

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (C) No. 5148 of 2006**

- Kum.Santosh Sharma, D/o Late Radhey Shyam Sharma, Aged about 28 years, R/o Subhash Chowk, Ambagarh Chowki, District Rajnandgaon, chhattisgarh

---- Petitioner**Versus**

1. Chhattisgarh State Election Commission, Through its Secretary, Mahanadi Sector, Mantralaya Premises, Raipur – 492001, Chhattisgarh.
2. State of Chhattisgarh, Through the Secretary, Department of Urban Development and Environment, Mantralaya, D.K.S. Bhawan, Raipur, Chhattisgarh.
3. Collector & District Election Officer, Rajnandgaon, District Rajnandgaon, Chhattisgarh
4. Director, Urban Administration, Deptt. Of urban Administration, State of Chhattisgarh, Raipur, Chhattisgarh.
5. Chief Municipal Officer, Nagar Panchayat Ambagarh Chowki, District Rajnandgaon, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Avinash Choubey, Advocate
For Respondents No.2 & 4/State	:	Shri Anmol Sharma, PL
For Respondents No.1, 3 & 5	:	Shri Aditya Bhardwaj, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****08/04/2019**

1. Heard.
2. The instant writ petition is against the order dated 08.09.2006 passed by the State Election Commission, whereby the petitioner was disqualified to contest

the election of Municipality/Nagar Panchayat, to be elected as a President or Councilor for a period of 5 years. The said order was passed in exercise of powers under Section 32 -C of the Chhattisgarh Municipalities Act, 1961 (hereinafter referred to as 'the Act, 1961'). The occasion was to pass such order arose as the petitioner failed to submit the election expenses within a period of 30 days from the date of election of the returning candidate.

3. The said order has been assailed raising grounds on fact that on 14.12.2004 the election was held and on 19.12.2004 the counting took place. It was contended on behalf of the petitioner that expenses in respect of the election was submitted through the agent of the petitioner and the petitioner was under the bona fide belief that such expenses/statements have been submitted. It is stated that subsequently the petitioner received a show-cause notice from the State Election Commission, whereon it came to her notice that the expenditure account has not been submitted as such immediately thereafter the account was submitted. It is further stated that the District Election Officer after evaluating those facts had also recommended the case of the petitioner for consideration on sympathetic grounds.
4. Learned counsel for the petitioner would submit that once the candidate has been elected by the due process of law, he/she could not be unseated on the technical grounds as it will defeat the basic structure of democracy. He further submits that the affidavit of one Raj Kishore Khandelwal has been placed along with the petition, wherein the reasons have been assigned that the accounts were submitted before the Election Office, but the same was not accepted initially. Subsequently again when the account was submitted it could not be deposited as on that date the office of the Election Commission was crowded

too much, therefore, the submission could not be made. Learned counsel for the petitioner would further submit that taking into those facts and the bona fide explanation given, the reasons for justification for failure was established and thereby the impugned order suffers with illegality and is required to be set aside.

5. Learned counsel for the respondents oppose the arguments advanced by learned counsel for the petitioner.
6. I have heard learned counsel for the parties and perused the documents filed along with the petition.
7. The petitioner who was elected as a President of Nagar Panchayt, Ambagarh Chowki, the election took place on 14.12.2004 thereafter the counting took place on 19.12.2004. As per Section 32- B of the Act, 1961 the lodging of the account of the election expenses was to be made within 30 days from the date of election of the returning candidate. For the sake of brevity Section 32-B of the Act, 1961 is reproduced hereunder:-

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.

By application of the aforesaid statute since the election was completed on 19.12.2004 the cut off date of 30 days would come to an end on 17.01.2005. Admittedly, by 17.01.2005 no account of the election expenses was deposited.

8. As per the explanation given by the petitioner in the petition and the affidavit of one Raj Kishore Khandelwal, who acted as an agent of the petitioner, on

31.12.2004 the account though was tried to be deposited, but the same was not accepted for the reason of some mistake, however, on 03.01.2005 after correcting the mistake in the account, the agent tried to deposit the same, but because of the crowd in the office, the same could not be deposited. It was for the first time on 24.03.2005 the show-cause notice was issued to the petitioner as the account was not deposited till that date. Therefore, as per the Section 32-B of the Act, 1961 and show-cause notice of disqualification under Section 32-C of the Act, 1961 was served. For the sake of brevity Section 32-C of the Act, 1961 is reproduced hereunder:-

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.”

9. The said show-cause notice of 24.03.2005 appears to be in the principle or ratio laid down in the case of **Ravi Yashwant Bhoir v. District Collector, Raigad and others**¹ wherein the Supreme Court has held 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

¹ (2012) 4 SCC 407

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 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

² (2002) 5 SCC 685 : AIR 2002 SC 2158

³ AIR 1963 SC 395

⁴ AIR 1964 SC 364

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 deprived of representation by the person of his choice.”

Therefore, the show-cause notice appears to be in compliance of the provisions laid down by the Supreme Court as above.

11. In the matter of **Jawahar Lal Gupta v. Rajya Nirvachan Ayog, Bhopal**⁸, 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.”

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

⁸ 2003 (1) MPLJ 180

12. In the matter of **Shantilal (Bum Bum) v. State of M.P. and others**⁹, 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.”

13. In the light of aforesaid principles and ratio laid down the show-cause notice and its reply given by the petitioner is considered. In the instant case, the election since was held on 19.12.2004, admittedly, within the cut off date of 30 days as contemplated under Section 32-B of the Act, 1961 the accounts were not lodged. It was for the first time on 24.03.2005 a show-cause notice (Annexure P-5) was served as to why the proceedings under Section 32-C of the Act, 1961 may not be drawn. In reply to such notice, the petitioner by its reply dated 11.04.2005 stated that the agent of the petitioner has deposited the account along with the affidavit within the stipulated time in the month of January with the Election Commission. Admittedly the same was not done. The affidavit of one Raj Kishore Khandelwal, who was acting as an agent of the petitioner, which is placed in this case

⁹ 2003 (3) MPHT 326

purports that on 31.12.2004 he tried to deposit the account with the election commission, but it was not accepted as some fault was existing. The affidavit further shows that on 03.01.2005 he again after correction of the mistake went to the office of the Election Commission and tried to deposit the account but because of the crowd, the same was not taken on record. This affidavit was sworn on 15th of September, 2006. In backdrop of such fact, when the second show-cause notice dated 16.09.2005 is perused it shows that the petitioner was served with another notice and was asked to whom the account was given, the second show-cause notice was replied by the petitioner on 27.09.2005 wherein she stated that on 31.12.2004 her agent came to the election office, however, without depositing the same he went back and she was under the bona fide impression that the accounts have been deposited. The said factual aspect has been contradicted by the affidavit filed by the petitioner herself along with her petition, wherein one Raj Kishore Khandelwal, who has sworn the affidavit stated that on 31.12.2004 he tried to deposit the account but because of some fault, it could not be deposited. Therefore, it is difficult to belief that there were no communication between the petitioner and her agent for such a long period.

14. The series of defence which has been raised by the petitioner appears to be factually contradictory in nature. In reply to the first show-cause notice, the petitioner stated that she was under the impression that the accounts have been deposited by her agent within the stipulated time in the month of January. but in the reply to the second show-cause notice she stated that on 31.12.2004 her agent went to the election office, however, without depositing the account he came back, which is highly improbable to understand and accept as to how the agent would not disclose this fact to the petitioner, with whom he was

working as an agent. The submission of account in the instant case is grossly delayed by more than 2 & ½ months. The object of the statute of Section 32-B and Section 32-C of the Act, 1961 is to ensure the account of election expenses are to be lodged by the candidate within a short period of time so as to evaluate the missing and reflective expenditure in the election. If such time is made unlimited and is stretched beyond reasonable time then the entire purpose of the Act, 1961 would be defeated as the candidate would manipulate the account and submit the account according to their choice and wish. The delay if in given facts are not good & reasonable so as to invoke the power under Article 226 of the Constitution of India and condone the delay.

15. In view of such fact, since the account in the instant case was eventually deposited in the month of April, 2005, which is more than 2 & ½ months delayed, the reason and justification given by the petitioner is difficult to accept to be as good ground, therefore, in the facts of this case, I am not inclined to interfere with the order of the Election Commissioner, which makes the petitioner disqualified for not adhering the provisions of Section 32-B of the Act, 1961 in respect of the petitioner. Accordingly, the writ petition is dismissed.

Sd/-

Goutam Bhaduri

Judge

Ashu