

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.781 OF 2019

ORDER

By way of this writ petition, the petitioner assailed the action of the authorities in disqualifying her from contesting in the ensuing panchayat elections and sought the setting aside of the impugned order with a consequential direction to the authorities to allow her to contest in the ensuing panchayat elections to be held in January, 2019.

By order dated 17.01.2019, a learned Judge of this Court took note of the fact that an interim order was passed on 04.01.2019 in a similar writ petition, W.P.No.415 of 2019, and granted interim suspension of the impugned proceedings with a direction to the authorities to allow the petitioner to contest in the panchayat elections to be held in January, 2019. The interim order having been complied with, the petitioner participated in the election to the post of Sarpanch of Botla Wanaparthi Gram Panchayat in Dharmaram Mandal, Peddapalli District, and emerged successful. Thereupon, Kallepalle Rajeshwari, a defeated candidate in the said election, got herself impleaded as the fifth respondent in the writ petition and filed I.A.No.3 of 2019 to vacate the aforestated interim order dated 17.01.2019. The Telangana State Election Commission (*for brevity*, 'the Commission') also filed a vacate stay petition in relation to this interim order but did not get the same numbered.

Heard Mr.T.S.Rayalu, learned counsel for the petitioner, Ms.Priyanka Singh, learned counsel representing Mr.P.Sudheer Rao, learned counsel for the Commission, and Mr.Arun Kumar Doddla, learned counsel for the fifth respondent.

Though the prayer portion of the writ petition does not mention the details of the disqualification order, it was referred to as the 'impugned order' therein. The order of disqualification is dated 20.01.2018 and reads to the effect that the petitioner, having participated in the election held to the post of member of Mandal Parishad Territorial Constituency (MPTC) Khilavanaparthi, Dharmaram Mandal, in April, 2014, failed to submit her account of election expenses as required under Section 230-A of the Andhra Pradesh Panchayat Raj Act, 1994 (*for brevity*, 'the Act of 1994'), applicable in the State of Telangana, within the stipulated period of 45 days from the date of declaration of the election result. It was on this ground that the Commission exercised power under Section 19-B of the Act of 1994 read with Rule 103(8) of the Andhra Pradesh Panchayat Raj (Conduct of Elections) Rules, 2006 (*for brevity*, 'the Rules of 2006'), and held the petitioner to be ineligible to contest any election held for any office under the provisions of the Act of 1994 for a period of three years from the date of issuance of the order.

The petitioner asserted that she had not received any notice from the authorities asking for her explanation in relation to the failure on her part to submit her account of election expenditure and that she had not done so owing to the fact that she was not conversant with administrative matters, being an agriculturist.

These assertions were countered by the Commission. The Secretary of the Commission, speaking on its behalf, pointed out in his counter affidavit that notice dated 07.10.2016 was issued to the petitioner calling upon her to explain as to why she should not be declared ineligible to contest any election to be held for any office under the Act of 1994 for a period of three years for her failure in lodging an account of her election expenses. This notice was stated to have been received by the petitioner

on 13.12.2016 but in spite of the same, she did not choose to respond. As regards the order of disqualification dated 20.01.2018, the Secretary stated that the same was served upon the petitioner and she duly acknowledged its receipt on 28.02.2018. He pointed out that, having slept over the matter for eleven months, the petitioner chose to file this writ petition. The Secretary of the Commission adverted to the contents of the earlier orders issued on 18.05.2011 and 12.07.2013 with regard to the procedure and format to be followed while submitting accounts of election expenses. He pointed out that by way of para 12 of the order dated 18.05.2011, it was directed that final returns of election expenses should be submitted by contesting candidates to the District Election Authority through the MPDO within forty-five days from the date of declaration of the result and that the District Election Authority should get the said returns published in the manner as prescribed in the order. Para 13 of the said order provided that the District Election Authority should furnish the names of contesting candidates who failed to lodge election expenses within the time stipulated and in the manner specified. Referring to the later order dated 12.07.2013, he stated that the Collector-cum-District Election Authority was authorized thereby to designate any officer to conduct inspection and scrutiny of accounts of the election expenses maintained by candidates.

On facts, he stated that the District Election Authority, Karimnagar District, submitted a report to the Commission, furnishing the list of candidates who had failed to lodge their election expenses within the stipulated forty-five days from the date of declaration of the election result. In exercise of power under Rule 103(5) of the Rules of 2006, the Commission issued show-cause notice dated 07.10.2016 to the petitioner calling for an explanation within twenty days as to why she should not be

disqualified under Section 19-B of the Act of 1994. The said notice was served upon the petitioner but she failed to give her reply in response thereto. The Commission accordingly passed the impugned order dated 20.01.2018, declaring her ineligible for a period of three years to contest in any election under the Act of 1994. The Secretary therefore asserted that the due procedure had been followed. As regards the time frame mentioned in the statutory scheme, the Secretary stated that the District Election Authority, Karimnagar, submitted a report and the Commission immediately took action thereupon. The delay prior thereto was explained as being merely administrative and procedural in nature. On the strength of these averments, the Secretary asserted that the writ petition was devoid of merit and liable to be dismissed.

In her counter filed in support of I.A.No.3 of 2019 filed in this writ petition, the fifth respondent stated that the petitioner suppressed the fact of her disqualification by the Commission and filed a nomination for the post of Sarpanch of Botla Wanaparthi Gram Panchayat in January, 2019, and it was she who brought it to the notice of the Returning Officer that the petitioner stood disqualified. She therefore asserted that the petitioner had suppressed material facts. She also adverted to the fact that the petitioner had not disclosed receipt of the notice issued to her prior to the order of disqualification being passed and stressed upon the fact that the petitioner admitted to the lapse on her part in submitting her account of election expenses in the year 2014. She also adverted to the delay on the part of the petitioner in approaching the Court after receipt of the order of disqualification. She accordingly sought vacating of the interim order dated 17.01.2019 and dismissal of the writ petition.

In her additional counter affidavit, the fifth respondent stated that no election held under the Act of 1994 could be called in question except

by way of an election petition and therefore, the writ petition was not maintainable. She further asserted that this Court would not entertain a writ petition and interfere in matters pertaining to elections. She pointed out that the prayer portion in the writ petition did not give the details of the order of disqualification and therefore, it has to be construed that it was not even subjected to challenge.

Mr.T.S.Rayalu, learned counsel, stated that he would adopt the arguments advanced by the learned counsel in the batch of writ petitions heard earlier by this Court relating to similar disqualification orders.

On the same lines, Ms.Priyanka Singh, learned counsel, stated that she would adopt the arguments advanced by Mr.G.Vidya Sagar, learned senior counsel, who appeared for the Commission in the said batch of cases.

Mr.Arun Kumar Doddla, learned counsel, while reiterating the contents of the counter affidavits filed by his client, placed reliance on the Division Bench judgment of the Andhra Pradesh High Court in STATE ELECTION COMMISSION, ANDHRA PRADESH V/ s. MALLADI RAJENDRA PRASAD¹. This case related to rejection of a nomination by the Election-cum-Returning Officer on the ground that the name of the candidate was not reflected in the electoral rolls. A learned Judge granted an interim order directing the Returning Officer to entertain the nomination for contesting the election to the post of member of the Zilla Parishad Territorial Constituency of Tallarevu. Assailing the validity of the said order, the State Election Commission, Andhra Pradesh, preferred an appeal before the Division Bench. Reference was made by the Division Bench to Article 243-O of the Constitution which imposes a complete bar against entertaining a challenge to the election and observed that the

¹ 2006 (5) ALT 279 (D.B.)

ambit and reach of this bar was very wide and pervasive. Referring to Article 329(b) of the Constitution and the judgment of the Supreme Court in *N.P.PONNUSWAMY V/ s. RETURNING OFFICER, NAMAKKAL CONSTITUENCY*², the Bench ultimately held that the High Court cannot entertain a writ petition filed by a candidate in an election with the grievance that his nomination has been unlawfully rejected or that he has been deprived of an opportunity to contest the election.

The above judgment is inapplicable on facts as the case on hand does not relate to rejection of a nomination filed by a candidate. Further, no election is called in question requiring the filing of an election petition.

Though much has been said about the petitioner suppressing the fact that she was put on notice prior to passing of the order of disqualification apart from the delay on her part in approaching the Court and her failure to clearly spell out the relief sought, it may be noted that a larger issue arises for consideration and these individual factors may not be fatal to the extent of disentitling the petitioner to relief. It may also be noted that this was not an isolated case of the Commission disqualifying a single candidate or a few candidates on the ground that they failed to lodge their accounts of election expenses. Such an exercise was initiated by the Commission in relation to candidates across five districts, running into hundreds, and therefore, the matter requires consideration keeping the larger picture in mind and in such a situation, individual lapses in a particular case may not weigh against the petitioner therein as they would have, had it been a solitary case.

The argument of Mr.Arun Kumar Doddla, learned counsel, as to the maintainability of this writ petition on the ground that the writ Court would not ordinarily interfere in electoral matters, it may be noted that in

² AIR 1952 SC 64

MANDA JAGANNATH V/ s. K.S.RATHNAM³, the Supreme Court pointed out that there may be special situations wherein writ jurisdiction can be exercised - a special situation would mean one where errors have the effect of interfering in the free flow of the scheduled election or hinder the progress of the election, which is the paramount consideration. As this Court is of the considered opinion that the case on hand, being one amongst the batch of cases decided today by way of a separate common order, would squarely fall within the exception adumbrated by the Supreme Court in MANDA JAGANNATH³, this writ petition is maintainable.

Coming to the merits of the matter, Section 19-B of the Act of 1994 speaks of disqualification of candidates for failing to lodge their accounts of election expenses. The provision reads thus:

‘Section 19-B. 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, after following the procedure prescribed, by order published in the Andhra Pradesh Gazette declare him,

(i) to be ineligible for a period of three years from the date of the said order to contest any election held for any office under this Act; and

(ii) to have ceased to hold office; in case he is elected.’

Chapter II-A in Part-V of the Act of 1994 deals with ‘Election Expenses’. Section 230 therein states that the said Chapter would apply to candidates in any election held under the Act of 1994. Section 230-A speaks of how an account of election expenses is to be maintained by every candidate in any election held under the Act of 1994. Section 230-B states that every contesting candidate at an election shall, within forty-five

³ AIR 2004 SC 3600

days from the date of declaration of the result of the election, lodge with the District Election Authority, an account of his election expenses.

The Rules of 2006 were framed by the erstwhile Government of Andhra Pradesh in exercise of power under the provisions of the Act of 1994. Rule 100 of the Rules of 2006 deals with particulars of the account of election expenses and sub-rule (2) thereof provides that the account of election expenses shall be submitted to the District Election Authority through the Mandal Parishad Development Officer (MPDO) within forty-five days of the declaration of the election result. The date of submitting the return in the office of the MPDO shall be deemed to be the date of filing of the return under Section 230-B of the Act of 1994 and the MPDO is required to forward all the returns received by him to the District Election Authority immediately on the expiry of forty-five days from the date of declaration of the election result. Sub-rule (3) provides that the MPDO shall send a list of contesting candidates who failed to submit their accounts of election expenses within the time specified in sub-rule (2) and he shall also forward any account of election expenses submitted after the due date, with his report. Rule 101 prescribes that the District Election Authority shall, within two days from the date on which the account of election expenses is received by him under Rule 100, cause a notice to be affixed on the notice board specifying the date on which the account has been lodged before the MPDO, the name of the candidate and the time and place at which such account can be inspected by any intending person. Rule 102 states that any person shall, on payment of a fee of one rupee, be entitled to inspect any such account and obtain attested copies thereof on payment of costs.

Rule 103 is of particular relevance for the purposes of this adjudication and is extracted hereunder:

‘103. Report by District Election Authority as to the lodging of the account of election expenses and the decision of the State Election Commission thereon :-(1) As soon as may be, after the expiration of the time specified in Section 230B for the lodging of the accounts of election expenses at any election, the District Election Authority shall, report to the State Election Commission,—

(a) the name of each contesting candidate;

(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 these rules.

(2) Where the District Election Authority is of the opinion that the account of election expenses of any candidate has not been lodged within the due date or lodged but not in the manner required by the Act and these rules, he shall make a report to the State Election Commission and with every such report, forward the account of election expenses of that candidate and the vouchers lodged along with it, if any.

(3) Immediately after the submission of the report referred to in sub-rule (1) the District Election Authority shall publish a copy thereof affixing the same on his notice board.

(4) As soon as may be, after the receipt of the report referred to in sub-rule (1), the State 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 these rules.

(5) Where the State Election commission decides that a contesting candidate has failed to lodge his account of election expenses within the time and/or in the manner required by the Act and these rules, it shall by notice in writing call upon the candidate to show cause why he should not be disqualified, and declared to have ceased to hold office under Section 19 B of the Act for the failure in case he is elected.

(6) Any contesting candidate who has been called upon to show cause under sub-rule (5) may, within twenty days of the receipt of such notice, submit in respect of the matter a representation in writing to the State Election Commission, and shall at the same time send to District Election Authority a copy of his representation together with a complete account of his election expenses if he had not already furnished such an account.

(7) The District Election Authority shall, within five days of the receipt thereof, forward to the State Election Commission, the copy of the representation and the account, if any, with such comments as he wishes to make thereon.

(8) If, after considering the representation submitted by the candidate and the comments made by the District Election

Authority, and after such inquiry as it thinks fit, the State Election Commission is satisfied that the candidate has no good reason or justification for the failure to lodge his account, it shall declare him by an order made under section 19B of the Act to be ineligible for a period of three years, from the date of the said order, to contest any election held for any office under the Act and if he is an elected candidate declare him to have ceased to hold office with immediate effect and publish the order in the Official Gazette.'

Rule 104 stipulates that the total of the election expenses incurred or authorised to be incurred by each contesting candidate in connection with an election shall not exceed the amount specified for each office in the order made by the Commission in that behalf.

The erstwhile Andhra Pradesh State Election Commission prescribed the procedure and the format in which accounts of election expenditure had to be maintained and filed by candidates, *vide* its orders dated 18.05.2011 and 12.07.2013.

This being the statutory milieu, it would be appropriate at this stage to note factual aspects pertinent to this case.

Elections to the posts of members of MPTCs were held in two phases in April, 2014 - on 06.04.2014 and 11.04.2014. The results of both elections were however declared on the same day, *viz.*, 13.05.2014. In consequence, the stipulated forty-five days for submission of accounts of election expenses by such candidates expired on 26.06.2014.

As Ms.Priyanka Singh, learned counsel, adopted the arguments advanced on behalf of the Commission in the batch of cases, it would be apposite to refer to the same now. Sri G.Vidya Sagar, learned senior counsel appearing for the Commission in those cases, had forcefully argued that the inaction on the part of candidates in abiding by the statutory mandate of submitting their accounts of election expenses ought not to be viewed lightly by this Court. He stated that the objective sought to be achieved by the statutory scheme has to be kept in mind by this Court while dealing with such cases. He pointed out that given the

realities of electioneering in our country and the corrupt practices resorted to by candidates, it is essential to curb excessive expenditure by candidates for achieving their purpose and that is the reason why each candidate participating in an election is mandatorily required to submit his account of election expenses. Failure on the part of the candidate, *per* the learned senior counsel, would essentially be a lapse on his/her own part and law must take its course as a result thereof. He contended that mere delay in the implementation of the law in this regard would not absolve the errant candidate of the lapse in not abiding by the statutory mandate. He asserted that the delay in this regard has to be viewed liberally, given the fact that the State of Telangana was formed on 02.06.2014 and the stipulated forty-five day period for candidates in the elections to the posts of MPTC/ZPTC members expired on 26.06.2014, even before the constitution of the Commission in September, 2014. He further pointed out that districts in the State of Telangana were reconstituted and new districts were formed in October, 2016. These factors, *per* the learned senior counsel, had to be taken into consideration while testing the delay in taking action against erring candidates. He asserted that setting aside the disqualification visited upon such candidates would result in rewarding them with a premium, despite their lapse in abiding by the statutory mandate, and such benefit ought not to be conferred upon law breakers.

It is no doubt true that a laudable objective is sought to be achieved by the statutory scheme, which obligates candidates to come clean with regard to the amount of money spent by them in the course of elections, be it to the posts of Sarpanches/Ward Members of Gram Panchayats or to the posts of members of MPTCs/ZPTCs. However, timely implementation of the sanctions prescribed by law, in case of deviation by a candidate, is a must to achieve such an objective. Be it noted that a

candidate who fails to abide by this statutory mandate would cease to hold office even if he is elected to the post, once the due procedure is followed and he is disqualified on the ground that he did not submit his account of election expenses. This being the severity of the consequences contemplated by law for those who fall short of their statutory obligation, delay on the part of the authorities in giving timely effect to such rigorous provisions would run contra to the very purpose of this statutory scheme. Hypothetically speaking, a candidate who ran afoul of the mandate to submit his account of election expenses, but was elected to the post in the 2014 elections, was allowed to merrily continue in office till 2017/2018, when the Commission passed the disqualification orders *en masse* against all the erring candidates in the districts of Karimnagar, Nalgonda, Ranga Reddy, Warangal and Medak.

This being the situation, the issue boils down to whether the inaction on the part of the election authorities would outweigh the inaction/lapses on the part of the petitioner. The answer to this question, in the considered opinion of this Court, squarely turns upon how the statutory scheme is to be understood and implemented.

Section 230-A of the Act of 1994 mandates that every candidate in an election held under the Act of 1994 shall keep a separate and correct account of all expenses incurred in connection with the election. Section 230-B requires him to lodge with the District Election Authority an account of his election expenses within forty-five days from the date of declaration of the election result. The temporal mandate in Section 230-B is explicit and the duty cast upon a candidate to do the needful within the stipulated forty-five days is spelt out in clear terms. Section 19-B postulates that a candidate who fails to lodge his account of election expenses, within time and in the manner required by or under the Act of 1994, and who has no

good reason or justification for such failure, is liable to be proceeded against by the Commission. After adhering to the prescribed procedure the Commission is empowered, by an order published in the Gazette, to declare such a candidate to be ineligible to contest in any election for any office under the Act of 1994 for a period of three years from the date of such order and that he ceases to hold office, in case he has been elected.

Rule 100(2) of the Rules of 2006 reiterates that the account of election expenses should be submitted by a candidate through the MPDO to the District Election Authority within forty-five days of the declaration of the result of the election. Further, the Rule demonstrates that the MPDO, in turn, is required to forward all returns received by him to the District Election Authority 'immediately' on the expiry of forty-five days from the date of declaration of the result. Rule 100(3) also requires the MPDO to send a list of contesting candidates who failed to submit their accounts of election expenses within time and also the accounts of election expenses submitted by candidates after the due date, along with his reports. The discretion vesting in the MPDO to receive accounts of election expenses beyond the stipulated forty-five day period is brought out in this rule. However, the MPDO is required to submit his report in that regard.

The duty cast upon the District Election Authority is dealt with in Rules 101, 102 and 103 (1), (2) & (3) of the Rules of 2006. Rule 101 stipulates that within two days from the date on which the accounts of election expenses are received by the District Election Authority from the MPDO under Rule 100, the District Election Authority shall cause notice to be affixed on its notice board specifying the name of the candidate, the date on which his account was lodged before the MPDO and indicate the time and place at which such an account could be inspected. Rule 103 (1) provides that 'as soon as may be', after expiration of the stipulated period

of forty-five days, the District Election Authority should report to the State Election Commission the name of each contesting candidate; whether such candidate has lodged the account of election expenses and if so, the date; and whether in the opinion of the District Election Authority, such an account has been lodged within time and in the manner required. Sub-rule (2) provides that in the event the District Election Authority is of the opinion that the account of election expenses has not been lodged either within the due date or in the manner required, he should make a report to the Commission and forward the account of election expenses of that candidate along with the vouchers lodged with it, if any. Sub-rule (3) states that immediately after submission of the report referred to in sub-rule(1) of Rule 103, the District Election Authority should publish a copy thereof, affixing the same on his notice board.

Though Sri G.Vidya Sagar, learned senior counsel, contended that the statutory scheme allows the election authorities to discharge their functions under the aforestated rules without a temporal restriction, this Court is not persuaded to agree. The aforestated rules clearly bring out that the District Election Authority is required to be on his toes while dealing with the matter. Merely because the words 'as soon as may be' have been used in Rule 103(1), it does not deviate from the fact that the District Election Authority is time-bound in the discharge of his functions. The words 'as soon as may be' in Rule 103(1) is attributable to the discretion given to the MPDO under Rule 100(3) to receive accounts of election expenditure even after the due date. Be it noted that Rule 101 of the Rules of 2006 makes it clear that the District Election Authority is required to cause notice to be affixed on his notice board in relation to each candidate and therefore, his reports to the Commission would not be limited to just one. As and when he causes publication of notices under

Rule 101 upon receipt of accounts of election expenses from the MPDO under Rule 100, he would be required to forward his reports to the Commission under Rule 103(1). The use of the words 'name of each contesting candidate' under Rule 103(1)(a) clearly shows that the District Election Authority may send a report covering more than one candidate and in that regard, he may have some amount of discretion to club details of several candidates while submitting a report to the Commission under Rule 103(1). It is only to this extent that he may have some discretion as regards the time factor and that is the reason why Rule 103(1) is prefaced with the words 'as soon as may be'. The use of the very same words in Rule 103(4) in relation to the next step to be taken by the Commission would indicate that there is a temporal stipulation even in that regard. This sub-rule makes it clear that after receipt of the report from the District Election Authority under Rule 103(1), the Commission shall, 'as soon as may be', consider the same and decide whether any candidate failed to lodge the account of election expenses within time and in the manner required. Rule 103(5) provides that if the Commission decides that a candidate failed to do so, it shall by notice in writing call upon such candidate to show cause why he should not be disqualified, and declared to have ceased to hold office under Section 19-B of the Act of 1994 for his failure, in case he is elected. Sub-rule (6) of Rule 103 demonstrates that twenty days time is given to such a candidate to submit his response to the show-cause notice. At the same time, the candidate is required to send to the District Election Authority a copy of his representation along with a complete account of his election expenses, if he has not furnished such an account already. Rule 103(7) demonstrates that the District Election Authority has to forward the representation and the account, if any, received from such candidate along with its comments to the

Commission within five days from the date of receipt of the representation and account, if any, from the candidate. Rule 103(8) postulates that after considering the representation of the candidate and the comments made by the District Election Authority and after holding such inquiry as it thinks fit, the Commission, if it satisfied that the candidate had no good reason or justification for his failure, shall declare him by an order made under Section 19-B of the Act of 1994 to be ineligible for a period of three years from the date of the said order to contest any election held for any office under the Act of 1994 and in the event he is an elected candidate, to declare that he would no longer hold office with immediate effect.

In the light of the aforestated statutory scheme, which clearly exemplifies the timely steps that have to be taken, be it by the candidate or by the authorities, this Court is of the opinion that it is not open to the Commission to brush aside the delay in disqualifying the petitioner on the ground that she failed to submit her accounts of election expenses within the stipulated forty-five days. Be it noted that this belated exercise was not restricted to an isolated case or two but was applied across the board to several candidates hailing from five districts.

Reliance placed by Sri G.Vidya Sagar, learned senior counsel, on the Division Bench judgment of the Chhattisgarh High Court in THE COMMISSIONER, STATE ELECTION COMMISSION, CHHATTISGARH V/ s. SMT. FOHARA BAI MIRI⁴ is therefore of no avail, as that was a case where the disqualification was restricted to a single person. It was in the light of the facts obtaining in that case, relating to that one person, that the Division Bench observed that a duty was cast upon every contesting candidate to lodge election expenses with the State Election Commission within the time stipulated and failure to

⁴ W.A.NO.747 OF 2018 DECIDED ON 31.10.2018

comply would have its consequential rigors. The Division Bench further observed that a reading of the statutory provision indicated that the primary ingredient was failure on the part of the candidate to lodge election expenses within time and if the Election Commission was not satisfied with the reasons offered for non-compliance, there was a mandate to disqualify such a candidate for a period of five years from the date of the order. This being the thrust of the statutory scheme even in the cases on hand, there can be no doubting the proposition laid down by the Division Bench. However, unlike the case before the Chhattisgarh High Court, there is a huge delay on the part of the election authorities in taking action against a vast multitude of candidates. That is the distinguishing factor between that case and this case.

Similarly, the observations made by a Division Bench of the erstwhile High Court of Andhra Pradesh in KESHAV JADHAV V/ s. ELECTION COMMISSION OF INDIA, DELHI⁵ are of no avail to the Commission. That was also a case of one candidate being disqualified for failure to submit his election expenses. Though there was some amount of delay on the part of the Commission in taking steps, the Bench did not address the issue of delay on the part of the election authorities in effecting such disqualification and no argument was advanced in that regard. The Division Bench further opined that such disqualification would not amount to imposition of any punishment or stigma. Be it noted however that the case before the Division Bench did not pertain to the Act of 1994 or the Rules of 2006.

In any event, irrespective of the character that attaches to the disqualification effected by the Commission under the order impugned in this case, the inevitable consequence that flows therefrom is that the

⁵ AIR 2001 AP 538

petitioner stood disqualified from contesting in elections for any office under the Act of 1994 for a period of three years from the date of the order of disqualification. As already noted *supra*, the election in question was held in April, 2014 and the stipulated forty-five days expired in June, 2014. There is no getting over the fact that the District Election Authority failed to take steps as per the statutory temporal mandate of the Act of 1994 and the Rules framed thereunder. The consequence of the inaction on the part of the authorities in this regard is now sought to be belatedly visited upon the petitioner. The effect of the impugned order which was issued, wittingly or otherwise, just prior to the expiry of the five year term of office of those elected in the 2014 election, was that the petitioner would not be eligible to participate in the regular elections to the panchayat bodies, to be held upon such expiry. It may be noted that the Commission issued an Election Notification in January, 2019, for holding such ordinary elections to the posts of Sarpanches/Ward Members of Gram Panchayats and it was only by virtue of the interim order granted by this Court that the petitioner could participate in such elections.

Pitted against the failure on the part of the candidates who did not submit their accounts of election expenses in time or as per procedure, the failure on the part of the election authorities in taking timely steps to disqualify them adversely impacted the free electoral process of the ordinary elections scheduled to be held upon expiry of the terms of those who emerged successful in the elections of 2013/2014. A higher Constitutional objective underlies Article 243C of the Constitution, which provides for persons being chosen freely by direct election to occupy posts in a Gram Panchayat. The thrust of such an election would be to secure maximum participation so that the best candidate would emerge successful. This free and fair election process cannot be thwarted by

shutting out candidates at the threshold by visiting upon them a disqualification which ought to have been visited upon them as long back as in the years 2013/2014. The delay on the part of the election authorities in taking timely measures therefore has the effect of negating the free democratic process underlying elections to these bodies.

Viewed thus, the failure of the District Election Authorities in taking steps within time cannot be said to be beyond reproach. Though Sri G. Vidya Sagar, learned senior counsel, would contend that the peculiar factors existing in 2016 should be taken into account to condone the delay on the part of the election authorities, this Court is of the opinion that the statutory scheme does not permit such justification being offered. Once the statute required the authorities to take steps 'immediately' or 'as soon as may be', they cannot sleep over such matters for years together and thereafter seek to justify the delay on their part.

Be it viewed from any angle, this Court finds that the balance would tilt in favour of the petitioner, given the lapses on the part of the election authorities in giving effect to their statutory obligations. The order of disqualification visited upon the petitioner by the Commission is accordingly set aside.

The writ petition is allowed. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

SANJAY KUMAR, J

20th MARCH, 2019

PGS

Note: Furnish C.C. by 26.03.2019

B/o GJ/PGS