

**(2002) 05 MP CK 0072**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 806 of 2002**

Jawahar Lal Gupta

APPELLANT

Vs

The Rajya Nirvachan Ayog and Another

RESPONDENT

**Date of Decision : 16-05-2002**

**Acts Referred:**

Madhya Pradesh Municipalities Act, 1961 — Section 32C

**Citation : AIR 2003 MP 161 : (2002) ILR (MP) 575 : (2003) 1 MPLJ 180**

**Hon'ble Judges : Arun Mishra, J**

**Bench : Single Bench**

**Advocate : N.C. Jain and Rakesh Jain, for the Appellant; V.S. Shroti and A. Shroti, for the Respondent**

**Final Decision : Allowed**

## Judgement

Arun Mishra, J.

Petitioner in the instant writ petition seeks quashment of the order Annexure P/1 disqualifying him for period of five years u/s 32C of M.P. Municipalities Act, 1961 (for short "the Act of 1961").

Notification was issued on 23rd October, 2001 (Annexure P/1) published in M.P. Gazette dated 9th November, 2001 notifying that M.P. State Election Commission was satisfied that each of the contesting candidates specified in the table at the general election of the President of Nagar Panchayat held in December, 1999 has failed to lodge an account of his Election Expenses as required by the Act of 1961 and the Election Expenses (Maintenance and Lodging of Account) Order, 1997 (for short "the Order of 1997"). It was also mentioned that said candidates have not furnished any reason or explanation for the said failure even after due notice and the State Election Commission was, thus, satisfied that they have no good reason or justification for the said failure. The State Election Commission declared the petitioner to be disqualified for being chosen as and for being a Member of the Nagar Panchayat specified in column (2), that is, Nagar

Panchayat, Mauganj, District-Rewa for a period of five years from the date of the order.

Factual matrix indicates that petitioner contested the election of the President of Nagar Panchayat, Mauganj on 28-12-1999. He had appointed Shri Abdul Hamid Siddiqui as an election agent under Rule 33 of M.P. Nagar Palika Nirvachan Niyam information of which was duly submitted to the returning officer. Petitioner submits that for all practical purposes, election agent is to act on his behalf on all occasions. It is the duty of the election agent to maintain the correct accounts u/s 32-A of the Act of 1961 and to lodge it properly u/s 32-B and to do all other necessary things in the maintenance of day-to-day accounts. Section 32-C of the Act of 1961 deals with disqualification for failure to lodge account of election expenses. Petitioner submits that Section 32-A and 32-B of the Act of 1961 do not require to maintain the accounts by counter signing vouchers by the candidate. Vouchers must be signed either by the election agent or by candidate. Vouchers are merely the supporting documents to the statements of accounts which is submitted and which is perused from time to time either by the Returning Officer or his duly authorised subordinates. Petitioner further relies on the "Order of 1997". Para 3 of the Order of 1997 requires particulars of account of election expenses to be maintained. Para 4 provides maintenance of day-to-day account of election expenses which shall be maintained by a candidate or his election agent from day to day, in a register in Proforma A, which shall be supplied to him by the Returning Officer immediately after his nomination. Para 5 provides production of the record of day-to-day account of election expenses for inspection and in case inspection is not offered that has to be treated as "major default" on the part of candidate to comply with this order. Para 6 deals with abstract statement of election expenses which are to be submitted soon after declaration of the result of election. Para 7 provides for lodging of account of election expenses which includes the register of day to day account of election expenses; vouchers relating to the entries made in the register of election expenses and abstract statement of election expenses. The register of day to day account of election expenses and the abstract statement of election shall be authenticated and countersigned by the candidate in case they have been prepared and signed by his election agent and the vouchers shall also be counter signed by him before being lodged. Para 8 deals with the procedure of notice by District Election Officer for inspection of account. Para 9 relates to inspection of account and the obtaining of copies thereof. Para 10 deals with the report by the district election officer as to the lodging of the account of election expenses and the decision of the Election Commissioner thereon.

Petitioner submits that petitioner received notice issued by Deputy Election Officer of District Annexure P/2 dated 22nd February, 2000 in which only one defect was pointed out that counter signatures were not there on each and every voucher of the candidate. Thereafter petitioner submits that he contacted the District Election Officer and informed him of the factum of submitting an affidavit which was sworn before Naib Tahsildar, Mauganj. He was told that all these facts

together with the fact that affidavit has been filed may be taken as full compliance of the provision to which he showed his satisfaction and, therefore, no written reply was filed by the petitioner. Petitioner had lodged the account within the prescribed time along with requisite registers and vouchers and the summary as provided in Para 6 of the order of 10th of January, 2000. Petitioner submits that he was not informed at any point of time that affidavit was defective in any manner and outrightly without further issue of any notice after Annexure P/2, Gazette Notification was made by State Election Commission without affording due opportunity to rectify the defect, if any.

Respondents in their return contend that vouchers are required to be verified and counter-signed by the candidate even though the vouchers bear the signatures of the election agent. Election took place in December, 1999; petitioner contested the election for office of President and was declared elected. It was the duty enjoined upon the petitioner to have submitted the accounts as per Section 32-B of the Act of 1961. The State Election Commission has framed rules exercising power under Article 243ZA of the Constitution and u/s 14A of M.P. Municipal Corporation Act, 1956 and u/s 32A of M.P. Municipalities Act, 1961. Rules are called Election Expenses (Maintenance and Lodging of Account) Order, 1997. Paras 7 and 10 have been violated. Following defects have been pointed out :

- (i) Each voucher has not been signed by the election agent and the said vouchers have also not been counter signed by petitioner;
- (ii) The Registers have been signed by the election agent and they were not countersigned by petitioner;
- (iii) No affidavit has been filed along with expenses account;
- (iv) The affidavit is not in accordance with law as it has not been sworn before the specified competent authority.

The State Election Commission issued a show cause notice Annexure R/2 on 27th May, 2000 pointing out that account filed by the petitioner was not proper as such he was required to show cause that why he should not be disqualified u/s 32-C of the Act of 1961 for a period of five years. Statement sent by the Collector/District Election Officer, District-Rewa on 24th February, 2000 has also been filed with return as Annexure R/1. The defects pointed out by the District Election Officer are mentioned at item No. 8 in column No. 8 in the charge index. Only two defects were pointed out by the District Election Officer first that on the vouchers proper revenue stamps receipts were not affixed secondly they were not verified by the candidate concerned.

State Election Commission has also produced the order on the basis of which the Gazette Notification was issued. Relevant portion of the order with respect to Shri Jawaharlal Gupta is quoted below :--

(Editor: The vernacular matter written hereunder has not been inserted and same has been omitted.)

Petitioner submits that at no point of time the District Election Officer informed the petitioner that affidavit filed by the petitioner was defective in any manner. The show cause notice Annexure P/2 which was issued contained only a notice so as to cure one defect i.e. each voucher was not signed by the petitioner or by his election agent.

Petitioner further submits that notice Annexure R/2 was not received by the petitioner on 12-6-2000; rejoinder has been filed on affidavit to deny the signature of the petitioner on document Annexure R/2. Even otherwise, learned senior counsel for petitioner submits that Annexure R/2 cannot be taken to be a specific notice over and above the defects which were pointed out to the petitioner by the Election Officer as per notice Annexure P/2 dt. 22-2-2000 and it was not open to State Election Commission without issuance of further notice specifically pointing out defects, to go beyond the information submitted by the District Election Officer; as per Annexure R/1 as it was duty enjoined to afford the petitioner an opportunity to rectify the defects which opportunity was denied by not intimating the defects "specifically" in the notice Annexure P/2. Notice Annexure R/2 is totally vague; no specific defects are pointed out and the order passed by the State Election Commission is based on different grounds which were not intimated to the petitioner such as to the defect in the affidavit. The State Election Commission has not mentioned specifically in the note-sheet put which was approved and has to be taken as basis of an order, as to what was the actual defect and the only notice which was relied upon by the State Election Commission was notice dated 22-2-2000 which is Annexure P/2. The State Election Commission did not rely upon the notice issued subsequently Annexure R/2. In the notice Annexure P/2 no defect as to affidavit was pointed out and out of the reasons mentioned in the order of State Election Commission one is totally baseless that affidavit was not in accordance with the procedure prescribed and the second ground taken is that the vouchers are not duly countersigned is also not germane as on registers signatures are there of the petitioner and State Election Commission did not afford opportunity to rectify the defect if it was not satisfied by affidavit and, in any case defect was not of substantial nature.

Learned Sr. Counsel Shri V.S. Shrotri submits that it would be highly undemocratic if an interference is made in the just and proper order passed by the State Election Commission as due and proper opportunity was given to the petitioner to rectify the defect, but he failed to do so. Notice Annexure P/2 was issued on 22-2-2000 which was followed by another notice Annexure R/2 issued on 27th May, 2000 and it cannot be said to be a penal consequences as that automatically follows on failure to file the proper accounts; purity of the election has to be maintained at all costs and non-filing of proper account as a necessary consequence leads to disqualification. Thus, no interference is called for. Learned counsel has also placed reliance on various provisions of the Order of 1997 and Sections 32A, 32B and 32C of the Act of 1961.

Before adverting to the submissions raised by learned senior counsels for parties,

the provisions in the Act of 1961 with respect to the lodging of account of election expenses be considered. Section 32A of the Act of 1961 requires the amount of the election expenses to be maintained by the candidate 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. Section 32-A of the Act of 1961 is quoted below:--

"32-A. Account of election expenses : (1) 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.

(2) The total of the said expenditure shall not exceed, such amount as may be prescribed by the State Government in consultation with the State Election Commission.

(3) The amount of expenditure shall contain such particulars as may be prescribed by the State Election Commission."

Section 32-B of the Act of 1961 requires lodging of account of election expenses by only contesting candidate within 30 days from the date of election. Section 32-B is quoted below:--

"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."

Section 32-C of the Act of 1961 deals with disqualification for failure to lodge account of election expenses. Section 32-C is quoted below:--

"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 member 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."

A reading of Section 32-C of the Act of 1961 makes it clear that State Election Commission is enjoined to record a satisfaction that a person has failed to lodge the account of election expenses within the time and the manner required under this Act, and further mind has to be applied by the State Election Commission

mandatorily as to the "reasons", and the finding has to be recorded that a person has "no good reason or justification" for the failure. The State Election Commission shall, by order published in the Official Gazette, declare such person to be disqualified and such a person shall be disqualified for being chosen as and for being a member 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. Serious consequences are enumerated in Section 32,-C of the Act.

Election Expenses (Maintenance and Lodging of Account) Order, 1997, paragraphs 3, 4, 5, 7 and 10 are relevant; they are quoted below:--

"3. Particulars of account of elections expenses: (1) The account of election expenses to be kept by a candidate or his election agent under the Act shall contain the following particulars in respect of each item of expenditure, namely:--

- (a) the date on which the expenditure was incurred or authorised;
- (b) the nature of expenditure (as for example, travelling, postage or printing and the like) :
- (c) the amount of the expenditure:--
  - (i) the amount paid,
  - (ii) the amount outstanding;
- (d) date of payment;
- (e) the name and address of the payee;
- (f) the serial number of vouchers, in case of amount paid;
- (g) the serial number of bills of any, in case of amount outstanding;
- (h) the name and address of the person to whom the amount outstanding is payable.

(2) A voucher shall be obtained for every item of expenditure unless from the nature of the case, such as postage, travel by rail and the like, it is not practicable to obtain a voucher.

(3) It shall not be necessary to give the particulars mentioned in item (e) of sub-paragraph (1) in regard to items of expenditure for which vouchers have not been obtained under sub-paragraph (2)."

"4. Maintenance of day to day account of election expenses :-- (1) The account of election expenses shall be maintained by a candidate or his election agent from day to day, in a register in Pro forma A, which shall be supplied to him by the Returning Officer immediately after his nomination.

(2) The particulars of every item of expenditure shall be entered in the register referred to in sub-paragraph (1), from day to day in the same chronological

order in which the expenditure is incurred or authorised and the vouchers or bills relating to the expenditure shall be maintained along with the register."

"5. Production of record of day to day account election expenses for inspection :-- The register of day to day account of election expenses together with the supporting vouchers and bills shall be produced for inspection at any time during the process of election, by the candidate or his election agent, on demand by the Returning Officer, District Election Officer or an Observer or Officer authorised by the Election Commission in this behalf, forthwith and failure to do, so shall be deemed to be a major default on the part of the candidate to comply with this order."

"7. Lodging of account of election expenses:-- (1) Every contesting candidate or his election agent shall lodge the account of election expenses with the District Election Officer, within the time specified in the Act, that is, 30 days from the date of election.

(2) The account of election expenses shall comprise the following documents, namely:--

(a) the register of day to day account of election expenses referred to in paragraph 4 in original;

(b) vouchers relating to the entries made in the register of election expenses; and

(c) abstract statement of election expenses, referred to in paragraph 6.

(3) The register of day to day account of election expenses and the abstract statement of election shall be authenticated and countersigned by the candidate in case they have been prepared and signed by his election agent and the vouchers shall also be countersigned by him, before being lodged.

The account of election expenses shall be accompanied by an affidavit of the candidate in Pro forma C and shall not be regarded as complete without such an affidavit."

"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 sub-paragraph (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 sub-paragraph (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 or 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."

It is necessary under "Order of 1997" to maintain the election expenses as per the particulars prescribed under para 3. As per para 4 maintenance of day to day account of election expenses is required. Para 5 provides for production of the record of day to day account of election expenses for inspection. Para 7 relates to lodging of the account of election expenses. Under para 7 register of day to day account of election expenses, vouchers relating to the entries made in the register of election expenses and abstract statement of election expenses are the relevant documents. Registers/vouchers can be maintained by an election agent if they have been maintained by election agent, these documents are required to be countersigned by the candidate. Sub-para (4) of para 7 provides that the account of election expenses shall be accompanied by an affidavit of the candidate in Pro forma-C and shall not be regarded as complete without such an affidavit. Report has to be sent by the District Election Officer to the Election Commission about lodging of the account of election expenses of every contesting candidate on the points enumerated under para 10. Sub-para (2) of

para 10 provides that 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. In the instant case, report of District Election Officer has been filed as Annexure R/1. Such a report as contained in Annexure R/1 has to be published in the notice board of District Office as required under sub-para (3) of para 10 for information to general public. Sub-para (4) of para 10 provides that after the receipt of the report, Election Commission has important role to 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. Under sub-para (5) of para 10 a show cause notice is required to be issued as to the defect found in the election expenses accounts. A contesting candidate can rectify the default within fifteen days from the date of 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. It is apparent that even if the election expenses were not earlier filed can be filed subsequently on receipt of the notice as contemplated under sub-para (5) of para 10 of the Order of 1997.

The various documents in the instant case clearly indicate that what the petitioner was informed as per Annexure P/ 2 that his counter signatures were not there on the vouchers; petitioner was not intimated that signatures of his election agent or his counter signatures were not there on "register". Similarly, petitioner was not intimated that the "affidavit" filed was not proper or defective in any manner and the State Election Commission in its order has considered the primarily defect that the affidavit was not in accordance with law. What was the defect in the "affidavit" was not adverted to by the State Election Commission nor was intimated to the petitioners at any time either by the District Election Officer or by the State Election Commission. Thus, it is clear that no proper opportunity was given with respect to the "affidavit" part to the petitioner to rectify the defect which was mandatory to be given under sub-para (5) of para 10 of the Order of 1997.

Though it is not necessary to go into the question whether notice Annexure R/2 was, as a matter of fact, served on the petitioner as the service of the same has been seriously disputed. Notice Annexure R/2 was allegedly issued to the petitioner on 27th May, 2000 and served on 12-6-2000 in the notesheet which culminated in order passed by the State Election Commission quoted above on which basis the Gazette Notification Annexure P/1 was issued. It has not been mentioned in the office note-sheet that any such notice was ever issued to the petitioner. Annexure R/2 notice has not been made the basis by the State Election Commission itself while disqualifying the petitioner. There is no reference that such a notice was issued to the petitioner in the month of May. The only

notice referred to was Annexure P/2 dated 22-2-2000 which was issued by the District Election Officer. Thus, it appears that State Election Commission did not properly consider the actual factual situation on record and did not apply its mind to the fact that whether the petitioner was intimated specifically as to the defects in proper manner and whether there was service of notice Annexure R/2 on petitioner, and it was not the ground employed that petitioner had failed to file a reply in spite of having received notice Annexure R/2. No such finding is recorded by the State Election Commission in its order. Until and unless State Election Commission considers each and every fact, the consequences enumerated u/s 32-C of the Act of 1961 could not be made to fall upon the petitioner as the consequences are serious, carries dismembership and disqualification to contest the election for a maximum period of five years which was invoked to the maximum against petitioner. Petitioner has been required to vacate office without due compliance of the provisions quoted above. Though argument of learned senior counsel for State Election Commission based on protection of democracy is attractive, but in my considered opinion a person who has been elected by a democratic process must be removed following due procedure and not in an unreasonable manner in violation of basic safeguards provided in the Order of 1997 which recognizes the principles of natural justice.

Learned counsel for the petitioner has pressed into service a decision of the Apex Court in Ch. Subbarao Vs. Member, Election Tribunal, Hyderabad, to contend that substantial compliance is enough. He has also pressed into service another decision of the Apex Court in Anup Singh Vs. Shri Abdul Ghani and Another, ; para 7 of which is relevant and is quoted below:--

"7. An exactly similar matter came to be considered by this Court in Ch. Subbarao Vs. Member, Election Tribunal, Hyderabad, . In that case also the copies were signed by the petitioner but there was no attestation in the sense that the words "true copy" were omitted above the signature of the petitioner. This Court held that as the signature in original was there in the copy, the presence of such original signature in the copy was sufficient to indicate that the copy was attested as a true copy, even though the words "true copy" were not written above the signature in the copies. This Court further held that there was substantial compliance with Section 81(3) of the Act and the petition could not be dismissed u/s 90(3). That case applies with full force to the facts of the present case, and it must therefore, be held that there was substantial compliance with a Section 81(3) and the petitions could not therefore, be dismissed u/s 90(3)."

What has been emphasised by the Apex Court on the strength of Subba Rao (supra) in Dr. Anup Singh's case is that "substantial compliance" is enough.

Learned counsel for the State Election Commission has pressed into service a decision in Capt. Chanan Singh Sidhu Vs. The Election Commission of India, New Delhi and others, The facts of Capt. Chanan Singh's case are totally different; in that case even after opportunity and notice the proper accounts were not

submitted.

The State Election Commission has not applied its mind whether there was substantial compliance. It is not the ground adopted in the order by the State Election Commission that on register signatures of petitioner were not there, no notice to that effect was issued, then there is entry or voucher in the register and the vouchers have been signed by the election agent; only defect appears to be that of "counter signature" of candidate. A copy of accounts can also be furnished within the time supported by an affidavit, register and vouchers. It has to be determined by Election Commission whether there was "substantial compliance" made before ordering the petitioner to be disqualified. All these questions have to be gone into and decided afresh by a reasoned and speaking order by the State Election Commission after duly giving opportunity to petitioner by a notice specifically pointing out defects.

In the result, the writ petition is allowed. The notification Annexure P/1 is quashed by issue of writ of certiorari.

It is open to the State Election Commission to hear the petitioner afresh pointing out specifically all the defects to him and afford an opportunity as contemplated under para 10 of the Order of 1997 and thereafter to take a just decision as it may deem fit. No order as to costs.