HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY ,THE TWENTY FOURTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY

PRESENT

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION NO: 23498 OF 2020

Between:

Shaik Jamal Bee, W/o Imam Saheb, Aged 46 years, Occ.House-wife, R/o H.No.7-3-260, Riccob Bazar, Khammam Urban, Khammam District-507001, State of Telangana.

...PETITIONER

AND

1. State of Telangana, Rep by its Prl Secretary Municipal Administration and Urban Development, Telangana Secretariat, Hyderabad
2. Telangana State Election Commission, Rep. by its Secretary, 1st Floor, DTCP Building, Opp. PTI Building, A.O Guards, Hyderabad-500004.
3. Collector and District Election Authority, Khammam District,
4. The Municipal Commissioner-Cum-Returning Officer, Khammam Municipal Corporation, Khammam District
5. Khammam Municipal Corporation, Rep. By its Commissioner, Khammam, Khammam District

...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 Writ, order or direction more in the nature of Mandamus, declaring the impugned the Order No.312/TSEC-L/2016-(31) Dated.08/08/2019 issued by Respondent No .2, disqualifying the Petitioner from contesting any election to be held for any office under the provisions of GHMC Act, 1955 for a period of 3 years from the date of the order as, arbitrary illegal unjust and violation of Principles of Natural Justice and violation of Articles 14 16 and 21 of the Constitution of India, consequently set-aside the impugned Order No.312/TSEC-L/2016-(31) Dated.08/08/2019 issued by Respondent No.2 and declare that the Petitioner is entitled to contest in any elections to be held for any office under the provisions of the provisions of GHMC Act, 1955 with all consequential benefits in the interest of justice.

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 operation of the impugned Order No.312/TSEC-L/2016-(31). Dated.08/08/2019 issued by Respondent.No.2, pending disposal of the writ petition, without insisting in the interest of justice.

Counsel for the Petitioner : SRI RAMESH BURA
Counsel for the Respondent No.1: GP FOR MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT
Counsel for the Respondent Nos.2 & 3: SRI P.SUDHEER RAO, SC FOR TSEC
Counsel for the Respondent Nos.4 & 5:Ms. M.BHAGYA SREE,
SC FOR MUNICIPALITY

The Court made the following: ORDER

THE HON BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION No.23498 of 2020

ORDER:

Heard the learned counsel for the petitioner, the learned Government Pleader for Municipal Administration and Urban Development for respondent No.1, the learned Standing Counsel for Telangana State Election Commission, for respondent No.2, and Ms.M.Bhagya Sree, the learned Standing Counsel for respondent Nos.3 to 5. With their consent, the Writ Petition is disposed of at the stage of admission itself.

The present Writ Petition is filed aggrieved by the orders passed by respondent No.2 vide proceedings No.312/TSEC-L/2016-[31], dated 08.08.2019, disqualifying the petitioner from contesting the election to be held under the Telangana Municipality Act, 2019, for a period of three years on the ground that the petitioner had not submitted the election expenditure.

When the matter is taken up for hearing, the learned counsel for the petitioner has submitted that the lis in the present writ petition is squarely covered by the orders passed this Court in W.P.No.17075 of 2018 & batch, dated 20.03.2019.

The above said submission is not disputed by the learned Standing Counsels appearing for the respondents herein.

In view of the same and for the reasons alike in the order, dated 20.03.2019, passed in W.P.No.17075 of 2018 & batch, the present Writ Petition is allowed and the disqualification order, dated 08.08.2019, passed by respondent No.2 is hereby set aside.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

SD/-T.KRISHNA KUMAR
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Prl Secretary Municipal Administration and Urban Development, State of Telangana, Telangana Secretariat, Hyderabad
2. The Secretary, Telangana State Election Commission, 1st Floor, DTCP Building, Opp. PTI Building, A.O Guards, Hyderabad-500004.
3. Collector and District Election Authority, Khammam District,
4. The Municipal Commissioner-Cum-Returning Officer, Khammam Municipal Corporation, Khammam District
5. The Commissioner, Khammam Municipal Corporation, Khammam, Khammam District
6. One CC to Sri Ramesh Bura, Advocate [OPUC]
7. One CC to Sri P.Sudheer Rao, SC for TSEC, Advocate [OPUC]
8. One CC to Ms. M.Bhagya Sree, SC for Municipality, Advocate [OPUC]
9. Two CCs to GP for Municipal Administration and Urban Development, High Court for the State of Telangana at Hyderabad. [OUT]
10. Two CD Copies

(Along with a copy of order dt:20/03/2019 in W.P.No.17075 of 2018 and Batch)

sm

HIGH COURT

DATED:24/12/2020

ORDER

WP.No.23498 of 2020



ALLOWING THE WP

WITHOUT COSTS

12
21/1/21

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION Nos.17075, 17080, 17196, 18350, 18401, 18504, 19105, 19773, 19821, 19824, 19957, 20078, 20280, 20309, 20549, 20567, 21273, 21318, 22551, 22559, 22592, 32815, 46707, 47519, 47558, 47789, 48054, 48067, 48071, 48118, 48120 and 48124 of 2018;
61, 80, 122, 208, 210, 213, 215. 244, 257, 271, 279, 280, 305, 323, 324, 325, 327, 347, 360, 369, 394, 395, 397, 399, 402, 405, 406, 407, 410, 414, 415, 416, 420, 422, 424, 430, 432, 434, 441, 451, 453, 455, 460, 497, 596, 597, 598, 600, 603, 605, 611, 612, 615, 616, 617, 618, 619, 622, 623, 625, 626, 627, 628, 629, 630, 631, 633, 634, 635, 637, 638, 641, 642, 644, 645, 647, 648, 649, 650, 651, 652, 653, 655, 658, 660, 664, 665, 666, 667, 668, 669, 671, 673, 674, 675, 676, 677, 679, 681, 683, 684, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 697, 698, 699, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 716, 717, 718, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 736, 738, 739, 742, 743, 744, 746, 747, 748, 749, 751, 752, 753, 754, 755, 756, 757, 759, 760, 761, 762, 763, 764, 765, 766, 768, 769, 770, 771, 772, 773, 775, 776, 777, 778, 779, 780, 782, 783, 784, 806, 860, 869, 870, 871, 885, 886, 887, 893, 1675, 1745, 3263, 3341, 3591, 3617, 3645, 3649, 3650, 3653, 3775, 4730, 4881 5173 and 5257 of 2019

COMMON ORDER

The issue for consideration in all these writ petitions being the same, they are amenable to disposal by way this common order.

The petitioners in these cases contested in the elections held in 2013 and 2014 to various posts falling within the purview of the Andhra Pradesh Panchayat Raj Act, 1994 (*for brevity*, 'the Act of 1994'). Some of them contested for the posts of Sarpanches/Ward Members of Gram Panchayats in the elections held on 23.07.2013, 27.07.2013 and 31.07.2013 while others were in the fray for the posts of members of Mandal Parishad Territorial Constituencies (MPTCs)/Zilla Parishad Territorial Constituencies (ZPTCs) in the elections held in April, 2014.

While so, the Telangana State Election Commission (*for brevity*, 'the Commission') disqualified all the petitioners under Section 19-B of the Act of 1994, which was applicable to the State of Telangana after its

formation on 02.06.2014. By way of these writ petitions, they assail the validity of the disqualification visited upon them.

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 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 Andhra Pradesh Panchayat Raj (Conduct of Elections) Rules, 2006 (*for brevity*, 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,--
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> (a) the name of each contesting candidate;
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> (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 batch of cases.

The results of the three-phase elections held on 23.07.2013, 27.07.2013 and 31.07.2013 to the posts of Sarpanches/Ward Members of Gram Panchayats were declared on the date of each such poll. Therefore, the stipulated forty-five days for submission of accounts of election expenses by candidates who participated in these elections expired on 05.09.2013, 09.09.2013 and 13.09.2013 respectively. As regards elections to the posts of members of MPTCs and ZPTCs, they 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.

Be it noted that some of the petitioners in these cases claim that they submitted their accounts of election expenses while others admittedly failed to do so. However, the Commission uniformly claims that none of the petitioners in these cases submitted their accounts of election expenses within time and as per procedure. This question of fact may however not be of any significance for the reasons stated hereinafter.

It is on the basis of the alleged failure of the petitioners to submit their accounts of election expenses as per due procedure within the

stipulated time that the Commission passed the impugned orders of disqualification in the later part of 2017 in most cases and in early 2018 in the others, exercising power under Section 19-B of the Act of 1994 read with Rule 103(8) of the Rules of 2006, declaring each of the petitioners in these cases as ineligible to contest in any election for any office under the Act of 1994 for three years from the date of issuance of the order.

Interim orders of suspension were however passed by this Court in all these cases. As all the orders run on the same lines, it would suffice to refer to one such order. In W.P.No.22551 of 2018, the following interim order was passed on 04.01.2019:

> 'Perusal of the statutory scheme under the Panchayat Raj Act and the Rules framed thereunder demonstrates that the election authorities were required to take timely measures in relation to the candidates who failed to submit their accounts of election expenses within the stipulated time of 45 days. So much so, an elected member could be disqualified for failing to lodge an account of election expenses and ceased to hold office with immediate effect upon publication of an order in the Official Gazette.
>
> Though a counter-affidavit was filed by the Secretary of the State Election Commission, there is no explanation forthcoming as to why steps were not taken by the State Election Commission to follow up with the District Election Authority with regard to the candidates who had failed to file the account of their election expenses within the stipulated time and to take timely measures to disqualify such candidates.
>
> That being so, the impugned order reflects that the authorities were somnolent in the matter despite the expiry of the stipulated 45 days as long back as in the year 2013 and took steps only in the year 2018. The dereliction of duty on the part of the authorities would therefore outweigh the inaction, if any, of the candidate.
>
> There shall accordingly be interim suspension as prayed for.'

Counter-affidavits were filed by the Commission in some of the cases. As its stand is common in all of them, it would be sufficient for the purposes of this order to refer to the contents of one such counter.

In W.P.No.22551 of 2018, the Secretary of the Commission filed a counter in August, 2018, wherein, after referring to the statutory

provisions set out *supra*, he 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 report dated 30.05.2017 to the Commission, furnishing the list of 1618 candidates who had failed to lodge their election expenses within the stipulated forty-five days from the date of declaration of the election results. The petitioner in W.P.No.22551 of 2018 was stated to be amongst those named in this list. In exercise of power under Rule 103(5) of the Rules of 2006, the Commission issued show-cause notice dated 06.06.2017 to the petitioner calling for an explanation within twenty days as to why he should not be disqualified under Section 19-B of the Act of 1994. The said notice was served upon the petitioner on 19.06.2017 but he failed to give his reply in response thereto. The Commission accordingly passed the impugned order dated 12.01.2018, declaring him

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 his report only on 30.05.2017 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.

For good measure, written submissions were also filed by the Commission. Therein, while again adverting to the statutory provisions, it was pointed out that the responsibility of the District Election Authority under Rule 103 of the Rules of 2006 to compile and submit a further report started only upon receipt of a report from the MPDO. It was asserted that the language of sub-rules (1), (2) and (4) of Rule 103 of the Rules of 2006 did not specify or use the word 'immediately', which found mention in sub-rule (2) and sub-rule (3) of Rule 103. According to the Commission, sub-rule (3) of Rule 100 permitted the MPDO to receive an account of election expenses even after expiry of the due date and therefore, a conjoint reading of the sub-rules of Rule 103 showed that the District Election Authority was not required to forward a report to the Commission immediately upon expiry of forty-five days. It was also pointed out that sub-rules (6) and (8) of Rule 103 did not use the word 'immediately' and merely said 'as soon as may be'. The Commission stated that it was for the entire State while District Election Authorities functioned in each of the districts and therefore, as the role of the Commission was different from that of District Election Authorities, no

time frame was prescribed for it. According to the Commission, the Act of 1994 and the Rules of 2006 did not prescribe any time frame within which a decision was to be taken by the Commission and in the absence of such limitation, the orders of the Commission, invoking Section 19-B, could not be found fault with on the sole premise that the Commission did not adhere to the time frame.

The Commission further stated that disqualification under Section 19-B was consequential upon the lapse on the part of the contesting candidate concerned and did not amount to penal action. It was pointed out that after the formation of the State of Telangana with effect from 02.06.2014, the Government of Telangana adopted the Act of 1994 and the Rules made thereunder, by exercising power under Section 101 of the Andhra Pradesh Reorganization Act, 2014, *vide* G.O.Ms.No.9, Panchayat Raj and Rural Development Department, dated 12.09.2014. The Commission was stated to have been constituted in September, 2014, under Article 243K read with Article 243ZA of the Constitution and it was only thereafter that the Commission addressed letters to the District Election Authorities to submit accounts of election expenses filed by contesting candidates. Some of the District Election Authorities obeyed this directive but in so far as Karimnagar, Nalgonda, Ranga Reddy and Warangal Districts are concerned, no details were furnished. The Commission again addressed letters dated 24.08.2015 to the District Election Authorities of these districts calling upon them to furnish the details, but to no avail. Similar letters were also addressed by the Commission to the Zilla Praja Parishads (ZPPs). Again, the Commission issued reminders to the District Election Authorities and the Chief Executive Officers of ZPPs on 08.10.2015. Upon receipt of the accounts of

election expenses submitted by candidates and the reports of the District Election Authorities, the Commission was stated to have exercised powers under Rule 103(5) of the Rules of 2006 and issued notices to candidates who had failed to submit their election expenses as per procedure. The Commission therefore claimed that it had followed the due procedure before disqualifying such candidates, viz., the petitioners before this Court. Reference was made to case law in support of the Commission's contention that such disqualification does not partake the nature of a punishment or a stigma. The action taken by the Commission in each of these cases was therefore sought to be justified.

The letters dated 24.08.2015 and 08.10.2015 addressed by the Commission to the lower authorities are placed on record. The Commission also produced the letters received from the District Election Authorities, which clearly demonstrate that such reports were submitted by these authorities only in May, 2017, and thereafter.

Sri G.Vidya Sagar, learned senior counsel appearing for Sri P.Sudheer Rao, learned counsel for the Commission, would forcefully argue 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 would state that the objective sought to be achieved by the statutory scheme has to be kept in mind by this Court while dealing with the cases on hand. He would point 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 would contend 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 would assert 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, by which date the stipulated forty-five day period had already expired in so far as candidates who participated in the elections to the posts of Sarpanches/Ward Members of Gram Panchayats were concerned and as regards candidates in the elections to the posts of MPTC/ZPTC members, the stipulated forty-five day period expired on 26.06.2014, even before the constitution of the Commission in September, 2014. He would further point 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, would have to be taken into consideration while testing the delay in taking action against the petitioners. He would assert that setting aside the disqualification visited upon the petitioners 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 by this Court upon law breakers.

Though, ordinarily, this Court would not entertain writ petitions in relation to election matters, this self-imposed restraint is not intractable. In **MANDA JAGANNATH V/s. K.S.RATHNAM**[1], the Supreme Court pointed out that there may be special situations wherein writ jurisdiction can be exercised even in matters relating to elections - a special situation would mean one where errors have the effect of interfering in the free

[1] AIR 2004 SC 3600

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 cases on hand would squarely fall within the exception adumbrated by the Supreme Court in **MANDA JAGANNATH**[1], for the reasons set out hereinafter, these writ petitions are maintainable.

It is no doubt true that a laudable objective is sought to be achieved by the statutory scheme, which obligates cancidates 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 2013 elections/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. At this stage, it may also be noted that the Commission has an explanation to offer for the delay only in respect of four out of these five districts. There is no

mention as to why steps were not taken within time in the cases of erring candidates hailing from Medak District.

Be that as it may.

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 petitioners. 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. Further, it would not be necessary to go into the disputed question of fact as to whether some of the petitioners did actually submit their accounts of expenses as per procedure, thereby fulfilling their mandatory obligation.

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 contesting 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, would contend 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 petitioners on the ground that they themselves failed to submit their 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 MIRI**[2] 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

[2] 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 these cases.

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, DELHI**[3] 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 orders impugned in

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[3] AIR 2001 AP 538

these cases, the inevitable consequence that flows therefrom is that each of the petitioners stood disqualified from contesting in elections for any office under the Act of 1994 for a period of three years from the date of each such individual order of disqualification. As already noted *supra*, the elections in question were held in July, 2013 and April, 2014 and the stipulated forty-five days expired in September, 2013 and in June, 2014, as the case may be. It is an admitted fact that reports were submitted by the District Election Authorities of four out of the five districts in question, leaving Medak aside, only in May, 2017 and thereafter. The Commission, no doubt, was quick to act upon the same and orders of disqualification were issued either in 2017 itself or in early 2018. However, there is no getting over the fact that the District Election Authorities 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 petitioners. The effect of the impugned orders which were issued, wittingly or otherwise, just prior to the expiry of the five year term of office of those elected in the 2013/2014 elections, was that none of the petitioners were 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 orders granted by this Court that the petitioners 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. It may also be noted that in so far as the elections held in 2013 were concerned, the stipulated period of forty-five days expired in September, 2013 itself, long before formation of the new State of Telangana and the issues that cropped up thereafter.

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

The writ petitions are allowed. Pending miscellaneous in this batch of cases, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

20th MARCH, 2019.

L/R copy to be marked - Yes
B/o PGS