
(2009) 03 P&H CK 0182
In the Punjab And Haryana At Chandigarh

Sat Pal	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 17-03-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Representation of the People Act, 1951 — Section 10A, 125A, 134A, 134B, 135B

Citation : (2009) 154 PLR 541

Hon'ble Judges : Ajai Lamba, J

Bench : Single Bench

Judgement

Ajai Lamba, J.—This civil writ petition filed under Article 226/227 of the Constitution of India prays for issuance of a writ in the nature of certiorari for quashing Order dated 20.2.2009 (Annexure P-11).

2. The facts in nutshell are that election to Municipal Committee, Nilokheri, District Karnal was held and election result declared on 20.1.2008. u/s 13-D of the Haryana Municipal Act, 1973, added by Haryana Act No. 20 of 2006 and further modified by Haryana Act No. 26 of 2006 (for short, "the Act"), in case a person fails to furnish account of election expenditure within the time specified and in the manner required by or under the Act, the person shall be declared disqualified for three years. The relevant provision as reproduced in Para 12 of the petition reads as under:

The Haryana Municipal Act, 1973, Section 13-D 13D. Application of certain sections of Central Act 43 of 1951.- The provisions of Sections 10A, 20B, 28A, 33A, 33B 125A, 134A, 134B, 135B and 135C of the Representation of the People Act, 1951 (Central Act 43 of 1951), shall mutatis mutandis apply to the provisions of this Act] Section 10-A of Representation of the People Act, 1951-10-A. Disqualification of failure to lodge account of election expenses- If the 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

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.

3. In the case in hand, the petitioner who had contested the election, was required to furnish details of election expenditure alongwith affidavits as required, by 19.2.2008. The needful was not done and therefore, a show cause notice was issued as to why he should not be disqualified. The petitioner took a stand before the authorities that he was ill and subsequently, cousin of the petitioner expired, therefore, the needful could not be done.

4. Learned Counsel for the petitioner contends that it is a new introduction in the legislation and most of the persons in the area had not complied with the provision. The petitioner has no malafide reasons. It was for reasons beyond the control of the petitioner and for bonafide causes that the election expenditure could not be furnished in proper format in time. Although the petitioner had informed the authorities that relevant documents/certificates would be produced in evidence of the reasons for delay, however, it has wrongly been recorded in the order that he did not possess the medical certificates. The medical certificates/other evidence in favour of the petitioner have been placed on record as Annexures P-9 and P-10.

5. Considering the fact that the petitioner had been elected by way of democratic process at nucleus level, prima facie, I am of the view that the respondents need to consider the documents appended with this petition to enable the petitioner to substantiate his case justifying the delay in filing the election expenditure.

6. Notice of motion.

7. Mr. Anjum Ahmed, Additional Advocate General, Haryana, on the asking of the Court, accepts notice on behalf of the respondents. Copy of the petition has been given.

8. I have heard the learned Counsel for the parties.

9. It is not in dispute that the petitioner was elected as a Municipal Councillor of Ward No. 9, Municipal Committee, Nilokheri. The petitioner was required to furnish election expenditure alongwith affidavit by 19.2.2008. The needful not having been done, a show cause notice was issued. Under the provisions of Section 13-D of the Act, the petitioner had the right to convince the Election Commission that he had a good reason and justification for failure to furnish relevant details in time. Reliance has been placed on Annexures P-9 and P-10 to justify the delay in furnishing the account in compliance of the provisions of the Act.

10. Annexure P-8 also indicates that a detailed representation was made by the petitioner indicating the hardship faced by him.

11. I am of the view that the State Election Commission, Haryana is required to

take into account the documents and facts & circumstances faced by the petitioner, and thereafter see whether the petitioner had good reason or justification to file the election expenditure beyond the prescribed period.

12. This petition is allowed. Annexure P-I 1 is hereby set aside.

13. The State Election Commission, Haryana, is directed to re-consider the case of the petitioner.

14. The petitioner would be at liberty to place before the State Election Commission the material to show that for bonafide reasons and for reasons beyond his control, he could not file the election expenditure, as required by law, in time. The Election Commission shall take into account the material placed before it and consider the reasons for filing the election expenditure beyond prescribed time limit and pass an order afresh, in accordance with law.