

(2020) 02 BOM CK 0012
In the Bombay High Court
Case No : Writ Petition No. 1576 Of 2017

Shrikrishna Adbol

APPELLANT

Vs

Election Commission Of India Through Chief Election
Commissioner And Ors

RESPONDENT

Date of Decision : 04-02-2020

Acts Referred:

Representation Of The People Act, 1951 — Section 10A, 10A(b), 66, 77, 78, 81, 89,
89(1)(a)(b)(c), 100, 100(1), 101, 123
Conduct Of Election Rules, 1961 — Rule 64

Citation : (2020) 02 BOM CK 0012

Hon'ble Judges : Ravindra V. Ghuge, J;S.M. Modak , J

Bench : Division Bench

Advocate : N.B. Rathod, Neerja Chaubey, Mugdha Chandurkar, K.L.
Dharmadhikari

Final Decision : Dismissed

Judgement

Ravindra V. Ghuge, J

1] Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2] The petitioner is aggrieved by the order dated 08.12.2016, passed by respondent no.3 and the communication dated 18.01.2017, issued by him.

3] The petitioner preferred an application under Section 10-A read with Chapter VIII and the rules framed thereunder before the Chief Election

Commissioner under the Representation of the Peoples Act, 1951. The complaint was titled as "Complaint Election Petition No.6/MT-PC/6/2014-

CEMS-II of 2015". It is canvassed before us that the petitioner had sought the disqualification of respondent no.4 elected candidate on the ground

that the election expenses were not lodged within the prescribed time under

Section 10-A of the Representation of the Peoples Act, 1951.

4] We have perused the complaint preferred by the petitioner, which runs into 27 pages. We do not deem it appropriate to enlarge the size of this

judgment by referring to the entire details of the contentions set out in the complaint. Suffice it to say, that the complaint contains several contentions

and allegations as regards various expenses allegedly incurred by the returned candidate. It contains allegations about various senior leaders of the

Bhartiya Janata Party, who had campaigned for the returned candidate. The cost incurred by the party for advertisement in various newspapers has

been speculated in the complaint. The expenses for the use of a helicopter, purportedly by the late Shri Gopinath Munde, for campaigning in favour of

the returned candidate, is said to have been suppressed by the returned candidate. It is alleged that the expenses incurred for publishing

advertisements of Shri Narendra Modi, has been suppressed by the returned candidate. A host of allegations have been set out in the lengthy

complaint regarding suppression of expenditure.

5] Considering the above, we deem it appropriate to reproduce the prayers put-forth by the petitioner in his complaint here under:-

A) The 19th Akola Parliamentary Returning Officer (District Returning Officer) be directed to furnish the report as stipulated under section 89(1)(a)

(b)(c).

B) The 19th Akola Parliamentary Returning Officer (District Returning Officer) be directed to sent the report after examining the application

submitted by this Applicant on 13/12/2014.

C) That on receipt of the report from the 19th Akola Parliamentary Returning Officer (District Returning Officer) the proceeding under section 10A

be initiated.

D) That it be declared that the amount of Rs. 6,47,895/- is spend not from the account declared to the Returning Officer 19th Akola Parliamentary

Constituency. That it be declared that expenditure amount not accounted for in the account declared to the defendant No2 is a corrupt practice and

covered under section 10A and section 77.

E) That the amount of Rs. 26,98,920.00 (twenty Six Lakhs Ninety Eight Thousand Nine Two Hundred spend on advertisement and not included in the

statement of account is a corrupt practice and covered under section 10A and section 77 & 123 & 100.

F) That as the time laid down for submitting of the corrected account the proceeding under section 10A & Chapter VIII read with section 89 of the rules of conduct be initiated.

G) That failure to file the proper and true and corrected account and in the manner laid down by the commission in time and to file even after giving an opportunity by the 19th Akola Parliamentary Returning Officer (District Returning Officer) the defendant No 1 Mr. Sanjay be did not avail the opportunity, is a corrupt practice and be declared as disqualified.

H) That it be declared that the defendant No 1 Mr. Sanjay Dhotre has failed and committed breach to file the true and correct and in the manner as given by election commission of India, account in time as stated in section 77 & 78 of the R.P.A. 1951.

I) That be declared that no correction or addition in the account can be made after the stipulated time in the Act R.P.A. 1951.

J) That it be declared the defendant did not maintain a correct and true and in the manner account of his election expenditure under section 77 in connection with his election to the Parliament from 19th Akola Maharashtra Parliamentary constituency held in April 2014.

K) That it be declared the defendant No 1 has filed incorrect account of election expense with the District Returning Officer on 03/06/2014 under section 78.

L) That on the disqualification of the defendant No.1 Mr. Sanjay Dhotre the result declared under section 66 P.R.A. 1951 and the issue of form 21C or 21D under section 64 of the Conduct of Election Rules 1961 be withdrawn.

6] It is pointed out by the learned Advocate representing the Election Commission, respondent nos.1, 2 and 3 that the term of office of the returned candidate has already expired in 2019. Fresh elections have been held in 2019 and respondent no.4 is once again returned from the Akola Parliamentary Constituency.

It is further contended that this petition is rendered infructuous as no purpose would be served by entertaining this petition. It is also contended that the valuable time of the Court would be unnecessarily wasted.

7] Considering the above submissions, we called upon the learned Advocate for the petitioner to respond on this contention. We also pre-empted him

that if we find that our time has been wasted, we are likely to impose costs. He submits that this petition deserves to be entertained and all his prayers

set out in the complaint under Section 10-A will have to be dealt with by this Court. It is in this backdrop that we have considered this petition.

8] We find from Section 10-A of the Representation of the Peoples Act, 1951 that it provides for disqualification of a candidate for failure to lodge

account of election expenses. It does not pertain to the disqualification only of the returned candidate. Even an unsuccessful candidate would face

disqualification for a period of three years from the date of the order. Section 10-A reads as under:-

10-A. Disqualification for failure to lodge account of election expenses.â" If the Election Commission is satisfied that a personâ

(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.

9] Considering the above, we have perused the record placed before us by the Election Commission. We find that the results of the parliamentary

elections were declared on 16.05.2014 when respondent no.4 was returned as a successful candidate. The last date for filing of the accounts of

election expenses was 15.06.2014. The record reveals that the election expenses were lodged by the returned candidate on 13.06.2014. The complaint

was filed by the petitioner on 20.04.2015 (the learned Advocate submits that by mistake the date is mentioned as 20.03.2014). The Notary Shri

Laxman B. Delhiwale, has not even mentioned the date on which the document was notarized before him and we are therefore, inclined to direct the

learned Registrar (Judicial) to initiate appropriate steps into this matter.

10] Be that as it may, we find from the language used in Section 10-A that it only pertains to the legal formality of lodging account of election

expenses within the time and the manner required by the Act. Section 10-A(b) pertains to a justification or a good cause to be shown for any failure

and if a good cause is pointed out justifying failure, the Election Commission would not disqualify such a candidate. We do not find that the scope and ambit of Section 10-A is with regard to the High Court going into the disputed issue of whether the account of election expenses reflect a truthful account of expenditure incurred or whether the candidate has suppressed election expenditure.

11] In view of the above, we find that the complaint preferred by the petitioner actually as the pleadings and averments of an election petition. The entire thrust of the petitioner in his complaint before the Election Commission was with regard to allegations of suppression of election expenditure by respondent no.4. We do not find that the said allegations could be gone into by this Court or the Election Commission under Section 10-A.

12] Section 81 under Chapter II of the Representation of the Peoples Act, 1951 provides for filing of an election petition calling in question any election, to be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101, to the High Court, by any candidate at such election or any elector, within forty-five days from the date of the election of the returned candidate. It is obvious that the petitioner had lost on time and had preferred the complaint on 20.03.2015. Since an election petition was barred, he has taken a chance by filing the petition under Section 10-A of the Peoples Representation Act, 1951. We are therefore, convinced that the petitioner has shrewdly preferred such complaint and has wasted the time of this Court.

13] In view of the above, we do not find that the impugned order rejecting the complaint of the petitioner could be termed as being perverse or erroneous. This petition, being devoid of merit is therefore, dismissed.

14] Considering the circumstances recorded as above, we are imposing costs of Rs.25000/- to be paid by the petitioner. The learned Advocates for the respondents submit that the cost amount may be donated to the Government Veterinary College and Hospital, Nagpur. As such, the petitioner shall deposit the said amount in this Court on or before 21.02.2020, failing which, the District Collector, Akola shall initiate recovery proceedings by treating the said amount to be arrears of land revenue.

The amount shall be transmitted by this Court to the Government Veterinary College and Hospital, Nagpur, forthwith.

15] Rule is discharged.

16] In so far as page 50 of the petition paper-book is concerned, which contains various stamps affixed by the Notary Shri Laxman B. Delhiwali, we

find that he has not even cared to sign below the attestation and he has also not affixed the date on which, the petitioner has affirmed the verification.

The learned Registrar (Judicial) of this Court is therefore, directed to adopt the appropriate procedure as is prescribed in law in order to initiate action

with regard to the conduct of the Notary.