

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7004 of 2018

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1. Manoj Singh @ Manoj Kr. Singh and Anr Son of Late Ram Prem Yadav Ward Councillor, Ward No. 11, Nagar Parisahad, Arwal, resident of village - Jinpura, P.S. - Arwal, District - Arwal.
 2. Punam Kumari wife of Sumit Suman Ward Councillor, Ward No. 13, Nagar Parisahad, Arwal, resident of Saidpura Dhaba, P.S. - Arwal, District – Arwal.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Bihar State Election Commission.
3. The Bihar State Election Commissioner.
4. The Joint Commission State Election Commission.
5. The Bihar State Election Commission through its Secretary Respondent No. 2 to 5 , 3rd Floor, Sone B
6. The District Magistrate, Arwal Cum-District Election Officer, District - Arwal.
7. The Sub-Divisional Magistrate cum Returning Officer, Nagar Parishad at Arwal, District - Arwal.
8. Nityanand Singh Son of late Bhagwan Singh resident of village - Khankulipur, P.O., P.S. and District – Arwal.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 15828 of 2018

1. Kamla Devi wife of Sri Sanjay Kumar, resident of Village- Muradpur Hujra, P.O. Badrabadh, P.S. Arwal, District- Arwal.
2. Awadh Prasad, son of Sri Nanha Dhobi, resident of Village- Vasilpur, P.O. Arwal, P.S. Arwal, District Arwal.
3. Akhilesh Sao, son of Late Kanhia Sao, resident of Village- Muradpur Hujra, P.O. Badrabadh, P.S. Arwal, District- Arwal.
4. Bano Pravin, wife of Syed Qureshi, resident of Village- Shahimallah, P.O. Arwal, P.S. Arwal, District Arwal.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Bihar State Election Commission, 3rd Floor, Sone Bhawan, Birchand Patel Marg, R. Block, Patna,
3. The State Election Commissioner, 3rd Floor, Sone Bhawan, Birchand Patel Marg, R. Block, Patna, Biha
4. The District Magistrate, Arwal cum District Election Officer Municipality,



Arwal.

5. The Sub Divisional Officer, Arwal cum Returning Officer, Nagar Parishad, Arwal.
... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 7128 of 2018

1. Shyam Kumar and Anr son of Sri Dwarik Paswan, Resident of Village- Chhotki Ahiyapur, Ward No. 3, P.O. and P.S. Arwal, District- Arwal.
2. Seema Devi, wife of Sri Dharamjay Gupta, Resident of Village- Wasilpur, Ward No. 5, P.O. and P.S. Arwal, District- Arwal.
... .. Petitioner/s

Versus

1. The State Election Commission Municipality
2. The State Election Commissioner, The State Election Commission Municipality, Sone Bhawan, Birchan
3. The Joint Election Commissioner, The State Election Commission Municipality, Sone Bhawan, Birchan
4. The Secretary, The State Election Commission Municipality, Sone Bhawan, Birchan Patel Path, Patna.
5. The District Magistrate-cum- District Election Officer Municipality, Arwal, District- Arwal.
6. The Sub Divisional Officer, Arwal, District- Arwal.
7. Nityanand Singh, son of Late Bhagwan Singh, Resident of Village- Khan Kulipur, P.O. and P.S. Arwal, District- Arwal.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 7230 of 2018

Nityanand Singh S/o Late Bhagwan Singh, resident of Village- Khan Kulipur, P.O., P.S. and District- Arwal.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The State Election Commission, Bihar through its Secretary, 3rd Floor, Sone Bhawan, Beerchand Patel
3. The State Election Commissioner, Bihar, 3rd Floor, Sone Bhawan, Beerchand Patel Path, Patna.
4. The District Magistrate-cum- District Election Officer Municipality, Arwal.
5. The Returning Officer, Arwal Nagar Parishad Election, Arwal.
6. Ramakant Kumar, S/o Tribhuwan Singh, resident of Village- Ahiyapur Chhotki, P.O., P.S. and District- Arwal, presently Ward Councilor of Ward No.- 01 of the Nagar Parishad, Arwal.

... .. Respondent/s



Appearance :

(In Civil Writ Jurisdiction Case No. 7004 of 2018)

For the Petitioner/s : Mr.Kamlesh Kumar, Adv.

For the Respondent/s : Mr.Abbas Haider -Sc6
Mr. Bindhyachal Singh, Adv.

(In Civil Writ Jurisdiction Case No. 7230 of 2018)

For the Petitioner/s : Mr.Ranjeet Choubey

For the Respondent/s : Mr.Y.P. Sinha-Aag7

(In Civil Writ Jurisdiction Case No. 15828 of 2018)

For the Petitioner/s : Mr. Jitendra Singh, Sr. Adv.

Mr.Tej Pratap Singh, Adv.

For the Respondent/s : Mr.Kinkar Kumar- SC9

(In Civil Writ Jurisdiction Case No. 7128 of 2018)

For the Petitioner/s : Mr. S.B.K. Manglam, Adv.

For the Respondent/s : Mr.Y.P. Sinha-AAG-7
Mr. Bindhyachal Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 16-04-2019

These four writ petitions involve common question of law and facts. Hence, they have been heard together and are being disposed of by a common order.

2. The petitioners in CWJC No. 7004 of 2018 have prayed for quashing the order dated 02.04.2018 passed by the State Election Commissioner in Case No. 03 of 2018 by which they have been disqualified from the post of ward councillor from their respective ward nos. 11 and 13 of Nagar Parishad, Arwal for three years on the ground of not submitting election expenses within time in terms of Section 474 of the Bihar Municipal Act, 2007 (for short 'the Act') read with Rule 101 of the Bihar Municipal Election Rules, 2007 (for short 'the Rules').

3. Similarly, on the same ground, vide order dated 02.04.2018, the petitioners in CWJC No. 7128 of 2018 have been



disqualified from the post of ward councillor from their respective ward nos. 3 and 5 of Nagar Parishad, Arwal for three years.

4. Further, vide order dated 16.07.2018 passed by the State Election Commissioner in Case No. 32 of 2018 the petitioners in CWJC No. 15828 of 2018 have been disqualified from the post of ward councillor of Nagar Parishad, Arwal pertaining to ward nos. 19, 4, 24 and 16 respectively on the ground of not submitting election expenses within time.

5. In CWJC No. 7230 of 2018, the petitioner has prayed for quashing the order dated 03.04.2018 passed by the State Election Commissioner in Case No. 04 of 2018 whereby the complaint filed by the petitioner for disqualifying the respondent no.6 from holding the post of ward councillor of Ward no.1 of the Nagar Parishad, Arwal under the provisions of Section 474 of the Act read with Rule 101 of the rules has been dismissed.

6. The admitted facts of election to the posts of ward councillors of Nagar Parishad, Arwal are that the State Government in the Urban Development Department in exercise of powers under Section 441 of the Act vide notification no. 1750 dated 11.03.2016 notified holding of election to the posts of ward councillors of Nagar Parishad, Arwal and fixed the date of election as 10.04.2016. Pursuant to the above notification, the dates of filing nomination papers for the abovesaid election was fixed



between 11.03.2016 and 18.03.2016. The petitioners in CWJC No. 7004 of 2018, CWJC No.7128 of 2018 and CWJC No. 15828 of 2018 and the respondent no.6 in CWJC No. 7230 of 2018 filed their respective nomination papers before the Sub-Divisional Officer, Arwal-cum-Returning Officer (Municipality), Arwal for contesting the abovesaid election. On 10.04.2016, the election was held and the result of the said election was declared by the Returning Officer on 12.04.2016. The petitioners in the first three petitions and the respondent no.6 in the fourth petition were declared elected from the respective wards from where they had filed their respective nomination papers. One Nityanand Singh (petitioner in CWJC No. 7230 of 2018) filed complaint case no. 03 of 2018 before the State Election Commission under Section 18(2) read with Section 18(1)(h) and Section 474 of the Act against the petitioners in CWJC No.7128 of 2018 and CWJC No. 7004 of 2018 praying therein that they be disqualified to hold the posts of ward councillors of Nagar Parishad, Arwal on the ground that they did not file their returns of the expenses incurred by them for the abovesaid election within the stipulated period of one month. On the same ground one Ayush Ranjan had filed a complaint case no. 32 of 2018 before the State Election Commission for disqualifying the petitioners of CWJC No. 15828 of 2018 from holding the posts of ward councillors. Further, the petitioner of CWJC No. 7230 of



2018 Nityanand Singh filed complaint case no. 4 of 2018 before the State Election Commission for disqualifying the respondent no.6 of that case from holding the post of ward councillor of ward no.1 of Nagar Parishad, Arwal for not filing the return to the election expenses within the statutory period prescribed under the Act and the Rules.

7. On the above complaints, the Commission issued notice to the parties. The returned candidates filed their respective written statements.

8. Apart from other grounds, the petitioners in the first three writ petitions questioned the maintainability of the complaint petitions and jurisdiction of the State Election Commission to disqualify the petitioners from holding their respective posts of ward councillors inasmuch as Section 474 of the Act read with Rule 101 of the Rules do not provide for disqualification of a returned candidate of an election to municipality under the Act on the ground of such candidate not having filed the return of their respective election expenses within the stipulated period of one month from the date of declaration of result of the election and further that it only provided for disqualification from contesting election for a period of three years from the date of passing of the order by the Commission. In support of the said contention, they have relied upon the law laid down by the Hon'ble Supreme Court



in the matter of *Ashok Shankarrao Chavan Vs. Madhavrao Kinhalkar*, since reported in *(2014) 7 SCC 99*.

9. After hearing the parties, the State Election Commission vide impugned orders dated 02.04.2018 and 16.07.2018 disqualified the petitioners of the first three writ petitions from holding their respective posts of ward councillors for failure in filing the return of their respective election expenses within the stipulated period from the date of declaration of election result with a consequent direction that the posts of ward councillors of respective wards held by the petitioners would be treated as vacant to fill which action would be taken as per the Rules.

10. It would be pertinent to note here that in CWJC No. 7230 of 2018, after hearing the parties, the State Election Commissioner rejected Complaint Case No. 4 of 2018 filed against respondent no.6 of that case accepting that he had filed return of election expenses within the stipulated period before the Returning Officer.

11. Mr. Jitendra Singh, learned senior advocate for the petitioners in CWJC No. 15828 of 2018 and CWJC No. 7004 of 2018 submitted that return of election expenses has to be filed by each and every candidate contesting a municipal election. The disqualification from contesting election for a period of three years



thereunder attaches not only the successful candidates but also to the unsuccessful candidates. However, it is only the elected candidates, who have been proceeded against under Section 474 of the Act and Rule 101 of the Rules on the allegation of not having filed the said expenses. He contended that the said action of the Election Commission is in violation of Article 14 of the Constitution of India and, thus, fit to be set aside.

12. He has further contended that Section 474 of the Act or Rule 101 of the Rules do not authorise the Election Commission to hold the election of a returned candidate invalid on account of non-submission of accounts of election expenses within stipulated 30 days.

13. He has pleaded that election of any office of the Municipality could be called in question only under Section 476 of the Act by way of election petition before the court of Munsif and not before the Election Commission.

14. He has argued that under Section 18(1)(h) of the Act a returned candidate would be disqualified after his election from holding a post as Member of Municipality if he has under any law for the time being in force become ineligible to be a Member of any local authority. The returned candidates have admittedly not been disqualified under any other law and hence the complaint



petitions filed under Section 18(1)(h) of the Act were not maintainable.

15. Lastly, he has urged that under Section 474 of the Act, the disqualification from contesting an election for a period of three years has been wrongly held by the Election Commission to be a removal of the returned candidates from the post of ward councillors.

16. Mr. S.B.K. Manglam, learned advocate for the petitioners in CWJC No. 7128 of 2018 adopting the above submissions pleaded that the impugned order passed by the State Election Commission is illegal, arbitrary and without jurisdiction. He contended that in exercise of power under Section 474 of the Act, the Election Commission could have disqualified a candidate to contest election for three years, but when it has passed the order under challenge it has disqualified the returned candidates from the membership of the Municipality which cannot be sustained in the eye of law.

17. Per contra, Mr. Amit Srivastava, learned counsel appearing for the State Election Commission submitted that in *Ashok Shankarrao Chavan* (Supra) similar question had arisen before the Hon'ble Supreme Court as to whether Election Commission of India is empowered to disqualify elected representative under Section 10(A) of the Representation of People



Act, 1951 (for short 'the Act of 1951') or not and after hearing the parties, the Court held that the order of the Election Commission of India under Section 10(A) of the Act of 1951 is justified. He submitted that Section 474 of the Act is akin to Section 10(A) of the Act of 1951. Hence, there is no legal infirmity in the orders passed by the State Election Commission whereby the returned candidates were disqualified to hold the post of Member of the Nagar Parishad. He contended that there was laches on the part of the petitioners in the first three writ petitions in the submission of the return of the election expenses. Since elections are governed by statutes operating in its field, the provisions of the statutes have to be complied in totality.

18. Mr. Bindhyachal Singh, learned advocate appearing for the respondent Nityanand Singh in CWJC Nos. 7004 of 2018 and 7128 of 2018 submitted that the impugned order passed by the Election Commission is totally justified in view of non-compliance with the statutory provisions prescribed under Section 473 of the Act and Rule 101 of the Rules.

19. Assailing the order dated 03.04.2018 passed in complaint case no. 04 of 2018 by the State Election Commission, he has submitted that said complaint against respondent no.6 of CWJC No. 7230 of 2018 has erroneously been dismissed on mere assumption and presumption without there being any valid and



cogent evidence in support of the fact that the respondent no.6 had filed his return to the election expenses within the statutory period prescribed under the Rules.

20. The submissions made by Mr. Bindhyachal Singh has been contested by the respondents in CWJC No.7230 of 2018. The respondent no.6 has contended that he had filed his return to the election expenses on 25.04.2016 but the head clerk did not issue any receipt.

21. He contended that after going through the written statement, the State Election Commission rightly got satisfied that election expense was filed within time and, thus, he was not disqualified.

22. From the pleadings of the parties, it would be manifest that the main issue involved in all these writ petitions is whether the State Election Commission has the power and the jurisdiction under the provisions of Section 474 of the Act read with Rule 101 of the Rules to declare a returned candidate of a Municipal election to be disqualified for holding the seat to which such candidate had been elected and thus resulting in the said seat to be vacant liable to be filled up by a fresh election on the ground of not lodging election expenses incurred by such candidate within the time and manner required by or under the Act.



23. For appreciation of the issue and the questions of law involved in these writ petitions, it would be apposite to refer to Section 473 of the Act first, which provides for maintaining election expenses by each candidates. It reads as under :-

“473. Account of Election Expenses and maximum thereof —

(1) Every candidate at a Municipality election shall, either by himself or by his election agent, keep a separate and correct account of all expenditures in connection with the election, incurred or authorised by him or by his election agent between the dates on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of said expenditure shall not exceed such amount as may be prescribed.”

24. At this stage, I would also like to refer to Rule 101 of the Rules which specifically provides that the return of election expenses shall be lodged with the Returning Officer within thirty days from the date of publication of the result of the election. The provisions of Rule 101 are enumerated hereunder :-

“Rule 101. Return of election expenses.— (1) The return of election expenses shall be lodged with the Returning Officer within thirty days from the date of publication of the result of the election.



- (2) The account of election expenses to be kept by a candidate or his election agent shall be in format at Appendix-1.
- (3) The Returning Officer shall make enquiry as to the genuineness of the account submitted and thereafter cause a notice to be affixed to the notice board of his office, specifying:-
 - (a) the date on which the account has been lodged;
 - (b) the name of the candidate; and
 - (c) the time and place at which such account can be inspected. The enquiry may be completed within ten days of submission.
- (4) Any person shall on payment of a fee of ten rupees be entitled to inspect any such account and on payment of a fee of two rupees per page be entitled to obtain attested copies of such account or of any part thereof.”

25. It would also be relevant to refer to Section 474 of the Act, which provides for disqualification on failure to lodge account of election expenses hereunder :-

“474. Disqualification on 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 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 declare him to be disqualified and any such person shall be disqualified for a period of three years from the date of the order.”

26. Thus, it would be evident that Section 473(1) of the Act provides that every candidate at a Municipality election shall, either by himself or by his election agent, keep a separate and correct account of all expenditures in connection with the election, incurred or authorized by him or by his election agent between the dates on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.

27. Sub-section (2) of Section 473 of the Act provides that the account shall contain such particulars, as may be prescribed.

28. Sub-section (3) of Section 473 of the Act provides that the total of said expenditure shall not exceed such amount as may be prescribed.

29. Section 474 of the Act provides that if the State Election Commission is satisfied that a person (a) has failed to lodge an account of election expenses within the time and 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 declare him to be disqualified and any such person shall be disqualified for a period of three years from the date of the order.

30. Rule 100(1) of the Rules provide that every candidate at an election shall, either by himself or by his election agent, if a separate and correct account of all expenditure in connection with the election incurred or authorised by him or his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both day inclusive.

31. Rule 100(2) of the Rules provide that no expense shall be incurred or authorised by the candidate or his election agent on account or in respect or the conduct and management of an election in any ward in excess of Rs. 20,000/- in case of a ward from Municipal Council.

32. Rule 101(1) provides that the return of election expenses shall be lodged with the Returning Officer within thirty days from the date of publication of the result of the election.

33. Rule 101(2) provides that the account of election expenses to be kept by a candidate or his election agent shall be in format at Appendix-1.

34. Rule 101(3) provides that the Returning Officer shall make enquiry as to the genuineness of the account submitted and



thereafter cause a notice to be affixed to the notice board of his office, specifying:-

- (a) the date on which the account has been lodged;
- (b) the name of the candidate; and
- (c) the time and place at which such account can be inspected. The enquiry may be completed within ten days of submission.

35. The provision of Section 474 of the Act are in pari materia with the provisions of Section 10A of the Act of 1951 except that under the later provisions the order of disqualification is also to be published in the official gazette.

36. Section 10-A of the Act of 1951 provides that 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.

37. In the matter of *Ashok Shankarrao Chavan* (Supra), the Supreme Court while considering the powers of Election Commission of India under Section 10-A of the Act of 1951 has held as under:-



“70. As compared to the nature of proceedings of an election petition, when we examine the scope and jurisdiction of the Election Commission under Section 10-A, at the outset it must be stated that the power and jurisdiction therein does not clothe the Election Commission to deal with the successful election of the candidate concerned. In other words, exercising power under Section 10-A, the Election Commission cannot set aside the election of a successful candidate. Section 10-A talks of only an order of disqualification that can be passed by an Election Commission. Further, such disqualification order can be passed for failure to lodge an account of election expenses and such failure was within the time and in the manner required by or under the Act. Therefore, the scope of an election petition to be tried by an Election Tribunal (the High Court) and the scope of an order of disqualification to be passed under Section 10-A are entirely different and it must be stated that one does not conflict with the other. The very same allegation of a corrupt practice may form part of the failure to lodge the account in the manner required by or under the Act as has been specified in Sections 77 and 78 of the Act in an election petition. Therefore, simply because such an issue may form part of a corrupt practice as provided under Section 123(6) and the failure may



be in contravention of Section 78 of the Act, it may also be one of the grounds in challenging the successful election of a candidate concerned in an election petition. On that score, it cannot be held that the area of disqualification to be considered by the Election Commission, under Section 10-A, is fully covered in an election petition and thereby, the power and jurisdiction of the Election Commission would stand excluded. It cannot therefore, be contended that once the election petition having been rejected for want of particulars, which order has become final, a complaint under Section 10-A cannot be pursued. We, therefore, reject the said contention raised on behalf of the appellant.

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74. Further, a consideration of the implication of Articles 101(3)(a), 102(1)(e) and 103, as well as Articles 190(3)(a), 191(1)(e) and 192 of the Constitution read along with Section 146 of the Act having been exhaustively noted by us in the earlier part of the judgment, it will have to be held that **the power under Section 10-A is wide enough for the Election Commission to deal with the issue of disqualification on the ground of failure to lodge the account of election expenses within the time and in the manner required by or under the Act** for deciding the issue whether an order of disqualification should



be passed against a contesting candidate. In fact, while the scope of consideration by the Election Tribunal (the High Court) will be in relation to the validity of election of a successful candidate by the other contesting candidates and the ultimate conclusion by the Election Tribunal (the High Court) may be either validating the election or invalidating the election by setting it aside, the power under Section 10-A would apply to all the candidates who contested in the election, who have to mandatorily comply with the requirement of Sections 77(1) and (3) as well as Section 78 along with the prescribed rules in that respect. Therefore, the submission that under Section 10-A the Election Commission cannot venture to hold an enquiry for the purpose of passing an order of disqualification in the light of the decision of the Election Tribunal (the High Court) in the case of the appellant in the appeal arising out of SLP (C) No. 29882 of 2011 is a far-fetched one.

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83. *Ponnuswami* [*N.P. Ponnuswami v. Returning Officer*, AIR 1952 SC 64] was a case where the nomination of a candidate rejected by the Returning Officer could be challenged only by way of an election petition under Section 329(b) and if that be so, whether any other proceedings could be resorted to including a proceeding under Article 226 of the Constitution challenging the



rejection of the nomination. Dealing with that situation, this Court held that the word “election” can be and has been appropriately used with reference to the entire process, which consists of several stages and embraces many steps some of which may have important bearing on the result of the process. Therefore, it was held that if the grounds on which an election can be called in question, could be raised at an earlier stage and the errors, if any, are rectified there will be no meaning in enacting a provision like Article 329(b) and in setting up a Special Tribunal. It was further held that any other meaning ascribed to the words used in the article would lead to anomalies which the Constitution could not have contemplated, one of them being that conflicting views may be expressed by the High Court at the pre-polling stage and by the Election Tribunal, which is to be an independent body at the stage when the matter is brought up before it. In the light of the situation in which the overall jurisdiction of the Election Tribunal (the High Court) relating to a challenge that can be made to an election can be made as provided under Article 329(b), this Court having held that the word “election” would include very many processes till the completion of the polling and the declaration of the result and, therefore, there cannot be a piecemeal challenge permitted to be made by way of a writ petition under Article 226. The said



proposition of law, as declared by this Court, can never be controverted. In the case on hand, there was no attempt made by anyone to challenge the election of the appellant by resorting to a complaint which has emanated in the form of proceeding under Section 10-A by the Election Commission. **In fact, in a proceeding under Section 10-A, there is no scope or power vested with the Election Commission to declare the election as invalid.** Therefore, there is no question of any violation of Article 329(b) that would arise in the case on hand. We, therefore, do not find any support from the said decision for the appellant.

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85. On finding that such a power was not invested with a Deputy Commissioner under the said Act and that the only remedy available to the complainant was by way of an election petition as provided under Section 163 read with Sections 174 and 175 of the Act, this Court in *Surinder Singh case* [*State of H.P. v. Surinder Singh Banolta*, (2006) 12 SCC 484] held that such parallel proceedings cannot be permitted. We do not find any scope to apply the said decision to the case on hand. **We have elaborately noted the scheme of the Act by which the scope of the election petition as contained in Sections 79 to 116 was noted, as against the power and**



jurisdiction of the Election Commission to pass an order of disqualification under Section 10-A, which does not deal with the validity of the election but is only concerned with the failure to lodge a statement of election expenses in the manner as required by or under the Act, for the purpose of passing an order of disqualification.”

(emphasis mine)

38. Thus, the Hon’ble Supreme Court while considering the powers of the Election Commission of India under Section 10-A of the Act of 1951 in *Ashok Shankarrao Chavan* (Supra) has clearly held that the same does not extend to disqualify a returned candidate from holding the seat to which he has been elected resulting the seat to have become vacant.

39. Hence, in view of the law laid down by the Hon’ble Supreme Court in the above case of *Ashok Shankarrao Chavan* (Supra) is in the context of the said pari materia provision to the provision of Section 474 of the Act. The State Election Commission under the said Section does not have the power or jurisdiction to declare the elected candidate to be disqualified from holding the seat to which he was elected in a municipal election and consequently to order the same to be filled up by fresh election.



40. Hence, in my opinion, disqualification under Section 474 of the Act is disqualification from being eligible to contest the election for a period of three years and not a disqualification for holding the seat itself by an elected candidate.

41. In view of the discussions made above, the order impugned dated 02.04.2018 passed by the State Election Commission in Case No. 03 of 2018 and order dated 16.07.2018 passed in Case No. 32 of 2018 whereby the respective petitioners in CWJC Nos. 7004 of 2018, 7128 of 2018 and 15828 of 2018 have been disqualified from holding their respective posts of ward councilor of Nagar Parishad, Arwal pertaining to ward nos. 11, 13, 3, 5, 19, 4, 24 and 16 are set aside.

42. CWJC Nos. 7004 of 2018, 7128 of 2018 and 15828 of 2018 stand allowed. The consequences shall follow. The petitioners of these cases shall be restored as ward councilors of their respective wards in Nagar Parishad, Arwal.

43. As far as CWJC No. 7230 of 2018, is concerned, the prayer made in the writ petition cannot be allowed for the reasons noted above. In the said writ petition the petitioner has prayed for setting aside the order dated 03.04.2018 passed in Complaint Case No. 04 of 2018 by the State Election Commission whereby the complaint filed by the petitioner for disqualifying the



respondent no. 6 from holding the post of ward councilor of ward no. 1 of Nagar Parishad, Arwal has been dismissed. The petitioner had made a complaint before the State Election Commissioner that the respondent no. 6 was required to lodge election expenses within 30 days from the date of publication of result in view of the provisions of Rule 101 of the rules, but he failed to lodge the election expenses before the competent authority within the stipulated period. Upon notice, the respondent no.6 submitted his written statement before the State Election Commissioner wherein he had pleaded that he had filed return before the Returning Officer within the stipulated period on 26.04.2016. He had contended that after submission of his return, the head clerk of the office of the Returning Officer did not issue any receipt. Since he had already submitted return of the election expenses before the Returning Officer, no notice was ever issued to him at any point of time for the purpose of filing return of the election expenses. The State Election Commission, after hearing the parties, came to the conclusion that the respondent no. 6 had submitted his election expenses within time. In that view of the matter, the complaint case lodged by the petitioner was rejected. The findings of fact recorded by the State Election Commission are based on evidences produced before it. There is nothing on record on the basis of which this Court may



come to the conclusion that the findings of the State Election Commission are erroneous or perverse.

44. Hence, I see no reason to interfere with the order dated 03.04.2018 passed in Complaint Case No. 04 of 2018 by the State Election Commission.

45. Accordingly, CWJC No. 7230 of 2018 stands dismissed.

(Ashwani Kumar Singh, J)

Pradeep/sneha

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	29.04.2019
Transmission Date	

