

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.2040 of 2017

(Arising out of order dated 1-6-2017 in Case No.F-68-149/Three(Two)/
N.P./Vyay Lekha/2015/2716 of the Chhattisgarh State Election
Commission, Raipur)

Smt. Urvashi Singh Thakur, W/o Shri Sarad Kumar Singh, aged
about 34 years, R/o Vill. Pathalgaon (Purani Basti), Post + Thana +
Tahsil Pathalgaon, Distt. Jashpur (C.G.)

---- Petitioner

Versus

1. Chhattisgarh State Election Commission, through its Secretary,
Chhattisgarh State Election Commission, Near of D.K.S. Bhawan
(old Mantralaya), Raipur (C.G.)
2. State of Chhattisgarh, through Secretary, Ministry of Local and Self
Government, Mantralaya Parisar, Raipur (C.G.)
3. District Election Officer (Municipalities), Jashpur, Distt. Jashpur
(C.G.)
4. Returning Officer, Nagar Panchayat, Pathalgaon, Tahsil
Pathalgaon, Distt. Jashpur (C.G.)
5. Nagar Panchayat, Pathalgaon, through the Chief Municipal Officer,
Nagar Panchayat, Pathalgaon, Distt. Jashpur (C.G.)

---- Respondents

For Petitioner: Mr. Prateek Sharma and Mr. Manoj Chauhan,
Advocates.

For Respondent No.1: Mr. R.S. Marhas, Advocate.

For Respondents No.2 to 4 / State: -

Mr. Dhiraj Kumar Wankhede, Govt. Advocate.

For Respondent No.5: Mr. Avadhut Vinayak Joshi, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

24/08/2017

1. Smt. Urvashi Singh Thakur, the petitioner herein, was elected as
President of Nagar Panchayat, Pathalgaon. Her election was

notified in the official Gazette in accordance with the provisions contained in Section 45 of the Chhattisgarh Municipalities Act, 1961 (for short, 'the Act, 1961') on the same date (4-1-2015). Thereafter, she was served with a notice dated 16-1-2015 by the Chhattisgarh State Election Commission calling upon her to file her election expenses as required under 32-B of the Act, 1961 within four days which the petitioner did not submit and ultimately, is said to have been submitted on 4-2-2015 before the Returning Officer, Pathalgaon which is said to have been within time recommended by the District Election Officer. Thereafter, on 8-5-2015, the State Election Commission served a notice to the petitioner that she has not submitted her election expenses within time and in manner prescribed under the Act, 1961 to which the petitioner replied by filing additional reply and also submitted that she had gone to the Office of the District Election Officer, Jashpur on 3-2-2015 to file the election expenses, but it was not accepted by the Accounts Officer (Expenses) and therefore she submitted the same on 4-2-2015 before the Returning Officer, Pathalgaon as per the law. Thereafter, the statement of the petitioner was recorded by the State Election Commissioner and explanation was called from the District Collector as to whether she had gone to the Office of the District Election Officer on 3-2-2015 and thereafter, the State Election Commission passed the impugned order finding no good cause or justification for not filing the election expenses up to 3-2-2015 within thirty days from the date of her election and also declared her disqualified and further disqualified her for being

elected for next four years. Calling in question legality, validity and correctness of the order passed by the Chhattisgarh State Election Commission disqualifying the petitioner from her present post and also questioning the further disqualification for four years, this writ petition has been preferred.

2. Mr. Prateek Sharma, learned counsel appearing for the petitioner, assisted by Mr. Manoj Chauhan would submit that the petitioner visited the Office of the District Election Officer, Jashpur along with the entire expenses and affidavit on 3-2-2015, but the Accounts Officer (Expenses) declined to accept the same stating that she is required to submit the said election expenses to the Returning Officer at Pathalgaon which she submitted on 4-2-2015 along with her afresh affidavit. Therefore, there is a good reason/justification for her failure to lodge the election expenses within the meaning of Section 32-C (b) of the Act, 1961, as such, the impugned order deserves to be quashed.
3. Mr. R.S. Marhas, learned counsel appearing for respondent No.1, while vehemently opposing the prayer made by Mr. Sharma, would submit that 30 days had expired on 3-2-2015 whereas, admittedly, the election expenses were filed before the Returning Officer on 4-2-2015 within the meaning of Section 32-B of the Act, 1961 and therefore, there is no good reason or justification for failure to submit election expenses as such, the petitioner has rightly been disqualified for the said post and further, she has also been rightly disqualified for being chosen and for being elected as President of

the Nagar Panchayat for four years.

4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the record with utmost circumspection.
5. In order to appreciate the rival contentions made by the parties, it would be appropriate to notice the legal provisions in this regard under the Act, 1961 and the rules made thereunder. Sections 32-A, 32-B and 32-C of the Act, 1961 state as follows: -

“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 authorised 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 authorised 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 authorised 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 arrangements 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 authorised 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.

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 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.”

6. The aforesaid provisions of the Act, 1961 would show that every candidate at the election of President is required to maintain a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent and shall within thirty days from the date of election of the returned candidate submit the same with the officer notified by the State Election Commission an account of his election expenses. By virtue of the provisions contained in Section 32-C of the Act, 1961, the State Election Commission is required to be satisfied before making the order of disqualification for failure to lodge account of

election expenses that whether the person has failed to lodge an account of election expenses within the time and in the manner required by or under the Act or not and if it finds that such a candidate has no good reason or justification for the failure, the State Election Commission is empowered to disqualify him for being chosen as President of the Municipal Council or Nagar Panchayat, as the case may be, for not exceeding five years from the date of the said order.

7. In exercise of the powers conferred by Article 243-ZA of the Constitution of India read with Section 14-A of the Chhattisgarh Municipal Corporation Act, 1956 and Section 32-A of the Act, 1961, the State Election Commission has issued an order known as the Election Expenses (Maintenance and Lodging of Account) Order, 2012 (for short, 'the Order, 2012'). Lodging of the account of election expenses is contained in clause 7 of the Order, 2012. Clause 10 of the Order, 2012 is relevant and for the sake of convenience, it is noticed herein-above: -

“10. Report by the District Election Officer as to the lodging of the account of election expenses and the decision of Election Commission 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 with full postal address;
- (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) Whether in his opinion such account has been

lodged within the time and in the manner required by the Act and this Order.

(2) Where 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 shall 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 under section 14-C of the Chhattisgarh Municipal Corporation Act, 1956 (No. 23 of 1956) or section 32-C of the Chhattisgarh Municipalities Act, 1961 (No. 37 of 1961), as the case may be, for the failure.

(6) Any contesting candidate who has been called upon to show cause under sub-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.

(7) The District Election Officer, within five days of the receipt thereof, forward to the Election Commission the copy of the representation with such comments as he wishes to make thereon."

8. At this stage, it would be expedient to notice the relevant judgments of the Supreme Court and the High Court dealing with the issue in question for adjudicating the controversy.

9. In a decision of the Supreme Court in the matter of **Ravi Yashwant Bhoir v. District Collector, Raigad and others**¹, Their Lordships of the Supreme Court have considered that removal of elected office-bearer from office on the basis of proved misconduct is a quasi judicial proceeding in nature and therefore the principles of natural justice are required to be given full play and strict compliance should be ensured, even in the absence of any provision providing for the same and observed as under in paragraphs 30, 31 and 32: -

“30. There can also be no quarrel with the settled legal proposition that removal of a duly elected member on the basis of proved misconduct is a quasi-judicial proceeding in nature. [Vide [Indian National Congress \(I\) v. Institute of Social Welfare](#)².] This view stands further fortified by the Constitution Bench judgments of this Court in [Bachhitar Singh v. State of Punjab](#)³ and [Union of India v. H.C. Goel](#)⁴. Therefore, the principles of natural justice are required to be given full play and strict compliance should be ensured, even in the absence of any provision providing for the same. Principles of natural justice require a fair opportunity of defence to such an elected office-bearer.

31. Undoubtedly, any elected official in local self-government has to be put on a higher pedestal as against a government servant. If a temporary government employee cannot be removed on the ground of misconduct without holding a full-fledged inquiry, it is difficult to imagine how an elected office can be removed without holding a full-fledged inquiry.

32. In service jurisprudence, minor punishment is permissible to be imposed while holding the inquiry as per the procedure prescribed for it but for removal, termination or reduction in rank, a full-fledged inquiry is required otherwise it will be violative of the provisions of [Article 311](#) of the Constitution of India. The case is to be understood in an entirely different context as

1 (2012) 4 SCC 407

2 (2002) 5 SCC 685 : AIR 2002 SC 2158

3 AIR 1963 SC 395

4 AIR 1964 SC 364

compared to the government employees, for the reason, that for the removal of the elected officials, a more stringent procedure and standard of proof is required.”

10. Likewise in paragraphs 34, 35 and 36 of the judgment rendered in

Ravi Yashwant Bhoir (supra), Their Lordships of the Supreme

Court held as under: -

“34. In a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office-bearer sought to be removed.

35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (vide [Jyoti Basu v. Debi Ghosal](#)⁵, [Mohan Lal Tripathi v. District Magistrate, Rae Bareilly](#)⁶ and [Ram Beti v. District Panchayat Raj Adhikari](#)⁷).

36. In view of the above, the law on the issue stands crystallised to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency/electoral college is also

5 (1982) 1 SCC 691 : AIR 1982 SC 983

6 (1992) 4 SCC 80 : AIR 1993 SC 2042

7 (1998) 1 SCC 680 : AIR 1998 SC 1222

deprived of representation by the person of his choice.”

11. In the matter of **Sadashiv H. Patil v. Vithal D. Teke and others**⁸,

the Supreme Court in para-14 held thus:--

“14. A finding as to disqualification under the Act has the effect of unseating a person from an elected office held by him pursuant to his victory at the polls in accordance with the democratic procedure of constituting a local authority. The consequences befall not only him as an individual but also the constituency represented by him which would cease to be represented on account of his having been disqualified. Looking at the penal consequences flowing from an elected councillor being subjected to disqualification and its repercussion on the functioning of the local body as also the city or township governed by the local body the provisions have to be construed strictly. A rigorous compliance with the provisions of the Act and the Rules must be shown to have taken place while dealing with a reference under Section 7 of the Act.”

12. In the matter of **Jawahar Lal Gupta v. Rajya Nirvachan Ayog,**

Bhopal⁹, the High Court of Madhya Pradesh interpreting Section 32-C of the Act, 1961 held thus:

“13. A reading of Section 32-C of the Act of 1961 makes it clear that State Election Commission is enjoined to record a satisfaction that a person has failed to lodge the account of election expenses within the time and the manner required under this Act, and further mind has to be applied by the State Election Commission mandatorily as to the "reasons", and the finding has to be recorded that a person has "no good reason or justification" for the failure. The State Election Commission shall, by order published in the Official Gazette, declare such person to be disqualified and such a person shall be disqualified for being chosen as and for being a member 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. Serious consequences are enumerated in Section 32-C of the Act.”

13. In the matter of **Jaipal Singh v. M.P. State Election Commission**

⁸ (2000) 8 SCC 82

⁹ 2003 (1) MPLJ 180

and others¹⁰, the Madhya Pradesh High Court quashed the order of disqualification passed under Section 32-C of the Act, 1961 on the ground that the order was passed without application of mind and without affording opportunity of hearing to the petitioner.

14. In the matter of **Shantilal (Bum Bum) v. State of M.P. and others**¹¹, the High Court of Madhya Pradesh interpreting Section 32-C of the Act, 1961 held thus:

“9. Perusal of aforequoted section clearly indicate that Election Commission is under legal obligation to record its satisfaction whether a person has failed to make out any good reason or justification for his failure in not submitting the accounts within time prescribed. In other words, if the person is required to make out a good reason or justify as to why and for what reasons, he could not submit the accounts in time, it is equally obligatory upon the State Election Commission to examine as to whether grounds, and/or cause stated in reply constitutes good reason. It requires application of judicial mind to the facts of each case and then a reasoned order as to why the reasons stated in reply by a concerned person do not make out a case of good reasons or why it makes out a case of good reasons. In either case, the order passed by the Election Commissioner must indicate its reasoning. The use of the word "is satisfied" in Section 32-C *ibid* is significant. It contemplates judicial application of mind to be applied by Election Commissioner to the facts of each case and secondly, it must appear from the order that the satisfaction reached has some factual and legal basis. It involves an element of exercise of discretion and when one speaks of exercise of discretion it always means judicial discretion as is well known in judicial parlance. Since, the consequences of adverse order are quite disastrous because it results in vacation of the office secured by democratic way, the issue must be dealt with care and judiciously.”

15. In the matter of **Mahendra, s/o R.S. Palariya v. M.P. State Election Commission and others**¹², a show cause notice was

10 2006 (4) MPHT 10 (NOC)

11 2003 (3) MPHT 326

12 2005 (1) MPLJ 245

issued under Section 32-C in the year 2000 and he was disqualified after 4 years from the date of submitting explanation. The High Court was of the opinion that had the Commission taken a decision in the year 2000 the disqualification would have come to an end till the next election. Accordingly, it has been held that disqualification cannot be sustained under the law and it was quashed.

16. After having noticed the statutory provisions and also after having noticed the relevant principles of law, reverting back to the facts of the present case, following facts would emerge on the face of the record: -

1. The proceeding for disqualification under the Order, 2012, is a quasi judicial proceeding and principles of natural justice must be followed strictly.
2. Last date for submission of account of election expenses expired on **3-2-2015**.
3. The petitioner submitted election expenses on **4-2-2015**.
4. The petitioner examined herself on oath before the State Election Commission on **10-4-2017** in which she has categorically made a statement that she visited the Office of the District Election Officer, Jashpur on 3-2-2015, but the Accounts Officer (Expenses) has directed her to submit her election expenses at Pathalgaon and on 4-2-2015 she submitted her election expenses before Shri P.K. Anand Accounts Officer (Expenses).

5. The petitioner was not cross-examined by any Presenting Officer on behalf of the State Election Commission.
 6. The State Election Commission called opinion from the Collector / District Election Officer, but copy of the same was not served to the petitioner or the said Collector was not summoned by the respondent Election Commission and the petitioner was not allowed to cross-examine on the said point that she had visited the Office of the District Election Officer, Jashpur on 3-2-2015.
 7. The State Election Commission relied upon the opinion of the District Collector to disqualify the petitioner.
17. From the aforesaid facts, it is quite vivid that the proceeding initiated before the State Election Commission for imposing the punishment of disqualification upon the petitioner was a quasi-judicial proceeding and principles of natural justice are required to be followed. The petitioner made a statement before the State Election Commission that she had gone to the Office of the District Election Officer, Jashpur for submission of her election expenses, she was not subjected to cross-examination on the other side by any of the officers presenting the case on behalf of the State Election Commission. Her statement remained un-controverted that on 3-2-2015, her election expenses were not accepted by the Accounts Officer in the Office of the District Election Officer, Jashpur. Furthermore, the State Election Commission has only sought opinion from the District Collector, Jashpur, even the State

Election Commission has not summoned the District Collector to appear before the Commission permitting the petitioner to cross-examine the Collector or any other person from the District Election Office or the Accounts Officer (Expenses) has not come to the witness box so that the petitioner may cross-examine him reiterating / verifying her version that she had gone to the Office of the District Election Officer on 3-2-2015. Even the copy of the memo seeking opinion from the Collector has not been served to the petitioner before passing the impugned order. Therefore, it cannot be held that the petitioner was afforded reasonable opportunity of being heard before declaring her to be disqualified for holding the present post and further disqualifying her for a period of four years.

18. Thus, the petitioner has admittedly, lodged the election expenses on 4-2-2015 and there is failure on her part to submit election expenses within time and in the manner required by law under the Act i.e. up to 3-2-2015 and, therefore, in terms of Section 32-C of the Act, 1961, good reason or justification has to be there for her failure to lodge the account of election expenses which according to the Commission, the petitioner has failed to do.
19. What is the difference between good cause and sufficient cause has been highlighted by the Supreme Court in the matter of **Arjun Singh v. Mohindra Kumar and others**¹³ in which the Supreme Court has held that good cause is lighter than sufficient cause and lighter degree of proof is required in good cause than sufficient

13 AIR 1964 SC 993

cause.

20. The cause shown by the petitioner that she had gone to the Office of the District Election Officer, Jashpur on 3-2-2015 for submission of her election expenses remain un-controverted for want of cross-examination on behalf of the respondent Commission to the petitioner. Further, there is no evidence on oath on behalf of the State Election Commission that the petitioner had not come to the Office of the District Election Officer for submission of her election expenses. The opinion of the Collector is not conclusive in absence of having been given statement on oath and no copy of the same has been supplied to the petitioner. In my considered opinion the explanation given by the petitioner constitutes "good cause" within the meaning of Section 32-C (b) of the Act, 1961 meaning thereby the second limb of Section 32-C, is not satisfied and therefore declaration of the State Election Commission that the petitioner is disqualified for being chosen as President of Nagar Panchayat is arbitrary and contrary to law apart from being illegal. As such, the order impugned of the State Election Commission deserves to be and is hereby quashed.

21. As a fallout and consequence of aforesaid discussion, the order passed by the State Election Commission holding the petitioner to be disqualified on the post of President of Nagar Panchayat, Pathalgaon is hereby quashed and also the resultant direction that she will not be eligible to be chosen as President for four years is also quashed.

22. The writ petition is allowed to the extent sketched herein-above leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.2040 of 2017

Smt. Urvashi Singh Thakur

Versus

Chhattisgarh State Election Commission and others

Head Note

Proceeding before the State Election Commission is quasi-judicial in nature therefore, the principles of natural justice are required to be followed strictly.

शीर्ष टिप्पण

राज्य निर्वाचन आयोग के समक्ष कार्यवाही न्यायिककल्प प्रकृति की होती है अतः नैसर्गिक न्याय के सिद्धान्तों के कड़ाई से पालन की आवश्यकता है।