
(2014) 12 MP CK 0087
In the Madhya Pradesh High Court
Case No : Writ Petition No. 7101/14

Ku. Vimlesh Vanshkar

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 22-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Municipalities Act, 1961 — Section 32A, 32B, 32C

Citation : (2015) 1 JLJ 297 : (2015) 1 MPHT 273 : (2015) 2 MPJR 77 : (2015) 2 MPJR 208 : (2015) 1 MPLJ 393

Hon'ble Judges : B.D. Rathi, J

Bench : Single Bench

Advocate : D.S. Raghuvanshi, Advocate and Party-in-Person, Advocate for the Appellant; Ami Prabal, Advocate for the Respondent

Judgement

B.D. Rathi, J.—Heard finally with the consent of the counsel for the parties.

2. Present writ petition filed under Article 226 of the Constitution of India has been preferred seeking the following reliefs to the extent mentioned below:

(i) By allowing the writ petition, the impugned order dated 21/8/2014 (Annexure-P/1) be quashed.

(ii) The petitioner be permitted to participate in Nagar Panchayat Election held for the post of Chairman in the month of February, 2015.

(iii) Any other relief which the Hon''ble court deems fit and proper.

3. The facts in short are that the impugned order dated 21/8/2014, marked as Annexure-P/1 was communicated to the petitioner on 4/9/2014 whereby she was declared as disqualified to take part in coming election held for the post of Chairman of Nagar Panchayat, Badoni, district Daita for next five years on her failure to furnish accounts of election expenses which were held in the year 2009. It was alleged that the petitioner took part in the said election but failed to

submit accounts of election expenses.

4. It is submitted by the counsel for the petitioner that previously election was held in the year 2009 whereas the impugned order has been passed in the year 2014, after a period of five years which indicates malafide on the part of the respondents. Apart that, no show-cause notice was given to the petitioner. Opportunity of hearing was also not given. Therefore on these two counts, firstly in violation of principles of natural justice in not affording opportunity of hearing to the petitioner and because the impugned order was passed after a period of five years, the petition is sought to be allowed and the impugned order dated 21/8/2014 (Annexure-P/1) is prayed to be set aside by permitting the petitioner to participate in the election of Nagar Panchayat held for the post of Chairman in the month of February, 2015. In support of the arguments, learned counsel for the petitioner placed reliance on the decision in the case of Mahendra Palariya Vs. M.P. State Election Commission and Others, .

5. Prayer was opposed by the learned counsel appearing for the other side on the ground that show-notice (Annexure-R/2) was served on the father of the petitioner. The petitioner is one of the family members of the joint family who is residing with her father but despite serving of aforesaid notice no reply was submitted by her. Secondly, it was the duty of the petitioner to furnish the accounts of the election expenses within a period of 30 days from the date of election of the return candidate before the officer nominated for the said election as per the provisions given under Section 32-B of M.P. Municipalities Act, 1961 but same particulars have not been furnished, therefore, the respondents/ election commission as per provisions given under section 32-C of the aforesaid Act held disqualification of the petitioner on her failure to lodge the account of election expenses. Hence, it is prayed that the petition having no substance be dismissed.

6. Having regard to the arguments advanced above, the entire case has been examined.

7. Before dwelling upon the issue involved in the case, the relevant provisions are 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 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 Parishad, as the case may be, for a period not exceeding five years from the date of the Order."

8. Admittedly, as per the facts on record, the previous election was held in the month of February, 2010 but the showcause notice (Annexure-R/2) dated 9/9/2010 was not served on the petitioner at previous point of time. Instead the same was served on Harprasad, the father of the petitioner. Nowhere it was evidentially clear that the petitioner is residing with her father Harprasad as a member of joint family. Therefore, it is discernible from the record that opportunity of hearing was not afforded to the petitioner. Moreover, it was mentioned in the notice that previously the election was held in the month of February, 2010 under the M.P. Gazette Notification filed as Annexure-R/6. By the aforesaid Notification the election was held in the month of February, 2010 but in the impugned order dated 21/8/2014, Annexure P/1, it was mentioned that the election was held in the month of December, 2009. It means that impugned show cause notice for the election held in the month of December, 2009 was not given but the notice given was for the election held in the month of February, 2010. No order has been passed against the petitioner for the election held in the month of February, 2010. Therefore, in the considered opinion of this court, the impugned order issued against the petitioner is bad in law. The same was issued without giving an opportunity of hearing to the petitioner. Suffice it to observe that if the election commission would have acted properly then the said order ought to have been passed in a proper manner for the election in question. But the election commission took a period of near about five years for consideration which cannot be appreciated. The petitioner cannot be penalized to contest the next election on the basis of the order which has been issued by the election commission after a lapse of five years. It is also pertinent to mention here that the impugned order dated 21/8/2014 (Annexure-P/1) was issued against in all fourteen candidates. It shows that a joint order was passed against all the aforesaid fourteen candidates which can be termed as stereo typed order. So, admittedly, the detailed order has not been passed and in a routine way the case of the petitioner has been examined by the respondents/authorities.

9. For the aforesaid reasons, the impugned order passed by the respondents disqualifying the petitioner for election with further disqualification for five years from the date of order cannot be sustained under the law. The order by Gazette Notification issued by the Election Commission in respect of the petitioner is hereby set aside. Accordingly, the petition is allowed.

10. No order as to costs.