales Tax and Others Vs. Subhash and Company, Shankara Co-op Housing Society Ltd. Vs. M. Prabhakar and Others, , Vijay Kumar Kaul and Others Vs. Union of India (UOI) and Others, and Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others,

6. On the other hand, learned counsel appearing for the respondent No. 2 to 4 would support the impugned orders and submit that the respondent No. 2 has no power to condone the delay, particularly when no representation was made before the order u/s 32-C(b) of Act, 1961 was passed. The petitioner has not made any application for condonation of delay. Even in the subsequent representation filed u/s 32-D of the Act, 1961, no proper and cogent reasons has been mentioned to remove the disqualification/reduce the period of disqualification, as passed in the order dated 10.05.2011.

7. Section 32-A of the Act, 1961 provides that every candidate at an election of President shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both days inclusive, in order to prevent excessive expenditure or more than such an amount as may be prescribed by the State Government in consultation with the State Election Commission.

8. Section 32-B of the Act, 1961 reads as under:

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 u/s 32-A.

9. Section 32-C(a) of the Act, 1961 provides that if the State Election Commission is satisfied that a person has failed to lodge an account of election expenses within the time and in the manner required by or under this Act, may disqualify any such person for being chosen as, and for being a Councillor or President of the Municipal Council or Nagar Panchayat for a period not exceeding five years from the date of the order.

10. Section 32-D of the Act, 1961 provides for removal or reduction of period of disqualification, if an application is made within 30 days from the date of publication of the order passed under clause(b) of section 32-C in the official Gazette, may for reasons to be recorded in writing any disqualification or reduce the period of any such disqualification.

11. The Order, 1997 was framed in exercise of powers conferred u/s 32-A of the Act, 1961. For ready reference, clause (10) of the Order, 1997 is quoted as below:

10. Report by the District Election Officer as to the lodging of the account of election expenses and the decision of the Election Commissioner thereon:--

(1) As soon as may be after the expiration of the time specified in the Act for the lodging of the account of election expenses the District Election Officer shall send a report to the Election Commission about every contesting candidate, on, the following points:--

(a) The name of the contesting candidate:

(b) Whether such candidate has lodged his account of election expenses and if so, the date on which such account has been lodged; and

(c) Where in his opinion such account has been lodged within the time and in the manner required by the Act and this Order.

(2) Whether the District Election Officer is of the opinion that the account of election expenses of any contesting candidate has not been lodged in the manner required by the Act and this order, he shall with every such report forward to the Election Commission the account of election expenses of that candidate.

(3) Immediately after the submission of the report referred to in subparagraph (1) the District Election Officer shall publish a copy thereof by affixing the same to his notice board.

(4) As soon as may be after the receipt of the report referred to in subparagraph (1) the Election Commission consider the same and decide whether any contesting candidate has failed to lodge the account of election expenses within the time and in the manner required by the Act and this Order.

(5) Where the Election Commission decides that a contesting candidate has failed to lodge his account of election expenses within the time and in the manner required by the Act and this Order, it shall by notice in writing call upon the

candidate to show cause why he should not be disqualified u/s 14-C of the M.P. Municipal Corporation Act, 1956 or as the case may be, Section 32-C of the M.P. Municipalities Act, 1961 for the failure.

(6) Any contesting candidate who has been called upon to show under paragraph (5) may within fifteen days of the receipt of such notice submit in respect of the matter a representation in writing to the Election Commission, and shall at the same time send to the District Election-Officer a copy of his representation together with a complete account of his election expenses if he had not already furnished such an account.

(7) The District Election Officer shall, within five days of the receipt thereof, forward to the Election Commission the copy of the representation and the account, if any, with such comments as he wishes to make thereon, for further appropriate action.

12. On bare perusal of the above, it is evident that if a candidate has failed to lodge account of his election expenses within the time and in the manner required by the Act and this Order, forward the report to the Election Commission, immediately after submission of the report under sub clause 10(5) of the Order, the Election Commission shall by notice in writing call upon the candidate to show cause as to why he should not be disqualified under the provisions of section 32-C of the Act, 1961. The contesting candidate may, within 15 days of the such notice, submit representation to the Election Commission copy of the representation together with complete account of his election expenses, if he had already not furnished the account. Thus, even if the petitioner has not submitted complete account of his election expenses within the specified time, opportunity is granted to the contesting candidate to submit the same with a representation within a period of 15 days of the receipt of such notice.

13. Notice was issued on 20.06.2011. It is no where stated as to when the notice was received by the petitioner. However, the petitioner failed to submit representation or reply to the show cause notice to clarify that he had already submitted his account of election expenses, though, belatedly. In that view of the matter, the decision dated 10.05.2011 disqualifying the petitioner for a period of four years and four months, is just, legal and proper.

14. Reliance of the Ms. Ali on the decision of this Court in Smt. Pushpa Sahu v. State Election Commission & Others [W.P. (C) No. 1075/2011, decided on 14.07.2011], is on the facts where the return candidate had submitted complete account of election expenses within period of 15 days with his representation and as such, the same is not applicable to the facts of the case.

15. In Hari Mohan Chaudhary v. State of M.P. [2011 (1) MPWN 60], relied on by the petitioner, therein, it was held that if the account of election expenses has been filed within a period of 15 days, he would not be liable to be disqualified, is also not applicable to the facts of the case.

16. I have examined all the decisions cited by learned counsel for the petitioner. It is found that no decision is of any help to the petitioner, as they are not applicable to the issue involved and the facts of the instant case.

17. Contention of learned counsel for the petitioner that the delay in lodging the account of election expenses ought to have been condoned as the petitioner was duly elected by the people of the area and on the technical ground of delay, the petitioner ought not to have been removed, is noticed to be rejected. In this case, as afore-stated that the petitioner had not made any representation for condonation of delay under clause 10(6) of the Order. The petitioner has also not filed any application for condonation of delay at any stage thereafter. The petitioner has explained the position only after the order u/s 32-C(b) of the Act, 1961 was passed on 10.05.2011 (Annexure P/2), the subsequent explanation is of not use as that would not serve any purpose.

18. The impugned orders dated 08.09.2011 (Annexure P/1) and 10.05.2011 (Annexure P/2) are just, legal and proper warranting no interference. Thus, this petition is dismissed. No order as to costs.