

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on 18.2.2020****Judgment Delivered on 07/08/2020****WA No. 415 of 2017****(Arising out of the order dated 24.8.2017 passed by learned
Single Judge in WPC No.2040/2017)**

- Chhattisgarh State Election Commission Through Secretary, Chhattisgarh State Election Commission, Near D.K.S. Bhawan, Old Mantralaya, Shastri Chowk, Raipur, Chhattisgarh.

---- Appellant**Versus**

1. Smt. Urvashi Singh Thakur, W/o Shri Sarad Kumar Singh, aged about 34 years, R/o Village Pathalgaon (Purani Basti) Post, Police Station and Tehsil Pathalgaon, District Jashpur (CG)
2. State of Chhattisgarh, through Secretary, Ministry of Local Self Government, Mantralaya Parisar, Raipur, Chhattisgarh.
3. District Election Officer (Municipalities), Jashpur, District Jashpur, Chhattisgarh.
4. Returning Officer, Nagar Panchayat, Pathalgaon, Tehsil Pathalgaon, District Jashpur, Chhattisgarh.
5. Nagar Panchayat Pathalgaon, through the Chief Municipal Officer, Nagar Panchayat, Pathalgaon, District Jashpur, Chhattisgarh.

---- Respondents

For Appellant	:	Mr. Ranbir Singh Marhas, Advocate
For Respondent No.1	:	Mr. Prateek Sharma, Advocate
For Respondent No.2 to 4:	:	Mr. C.Shrivastava, Dy. Adv. General

Hon'ble Shri P. R. Ramachandra Menon, CJ**Hon'ble Shri Parth Prateem Sahu, J****CAV Order****Per Parth Prateem Sahu, J**

1. Appellant- State Election Commission has questioned the correctness and sustainability of the order dated 24.8.2017 passed in WPC No.2040/2017 by which learned Single Judge has allowed writ petition filed by respondent No.1 and set aside the order dated 1.6.2017 passed by appellant- State Election Commission under Section 32-B read with Section 32-C of the

Chhattisgarh Municipalities Act, 1961 (for short 'the Act of 1961') disqualifying respondent No.1 for being chosen as President of Municipal Council for a period of four years.

2. Facts of the case, in nutshell, are that petitioner/respondent No.1 successfully contested election to the post of President, Nagar Panchayat, Pathalgaon and a certificate of election (Annexure P-2 to writ petition) was issued in her favour on 4.1.2015 by the Returning Officer. On 16.1.2015 the Observer, CG State Election Commission, Raipur, Camp Jashpur, issued show-cause notice to petitioner/respondent No.1 calling upon her to submit accounts register of election expenses by 20.1.2015. Petitioner/respondent No.1 failed to submit accounts register of election expenses within the period prescribed in show-cause notice dated 16.1.2015 and submitted the same on 4.2.2015 before the District Election Officer, Jashpur. Thereafter, the Secretary, CG State Election Commission, Raipur issued show-cause notice dated 8.5.2015 calling upon petitioner/ respondent No.1 to explain as to why proceeding under Section 32C of the Act of 1961 be not initiated against her. Petitioner/ respondent No.1 submitted reply to said show-cause notice stating that on 4.2.2015 itself she had submitted register and other documents relating to her election expenses in the office of Collector, Jashpur in time. Reply submitted by petitioner/respondent No.1 was forwarded to the Collector-cum- District Election Officer, Jashpur for opinion. The Collector, Jashpur forwarded her opinion to the

Secretary, CG State Election Commission, Raipur mentioning that account of election expenses have been submitted by petitioner/ respondent No.1 on 4.2.2015, which is within time, and recommended not to take action against petitioner/ respondent No.1 under Sections 32 (A) & 32 (B) of the Act of 1961. Upon considering reply submitted by petitioner / respondent No.1 and also opinion of the Collector, Jashpur, the appellant arrived at a conclusion that accounts of election expenses were not submitted by petitioner / respondent No.1 within the period stipulated under Sections 32(A) & 32 (B) of the Act of 1961. Petitioner/respondent No.1 was also asked to appear in the office of appellant for personal hearing. Statement of petitioner/ respondent No.1 was recorded in which she stated that on 3.2.2015 she had approached the office of District Election Officer, Jashpur to lodge her account of election expenses, but she was asked to lodge the same with the office of District Election Officer, Pathalgaon. Based on this statement of respondent No.1, a clarification with regard to submission of accounts of election expenses by respondent No.1 was sought from the Collector-cum-District Election Officer, Jashpur, who vide letter dated 22.5.2017 clarified the query so raised.

3. After considering reply to show-cause notice submitted by respondent No.1, her statement on oath, clarification given by the Collector-cum-District Election Officer, Jashpur along with other materials available on record, appellant passed the order

dated 1.6.2017 (Annexure P-1) under Section 32-C of the Act of 1961 holding respondent No.1 to be disqualified to hold the post of President for a period of four years on the ground that she did not submit account of election expenses within prescribed period and no good reason has been offered by her for her failure to do so. The order dated 1.6.2018 was put to challenge by respondent No.1 by filing a writ petition before the High Court on the grounds mentioned therein, to which reply was submitted by appellant herein.

4. Learned Single Judge upon considering the pleadings of writ petition, reply, provisions of the Act of 1961, submission of both the sides and further taking note of judgements of Hon'ble Supreme Court, has set aside the order dated 1.6.2018 (Annexure P-1) by recording that though petitioner/ respondent No.1 failed to submit accounts of election expenses within prescribed time, the reply submitted by her to show-cause notice has not been properly considered by appellant-Commission, which constitutes 'good cause' within the meaning of Section 32-C (b) of the Act of 1961 and proper opportunity of hearing was not granted. It is this order which is challenged by appellant State Election Commission in this writ appeal.
5. Mr. Ranbir Singh Marhas, learned counsel representing appellant submits that petitioner/respondent No.1 did not raise this defence in her reply to show-cause notice that she had approached office of the Accounts Officer (Expenses), Jashpur on 3.2.2015 for submission of accounts of election expenses.

The defence taken by petitioner/respondent No.1 is an afterthought invented subsequently to get away from the clutches of provision of the Act of 1961. It is further submitted that even the ground subsequently raised by petitioner/respondent No.1 that she approached the Accounts Officer (Expenses) on 3.2.2015 is not supported by any cogent material except the statement of petitioner/respondent No.1 herself recorded on 10.4.2017, which is patently false & baseless because affidavit required to be filed along with accounts of election expenses was sworn on 4.2.2015 and if petitioner/ respondent No.1 had approached the Accounts Officer (Expenses) on 3.2.2015 for submission of accounts of election expenses, then the affidavit attached along with accounts of election expenses should have been sworn on 3.2.2015. Learned counsel contended that nature of proceeding provided under Section 32-C of the Act of 1961 does not require cross-examination of a witness and the Election Commission has to arrive at a conclusion based upon reply, documents and all other materials and evidence submitted by a candidate. Considering the reply to show-cause notice and statement of respondent No.1 recorded before the Election Commission, the appellant has rightly arrived at a conclusion that respondent No.1 could not be able to make out a good ground for non-submission of her election expenses within time, as provided under Section 32-B of the Act of 1961. He submits that there was no error in the order passed by the State Election Commission as the same has been passed after

due application of mind and in accordance with law.

6. Mr. Prateek Sharma, learned counsel representing respondent No.1 would submit that after considering the materials brought on record and relevant provisions of law including case laws on the point, the learned Single Judge has passed the impugned order in which there is no error warranting interference. He submits that respondent No.1 had not mentioned in her statement that on 3.2.2015 she had visited the office of District Election Officer, Jashpur for submission of election expenses accounts, the Accounts Officer (Expenses) declined to accept the same stating that she is required to submit her election expenses to the Returning Office, Pathalgaon and for this reason, she could not be able to submit her accounts of election expenses on 3.2.2015, which was the last date for submission of accounts of election expenses. It is pointed out that petitioner/respondent No.1 has been able to make out a good cause for non-submission of accounts of election expenses within thirty days from her election as President, Nagar Panchayat, Pathalgaon. Even the Collector, Jashpur had mentioned in letter dated 7.6.2016 that petitioner / respondent No.1 had deposited her accounts of election expenses within prescribed time. However, the appellant-State Election Commission, without affording opportunity of hearing and without supplying copy of clarificatory letter issued by the Collector-cum-District Election Officer, Jashpur, has passed the order dated 1.6.2017, which has rightly been set aside by the

learned Single Judge. He also submits that cases of four returned candidates including petitioner/respondent No.1 have been decided by the order dated 1.6.2017, which indicates that there was no application of mind to individual cases. In support of aforesaid submissions, learned counsel places his reliance on the reportable judgment passed by Hon'ble Supreme Court in Civil Appeal No.1622/2020, parties being Laxmibai Vs. The Collector, Nanded & ors, and other connected matters. It is further contended that the State Election Commission took more than a year to pass order after issuance of notice, which was prejudicial to the interest of the respondent No.1. In alternate, learned counsel contended that the law does not prescribe for the specific period of disqualification and the discretion is given to the authority to pass appropriate orders looking to the facts and circumstances of the case. He lastly submits that in the fresh election which took place in the month of December, 2019, the respondent No.1 again got elected as President.

7. We have heard both the sides and perused the documents available in record.
8. Section 32-A of the Act of 1961 provides for account of election expenses to be maintained by a candidate himself or through his election agent with respect to the expenses incurred by him or by agent for contesting the election. Section 32-B of the Act of 1961 is one of the important provisions which prescribes period within which a candidate is required to lodge the account

of election expenses with the officer notified by the State Election Commission. Section 32-B reads thus:-

“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.”

9. The above quoted provision specifically prescribes that a returned candidate is required to submit his election expenses within a period of 30 days from the date of election i.e. from the date of issuance of notification of his/her election by the competent authority. In case at hand, date of issuance of notification of election of respondent No.1 is 4.1.2015 and as such, she was required to lodge/submit her account of election expenses within 30 days i.e. on or before 3.2.2015, whereas respondent No.1 had submitted/ lodged her account of election expenses on 4.2.2015.
10. Section 32-C of the Act of 1961 provides for consequential action against a returned candidate on his failure to lodge account of election expenses within stipulated time and in the manner required/prescribed under the Act of 1961. Section 32-C is as follows:-

“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 or 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.]”

11. A bare reading of above provision makes it clear that the State Election Commission, after arriving at a conclusion that returned candidate has no good reason or justification for the failure to submit his election expenses account within stipulated time, shall declare such returned candidate to be disqualified for being chosen as, and for being a Councillor or President of the Municipal Corporation or Nagar Panchayat, as the case may be, for a period not exceeding five years from the date of order.
12. Facts of present would reveal that after submission/lodgement of election expenses account by the respondent No.1 before the District Election Officer, show-cause notice dated 8.5.2015 was issued to respondent No.1 calling upon her to show-cause as to why the account of election expenses has not been lodged within prescribed period of 30 days from the date of her election. Respondent No.1 has further been called upon to explain as to why she be not declared disqualified under Section 32-C of the Act of 1961. A reply to show-cause notice was submitted by respondent No.1 on 3.6.2015, which is available in record as Annexure R-1/2, mentioning that the account of election expenses along with documents have been submitted/lodged in time i.e. on 4.2.2015. After submission of

reply to show-cause notice, letter dated 16.12.2016 (Annexure R1/5) was issued by the State Election Commission calling upon the respondent No.1 to appear in the office of the State Election Commission on 22.1.2017 at 12.30 p.m. if she wants personal hearing in the matter. On 10.4.2017 statement of respondent No.1 was recorded in which she has stated that on 3.2.2015 she had visited the office of District Election Officer, Jashpur to lodge account of her election expenses, but the Accounts Officer refused to accept the same and asked her to lodge/submit the same in the Election Office at Pathalgaon. To verify aforesaid statement of respondent No.1, the State Election Commission sought clarification/opinion of the District Election Officer, Jashpur, which was given on 22.5.2017 stating that statement of respondent No.1 is not correct. The Election Commission after considering reply & statement of respondent No.1 as also clarification/ opinion given by the District Election Officer, Jashpur, passed the impugned order of disqualification holding the petitioner/respondent No.1 herein to be disqualified to hold the post of President or Councillor of Nagar Panchayat for a period of four years.

13. Before proceeding further with the case, it will be beneficial to go through the procedure and manner in which election expenses are to be lodged. The State Election Commission in exercise of power conferred on it by virtue of Article 243ZA of the Constitution of India read with Section 14-A of the Chhattisgarh Municipal Corporation Act, 1956 and Section 32A

of the Act of 1961, has framed 'The Election Expenses (Maintenance and Lodging of Account) Order, 2012 (for short 'the Order of 2012') which cast an obligation on every contesting candidate to lodge account of his election expenses within thirty days from the date of election. The Order of 2012 not only prescribes the manner in which account of election expenses is to be lodged by a contesting candidate but also prescribes the procedure to be adopted by Competent Authority on failure of a returned candidate to lodge his account of election expenses within time prescribed and in the manner required. Clause 7 of the Order of 2012 deals with lodging of the account of election expenses and it specifically mentions that every contesting candidate shall lodge account of election expenses with the District Election Officer within the time specified in the Act of 1961. Clause 7 of the Order of 2012 is reproduced below for ready reference:-

“7. Lodging of the account of election expenses.- (1)

Every contesting candidate or his election agent shall lodge the account of election expenses with the District Election Officer, within the time specified in the Act, that is, thirty days from the date of election.

(2) The account of election expenses shall comprise the following documents, namely:-

- (a) the register of day to day account of election expenses referred to in paragraph 4 in original,
- (b) vouchers relating to the entries made in the register of election expenses, and
- (c) abstract statement of election expenses, referred to in paragraph 6.

(3) The register of day to day account of election expenses and the abstract statement of election expenses shall be authenticated and countersigned by the candidate in case they have been prepared and signed by his election agent and the vouchers shall also be countersigned by him, before being lodged.

(4) The account of election expenses shall be

accompanied by an affidavit of the candidate in proforma C and shall not be regarded as complete without such an affidavit.”

14. Clause 10 of the Order of 2012 casts an obligation on the District Election Officer with respect to lodging of account of election expenses and decision of the Election Commission thereon. Clause 10 reads thus:-

“10.Report by the District Election Officer as to the lodging of the account of election expenses and the decision of Election Commission thereon.— (1) As soon as may be after the expiration of the time specified in the Act for the lodging of the account of election expenses the District Election Officer shall send a report to the Election Commission about every contesting candidate, on the following points: -

- (a) The name of the contesting candidate with full postal address;
- (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 this Order

(2) Where the District Election Officer is of the opinion that the account of election expenses of any contesting candidate has not been lodged in the manner required by the Act and this Order, he shall with every such report forward to the Election Commission the account of election expenses of that candidate.

(3) Immediately after the submission of the report referred to in sub-paragraph (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-paragraph (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 this Order.

(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 this Order, it shall by notice in writing call upon the candidate to show cause why he should not be disqualified under section 14-C of the Chhattisgarh Municipal Corporation Act, 1956 (No. 23 of 1956) or section 32-C of the Chhattisgarh Municipalities Act, 1961 (No. 37 of 1961), as the case may be, for the

failure.

(6) Any contesting candidate who has been called upon to show cause under sub-paragraph (5), may within fifteen 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.

(7) The District Election Officer, within five days of the receipt thereof, forward to the Election Commission the copy of the representation with such comments as he wishes to make thereon.”

15. From the provisions discussed and extracted above, it is clear that a candidate is required to submit/lodge account of election expenses within time prescribed i.e. within 30 days from the date of election and in the manner prescribed for the same under the Act of 1961 and the Order of 2012, failing which the candidate concerned shall incur disqualification under Section 32C (b) of the Act of 1961 for having not lodged the account of election expenses in the manner required by the Act of 1961.
16. In case at hand, admittedly respondent No.1 submitted her account of election expenses on 4.2.2015. The State Election Commission issued a show-cause notice calling upon respondent No.1 to explain as to why she be not declared disqualified for her failure to submit/lodge account of election expenses within prescribed time. Respondent No.1 submitted reply to the show-cause notice explaining that she had submitted account of election expenses in time on 4.2.2015. After providing an opportunity of personal hearing to respondent No.1, the State Election Commission recorded statement of respondent No.1 in which, for the first time, she has stated that on 3.2.2015 she had approached the office of

District Election Officer, Jashpur to lodge account of election expenses, but the Accounts Officer / Clerk instead of accepting it, asked her to submit the same in the office of District Election Officer, Pathalgaon. Upon considering the respondent No.1's reply to show-cause notice, her statement on oath and negative opinion given by the District Election Officer, Pathalgaon in respect of statement of respondent made for the first time before the State Election Commission in her statement that the Accounts Officer of District Election Office, Jashpur had refused to accept account of her election expenses on 3.2.2015, the State Election Commission passed the order under Section 32C of the Act of 1961 declaring respondent No.1 disqualified to contest election on the post of Councillor or President of any Municipal Council for a period of four years.

17. Learned Single Judge upon considering the facts and circumstances of case as well as the date on which account of election expenses was submitted by respondent No.1, held that there was delay in submission of account of election expenses by respondent No.1. Thereafter taking note of the judgements passed in the matters of **Ravi Yashwant Bhoir v. District Collector, Raigad & ors** reported in **(2012) 4 SCC 407**; **Jawahar Lal Gupta v. Rajya Nirvachan Ayog, Bhopal** reported in **(2000) 8 SCC 82**; **Jaipal Singh V. MP State Election Commission & ors** reported in **2006 (4) MPHT 10 (NOC)**; **Shantilal (Bum Bum) vs. State of M.P. & ors** reported

in **2003 (3) MPHT 326; Mahendra, s/o R.S. Palariya v. MP State Election Commission and others** reported in **2005 (1) MPLJ 245** has held that statement made by respondent No.1 before the State Election Commission remained uncontroverted as the respondent No.1 was not subjected to cross-examination and the clarification/ opinion given by the District Election Officer, Jashpur cannot be treated as conclusive for want of supply of a copy thereof to the respondent No.1 herein. Learned Judge further held that the explanation offered by respondent No.1 constitutes good cause within the meaning under Section 32-C (b) of the Act of 1961 and set aside the order of disqualification passed by the State Election Commission.

18. To appreciate the submission made by learned counsel for appellant that the State Election Commission has followed the procedure prescribed under Section 32C of the Act of 1961 for taking action against the respondent No.1, it would be beneficial to again refer certain clauses of the Order of 2012 wherein the procedure is prescribed for lodging of election expenses before the competent authority. Clause 3 deals with the particulars of account of election expenses. Clause 7 deals with the lodging of the account of election expenses. This clause prescribes the manner in which account of election expenses is to be submitted before the competent authority. Clause 7 (4) specifies that account of election expenses shall be accompanied by an affidavit of the candidate in Proforma 'C'

and shall not be complete without such an affidavit. Copy of affidavit submitted by petitioner/respondent herein along with account of her election expenses in compliance of Clause 7 (4) of the Order of 2012 is available on record. A glance of this affidavit would show that the same was notarized on 4.2.2015.

19. The State Election Commission while passing the impugned order of disqualification has taken note of the reply, affidavit enclosed along with account of election expenses and statement of respondent No.1 recorded before the State Election Commission. The State Election Commission has also considered that respondent No.1 submitted in her reply that account of election expenses was lodged on 4.2.2015, which was within time. It is for the first time the respondent No.1 has taken a plea that though she made an attempt to lodge account of election expenses in the office of District Election Officer, Jashpur on 3.2.2015, but the employee concerned had refused to accept the same and asked her to lodge the same in the office of District Election Officer, Pathalgaon.
20. In view of argument advanced by learned counsel for appellant, now the question arises before us is whether statement of respondent No.1 alone is to be taken into consideration to arrive at a conclusion that reason offered by respondent No.1 for non-submission of account of election expenses in time is a good reason or justification and whether the State Election Commission has followed the procedure prescribed under the law before passing the order impugned?

21. For taking action under the provision of Section 32-C of the Act of 1961, no enquiry or trial is provided. A conjoint reading of provisions of Section 32-C of the Act of 1961 and the Order of 2012, it is apparent that the authority has to proceed in a particular manner as provided under the Order of 2012 and to consider and decide with due application of mind, on the basis of material available, that reason assigned by the candidate for failure to lodge account of election expenses within prescribed time is a good reason or justification. In the present case, after considering the reply of respondent No.1 to show cause notice for delay in lodging her account of election expenses, option was given to her for personal hearing. Respondent No.1 opted for hearing and her statement was recorded before the State Election Commission in which altogether different stand was taken by respondent No.1 for delay in submission of account of election expenses than what was mentioned in the reply.
22. Affidavit, which has been shown to be one of the mandatory documents to be enclosed alongwith account of election expenses, was notarized only on 4.2.2015. Perusal of reply submitted by respondent No.1 to show-cause notice dated 8.5.2015 would show that it only mentions that account of election expenses has been submitted within time, whereas the show-cause notice very specifically mentions that respondent No.1 failed to lodge account of her election expenses within prescribed time. Oral statement made by respondent No.1 before the State Election Commission that she had approached

the authority concerned for submission of account of election expenses does not appear to be correct because account of election expenses required to be submitted by respondent No.1 under Section 32B of the Act of 1961 was not complete on 3.2.2015 as the affidavit to be accompanied with account of election expenses was not notarized. Furthermore, in the statement of respondent No.1 there is no whisper about the steps taken by her after refusal by the office of the District Election Officer, Jashpur. Respondent No.1 has only stated in her statement that next day she lodged account of her election expenses in the office of District Election Officer. She has not made any statement whether she acted on the so-called advise given by the employee of the District Election Officer or not, and if acted, what transpired and if not, why she not approached there and again visited office of the District Election Officer. It is apparent from the order (Annexure P-1) that the State Election Commission has not passed the order in mechanical manner rather the Commission has sought clarification/ opinion of the District Election Officer on the aforesaid version of respondent No.1. Contents of the order, Annexure P-1, show that before passing of the order, the State Election Commission has applied its mind and assigned reason for not accepting the reason or justification submitted by respondent No.1 to be not good.

23. So far as finding recorded by learned Single Judge that reason assigned for non-submission of account of election expenses in

time i.e. on 3.2.2015, to be good reason on account of uncontroverted statement made by respondent No.1 for want of cross-examination is concerned, we are not in agreement with the said finding of learned Single Judge for more than one reasons. The statement is contrary to the written reply. The State Election Commission has elaborately discussed for arriving at a conclusion, reason/ justification submitted by respondent No.1 for her failure to lodge account of election expenses within prescribed time to be not good and the same cannot be said to be an erroneous finding, particularly when the affidavit without which the account of election expenses lodged by respondent No.1 cannot be a complete document. It was notarized only on 4.2.2015. When the material available on record clearly shows that on 3.2.2015 account of election expenses to be submitted by respondent No.1 was not complete, the defence taken by respondent No.1 in her statement, for the first time, cannot be taken as Gospel truth, more so, when there was no explanation from the part of the respondent No.1 as to why the affidavit could not be notarized on 3.2.2015 and was notarized only on 4.2.2015.

24. As per requirement of Section 32C of the Act of 1961, the Commission has to consider the justification / reason assigned by a candidate by applying its mind to be a good reason/ justification for condoning delay in lodgement of account of election expenses. The finding recorded by learned Single Judge that opinion of the District Election Officer, Jashpur

cannot be held to be conclusive in absence of having been given statement on oath and copy of the same has not been supplied to the petitioner/respondent herein, the requirement of law under the provisions of Section 32C, it is for the candidate, who failed to submit/lodge account of election expenses within time, to justify or assign good reason for failure to comply with provisions of Section 32B of the Act of 1961. In case at hand, the finding of the State Election Commission that reason assigned by respondent No.1. does not constitute a good reason or justification is not based only on the opinion of the District Election Officer, Jashpur, or statement of respondent No.1, rather it is based on the factual matrix emerging from the material available on record which clearly shows that affidavit mandatorily required to be filed along with account of election expenses was notarized only on 4.2.2015 and thus, on 3.2.2015 the account of election expenses was not complete. In this circumstance, the State Election Commission discarded the stand taken by respondent No.1 in her statement that the Accounts Officer of the office of the District Election Officer, Jashpur had refused to accept account of election expenses of respondent No.1 on 3.2.2015. Hence, in our view, the State Election Commission has not committed any mistake in holding that the respondent No.1 failed to make out a good reason/justification.

25. The case laws referred by learned Single Judge are on different facts. The case of Ravi Yashwant Bhoir (supra) was

of removal of an elected member/officer on the ground of misconduct and the Hon'ble Supreme Court has held thus:-

“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 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*, *Mohan Lal Tripathi v. District Magistrate, Rae Bareilly* and *Ram Beti v. District Panchayat Raj Adhikari*).”

26. In the case of *Jawahar Lal Gupta (supra)*, the returned candidate submitted/lodged the account of election expenses but certain defects were pointed out, notice was issued to rectify the defect in which only one defect was pointed out, but the order of disqualification was passed considering other defects also for which no notice was issued.
27. In the case of *Shantilal (Bum-Bum) (supra)*, the Court has come to the conclusion that there was no application of mind by the Election Commission and remanded back the matter to the authority for taking decision afresh.

28. In the case at hand, the State Election Commission has considered the reply, statement and documents i.e. account of election expenses of the respondent No.1 and specific reason was assigned for not accepting the reason offered by the respondent No.1 for not submitting account of election expenses within prescribed time.
29. As we have held in the preceding paragraph that the reason offered by the respondent No.1 for lodging her account of election expenses with a delay of one day is not a good reason or justification, the question which arises for our consideration is whether lodgement of account of election expenses with a delay of one day would entail mandatory disqualification and the returned candidate is to be necessarily declared disqualified for a period upto five years or any lesser period or disqualification can be removed.
30. Before going through the provisions in the above regard, as provided under Section 32 of the Act of 1961, we feel it necessary to briefly recapitulate facts of the case once again. In the present case, the respondent No.1 had lodged her account of election expenses on the very next date of expiry of period of limitation which shows that the respondent No.1 / returned candidate had prepared her account of election expenses prior to expiry of period of limitation prescribed but could submit the same before the competent authority on next day of the limitation prescribed.

31. Section 32C of the Act of 1961 prescribes that if the State Election Commission is satisfied that a person has failed to lodge account of election expenses within time and in the manner required by or under this Act and has no good reason or justification for the failure, such a person shall be disqualified for being chosen as, and for being a Councillor or President of the Municipal Corporation or Nagar Panchayat, as the case may be, for a period not exceeding five years from the date of the order. Thus, it is amply clear that a person contesting election is required to lodge account of election expenses within prescribed time and in the manner required under the Act of 1961. After going through the account of election expenses lodged by the respondent No.1, the State Election Commission has not found any irregularity or error in manner of lodging of account or that it is not in the format prescribed under the Act of 1961. The only objection raised is that the account has been submitted with a delay of one day.
32. In the matter of **D. Venkat Reddy v. R. Sultan & ors** reported in **(1976) 2 SCC 455** Hon'ble Supreme Court while considering an election petition questioning election of a returned candidate on the ground of corrupt practice has held that valuable verdict of the people and the polls must be given due respect and should not be discarded on vague, indefinite, frivolous and fanciful allegations. Election result cannot be lightly brushed aside in the election dispute and at the same time it is necessary to protect the purity and sovereignty of the election.

Relevant part of the said decision is extracted below for immediate perusal:

“3. Mr. P. Bassi Reddy learned counsel for the appellant has assailed before us the findings of the High Court on issues Nos. 7, 26 and 27 as these were the only issues which affected the appellant. Mr. B. Shiv Sankar, learned counsel for the contesting respondent has endeavoured to support the judgment of the High Court by submitting that the findings arrived at by the High Court were based on a correct and proper appreciation of the evidence and the facts and circumstances on the record. In a democracy such as ours, the purity and sanctity of elections, the sacrosanct and sacred nature of the electoral process must be preserved and maintained. The valuable verdict of the people at the polls must be given due respect and candour and should not be disregarded or set at naught on vague, indefinite, frivolous or fanciful allegations or on evidence which is of a shaky or prevaricating character. It is well settled that the onus lies heavily on the election petitioner to make out a strong case for setting aside an election. In our country election is a fairly costly and expensive venture and the Representation of the People Act has provided sufficient safeguards to make the elections fair and free. In these circumstances, therefore, election results cannot be lightly brushed aside in election disputes. At the same time it is necessary to protect the purity and sobriety of the elections by ensuring that the candidates do not secure the valuable votes of the People by undue influence, fraud, communal propaganda, bribery or other corrupt practices as laid down in the Act.”

33. Hon'ble Supreme in its another decision in the case of **Tarlochan Dev Sharma vs. State of Punjab & ors** reported in **(2001) 6 SCC 260** has held that holding and enjoying an office, discharging related duties is a valuable statutory right of not only returned candidate but also his constituency or electoral college.
34. From the aforementioned law laid down by Hon'ble Supreme Court it is clear that the election of a person in any election to any office is on account of valuable verdict of the people and a duly elected person is entitled to hold office for the term for which he has been elected.
35. Taking note of the severe repercussion of the provisions of Section 32C of the Act of 1961 where the Election Commission is not justified with the reason assigned by the person for the delay in lodging account of election expenses, there shall be disqualification of such person for being chosen as and for being President or Councillor of the Municipal Corporation or Municipal Council for a period not exceeding 5 years, the Legislature has brought into provision under Section 32D of the Act of 1961 by way of amendment which came into force on 1.1.2005, which reads as under:-

“32-D. Removal or reduction of period of disqualification- The State Election Commission, on making an application within thirty days from the date of publication of the order, passed under clause (b) of Section 32-C in the official Gazette may for

reasons to be recorded in writing remove any disqualification or reduce the period of nay such disqualification.”

36. Under the above provision, the power/jurisdiction has been given to the State Election Commission to either remove or reduce the period of disqualification upon making application by such person against whom order of disqualification has been passed under clause (b) of Section 32C of the Act of 1961. Meaning thereby, the State Election Commission in exercise of its power under Section 32D, can remove a disqualification ordered under Section 32C (b) of the Act of 1961.

37. Going through the facts & events, reply to show-cause notice submitted by respondent No.1 mentioning therein that she had lodged her account of election expenses in time, and contents of letter dated 7.6.2016 of the Collector-cum-District Election Officer, Jashpur in which it is mentioned that the respondent No.1 had submitted her account of election expenses in time, we feel that there may be some confusion in calculating the period. Therefore, considering the reply submitted by respondent No.1 to the notice at first instance, letter of the Collector-cum-District Election Officer, Jashpur dated 7.6.2016 and further considering the date of lodgement of account by respondent No.1 i.e. on very next day of limitation i.e. 4.2.2015, we are of the considered view that the matter requires consideration in a very pragmatic manner keeping in mind the

purpose and object of incorporating Section 32D in the Act of 1961 whereby the powers to remove the disqualification has been granted to the Commissioner, State Election Commission. In the case at hand, the respondent No.1, after passing of the order under Section 32-C (b) of the Act of 1961, has not availed the remedy available to her under the provision of Section 32D of the Act of 1961 before the State Election Commission.

38. In the above circumstance, writ appeal is allowed in part. Impugned order dated 24.8.2018 passed by learned Single Judge in WPC No.2040/2017 stands set aside. Respondent No.1 is directed to approach the appellant- State Election Commission by filing an application under Section 32D of the Act of 1961 within a period of six weeks from the date of passing of this order and in turn, the State Election Commission is directed to consider and decide the said application within a further period of six weeks from the date of receipt of such application keeping in mind the provision of Section 32D of the Act of 1961, brought by way of an amendment, and also keeping in mind that the respondent No.1 has again been elected as 'President' of Nagar Panchayat Pathalgaon in the elections which took place in the year 2019, which shows the mandate of the voters of the constituency.
39. Section 32D of the Act of 1961 provides that a person against whom an order is passed under Section 32C has to move an application within a period of 30 days from the date of publication of such order in the Official Gazette. Looking to the

fact that respondent No.1 has preferred a writ petition challenging the order passed against her under Section 32C of the Act of 1961, we direct the State Election Commission to consider the application under Section 32D of the Act of 1961, which would be filed by respondent No.1 before it, to be within limitation and to pass appropriate order on such application on its own merits in accordance with law.

40. Considering the fact that after passing of the order of disqualification against the respondent No.1 on 1.6.2017, she had approached this Court by filing a writ petition which came to be decided in her favour vide order dated 24.8.2017; respondent No.1 has completed her elected term and she was again elected on the said post and also keeping in mind the provision of Section 32D of the Act of 1961, which empowers the State Election Commission to remove the disqualification, we direct that the order dated 1.6.2017 passed by appellant Chhattisgarh State Election Commission shall remain in abeyance till the application of respondent No.1 under Section 32D of the Act of 1961 is decided by the State Election Commission.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-