

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CWP No.11259 of 2019 (O&M)

Date of Decision: 02.05.2019

Narinder Singh

....Petitioner

Versus

Election Commission of India, New Delhi and
another

....Respondents

**CORAM :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present:- Mr. Akshay Bhan, Sr. Advocate
with Mr. Amandeep Singh Talwar, Advocate
for the petitioner.

Mr. G.P.S. Bal, Advocate
with Mr. Vijay Kumar, Advocate
for the respondents.

DAYA CHAUDHARY, J.

Petitioner-Narinder Singh who filed his nomination for contesting Parliamentary Election from 06-Anandpur Sahib (Punjab) has approached this Court by way of filing the present petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing of impugned order dated 29.04.2019 (not conveyed but he got the copy) declaring him disqualified from contesting the Parliamentary Election, 2019 on account of non submitting election expenses.

A further prayer has also been made for quashing of order dated 07.06.2018 (Annexure P-4), whereby, the petitioner has been disqualified on the ground of non-submission of account which is stated to be factually

incorrect and against the report of the District Election Officer.

A prayer has also been made for issuance of a direction to the respondents to consider the candidature of the petitioner for the Parliamentary Elections, 2019 i.e 06-Anandpur Sahib for which, he has filed the nomination and the scrutiny is pending.

Briefly, the facts of the case, as made out in the present petition, are that the petitioner contested the Punjab Legislative Assembly Election, 2017 from the SAS Nagar, Mohali Assembly Constituency, which was held on 04.02.2017. The result was declared on 11.03.2017. However, the petitioner lost the election. As per report of District Election Officer, the last date for submission of accounts was 10.04.2017. The petitioner could not submit the accounts within the stipulated period due to unavoidable circumstances. The register without vouchers and bills was not accepted by the District Election Officer despite making various requests. A Show Cause Notice was issued on 21.11.2017 by the Election Commission of India for failure to submit the accounts but the petitioner was out of country from 05.11.2017 to 19.12.2017. On coming back, he submitted reply to the Show Cause Notice, wherein, it was stated by him that accounts/expenses were ready to be submitted before the concerned authority. Thereafter, the petitioner submitted his accounts on 16.05.2018 to the District Election Officer, which were duly scrutinized and prepared a report stating in column No.8 that the District Election Officer was agreeing with the report submitted by the petitioner against all items of expenditure. However, the petitioner was not supplied copy of the report but subsequently, when it came to his notice while making enquiry from the Office of District Election Officer, he got a copy of the forwarding letter and report from the Office of

the District Election Officer-cum-District Commissioner, SAS Nagar, Mohali, which is annexed as Annexure P-3 (colly). Petitioner was declared as disqualified vide order dated 07.06.2018 by exercising the powers provided under Section 10A of the Representation of the People Act, 1951 (here-in-after called as `the Act, 1951) for a period of three years from the date of order i.e 07.06.2018 on the ground that he failed to submit the account of election expenses, 2017.

Learned Senior counsel for the petitioner submits that no communication was sent to the petitioner. He came to know about this only in the month of February, 2019 when he went to file the nomination for the Election of 2019 in the Office of District Election Officer in relation to the scrutiny of EVM's, which was being demonstrated for the forthcoming Parliamentary Elections, 2019. He immediately submitted representation dated 06.03.2019 (Annexure P-5) to the Secretary, Election Commission of India requesting for removal of disqualification stating that he had already submitted the accounts to the Commission. In pursuance of said representation, the petitioner received letter dated 22.04.2019 for appearance with the details for hearing on 25.04.2019 at 4.00 p.m before the Deputy Election Commissioner at New Delhi to grant an opportunity of hearing. In pursuance of aforesaid letter, he appeared on 25.04.2019 before the Election Commission of India vide pass Registration No.0063/00139/439020/2019. The petitioner submitted the representation mentioning therein all reasons/difficulties and that he had already submitted the accounts of Election, 2017. The petitioner submitted his nomination paper for the 06-Anandpur Sahib, Parliamentary Constituency, Punjab on 29.04.2019. The date for scrutiny of nomination as 30.04.2019. The

petitioner was informed orally that his nomination would be rejected because of his disqualification and order in this regard had already been passed on 29.04.2019 but till date, the petitioner was not supplied any copy of the order. However, he managed to get the photocopy of aforesaid order.

Learned senior counsel for the petitioner further submits that the petitioner has wrongly been declared disqualified on the ground that he did not submit expenses of Election, 2017, whereas, his accounts were duly submitted and accepted by the competent authority and the same were found in order.

Mr. Akshay Bhan, learned Senior counsel for the petitioner has relied upon the judgment of Hon'ble the Apex Court in case ***Election Commission of India through Secretary vs Ashok Kumar and others AIR 2000 Supreme Court 2979***, in support of his arguments.

Learned counsel for the respondents has raised a preliminary objection that the election process has started and the writ petition filed by the petitioner is not maintainable as there is a specific bar under Article 329 (b) of the Constitution of India. He also submitted that an attempt has been made by learned senior counsel for the petitioner to mislead the Court as no order was passed on 29.04.2019. The petitioner has been declared as disqualified for non-submission of accounts pertaining to previous election. Mr. Bal also submits that the petitioner failed to submit his accounts of Election, 2017 and Show Cause Notice dated 21.11.2017 was issued to him for not lodging his account of Election expenses which was duly received by his wife. The election expenses were to be submitted within a period of 20 days from the date of receipt of notice of commission. Even from the supplementary report dated 22.03.2018, it appears that still the petitioner

has not submitted his accounts and ultimately, he was declared disqualified vide order dated 07.06.2018. Thereafter, a request was made by him after nine months' i.e on 06.03.2019 for removal of his disqualification under Section 11 of the Act, 1951. The petitioner was given an opportunity to appear before the Deputy Election Commissioner on 25.04.2019 but no reasonable explanation for non submitting the accounts was given. Thereafter, the appeal of the petitioner was rejected on 29.04.2019. At the end, learned counsel for the respondents submits that the nomination paper of the petitioner was provisionally scrutinized under the directions of the Court only whereas he was not eligible to file.

Learned counsel for the respondents has relied upon the judgments of Hon'ble the Apex Court in cases *Mohinder Singh Gill and another vs The Chief Election Commissioner, New Delhi and others* 1978 AIR (SC) 851, *Manda Jaganath vs K.S. Rathnam and others* 2004(2) RCR (Civil) 810, *Krishna Ballabh Prasad Singh vs Sub Divisional Officer Hilsa-cum-Returning Officer* 1985(4) SCC 194, *N.P. Ponnuswami vs The Returning Officer, Namakhal Constituency, Namakhal, Salem dist., and others* 1952 AIR (SC) 64, *Hari Vishnu Kamath vs Ahmad Ishaque and others* 1955 AIR (SC) 233, *The Election Commission of India vs Shivaji and others* (Civil Appeal No.2849 of 1987, decided on 10.11.1987 and judgment of this Court in case *Amarjit Singh and others vs Financial Commissioner, Taxation, Punjab and others* 1978 PLJ 228 in support of his arguments.

Heard the arguments of learned counsel for the parties and we have also perused the documents available on the file.

Notice of motion in the case was issued on 30.04.2019 by

recording the following contentions of learned senior counsel for the petitioner :-

“ Learned Senior Counsel for the petitioner submits that the petitioner submitted the accounts to the District Election Officer, which were duly scrutinized and in column No.8, the District Election Officer agreed with the amount shown by the candidate against all items of expenditure as required. Petitioner submitted nomination papers for the Parliamentary Constituency, 06-Anandpur Sahib, Punjab on 29.04.2019 and said nomination was to be taken up for scrutiny on 30.04.2019. Petitioner appeared through his representative. An oral intimation was sent that the representation filed by the petitioner was dismissed on 29.04.2019 but the order of rejection was given to him in the morning of 30.04.2019 only.

Learned Senior counsel also submits that there is no fault of the petitioner and it cannot be a case that the petitioner did not submit accounts and order dated 30.04.2019 has been passed without verifying the documents and without application of mind.”

On asking of the Court, notice on behalf of respondents was accepted by Mr. Namit Kumar, who was present in the Court. He took time to verify the factual position in view of the averments/contentions made by learned senior counsel for the petitioner and the case was adjourned to 02.05.2019.

Mr. G.P.S. Bal, Advocate appeared on behalf of the respondents on 02.05.2019 and requested before this Court for fixing an application for recalling of order dated 30.04.2019 passed by this Court. Along with aforesaid application, he also filed an application under Article 226(3) of the Constitution of India for vacation of order dated 30.04.2019.

One more application bearing C.M No.6930 of 2019 was filed under Order 7 Rule 11 read with Section 151 CPC with a prayer for dismissal of main petition being barred by law.

The facts regarding contesting election of the assembly held on 04.02.2017 and declaration of result on 11.03.2017 are not disputed. The submission of accounts as per report of the District Election Officer on 10.04.2017 and notice of Show Cause dated 21.11.2017 issued by the Election Commission of India are also not disputed. The submission of accounts on 16.05.2018 to the District Election Officer, which was duly scrutinized; the preparation report and acceptance of accounts as reflected in column No.8 are also not disputed. The **details of submission and acceptance thereof** by the District Election Officer are reproduced as under :-

XXXX	2	3	4	5	6	7	8	9			10	11
xxxx	Name of the candidate and party affiliation	Due date of lodging of account	Date of lodging of accounts by the candidate.	Whether lodged in the prescribed format (yes or no)	Whether lodged in the manner required by law (yes or no)	Grand total of the expenses incurred/ authorized by the candidate/ agent (as mentioned in Part-II of Abstract Statement.	Whether the DEO agrees with the amount shown by the candidate against all the items of expenditure (should be similar to point No.12 of DEO's scrutiny) i.e Annexure 21	Total expenses incurred by the party (as reported in part-III of abstract statement)			Total expenses incurred by other/entries as reported in part-III of abstract statement	Remarks of the Expenditure Observer.
								<i>Lump sum amount in cash or cheque given to candidate by each political party</i>	<i>Grand total of other expenses incurred by the political party</i>	<i>Lumpsum amount in cash/cheque given to the candidate (and mention name of donors)</i>	<i>Grand total of other expenses in kind incurred for the candidate</i>	
Xxxx	Narinder Singh/Aap	10/04/17	16.05.2018	Yes	Yes	2420761	Yes Nil	Nil	Nil	13.27.000	Nil	-

On perusal of said report, it appears that the name of the petitioner is mentioned and due date of lodging of account is 10.04.2017.

The date of lodging of accounts by the candidate is 16.05.2018. Against

column No.5, the word 'yes' is mentioned as to show that the accounts have been lodged in the prescribed format and against column No.6 also, the word 'yes' is mentioned to the question as to whether the accounts have been lodged in the manner required by law. The grand total of the expenses is mentioned against column No.7 and thereafter, against column No.8, it has been reflected that DEO has agreed with the amount shown by the candidate against all types of expenditure. Even against column No.11 where remarks are required to be given, nothing is mentioned. It clearly shows that the expenditure submitted by the petitioner was accepted which was found to be in order.

Vide letter dated 07.06.2018, the petitioner was informed that he has not lodged the accounts and he has been declared disqualified. However, this letter was never conveyed to the petitioner. During arguments, it was specifically asked from learned counsel for the respondents to show as to whether this letter was actually sent or received by the petitioner or not. Simply, it has been shown to be sent through Registered A.D but no receipt thereof or acknowledgment has been shown. He visited the Office of District Election Officer in relation to scrutiny of EVM's which was being demonstrated for the forthcoming Parliamentary Elections and came to know about it in the month of February, 2019 and immediately made a representation on 06.03.2019 and requested to remove his disqualification as he has already submitted the accounts to the Commission as is clear from Annexure P-5. He was asked to appear with details for hearing on 25.04.2019 at 4.00 p.m before the Deputy Election Commissioner at New Delhi. In pursuance of aforesaid letter, the petitioner appeared on 25.04.2019 before the Election Commission of India, which is

clear from the pass issued to him. Issuance of pass is also mentioned. The petitioner moved a representation (Anenxure P-7), wherein, it is mentioned that he had already submitted the accounts. The respondents considered the application dated 06.03.2019 and thereafter, he was asked to appear on 25.04.2019. At the most, it can be a case that the petitioner did not submit his accounts within the prescribed period as he was out of station but it is not disputed that his accounts/vouchers submitted by him were duly received. In case, there was a delay in submission of accounts, notice could have been issued on the ground of late submission but nowhere such remarks have been given. Simply by saying that he has not submitted his accounts is itself contrary to the documents. Even during arguments, it is submitted that the petitioner did not submit his accounts of the Election, 2017 and because of that reason, he has been declared as disqualified. This assertion raised by learned counsel for the respondents is totally contrary to the record/communication. Even a single communication has not been sent to the petitioner that he did not furnish/lodge his expenditure. The arguments raised by learned counsel for the respondents cannot be accepted as neither any document has been placed on record nor submitted during arguments that any communication was sent to the effect that the accounts were not furnished within the prescribed period or it was submitted late. Even after acknowledgment of accounts by the competent authority and thereafter to say that he has been declared disqualified only on the ground of non submission of accounts/expenses of Election, 2017 is not justified/proper. The representation of the petitioner was stated to be dismissed on 29.04.2019 and the order of rejection was supplied to him on 30.04.2019. The aforesaid order dated 30.04.2019 has been passed without

verifying the documents and without any application of mind.

According to the statutory provisions contained in Sections 77 and 78 of the Act, 1951, every contesting candidate is required to keep a separate account of all the expenditure incurred by him/her in connection with the election between the date of which he was nominated and the date of declaration of the result thereof and to lodge the same with the District election Officer within a period of thirty days of the date of declaration of the result. This account is required to be lodged along with necessary details and supporting documents, that is, vouchers etc., as prescribed under Rules 86(1) and 86(3) of the Conduct of Elections Rules, 1961. The relevant statutory provisions as contained in the Act and the Rules are reproduced as under :-

Representation of the People Act, 1951

"77. Account of election expenses and maximum thereof. -

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

Explanation 1. - Notwithstanding any judgment, order or decision of any Court to the contrary, any expenditure incurred or authorised in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be and shall not ever be deemed to have been, expenditure in connection with the election incurred or authorised by the candidate or by his election agent for the purpose of this sub-section :

Provided that nothing contained in this Explanation shall affect :-

(a) any judgment, order or decision of the Supreme Court whereby the election of a candidate of the House of the People or to the Legislative Assembly of a State has been declared void or set aside before the commencement of the Representation of the People (Amendment) Ordinance, 1974 (Ord. 13 of 1974);

(b) any judgment, order or decision of a High Court whereby the election of any such candidate has been declared void or set aside before the commencement of the said Ordinance if no

appeal has been preferred to the Supreme Court against such judgment, order or decision of the High Court before such commencement and the period of limitation for filing such appeal has expired before such commencement.

Explanation 3. - For the removal of doubt, it is hereby declared that any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate or by his election agent for the purpose of this sub-section.

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

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

78. Lodging of account with the district election officer. - (1) Every contesting candidate at an election shall within thirty days from the date of election of the returned candidate or, if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates, lodged with the district election officer 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 77.

(2) The reference to the district election officer in sub-section (1) shall, in relation to a constituency in a Union territory, be construed as a reference to the returning officer for that constituency."

The Conduct of Elections Rules, 1961.

"86. Particulars of account of election expenses. (1) The account of election expenses to be kept by a candidate or his election agent under section 77 shall contain the following particulars in respect of each item of expenditure from day to day, namely :

(a) the date on which the expenditure was incurred or authorized;

(b) the nature of the expenditure (as for example, travelling, postage or printing and the like);

(c) the amount of the expenditure

(i) the amount paid;

(ii) the amount outstanding;

(d) the date of payment;

(e) the name and address of the payee;

(f) the serial number of vouchers, in case of amount paid;

(g) the serial number of bills, if any, in case of amount outstanding;

(h) the name and address of the person to whom the amount outstanding is payable.

(2) A vouchers shall be obtained for every item of expenditure

unless from the nature of the case, such as postage, travel by rail and the like, it is not practicable to obtain a voucher.

(3) All vouchers shall be lodged alongwith the account of election expenses, arranged according to the date of payment and serially numbered by the candidate or his election agent and such serial numbers shall be entered in the account under item (f) of sub-rule (1).

4. It shall not be necessary to give the particulars mentioned in item (e) of sub-rule (1) in regard to items of expenditure for which vouchers have not been obtained under sub-rule (2).

87. Notice by District Election Officer for inspection of accounts. - The district election officer shall, within two days from the date on which the account of election expenses has been lodged by a candidate under section 78, cause a notice to be affixed to his notice board, 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."

"88. Inspection of account and the obtaining of copies thereof.- Any person shall on payment of a fee of one rupee be entitled to inspect any such account and on payment of such fee as may be fixed by the Election Commission in this behalf be entitled to obtain attested copies of such account or of any part thereof.

89. Report by the District Election Officer as to the lodging of the account of election expenses and the decision of the Election Commission thereon.

(1) As soon as may be after the expiration of the time specified in section 78 for the lodging of the accounts of election expenses at any election, the district election officer shall report to the 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 officer is of the opinion that the account of election expenses of any candidate has not been lodged in the manner required by the Act and these Rules, he shall with every such report forward to the Election Commission the account of election expenses of that candidate and the vouchers lodged along with it.

(3) Immediately after the submission of the report referred to in sub-rule (1) the district election officer shall publish a copy thereof by affixing the same to his notice board.

(4) As soon as may be after the receipt of the report referred to in sub Rule (1), the 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 Election Commission decides that a contesting

candidate has failed to lodge his account of election expenses within the time and 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 under Section 10-A for the failure.

(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 Election Commission and shall at the same time send to the district election officer 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 officer shall, within five days of the receipt thereof, forward to the 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 officer and after such inquiry as it thinks fit, the Election Commission is satisfied that the candidate has no good reason or justification for the failure to lodge his account, it shall declare him to be disqualified under section 10-A for a period of three years from the date of the order and cause the order to be published in the Official Gazette."

2. In addition to the aforesaid statutory provisions contained in the Act and the Rules, the Election Commission of India has also been issuing from time to time a "Handbook for Returning Officers" containing the brief instructions for the guidance of contesting candidates for lodging their accounts of election expenses, as also the proforma for the maintenance of account of election expenses. According to para 6(h) of Chapter V, a copy of these instructions and the proforma is invariably supplied to every candidate at the time of filing the nomination papers itself."

The election was held on 04.02.2017 and the result was declared on 11.03.2017. The due date for lodging of account was 10.04.2017. Petitioner could not submit account within the stipulated period. He submitted the register but without vouchers and bills which were not accepted by the District Election Officer in spite of request. A Show Cause Notice was issued on 21.11.2017 but the petitioner was out of country from 05.11.2017 to 19.12.2017. On coming back, he submitted reply stating that the accounts were ready to be submitted. He submitted the accounts on 16.05.2018 to the District Election Officer which was duly

scrutinized by the District Election Officer and prepared a report stating in column 8 that the District Election Officer agreed with the amount shown by the petitioner against all items of expenditure. Report was not given but copy of the forwarding letter and report was procured as Annexure P-3 (colly).

Vide order dated 07.06.2018, petitioner was declared disqualified from the date of order i.e 07.06.2018 on the ground of non submitting of accounts of election without any communication. Petitioner came to know only in February, 2019. Thereafter, he submitted representation on 06.03.2019 (Annexure P-5).

For consideration of the issue involved in the present petition, it is appropriate to reproduce Sections 10-A and 11 of the Act, 1951, which is as under :-

Section 10-A : Disqualification for failure to lodge account of election expenses.

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 of 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".

Section 11 : Removal or reduction of period of disqualification. - The Election Commission may, or reason to be recorded, remove any disqualification under this Chapter except under Section 8-A or reduce the period of any such disqualification".

Failure to lodge an account of election expenses attracts the serious consequence of being disqualified for a period of three years from contesting the election. It is in view of the serious consequence that the Legislature has burdened the Election Commission with the duty of examining the matter and recording the satisfaction before a person earns the disqualification from contesting as election. Further more a provision has been made in Section 11 by which the Commission has been authorised to remove or reduce the disqualification.

The necessity for recording reasons has been emphasised by Courts since the hoary past. This is so not because of any positive requirement of a statute, but the requirement is based on the principles of natural justice. Any authority which decides a matter should disclose the process of reasoning so that the citizen, who as a right to resort to an appropriate remedy may be able to make an effective challenge to the order. If judicial or quasi judicial authority passes a laconic order without disclosing the process of reasoning, the right to even a constitutional remedy like the one under Article 226, may become illusory. In cases where jurisdiction of a Civil Court is expressly barred and the writ Court is debarred from examining the disputed questions of fact, the recording of reasons becomes all the more important. *Prima facie*, I am of the opinion that every authority exercising statutory powers whose orders may affect the civil rights of the citizen must disclose the process of reasoning while deciding a matter. Otherwise, the action may invite the criticism of being arbitrary.

It has been held in various judgments of Hon'ble the Apex Court that the power of judicial review of the Court is not unbridled. Judicial review is permissible over the statutory body exercising its functions affecting public law rights.

Although, no time limit is prescribed for passing an order of disqualification but the Election Commission is to act within a reasonable time. The order of disqualification was neither passed within the reasonable time nor it was conveyed to the petitioner.

The accounts are required to be lodged along with necessary details and supporting documents, that is, vouchers etc., as prescribed under Rules 86(1) and 86(3) of the Conduct of Elections Rules, 1961. As per Section 77 of the Act, 1951, the account of election expenses is required to be given by every candidate at an election, either by himself or by his election agent incurred during election. As per Section 78 of the Act, 1951, every contesting candidate is to furnish the accounts within a period of thirty days from the date of election. As per Section 87 of the Act, 1951, the

District Election Officer is to issue a notice to be affixed to his notice board within a period of two days from the date on which the account of election expenses has been lodged by a candidate under Section 78 of the Act, 1951, specifying the date on which the account has been lodged; the name of the candidate and the time and place at which such account can be inspected. The District Election Officer is to give a report for lodging of the account of election expenses and the decision of the Election Commission thereon. After expiry of the period as specified in Section 78 for the lodging of the accounts of election expenses at any election, the district election officer is also required to report to the Election Commission.

In the present case, the election expenses were submitted by the petitioner which were duly accepted and thereafter, nothing was conveyed to him. Although, there was delay in lodging of the accounts but since, it was duly scrutinized and the same was forwarded to the Election Commission of India on 22.05.2018, there was no reason to say that the election expenses were not furnished. After passing of order dated 07.06.2018, the petitioner made a representation, on the basis of which, the Election Commission of India decided to grant an opportunity of hearing on 25.04.2019 but no order was given to him. Even it was not mentioned that any discrepancy was there in furnishing the accounts. No communication was sent stating that the election expenses were not accepted because of delay. Once the accounts were accepted, it was no reason to say that the expenses were not furnished. Since the District Election Officer has submitted the report accepting the accounts and stating that the amount shown by the petitioner against all items of expenditure was there, there was no reason to pass any order of disqualifying him on the ground of

non-submission of accounts.

In view of provisions of Section 11 of the Act, 1951, the Election Commission may remove any disqualification on recording of reasons except under Section 8-A or may reduce the period of such disqualification. The necessity for recording reasons has been emphasized by the Courts. It is not because of any positive requirement of a statute, but the requirement is based on the principles of natural justice. Any authority which decides a matter should disclose the process of reasoning so that the citizen, who as a right to resort to avail an appropriate remedy may be able to make an effective challenge to the order. If judicial or quasi judicial authority passes a non-speaking order without disclosing the process of reasoning, the right of an aggrieved person is affected then that aggrieved person has a remedy under Article 226 of the Constitution of India. In cases where jurisdiction of a Civil Court is expressly barred and the writ court is also debarred from examining the disputed questions of fact, the recording of reasons becomes more important. Every such authority exercising statutory powers whose orders may affect the civil rights of the citizen must disclose the process of reasoning while deciding a matter. Failing in doing so, the action of such authority may invite the criticism and the same may be considered to be arbitrary.

Vide short separate order passed on 02.05.2019, the writ petition was allowed and it was also directed to accept the nomination paper, in case, it was found otherwise in order.

In view of facts as mentioned above, the order of disqualification has been passed which is totally contrary to the facts and record and also to the provisions of the Act, 1951 as well as Rules. The

action of the respondents is not only illegal, unlawful and contrary to the fact but the same has been passed without any application of mind, which cannot be sustained in the eyes of law.

Accordingly, the present petition is allowed and impugned orders dated 30.04.2019 and 07.06.2018 (Annexure P-4) are hereby set aside.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

02.05.2019
gurpreet

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No