

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE THIRD DAY OF NOVEMBER
TWO THOUSAND AND TWENTY

PRESENT

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION NO: 8581 OF 2020

Between:

Smt. Jetti Sandhaya Rani, W/o Jetti Kumar, Hindu, a/a 32 years, Occ. Agriculture,
R/o H.No.1-8, Wadkapur Julapalli Mandal, Peddapalli District, Telangana State-505525.

...PETITIONER

AND

1. The State of Telangana, Rep. by its Principal Secretary, Panchayatraj and Rural Development Department, Secretariat, Hyderabad, Telangana State-500 004.
2. The Telangana State Election Commission, Rep. by its Secretary, 1st Floor, DTCP Buildings, Opp. PTI buildings, AC Guards, Hyderabad.
3. The District Collector/District Election Authority, Peddapalli District, Peddapalli, Telangana State.
4. The District Panchayat Officer, Peddapalli District, Peddapalli, Telangana State.
5. The M.P.D.O/Asst. Election authority, Mandal Parishad Office, Julapalli, Peddapalli District, Telangana State.
6. Grampanchayat Wadkapur, Rep. By its Panchayat Secretary, Julapalli Mandal, Peddapalli District, Telangana State-505525.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order or Direction Particularly one in the nature of Writ of Mandamus, declaring the order passed by the 2nd respondent vide No. 2774/TSEC- PR/Julapally/GPS/2019 (56) dated 10/03/2020, in exercise of powers conferred U/s 23 of the Panchayat Raj Act 2018 and Under Rule 106(3) and 106(7) of State election Rules 2018, as illegal and arbitrary and violative of principles of natural justice, consequently set aside the order passed by the 2nd respondent vide No.2774/TSEC-PR/Julapalle/GPS/2019 (56) dated 10/03/2020 in exercise of powers conferred U/s 23 of the Panchyat Raj Act 2018 and under Rule106(3) and 106 (7) of State election Rules 2018.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order passed by the 2nd respondent vide No 2774/TSEC PR/Julapally/GPS/2019 (56) dated 10/03/2020 in exercise of powers Conferred U/s 23 of the Panchyat Raj Act

2018 and under Rules 106(3) and 106(7) of State election Rules 2018, pending disposal of the writ petition.

Counsel for the Petitioner: SRI. P. VENKANNA

Counsel for the Respondent Nos.1, 3, 4 and 5:
GP FOR PANCHAYAT RAJ & RURAL DEVELOPMENT

Counsel for the Respondent No.2: SRI VIDYA SAGAR, SENIOR COUNSEL FOR
SRI P. SUDHEER RAO, SC FOR T.S. ELECTION COMMISSION

Counsel for the Respondent No.6: SRI G. NARENDER REDDY,
SC FOR GRAM PANCHAYAT

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.8581 of 2020

ORDER:

The petitioner challenges her disqualification order dated 10.01.2020 passed under Section 23 of the Telangana Panchayat Raj Act, 2018, read with Rule 106 of the Telangana Panchayat Raj (Conduct of Elections) Rules, 2018.

It is a case where the petitioner was elected as a Ward Member, Ward No.1 of Wadkapur Grampanchyat on 30.01.2019. Results were also declared on 30.01.2019. In terms of Section 237 and 238 of the Rules, the petitioner is required to submit the election expenditure within 45 days i.e., on or before 18.03.2019. It is the case of the petitioner that as per the impugned order, the petitioner was issued with a Show Cause notice on 11.11.2019, which was served through MPDO on 05.12.2019, putting the petitioner on notice that the petitioner had failed to comply with the mandatory submission of election expenditure in terms of Section 103 of the Rules within 45 days, and as such she has incurred disqualification in terms of Section 23 of the Act. The petitioner denies having received any such Show Cause notice on 05.12.2019. Inasmuch as there was no Show Cause notice issued to the petitioner, the petitioner asserts that had a Show Cause notice been issued to the petitioner, the petitioner would have submitted her explanation, more particularly, with respect to the factum of submission of election expenditure.

Counter affidavits have been filed by the State Election Commission, and also by the MPDO.

As per the counter affidavit of the MPDO, a report dated 16.10.2019 was furnished to the State Election Commission

mentioning the details of candidates who have failed to submit election expenditure and thereafter the Show Cause notice dated 11.11.2019 was served on 05.12.2019 under Acknowledgment. Copy of the notice bearing the signature of the petitioner was also enclosed with the counter affidavit.

It is the case of the learned counsel for the petitioner that the petitioner is in the habit of signing in Telugu language, and denies receipt of Show Cause notice dated 11.11.2019 wherein the petitioner is alleged to have signed in English.

On the other hand, learned Senior Counsel Sri Vidyasagar submits that there being no reply affidavit filed denying the factum of the petitioner receiving the Show Cause notice and denying the signature of the petitioner, such a rebuttal contention cannot be accepted. Apart from that, learned Senior Counsel contends that the notice is only to ensure that the candidates abide by the mandatory requirement of submission of election expenditure; and even assuming that election expenditure is submitted in response to such notice, the same would not absolve the candidate from the rigor of non-compliance under Section 238 of the Act.

Learned Senior Counsel would contend that there are two independent issues - (1) submission of election expenditure pursuant to the notice, and (2) the explanation for delay for non-compliance. It is only in cases where the expenditure details are submitted before issuance of Show Cause notice, albeit belatedly, the justification of delay would arise, and not in other cases. It is the assertion of the learned Senior Counsel that the petitioner, except making a bald statement, miserably failed in setting out the details of election

expenditure or the details of alleged submission of election expenditure.

Having regard to the submissions made, at the outset it may be noted that this Court is not an appellate Court and the scope of examination with respect to the orders passed by the 2nd respondent-Election Commission is limited.

There is no dispute that the Act and the Rules mandate election expenditure be submitted within 45 days from the date of declaration of the results. The Show Cause notice which is required to be issued in terms of Sub-Rule (4) of Section 106 of the Rules cannot be construed as an opportunity for a candidate to submit election expenditure for the first time after issuance of the Show Cause notice. It is only in the event of there being compliance as per Rules with the submission of expenditure it would satisfy the requirement under the Rules. It may be noted that it is Section 238 of the Act which mandates submission of election expenditure within 45 days.

The Rules would have to be construed in consonance with the Act, and the Show Cause notice which is required to be given under Sub-Rule (4) of Section 106 of the Rules is only to ensure compliance of the mandate under Section 238 of the Act relating to submission of election expenditure. A conjoint reading of the Rules 106(3) to 106(5) would disclose the limited scope of State Election Commission for considering the reasons for the delay, if any, in non-compliance with the mandate under Section 238 of the Act for submitting election expenditure within 45 days, and not with respect to the submission of election expenditure after issuance of notice under Sub-Rule (4) of Section 106 of the Rules. The Rule by itself does not provide the

Election Commission with such a power to consider the delay in submission of election expenditure after issuance of the Show Cause notice under Sub-Rule (4) of Section 106 of the Rules.

Even assuming for argument sake that in a given case the election expenditure was submitted after issuance of Show Cause notice under Sub-Rule (4) of Section 106 of the Rules, the same would have to be considered in a narrow sense of gathering of election expenditure by Election Commission, and the delay from the date of election to the date of issuance of Show Cause notice under Sub-Rule (4) of Section 106 of the Rules or the submission of election expenditure under Sub-Rule (5) of Section 106 of the Rules after the issuance of notice under Sub-Rule (4) of Section 106 also is required to be explained.

In this context, Sub-Rule (4) of Section 106 is relevant, which reads as under:

"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, the Commission shall by notice in writing call upon the candidate to show cause why he/she should not be disqualified, and declared to have ceased to hold office under Section 23 of the Act for the failure in case he/she is elected."

The language of Sub-Rule(4) of Section 106 gives scope to consider the reasons for delay in submission of election expenditure in the manner prescribed under the Act and the Rules, within the time-frame stipulated under the Act. It may be noted that Sub-Rule (4) of Section 106 requires the State Election Commission to issue notice upon a candidate to Show Cause as to why he/she should not be

disqualified etc. In this context, it may be noted that the objective of stipulating a time-frame for submission of election expenditure is to control money play in the elections, and the objective would get defeated if an open-ended opportunity is given to candidates to submit election expenditure as per their volition or submit the same only after issuance of Show Cause notice.

In the present case on hand, though the learned counsel for the petitioner makes a bald statement that the petitioner had submitted details of election expenditure, the petitioner had neither mentioned the date of submission of election expenditure nor enclosed a copy of the election expenditure details as mandated under the Act.

In those circumstances, the writ petition does not merit any consideration and accordingly, the same is dismissed. No costs. Miscellaneous petitions, if any pending, shall also stand dismissed.

SD/-N.CHANDRA SEKHAR RAO
ASSISTANT REGISTRAR

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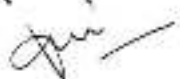
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(For His Lordship's Kind Perusal)

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5. Two CCs to GP for Panchayat Raj & Rural Development, High Court for the State of Telangana at Hyderabad. [OUT]
6. One CC to Sri P. Sudheer Rao, SC for T.S. Election Commission [OPUC]
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HIGH COURT

DATED:03/11/2020

ORDER

W.P.No.8581 of 2020



DISMISSING THE WRIT PETITION
WITHOUT COTS

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Dt 17/11/2020