
(2015) 08 KAR CK 0088

In the Karnataka High Court

Case No : Writ Petition No. 34978 of 2015 (LB-ELE)

Khamar Nizami

APPELLANT

Vs

State Election Commission, Karnataka and Others

RESPONDENT

Date of Decision : 19-08-2015

Acts Referred:

Citation : (2015) 6 KarLJ 295

Hon'ble Judges : R.S. Chauhan, J.

Bench : Single Bench

Advocate : S. Basavaraju, Advocate, for the Appellant; Shwetha Krishnappa, High Court Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—The petitioner is aggrieved by the order dated 21-7-2015 passed by the Commissioner, State Election Commission, whereby the learned Commission has disqualified the petitioner under Section 16-C of the Karnataka Municipalities Act, 1964 ("the Act" for short), from the post of Councillor of Channapatna City Municipal Council. Briefly the facts of the case are that in the Municipal Council election held in the year 2013, the petitioner was elected as a Councillor from Ward No. 23, Fausdar Beedi (Fausdar Road) under the Channapatna City Municipal Council. By notice dated 10-9-2013 issued by the State Election Commission, the petitioner was called to furnish the account of election expenses with the Returning Officer-cum-Tahsildar of Channapatna within a period of twenty days from the date of receipt of the notice in accordance with Section 16-B of the Act. However, the petitioner did not submit the election expenses within the stipulated period of twenty days. In fact, the petitioner submitted the election expenses in her reply dated 3-3-2014 to the said notice dated 10-9-2013. According to the petitioner, after 10-9-2013, further notices dated 26-2-2015 and 18-3-2015 were also served upon her, but she had submitted the election expenses on 3-3-2014 only. But, despite the fact that she had submitted the election expenses, by order dated 21-7-2015, she

has been disqualified by the learned Election Commissioner. Hence, this petition before this Court.

2. Mr. S. Basavaraju, the learned Counsel for the petitioner has vehemently raised the following contentions before this Court: firstly, it is merely a technical fault committed by the petitioner in not submitting her election expenses within the stipulated period of twenty days, a period stipulated in the notice dated 10-9-2013. But according to Section 16-C of the Act, a person can be disqualified only if the person is unable to show good reason or justification for her/his failure to submit the election expenses within the stipulated period mentioned in the notice.

Secondly, according to the learned Counsel, since the petitioner's mother was unwell, since the petitioner herself was unwell, she could not submit the election expenses within the stipulated period. Thus, petitioner had ample good reasons and justification for her failure to submit the election expenses. Despite the fact that she had a cogent justification for her failure, still by the impugned order, she has been disqualified.

Thirdly, even after she had submitted her election expenses on 3-3-2014, even thereafter, notices were issued to her on 18-3-2015, 25-4-2015 and 4-5-2015. But these notices are without any legal basis. Therefore, the impugned order deserves to be set aside.

3. Heard the learned Counsel for the petitioner, perused the record, and considered the impugned order.

Sections 16-B and 16-C of the Act is as under:

"16-B. Lodging of account with the Returning Officer.--Every contesting candidate at the election under this Act shall, within thirty days from the date of election of the returned candidate or, if there are more than one returned candidate at the election and the dates of the election are different, the later of those two dates lodge with the Returning Officer appointed at an election under this Act 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 16-A.

16-C. Failure to lodge an account of election expenses.--If the State Election Commission is satisfied that any 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 a period of three years from the date of the order."

4. A bare perusal of the said provision clearly reveal that it is the duty of the

contesting candidate to submit the account of election expenses with the Returning Officer within thirty days of the declaration of the result. In case, there is failure, according to Section 16-C of the Act, the candidate must show good reasons or justification for such failure. But, in case the candidate fails to submit the election expenses within a period of thirty days, according to Section 16-C of the Act, the State Election Commissioner has sufficient power to declare the elected person as disqualified. A co-joint reading of Sections 16-B and 16-C of the Act clearly reveals that Section 16-B is a mandatory provision and Section 16-C clearly stipulates the consequences of flouting the mandate of Section 16-B of the Act. Thus, the duty has been imposed by law upon the contesting candidate to submit the election expenses within the period of thirty days.

5. Admittedly, in the present case, the notice was issued to the petitioner on 10-9-2013; ample time was given to her to submit the election expenses. Even after the notice dated 10-9-2013 was issued to her, even on 26-2-2015, a second notice was issued to her. But, there was no response from the petitioner to either of these two notices. It is only after the lapse of six months that on 3-3-2014, the petitioner submitted her election expenses. Thus, clearly the petitioner has violated the mandatory provision of Section 16-B of the Act.

6. According to the learned Counsel, the petitioner has given ample justification for her failure to comply with the requirement of Section 16-B of the Act. According to the petitioner, both her mother and she were unwell. However, illness of a mother cannot be considered to be a justification for the failure to comply with the mandatory requirement of Section 16-B of the Act. Even if the petitioner were herself ill, it would not prevent her from sending the election expenses which were maintained in accordance with Section 16-A of the Act. There is no evidence to show the nature of the illness suffered by the petitioner which would prevent her from submitting her election expenses. Therefore, the justification being given by the petitioner are mere excuses and cannot be termed as "good reason" or "a valid justification" for her failure.

7. Sections 16-B and 16-C of the Act have specific purpose for submission of the election expenses. Since one of the bane of elections in India is the amount of unaccounted money which is pumped into an election, therefore, Sections 16-B and 16-C of the Act are merely an attempt to wipe out corruption which has crept into the election process. Such a beneficial purpose of Sections 16-B and 16-C of the Act cannot be lost sight of while examining the legal validity of the impugned order. Since the petitioner has failed to submit any good reason or justification for her failure, the learned Commissioner was very well justified in declaring the petitioner as disqualified under Section 16-C of the Act. Although the learned Counsel for the petitioner has contended that the fault committed by the petitioner could be condoned, in the case of *Balaji Yadav CM. v. State Election Commission*, Writ Petition No. 26662 of 2013, decided on 13th July, 2015, this Court has clearly held that once the law mandates a particular action to be taken by the State Election Commissioner, and once the law imposes

certain duty upon the elected candidate, the delay in submitting the election expenses cannot be condoned by this Court. Since the provisions of Sections 16-B and 16-C of the Act are mandatory in nature, any deviation from the mandate of Section 16-B of the Act can be justified only under Section 16-C of the Act. Since the explanation offered by the petitioner does not fulfill the requirement of Section 16-C of the Act, the learned Commissioner had no other option, but to disqualify the petitioner.

For the reasons stated above, this Court does not find any illegality in the impugned order. This petition, being devoid of any merit, is hereby dismissed.