IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7710 OF 2018

Sandip Mohan Patil. ..Petitioner.
Versus
Mira Bhayander Municipal Corporation
and Others. ..Respondents.

Mr. Sandesh D. Patil i/b Mr. P. S. Gole for the Petitioner.
Mr. N. R. Bubna for Respondent No.1.
Mrs. M. P. thakur, AGP for the Respondent-State.

Coram : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.
Date : **January 15, 2019**.

P. C. :

1. Heard the learned counsel for the respective parties.

2. Petitioner contested the election to Mira Bhayander Municipal Corporation held on 19th August 2017. He lost in the said election. In terms of the provisions of section 10(1E) of the Maharashtra Municipal Corporations Act [for short "*the Act*"], the Petitioner was duty bound to give accounts of election expenses to the State Election Commission within the period of 30 days from the date of election. The Petitioner did not submit the accounts of election expenses before 18th September 2017. Therefore, on 16th October 2017, Respondent No.1–Corporation issued notice to the Petitioner calling him upon to explain as to why he should not be disqualified

under the provisions of section 10(1E) of the Act. The Petitioner gave reply.

. Thereafter, on 1st February 2018 Respondent No.2–the Divisional Commissioner issued fresh notice to the Petitioner to show cause as to why he should not be disqualified. This notice was replied by the Petitioner on 20th February 2018. Respondent No.2, however, was not satisfied with the reply, and passed the order dated 3rd May 2018 thereby disqualifying the Petitioner for the period of three years under the provisions of section 10(1E) of the Act and this order is impugned in the present petition.

3. Mr. Sandesh Patil, learned counsel for the Petitioner submitted that the Petitioner was duty-bound to give accounts of election expenses on or before 18th September 2017, but the same were given on 21st October 2017, and thus there is delay of about 32 days. He submitted that this delay was explained by the Petitioner by giving reply to both–Respondent No.1(Corporation) as well as Respondent No.2(Divisional Commissioner). Mr. Patil submitted that without taking into consideration the explanation for delay, Respondent No.2 – Commissioner has passed the impugned order and therefore it is required to be quashed and set aside.

4. Mrs. M. P. Thakur, learned AGP supported the impugned order. She submitted that the Petitioner did not submit the accounts of elections expenses within the stipulated time, therefore, Respondent No.2 was within its jurisdiction to pass the impugned order.

5. Having considered rival submissions and having gone through the petition along with annexures thereto and the impugned order, we find merit in the petition. Section 10 of the Act deals with the disqualification for being a councillor. In the instant case, we are concerned with the provisions of sub-section (1E) of section 10 of the Act, which read thus :

> "(1E) 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 the State Election Commission, and
> >
> > (b) has no good reason or justification for such failure,
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> the State Election Commission may, by order published in the *Official Gazatte*, declare him to be disqualified and such person shall be disqualified for being a Councillor or for contesting an election or for being a Councillor for a period of three years from the date of the order."

6. A perusal of the above provisions makes it clear that in the event person has failed to lodge an accounts of election expenses

within the stipulated period, and there is no good reason or justification for the failure, then, the State Election Commission may declare the said candidate to be disqualified. In the present case, the Petitioner contested but failed in the election which were held on 19th August 2017. In terms of the provisions of section 10(1E) of the Act, he was obliged to lodge the accounts of expenses on or before 18th September 2017. Admittedly this was not done. However, in the replies given to Respondent No.1 and Respondent No.2, the Petitioner has given explanation that because of personal and household difficulties, he could not lodge the accounts of election expenses within the stipulated time. We find that Respondent No.2 in the impugned order has referred to the said explanation given by the Petitioner for delay, however, the same was not considered inasmuch as Respondent No.2 has not given reasoning as to whether it is sufficient or otherwise. Respondent No.2 has *simplicitor* stated that since the Petitioner has not lodged the accounts of election expenses within the stipulated period, his explanation for delay cannot be considered. This reasoning of Respondent No.2 cannot be accepted. Whatever may be the explanation given by the Petitioner, Respondent No.2 was bound to consider the same and required to give finding about its sufficiency or otherwise. Since Respondent No.2 has not considered the explanation given by the Petitioner, the impugned order cannot be sustained.

7. Normally, we would have remanded the matter back to Respondent No.2 to consider afresh the Petitioner's explanation for delay in lodging the accounts of election expenses and pass a fresh order, however in the present case we are not adopting the said course since the Petitioner has lodged the accounts of election expenses on 21st October 2017. Though there is delay of 32 days in lodging the accounts of election expenses, we find that the Petitioner has given reason for the same, and the reason we find to be sufficient in the facts and circumstances of the present case. Therefore, we are not inclined to remand the matter back to the commissioner. Consequently, we allow this petition in terms of prayer clause (a). The impugned order is quashed and set aside.

[SMT. BHARATI H. DANGRE, J.] **[RANJIT MORE, J.]**