

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR.

**WRIT PETITION NO.8349/2019**

**Pankaj s/o Surendra Shukla**

**Vs.**

**The State of Maharashtra, through its Divisional Commissionr, Nagpur Divn. and another**

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Office notes Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S.S.Ghate, Advocate for petitioner.  
Mrs. H.N.Prabhu, Assistant Government Pleader for respondent no. 1.  
Shri J.B.Kasat, Advocate for respondent no.2.

**CORAM : A.S.CHANDURKAR, J.**

**DATED : DECEMBER 20, 2019.**

**Rule.** Rule made returnable forthwith. Heard finally considering the short issue involved.

The petitioner contested elections to the Nagpur Municipal Corporation from Ward No.12-D in the general elections that were held in February 2017. Results of those elections were declared on 23.02.2017. The petitioner however was not elected from the said Ward. On the ground that the election expenses that were required to be furnished within the time stipulated were not so furnished, the Divisional Commissioner in exercise of powers under Section 10 (1) (1-E) of the Maharashtra Municipal Corporations Act, 1949 (for short, 'the said Act') proceeded to disqualify the petitioner from contesting elections for a period of three years. The State Election Commission has issued a notification for conducting by-elections to the Municipal Corporation which elections are to be held in January 2020. Since the petitioner is interested in contesting

those by-elections, he moved an application on 13.12.2019 praying that in view of the provisions of Section 10 (1) (1-F) of the said Act, the period of disqualification be reduced and he be permitted to contest the said by-elections. Along with the application he also furnished the details of the expenses incurred during the previous elections. The application was accompanied by an affidavit as required by the relevant rules. Since this application was not considered till date, the petitioner has approached this Court seeking to challenge the order dated 19.08.2017 that was passed under Section 10(1)(1-E) of the said Act.

Shri S.S.Ghate, learned counsel for the petitioner submits that by the impugned order the petitioner stands disqualified from contesting elections for a period of three years from the date of that order. Referring to the provisions of Section 10 (1) (1-E) of the said Act, it was submitted that the Divisional Commissioner has failed to consider whether there were any good reasons or justification for such failure thereby requiring him to be disqualified for a period of three years. According to him, the impugned order does not indicate consideration of that aspect and the petitioner has been disqualified for the maximum period permissible. In the alternate, it is submitted that the earlier elections were held in February 2017 and the period of more than two and half years have elapsed thereafter, the period of disqualification deserves to be reduced so as to enable the petitioner to contest the by-elections in January 2020. According to him, the reasons mentioned in the application dated 13.12.2019 are sufficient to reduce that period.

Mrs. H.N.Prabhu, learned Assistant Government Pleader for respondent no.1 and Shri J.B.Kasat, learned counsel for the respondent no.2 supported the impugned order. It is submitted that as there was failure on the part of the petitioner in

not furnishing the election expenses, he has been rightly held disqualified under Section 10 (1)(1-E) of the said Act. That order was not challenged by the petitioner for a considerable period and therefore at this stage, the petitioner is not entitled to any reliefs whatsoever. Moreover, since the application moved by the petitioner under Section 10 (1) (1-F) of the said Act is still pending, the writ petition does not deserve to be entertained.

Heard the learned counsel for the parties and considered the respective submissions. It is seen that the general elections to the Municipal Corporation were held in February 2017. On account of failure to submit the election expenses within stipulated time, the petitioner has been disqualified under Section 10 (1) (1-E) of the said Act for a period of three years. It appears that though the petitioner initially had accepted the order passed by the Divisional Commissioner dated 19.08.2017, in view of the by-elections declared he has now sought to invoke the provisions of Section 10 (1)(1-F) of the said Act. The reasons for failure to submit the election expenses are stated in the said application with a prayer to reduce the period of disqualification. However, such jurisdiction is required to be exercised by the State Election Commission and in the present case those powers are delegated to the Divisional Commissioner.

Under the provisions of Section 10 (1)(1-E) of the said Act a satisfaction has been recorded that the failure to furnish the account of election expenses is not deliberate and that there are some good reasons or justification for such failure. In the present case, in the impugned order dated 19.08.2017 it has been stated that the petitioner furnished his written statement which was taken into consideration by the Divisional Commissioner. However without stating therein as to whether such failure to submit election expenses was on account of absence of good reasons or justification, the petitioner has been disqualified for the

maximum period prescribed. As held in ***Vimalbai Sahebrao Gawai and others Vs. Divisional Commissioner, Amravati and others, 2015 (5) Mh. L. J. 723*** mere failure to submit election expenses within the time stipulated for that purpose cannot ipso facto result in disqualification but same is subject to such satisfaction being recorded.

Be that as it may, the jurisdiction is vested with the Divisional Commissioner to reduce the period of any such disqualification and as such application has been moved by the petitioner, the same requires to be considered by the Divisional Commissioner in that context.

In the light of the aforesaid discussion, therefore it is found that in the facts of the present case the following order would serve the ends of justice :

(1) The petitioner shall appear before the Divisional Commission at 11.00 a.m. on 21.12.2019. The Divisional Commissioner shall consider the application dated 13.12.2019 moved by the petitioner under the provisions of Section 10 (1) (1-F) of the said Act and pass orders on the same preferably by 5.00 pm. on the same day. Subject to that adjudication the petitioner is permitted to provisionally file his nomination form in accordance with the election programme published by the State Election Commission.

Needless to state that the petitioner's participation in the said election is subject to final outcome of the application moved under Section 10 (1)(1-F) of the said Act.

It is made clear that in case the said application is rejected by the Divisional Commissioner, the petitioner will be at liberty to challenge that order. All points in that regard are kept open.

The learned Assistant Government Pleader to communicate this order to the respondent no.1. Authenticated

copy of this order be given to the parties to act upon.

The writ petition is allowed. Rule is made absolute in aforesaid terms. No costs.

**JUDGE**

Andurkar.