

(2009) 04 MP CK 0080

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 7365 of 2006

M.P. State Election Commission

APPELLANT

Vs

Smt. Neelam Pravin Gandhi and Others

RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Constitution of India, 1950 — Article 213, 226, 356(1)
Hindu Marriage Act, 1955 — Section 10, 23, 23(1), 23(2)
Landlord and Tenant (Rent Control) Act, 1949 — Section 1
Madhya Pradesh Municipal Corporation Act, 1956 — Section 14C
Madhya Pradesh Municipalities Act, 1961 — Section 32A, 32B, 32C, 32C(B)
Madhya Pradesh Municipalities Rules, 1961 — Rule 10, 10(6)
Representation of the People Act, 1951 — Section 123

Citation : (2009) 2 JLJ 315

Hon'ble Judges : R.K. Gupta, J;Dipak Misra, J

Bench : Division Bench

Advocate : V.S. Shrotri and Vikram Johri, for the Appellant; Umesh Trivedi and Shalini, for the Respondent

Final Decision : Dismissed

Judgement

Gupta, J.—The question of fact and law being similar in the present writ appeals, they are being disposed of by this singular order.

2. These intra-Court appeals have been preferred by the Appellants challenging the common order dated 13.12.2004 passed by the learned Single Judge in Writ Petition No. 4040/2004 (Smt. Neelam Pravin Gandhi v. State Election Commission and Ors.) and Writ Petition No. 2202/2004 (Mahendra Palariya v. State Election Commission and Ors.) alongwith Writ Petition No. 3852/2004 (Smt. Seema Katakwar v. State of M.P. and Ors.) whereby the learned Single Judge has allowed the writ petitions and quashed the order passed by the present Appellant declaring the original writ Petitioners to be disqualified u/s 32-C of the M.P. Municipalities Act, 1961 (for brevity "the Act").

3. For the sake of convenience the facts are referred to from Writ Appeal No.

1365/2006. The background facts leading to the present appeal are that the Respondent No. 1 contested the election for the post of President, Nagar Panchayat, Niwadi, District Tikamgarh held on 28.12.1999. She did not submit any account of election expenses to the District Election Officer as required u/s 32-A of the Act. A show cause notice, Annexure R-2, dated 7.3.2000 was issued to the Respondent No. 1 why she should not be disqualified for a period of five years from contesting the election for not lodging the account of election expenses. The Respondent No. 1 submitted reply, Annexure R-3, to the show cause notice. The reply was filed before the SDO wherein she had shown that there was expenditure of Rs. 2,650/- in the election. Thereafter, the Appellant vide notification dated 18.3.2004 published in the M.P. Gazette on 2.4.2004 declared her disqualified u/s 32-C of the Act from contesting the election along with 25 persons.

4. The learned Single Judge has set aside the order passed by the Election Commissioner wherein the Respondent No. 1 was barred from contesting the election.

5. On behalf of the Appellant it is contended that the learned Single Judge was not justified in holding that a detailed inquiry is to be conducted before passing the impugned order and it is submitted that a summary enquiry is to be done by the competent authority. It is also contended that the return was not filed before the competent authority as notified u/s 32-B of the Act and on an inquiry it was found that since no return was filed, the order passed by the competent authority is justified.

6. On behalf of the Respondents it is contended that in pursuance of Section 32-B of the Act, the inquiry has to be conducted by affording an opportunity of hearing to the person concerned. It is further submitted that return had already been filed along with the show cause notice and hence, the same should have been appropriately dealt with before arriving at a conclusion for such a determination makes the order perfunctory.

7. Before we advert to the rival submissions it would be appropriate to refer to Section 32-A, 32-B and 32-C of the Act. They are reproduced herein below:

Section 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 authorized 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.

Explanation I: Any expenditure incurred or authorized in connection with the election of a President by a political party or by any other association or body of persons or by any individual other than the candidate or his election agent shall not be deemed to be expenditure in connection with the election incurred or authorized by the candidate or by his election agent for the purpose of this Sub-

section.

Explanation II: For the removal of doubt, it is hereby declared that any expenditure incurred in respect of any arrangement made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in Clause (7) of Section 123 of the Representation of the People Act, 1951, in discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorized by a candidate or by his election agent for the purpose of this Sub-section.

(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 account of expenditure shall contain such particulars as may be prescribed by the State Election Commission.

Section 32-B. Lodging of account of election expenses. - Every contesting candidature 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. 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.

8. It is further relevant to take note of paragraphs 4, 5, 7 and 10 of the Election Expenses (Maintenance and Lodging of Account) Order, 1997 (hereinafter referred to as the "1997 Order") which read as under:

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 Proforma 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 authorized and the vouchers or bills relating to the expenditure shall be maintained along with the register.

5. Production of the record of day to day account of 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 authorized 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 the account of election expenses. - (1) Every contesting candidate or his election agent shall lodge the account 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.

(4) The account of election expenses shall be accompanied by an affidavit of the candidate in Proforma C and shall not be regarded as complete without such an affidavit.

10. Report of 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 Madhya Pradesh Municipal Corporation Act, 1956 or as the case may be, Section 32-C of the Madhya Pradesh 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.

9. On the basis of the provisions as quoted hereinabove, it is clear that Section 32-B relates to the lodging of the account of election expenses by the candidate and the same has to be done within 30 days with the specified officer. Section 32-C deals with the disqualification for failure to lodge the account of election expenses. In fact, it is a consequence of not lodging of the accounts of the election expenses. Rule 10 of the 1997 Order prescribes that when the Election Commission decides that a contesting candidate has failed to lodge his accounts of election expenses within the specified time and in the manner required by the Act and 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 Act or as the case may be. Sub-rule 6 prescribes that any contesting candidate who has been called upon to show under paragraph 5 may within 15 days of the receipt of the 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.

10. On the basis of the discussion as aforesaid, it is clear that by virtue of Sub-rule 6 of Rule 10 of the Rules a candidate who has not earlier lodged the accounts of election expenses shall also furnish the complete account of his election expenses if he has not already furnished such account. In the present case a show cause notice was issued by the District Election Officer to the Petitioner and the copy of the same is filed as Annexure R-2 dated 7.3.2000. It was the case before the learned Single Judge of the original Petitioner that while filing the reply the accounts were submitted by him and reply is placed on record as Annexure R-3 to the return. The gazette notification dated 28.5.2004 was also placed on record as (Annexure P-7) by which the original Petitioner was declared as disqualified u/s 32-C of the Act and the same was held to be a cryptic order by the learned Single Judge and accordingly he allowed the petition by placing reliance on the judgment passed by this Court in Shantilal (Bum Bum) Vs. State of M.P. and Others,

11. On behalf of the Appellant it is submitted that a detailed enquiry in the present case was not required to be done by the District Election Officer. Since the District Election Officer found that the Petitioner has not furnished the account in compliance of Section 32-B, therefore, the action taken against the original Petitioner is proper. In this context, it is to be seen whether some enquiry is required to be conducted by the District Election Officer before issuing Gazette Notification disqualifying the candidate for not lodging of the account of the election expenses. It would be appropriate to refer to the words used in Section 32-C. They are "if the State Election Commission is satisfied that a person". This itself is indicative of the fact that the State Election Commission has to be satisfied that a person has failed to lodge the account of the election expenses within the specified time and if the State Election Commission is satisfied that there is no good reason or justification for the failure, the State Election Commission by an order published in the official gazette declare a candidate to be disqualified.

12. The words used in Sub-clause (b) of Section 32-C are also significant to be taken note of, they are "has no good reason or justification for the failure". The key words in Section 32-C are "satisfied" and "has no good reason or justification for the failure". These words show the legislative intent in using the same and cannot be treated to be the subjective satisfaction of the Election Commission but the same have to be based upon the objective consideration of the material so placed by a candidate while explaining non-furnishing of the account. Sub-para (5) of para 10 of the "1997 Order" also stipulates that if a show cause notice has been issued by the Election Commission then by virtue of sub-para (6) of para 10 the account can be furnished along with reasons in detail as to why the account was not earlier furnished within 30 days after the election.

13. On an analysis of the aforesaid provisions it is clear that it is not a case where subjective satisfaction by itself of the District Election Commission is sufficient to disqualify a candidate who has not lodged his account but order as

such has to be based upon the objective consideration. The word "satisfied" employed in Section 32-C has to be understood to mean "conclusion" or "determination". The word "satisfied" is employed in many a statute and has invited judicial consideration. The learned Single Judge has already considered the judgment passed by this Court in Shanti Lal's case (supra), and the same has been relied upon by him in coming to conclusion that the use of the word "satisfied" denotes application of mind. We are also in agreement with the reasoning given in Shanti Lal's case (supra).

14. In this regard, we may refer with profit to a Full Bench decision rendered by Allahabad High Court in Durgadas and Ors. v. REX AIR 1949 All 148 The said decision related to U.R. Maintenance of Public Order (Temporary) Act (IV(4) of 1947). In paras 36, 37 and 38 the Full Bench has laid down the view as under:

If the word "satisfied" is interpreted to mean the "subjective satisfaction" or "the State of mind of the detaining authority" then obviously it is not possible for the Courts to interfere. For however flimsy, if there is some material it cannot be said that there was absolutely no ground for satisfaction. To my mind, "satisfaction" only means that "he must be in fact satisfied", or, in other words, "honestly satisfied" and not a dishonest satisfaction, which will be no satisfaction at all. We have to remember that the satisfaction has to be on the consideration of the materials available to the detaining authority which may not be legal evidence.

If the Legislature has used the words "satisfied on reasonable grounds" and the meaning of the words was not cut down by the context in which they were used as in *Liversidge's case* 1942 AC 206 : 110 LJKB.724], or if there was no provision giving the detaining authority the right to keep back some facts, the Court would be justified in going into the question whether there were reasonable grounds of the satisfaction and it would be for the authority passing the order of detention to satisfy the Court that it had such grounds. It would be in that case for the detaining authority to disclose the grounds and to establish that there were reasonable grounds for the order. In our Statute, however, the words "satisfied or reasonable grounds" are not there. Learned Counsel has placed great reliance on the observations of Lord Wright that "satisfied" must mean "reasonably satisfied". The point for consideration before him was whether the words "has reasonable cause to believe" are anything more than a belief or mental state of the Secretary of State for Home Affairs His Lordship said:

Except for the word "reasonable", which I shall later discuss, there is no reference to anything but his personal belief, because I think that actual belief is implied by the words "has reasonable cause to believe". His belief is something personal to himself. The reasonable cause can only be material in so far as it is an element present to his mind which determines his own belief. The "cause to believe is part of the content of his mind". In a later part of the judgment discussing an earlier measure and the argument on the basis thereof His Lordship observed:

The point which was emphasised by the Appellant in this appeal was that the language used in the earlier form of the regulation was different in that it omitted the word "reasonable". The clause was; "The Secretary of State, if satisfied with respect to any particular person that with a view to preventing him from acting in any manner prejudicial to the public safety or the defence of the realm it is necessary to do so may make an order". It is, as I apprehend, not contested that under this earlier form of the regulation the matter was left to the discretion of the Secretary, but it was contended that the change from "if satisfied" to "if he has reasonable cause to believe" made all the difference and converted the plenary power of the Secretary into a power the exercise of which was subject to the judgment of a Court of law. Such, it was said, was the compelling force of the word "reasonable" that by itself it overrode every consideration, however peremptory, and that it inexorably excluded the idea of a merely executive discretion and introduced the opinion of a Court instead. I have already rejected that construction of the actual language in the present form of the regulation. The actual language is the acid test, and I see no ground for attaching so much weight to so slight a difference in words. "Satisfied" must mean "reasonably satisfied". It cannot import an arbitrary or irrational state of being satisfied. I find the distinction between "reasonably satisfied" and "has reasonable cause to believe" too tenuous ... I do not find in the later edition any indication of evils to be cured, but if defects are to be remedied, it was to be done by extending the Home Secretary's power on the one hand, and on the other enlarging the safeguards of the subject. It does not in terms provide for review by the Court.

I have extensively quoted from Lord Wright's judgment as the sentence "satisfied" must mean "reasonably satisfied" has been interpreted to mean that "reasonably satisfied" is something "more than satisfied", while His Lordships appears to cut down the meaning of the words "reasonably satisfied" and says that it does not imply anything more than the mental satisfaction of the Home Secretary."

15. Yahya Ali J. of the Madras High Court in his decision rendered in *In re: V. Venkataraman* AIR 1949 Mad 529 while dealing with the powers delegated by a provincial Government to Commissioner of Police under the Madras Maintenance of Public Order Act interpreted the meaning of word "satisfied" and came to the conclusion in para 8 as under:

To go back again to the precise language of Section 2(1)(a), it is important to consider that the fundamental basis upon which the exercise of power by the Provincial Government under this Act rests is that the Provincial Government should be satisfied with respect to the particular person that he is acting or about to act in any manner prejudicial to the public safety or the maintenance of public order and that it is necessary to detain him for the purpose of preventing him from so doing. It is only when these two conditions are satisfied that the Provincial Government, or, under the delegated power, the respective authority

may make an order directing that a particular person may be detained. It has been held in an earlier decision given by a Bench of this Court under this Act that the word "satisfied" in Sub-section (1) of Section 2 must be read as meaning "reasonably satisfied". It cannot import an arbitrary or irrational state of being satisfied. If further authority were needed for such a position, there is the dictum of Lord Wright in *Liversidge v. Sir John Anderson* 1942 AC 206 at p.271 : (1941)3 All ER 338: Vide also in *In re: Ex-parte Greene* (1942)1 KB 87, *Sackstader ex-parte* (1918)1 KB 578 : 1987 LJ KB 608. It means as has been again laid down in a number of decisions which is hardly necessary to refer to, which have recently been delivered under the corresponding Provincial Acts, that the satisfaction must be honest, careful and deliberate, arrived by the detaining authority after exercising due care and caution. The most important limitation upon the essential jurisdiction of the executive in exercising the powers under such a sweeping enactment is that there should be no fraud or abusive exercise of the power conferred thereby and that the powers should not, to any extent, be exceeded. In other words, the power should be exercised for the purpose contemplated by the Act and should come strictly within the limits, scope and ambit of the enactment. It has to be remembered that the Act avowedly commits tremendous inroads upon the liberty of the subject, and commensurate with that authority it is essential on the part of the executive that they should realize that it is in essence and in substance, a preventive and not a punitive jurisdiction and that detention should not be ordered or continued for the purpose of punishing a person for acts done in the past but wholly and solely for the purpose set out at the forefront of the Act of preventing him from acting in any manner prejudicial to the public safety or the maintenance of public order.

16. The meaning of word "satisfied" was again considered by Sinha J. on difference of opinion between Meredith, C.J. and Sarjoo Prasad, J. in *Ratan Roy Vs. State of Bihar and Others*, . The conclusion arrived at in para 51 of the said decision is reproduced below:

But it must also be remembered at the same time that wherever a legislation uses the word "satisfied", it must mean reasonably satisfied. I again quote for my authority the decision of the House of Lords in *Liversidge v. Anderson* 1942 AC 206 : (1941)3 All ER 338 In that case Lord Wright pointed out "satisfied" must mean "reasonably satisfied". It cannot import an arbitrary or irrational state of being satisfied. It is, therefore, quite obvious that if it is found on the very face of an Ordinance that it is an irrational and an unreasonable piece of legislation, a Court of law would certainly be entitled to hold that the legislation is invalid and pronounce against its being enforceable. My learned brother himself points out; "Courts can always enquire if mala fides have become apparent". It might well be that a Government may be unscrupulous enough to make an emergency an excuse for unjust action and may promulgate an Ordinance which may be on the very face of it inconsistent and unwarranted by the emergency in question and may be on the face of it so unreasonable as not to appeal to any rational individual. In those cases, in my opinion, the Court

would be always entitled to declare that the Ordinance is illegal. The illustrations, therefore, suggested in the judgment of my learned brother do not cause me any embarrassment as I am not prepared to go to the length of holding that even though a particular Governor may act quite unreasonably and in complete violation of the terms of Article 213 of the Constitution, the Court of law may yet sit quietly over it and see that injustice being done. In my opinion, that is never the purpose of Article 213 of the Constitution. Such a legislation would be declared void on the ground of mala fides and as being wholly unreasonable on the very face of it.

17. Taking into account the decision rendered by Allahabad High Court in Durga Das's case (supra), Thadani C.J. and Ram Lambhaya, J. in their decision rendered in *Keho Ram Hazarika v. The Government of Assam* AIR 1951 Assam 14 while dealing with the issue of power of Court to question reasonableness of grounds of detention interpreted the meaning of word "satisfied" and observed in para 2 as under:

Under Section 2, the Provincial Government, if satisfied, that it is necessary with a view to preventing an individual from acting in any manner prejudicial to public safety and the maintenance of public order, may order him to be detained. The intention of the Legislature is clear. It is the detaining authority that must be satisfied that detention of an individual is necessary in order that no act prejudicial to public safety and maintenance of public order is committed. The satisfaction contemplated by the section is satisfaction in point of fact. In the words of the learned Chief Justice of the Allahabad High Court in *Durga Das v. Rex* AIR 1949 All. 148 at p,155 : 50 CrLJ 214 FB "satisfaction" only means that the detaining authority must be in fact satisfied", or, in other words, "honestly satisfied". The reasonableness or otherwise of the satisfaction which forms the basis of the action of the detaining authority is not open to question in any Court.

18. In *Chandreshwari Prasad Narain Deo and Others Vs. State of Bihar and Another*, , the word "satisfied" again came for consideration and the Division Bench in para 7 opined as under:

In the course of argument, learned Government Pleader pointed out that u/s 4(h) the Collector may annul any transfer and dispossess the transferee "if he is satisfied" that such transfer was made with the object of defeating any provisions of the Act or for obtaining higher compensation thereunder. It was submitted that the Collector might exercise the power conferred by the section merely if he is satisfied that the transfer was made by the outgoing proprietor with a fraudulent motive, and the finding of the Collector could not be questioned by the High Court in a proceeding under Article 226 of the Constitution.

The contention of learned Government Pleader was that the satisfaction of the Collector u/s 4(h) was in the nature of a subjective satisfaction, and, therefore, could not be questioned by a Superior Court. I am unable to agree, I think the word "satisfied" in Section 4(h) must be construed to mean "reasonably

satisfied", and, therefore, the finding of the Collector u/s 4(h) cannot be a subjective or arbitrary finding but must be based upon adequate material. I also think that the satisfaction of the Collector u/s 4(h) is not a capricious satisfaction but must be capable of being tested in an objective manner. A similar interpretation was placed upon Section 4(h) by a Division Bench of this Court in Prem Manjari Devi Vs. State of Bihar and Another, .

A similar question of construction was elaborately discussed by Anr. Division Bench of this Court in Ramnath Sahani Vs. Sm. Sukumari Sinha and Others, with regard to Section 21(2), Bihar Building (Lease, Rent and Eviction) Control Act (Bihar Act 3 of 1947). It was decided by the Division Bench in that case that the "satisfaction" contemplated by Section 11(2) of the Statute was not subjective but an objective satisfaction, and the satisfaction of the controller must be based upon materials placed before him by the parties concerned.

Reference should also be made to the decision of the King's Bench in Rex v. Fulham, Hammersmith and Kensington Rent Tribunal (1950)2 All.ER 211 where a similar English statute was the subject-matter of interpretation. In that case the assignee of the tenant had made an application to the Rent Tribunal for determination of the standard rent, and the Rent Tribunal accordingly determined the standard rent of the premises and certified that the Landlord and Tenant (Rent Control) Act, 1949 Schedule1, Part I, para 1 applied to the two sums of \$180 and \$221 and determined the rental equivalent of those two sums at \$7 3s.2d. a quarter.

The landlord applied to the High Court for a writ of certiorari to bring up and quash the order of the Rent Tribunal on the ground that the Tribunal had wrongly come to the conclusion that a premium had been paid and as a result had reduced the rent. On behalf of the tenant, reliance was placed upon para 1 of Part I of Schedule I of the Landlord and Tenant (Rent Control) Act, 1949 which provided:

Where on an application u/s 1 of this Act made within twelve months from the date of the commencement of this Act it appears to the Tribunal that before the commencement of this Act any premium has been paid (whether lawfully required or not) in respect of the grant continuance or renewal of a tenancy of the dwelling house to which the application relates, whether by the tenant or by a previous tenant of the dwelling house, and has not been fully repaid or recovered the Tribunal shall, if the tenant so requires, certify that this part of this Schedule applies, and thereupon (a) except in a case falling within the next following sub-paragraph the rent payable shall be limited in accordance with para 2 of this Schedule

It was held by the High Court that according to Part I of Schedule 1 the fact of payment of premium was a condition precedent to the exercise by the Tribunal of its jurisdiction under the first schedule, and before the Tribunal could be said to have jurisdiction, it must not merely appear to the Tribunal that a premium has

been paid, but a premium must actually have been paid. In the result, the King's Bench Division consisting of Lord Goddard, C.J. and Humphreys and Parker, JJ. Granted a writ of certiorari to quash the decision of the Tribunal as the Tribunal had reached an erroneous finding on the question of preliminary fact.

19. In Anr. decision while dealing with Section 23 of the Hindu Marriage Act, a Division Bench of Gauhati High Court Consisting of T.S. Misra, C.J. and K.N. Saikia, J. in Smt. Gauri Dey Vs. Bidhu Bhusan Dey, considered the importance of word "satisfied" and expressed in para 3 thus:

We have gone through the impugned order and the record of the Court below. We find that the impugned order passed by the learned District Judge is not in accordance with law. It is perfunctory in nature and may even be said to be not at all a speaking order. As pointed out herein above, the case was contested by Smt. Gauri Dey who had filed her written statement. She had cross-examined Bidhu Bhusan Dey when he appeared in the witness box. The learned District Judge did not care to refer to any evidence adduced in the case either documentary or oral, nor did he record any finding on any of the issues. He simply said "case prima facie proved". It is surprising that a decree of divorce has been passed in this manner. Quite obviously the learned District Judge did not at all apply his mind to the facts of the case. There is no discussion whatsoever; no mention of facts even. The decree affected the status of two person. Important issues which so affect the parties demand a closer scrutiny. The nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue. Section 23 of the Act confers on the Court power to pass a decree if it is "satisfied" on matters mentioned in Clauses (a) to (e) of the section. The proceedings under the Act being essentially of a civil nature the word "satisfied" means "satisfied on preponderance of probabilities" and not "satisfied beyond a reasonable doubt". The Court is to apply its mind to applicability of various clauses of Section 23 before disposing of the case. Clause (d) of Sub-section (1) of Section 23 of the Act requires the Court to be satisfied that there has not been any unnecessary or improper delay in instituting the proceeding. The Defendant had pleaded in her written statement that the suit was barred by time. The District Judge should also hence have recorded a finding as to whether there had been unnecessary or improper delay in instituting the proceeding. Further, Sub-section (2) of Section 23 mandates the Court that before proceeding to grant any relief under the Hindu Marriage Act, the Court shall in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, make every endeavour to bring about a reconciliation between the parties. It was hence the duty of the District Judge in the first instance to try for reconciliation between the parties before granting the decree for divorce. Obviously he has not done so. The impugned decree manifestly suffers from the illegalities and infirmities pointed out herein above and deserves to be set aside.

In this context, it would also be profitable to refer to a decision rendered by the

apex Court in *Dr. N.G. Dastane Vs. Mrs. S. Dastane*, . In this decision, their Lordships while dealing with the powers conferred upon the Court by Sections 10 and 23 of the Hindu Marriage Act, 1955 for grant of a decree for judicial separation expressed the view in para 26 thus:

Neither Section 10 of the Act which enumerates the grounds on which a petition for judicial separation may be presented nor Section 23 which governs the jurisdiction of the Court to pass a decree in any proceeding under the Act requires that the Petitioner must prove his case beyond a reasonable doubt. Section 23 confers on the Court the power to pass a decree if it is "satisfied" on matters mentioned in Clauses (a) to (e) of the section. Considering that proceedings under the Act are essentially of a civil nature, the word "satisfied" must mean "satisfied on a preponderance of probabilities" and not "satisfied beyond a reasonable doubt". Section 23 does not alter the standard of proof in civil cases.

20. The Constitutional Bench in *S.R. Bommai and others Vs. Union of India and others etc. etc.*, while dealing with term "satisfied" used in Article 356(1) of the Constitution held thus:

From these authorities, one of the conclusions which may safely be drawn is that the exercise of power by the President under Article 356(1) to issue proclamation is subject to the judicial review atleast to the extent of examining whether the conditions precedent to the issuance of the proclamation have been satisfied or not. This examination will necessarily involve the scrutiny as to whether there existed material for the satisfaction of the President that a situation had arisen in which the Government of the State could not be carried on in accordance with the provisions of the Constitution. Needless to emphasise that it is not any material but material which, would lead to the conclusion that the Government of the State cannot be carried on in accordance with the provisions of the Constitution which is relevant for the purpose. It has further to be remembered that the Article requires that the President "has to be satisfied" that the situation in question has arisen. Hence the material in question has to be such as would induce a reasonable man to come to the conclusion in question. The expression used in the Article is "if the President is satisfied". The word "satisfied" has been defined in Shorter Oxford English Dictionary (3rd Edition) at page 1792 as "4. To furnish with sufficient proof or information, to set free from doubt or uncertainty, to convince; 5. To answer sufficiently (an objection, question); to fulfil or comply with (a request); to solve (a doubt, difficulty); 6. To answer the requirements of (a state of things, hypothesis, etc.); to accord with (conditions). Hence, it is not the personal whim, wish, view or opinion or the ipse dixit of the President dehors the material but a legitimate inference drawn from the material placed before him which is relevant for the purpose. In other words, the President has to be convinced of or has to have sufficient proof of information with regard to or has to be free from doubt or uncertainty about the state of things indicating that the situation in question has arisen. Although, therefore, the sufficiency or

otherwise of the material cannot be questioned, the legitimacy of inference drawn from such material is certainly open to judicial review.

21. On the basis of the aforesaid enunciation of law it is crystal clear that whenever the word "satisfied" is used then such satisfaction of the authority passing the order has to be tested on objective consideration and the authority is required to apply its mind. It has to be based upon information as well as the material. There cannot be any irrational approach. If in the order the conclusion is otherwise found to be not based upon the material on record or the information and even considering the reply then in such situation it cannot be said that the authority was satisfied by mere recording of satisfaction.

22. Clause (b) of Section 32-C of the Act itself indicates that if a candidate has no good reason or justification for the failure to furnish the account then he can be disqualified. Justification and good reasoning are to be given by the candidate for not lodging of the account within the time stipulated in Section 32-B of the Act. There is yet Anr. opportunity with the candidate to furnish the account subject to explanation of delay as per sub-para (5) of para 10 of the 1997 Order. When the legislature has provided enough safeguards in favour of a candidate who is to be disqualified or who is to be held guilty for not furnishing the election expenses within the time as stipulated then keeping in view the language of Section 32-C it is to be understood that the authority has to conduct some enquiry. It may not be a detailed inquiry but some enquiry is warranted for recording satisfaction on the basis of nature of defence so taken by a candidate by filing reply to the show cause notice. The nature of inquiry would certainly depend upon the nature of defence taken by a candidate while filing reply to the show cause notice.

23. The aforesaid situation further leads to a question that in case the candidate challenges the report submitted to the Election Commission then while filing the report the candidate as such has no opportunity as the rule does not provide for giving of an opportunity before submission of report by the competent authority as per para 10 of the 1997 Order under which the show cause notice is issued. If the report goes against the candidate then it becomes obligatory on the part of the Election Commission to give some opportunity to the candidate to explain the report itself and if any defence is submitted then on the basis of nature of defence as such the State Election Commission has to record that there were no good reason or justification for the failure to lodge the account but once a justification is given or reasons are explained then the reasons as well as the justification are to be tested by the Election Commission in the manner by holding summary inquiry which does not prejudice the rights of the person concerned who is to be affected by consequence of such disqualification. There cannot be a straight-jacket formula which is to be adopted by the State Election Commission. The nature of inquiry whether detailed or summary would depend upon the nature of defence taken by the candidate. It would vary from case to case.

24. Learned Single Judge in the instant case has recorded a finding that while filing the reply the details of the account were submitted. The order impugned does not show any application of mind by the State Election Commission that the defence which was set up was not based upon the good reason or the defence was not justified. The learned Single Judge has also come to the conclusion that the order passed by the State Election Officer is a cryptic one because it does not state anywhere the reasons for coming to conclusion that the reason stated were either not good or not justified. There is no reference in the impugned order with respect to the nature of defence which was taken by the Respondent candidate.

25. The issue involved in the present case can be perceived from Anr. angle. Section 32-C of the Act is penal in nature because it prescribes consequence/penalty for not furnishing the account by a candidate. Once the provision is of penal nature then the mandate of the legislature has to be strictly complied with. The words "has no good reason or justification" are used in Sub-section (B) of Section 32-C. These words are to be interpreted with more caution and care. A candidate is to be deprived of due to his disqualification from contesting the next election, therefore, it is a kind of penalty and the competent authority has to apply its mind with caution, care, rationale and objectivity and hold a proper enquiry depending upon the facts and circumstances of the case.

26. For the reasons stated hereinabove, we are inclined to hold that there is no case made for interference in the order passed by the learned Single Judge. The present appeals are, therefore, dismissed accordingly. There shall be no order as to costs.