

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.4760 OF 2018

Sanjay Bhaurao Tapase
Aged Major, Occ: Agriculturist,
R/o Wagholi, Tah. Hinganghat,
Dist. Wardha.

..... **PETITIONER**

...V E R S U S...

1. Divisional Commissioner,
Nagpur Division, Nagpur.
2. Collector Wardha, Dist. Wardha.
3. Zilla Parishad Wardha, through its
Chief Executive Officer.
4. Tahsildar Hinganghat, Dist. Wardha. **RESPONDENTS**

Mr. Apurv De, Advocate for Petitioner.
Ms. T. H. Khan, AGP for Respondents 1, 2 & 4/State.
Mr. P. S. Wathore, Advocate for Respondent 3.

CORAM: **ROHIT B. DEO, J.**
DATE: **25th FEBRUARY, 2022.**

ORAL JUDGMENT:

Heard. **Rule.** With consent, the petition is finally
heard.

2. The petitioner is assailing the order dated 05.12.2017

rendered by the District Collector, Wardha in purported exercise of power under Section 15B of the Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961 (Act) which provide that upon failure of the candidate to lodge an account of election expenses within the time and in the manner required by the Election Commission, **and there is no good reason or justification for such failure, the State Election Commission may, declare the candidate disqualified, and upon such disqualification the candidate shall not be eligible to contest an election for being a Councilor for a period of five years from the date of the order.** Sub-section (2) further provide, that the State Election Commission may, for reasons to be recorded, remove any disqualification under sub-section (1) or reduce the period of any such disqualification.

3. The controversy lies in narrow compass and only few facts, which are either admitted or are irrefutable, may be noted.

4. The petitioner was a candidate in the election to Constituency 46-Wagholi, Tahsil Hinganghat, District Wardha which was held on 16.02.2017. The result was declared on 23.02.2017. The State Election Commission had prescribed that the account of the election expenses be lodged within thirty

days from the date of declaration of the result, and ordinarily the petitioner was obligated to lodge the account on or before 25.03.2017. However, the petitioner was in judicial custody and was released from custody on 27.03.2017 pursuant to order of bail dated 22.03.2017. The petitioner lodged the account on 30.03.2017.

5. In response to the show cause notice issued the petitioner pleaded that he did have justification for not lodging the account within the stipulated period, and narrated the aforesaid factual position. However, without applying mind to the justification, and presumably on the assumption that failure to lodge account within the stipulated period *ipso facto* entails disqualification, the order impugned is passed by the Collector, which is confirmed by the Commissioner.

6. Apart from the broader question whether the provision invoked is mandatory or directory, I am satisfied that the order impugned is illegal since the provision itself obligates the authority, as delegate of the State Election Commission, to apply mind to the justification pleaded.

7. The orders impugned are unsustainable and are set aside. It shall be open for the Collector, if deemed fit, to decide the matter afresh after hearing the petitioner.

8. The petition is allowed in the aforestated terms.

JUDGE

NSN