

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR

WRIT PETITION No.7053 OF 2021

ORDER:

Heard Sri.Naresh Reddy Chinnolla, learned counsel for the petitioner, learned Government Pleader for Panchayath Raj for respondent No.1, Sri.G.Vidyasagar, learned Senior Counsel on behalf of Sri.P.Sudheer Rao, learned Standing Counsel for respondent No.2 and Sri.G.Narender Reddy, learned Standing Counsel for respondent No.3.

02. This Writ Petition is filed questioning the Order No.678/TSEC-Admin/NML-Narsapur-G/2020 (15) dated 06.02.2021 issued by the respondent No.2 through which the petitioner was disqualified to contest in any election to be held under the provisions of Telangana Panchayath Raj Act, 2018 (for short 'the Act, 2018') for a period of three years from the date of said order. The said order was issued in exercise of power under Section 23 of the Act, 2018 and Rule 106 (3) and 106 (7) of the Telangana Panchayath Raj (Conducting of Elections) Rules, 2018, (for short 'the Rules, 2018').

03. The facts of the case are that, the petitioner herein contested for the post of Surpanch of Rampur Grampanchayath, Narsapur Mandal, Nirmal District in the elections that were held on 25-01-2019 and results were declared on the same day and the petitioner lost the election. Through the impugned order the petitioner is disqualified from contesting any election under the Act, 2018 on the ground that the petitioner failed to comply the obligations cast upon him in terms of Section 238 of the Act, i.e., he failed to submit his account of Election Expenses, as required under the said provision. There is no dispute that the petitioner has not submitted his account of Election Expenses within the stipulated period under Section 238 of the Act, 2018. However, in the affidavit filed in support of the above Writ Petition, it is contended that because of the health reasons, the petitioner could not submit his account of Election Expenses in the prescribed proforma within 45 days. It is also an admitted fact that a Show-cause notice was issued to the petitioner in the

month of September, 2020 and the petitioner also admitted to have received the said Show-cause notice issued by the second respondent and submitted his explanation explaining the reason for failure to submit his account of Election Expenses.

04. It is contention of the learned counsel for the petitioner that impugned Order came to be passed mechanically without considering the explanation submitted by the petitioner and the same was issued in violation of the procedure established under the Act, 2018 and the impugned Order is issued after inordinate delay and hence the same is liable to be set aside. The learned counsel for the petitioner also placed reliance on Judgment of a learned Single Judge of this Court in W.P.No.17075 of 2018 and batch, which was confirmed by the Hon'ble Division Bench of this Court in W.A.No.120 of 2020, and contended that the said Judgment applies to the case of the petitioner herein.

05. On the other hand, learned Senior Counsel Sri.G.Vidyasagar, contended that though the petitioner has

submitted his explanation by saying that because of health reasons, he could not submit his account of Election Expenses within time, but the petitioner failed to substantiate the same by producing relevant record to show that the petitioner was suffering from health issues at the relevant. In the absence of any material in support of the alleged health issues of the petitioner, explanation submitted by the petitioner was found to be not satisfactory and the same was considered by the respondent No.2 while passing impugned Order. He further contended that a duty is cast upon the every contesting candidate in terms of Section 238 of the Act, 2018 to submit their return of election expenses and the same is a mandatory requirement. Failure to comply the said requirement would follow the consequences as provided under the Act, 2018 and the Rules made thereunder. Thus submitted that the impugned order is perfectly legal.

06. Sri.G.Narender Reddy, learned Standing Counsel for respondent No.3 also supported and adopted the

arguments of learned Senior Counsel and submitted that the Show-cause notice duly served upon the petitioner and the same was submitted to the respondent No.2 along with report.

07. A perusal of Section 238 of the Act, is very clear and in terms thereto, every contesting candidate at an election, within 45 days from the date of declaration of results of election, shall submit his account of Election Expenses. There is no dispute about the mandatory requirement of submitting the account of Election Expenses, within 45 days. A failure to submit the account of Election Expenses would lead to the initiation of action as provided under Section 23 of the Act, 2018. Under Section 23 of the Act, 2018 the State Election Commission is conferred with power to declare any candidate to be ineligible for a period of three years from contesting any election held for any Office under the Act, 2018 and to declare any candidate elected as ceased to hold office, in case of failure to lodge account of Election Expenses within time. There is no dispute about the power of the second respondent/election

commission to pass any order in the nature of impugned order. However, while passing any Order under Section 23 of the Act, 2018, the procedure prescribed under the Rules, 2018, is required to be followed.

08. Rule 103 of the Rules, 2018 deals with the procedure that is required to be followed while exercising the power under Section 23 of the Act, 2018. In the instant case, there is no allegation of non-compliance with any of the procedural requirements provided under Rule 106 of the Rules, 2018 or under Section 23 of the Act, 2018. The only contention raised by the learned counsel for the petitioner is that there is inordinate delay in issuing impugned Order.

09. From the material on record, it is seen that election in question was held on 25-01-2019 and the prescribed period of 45 days time was expired on 11-03-2019 and Show-cause notice dated 09-07-2020 was issued by the second respondent and the same was served upon on the petitioner in the month

of September, 2020 and final order under Section 23 of the Act came to be passed on 06-02-2021.

10. The learned counsel for the petitioner placed reliance on a decision of a learned Single Judge of this Court in W.P.No.17075 of 2018 and batch, which was confirmed by the Hon'ble Division Bench of this Court in W.A.No.120 of 2020. That is a case where the proceedings for disqualification were initiated after a lapse of four years i.e., just before the conclusion of the term of five years. Under those circumstances, the learned Single Judge of this Court held that the very object and purpose of the Act, is defeated by issuing Show-cause notice at a very belated stage but in this case that is not the situation. Further in this case itself, the very same issue delay in initiating proceedings for disqualification came up for consideration and the Hon'ble Division Bench of this Court on a references made by another learned Single Judge of this Court and the Hon'ble Division Bench held as under:

"As the issue involved in all these cases is one and the same, W.P.No.7053 of 2021 is taken up for consideration and the facts of the aforesaid case are as follows:

The Writ Petitioner being aggrieved by the order dated 06-02-2021 passed by the respondent No.2/Telangana State Election Commission came up before the learned Single Judge challenging the validity and legality of the aforesaid order passed under the Telangana Panchayath Raj Act, 2018 (for short, "the Panchayat Raj Act"). The writ petitioner participated in the election process for the post of Sarpanch of Rampur Grampanchayat, Narsapur (G) Mandal, Nirmal District and as stated in the order dated 06-02-2021, the writ petitioner did not comply with the statutory provisions as contained in Sections 237 and 238 of the Panchayat Raj Act. The impugned order reveals that the show cause notice was issued and thereafter, taking into account the reply of the writ petitioners, an order has been passed under Section 23 of the Panchayat Raj Act read with Rule 106 (3) and 106 (7) of the Telangana Panchayath Raj (Conducting of Elections) Rules, 2018, declaring him ineligible for contesting in any elections for the next three years. He was also removed from the post of Sarpanch.

On 23-03-2021, the learned Single Judge of this Court has referred the matter to this Court keeping in view the fact that a learned Single Judge of this Court in W.P.No.17075 of 2018 and batch, on the ground of delay and laches in initiating the proceedings for non-furnishing of accounts, has allowed the writ petitions, vide order dated 20-03-2019 and another learned Single Judge of this Court, declining to interfere with the orders passed by the State Election Commission on the ground of delay and laches, has dismissed W.P.Nos.6715 of 2020 and batch, vide order dated 05-10-2020.

As there were two divergent views of two learned Single Judges, the matter has been placed before this Court.

This Court has gone through Sections 237 and 238 of the Panchayat Raj Act, and the same are reproduced as under:

"237. Account of Election

Expenses:- (1) *Every candidate, at any election held under this Act shall, either by himself or by his election agent, keep a separate and correct account of all expenditure incurred in connection with the election, between the date on which the candidate concerned has been nominated and the date of declaration of the result of the election, both dates inclusive hereinafter in this Chapter referred to as election expenses.*

Explanation-I: *Election expenses for purpose of this Act shall mean all expenses in connection with the election:-*

(a) *incurred or authorized by the contesting candidates or by his election agent;*

(b) *incurred, by any association, or body of persons, or by any individual (other than the candidate or his election agent) aimed at promoting or procuring the election of the candidate concerned; and*

(c) *incurred by any political party, by which the candidate is set up, so as to promote or procure his election:*

Provided that any expenses incurred by any political party as part of its general propaganda, (which is distinguishable from its election campaign for the promotion or procuring the election of a particular candidate), by words, either written or spoken or by signs or visible representations or by audio-visual devices or through print or electronic media or otherwise shall not

constitute election expenses' for purposes of this Act.

Explanation-II:- *For the removal of doubts, it is hereby declared that any expenses incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in subsection (9) of section 211 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenses in connection with the election incurred or authorized by a candidate or by his election agent for the purposes of this sub-section.*

(2) *The account of election expenses shall contain such particulars, as may by order, be specified by the State Election Commission.*

(3) *The total of the said expenses shall not exceed such amount, as may by order, be specified by the State Election Commission.*

238. Lodging of account with the Mandal Parishad Development Officer and Chief Executive Officer:- *(1) 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 Mandal Parishad Development Officer, an account of his election expenses, which shall be a true copy of the account kept by him or by his election agent under section 237.*

(2) *The Mandal Parishad Development Officer shall submit the copies of election expenditure statements in respect of,*

(a) the members of Gram Panchayat and Mandal Parishad directly to the State Election Commission;

(b) the members of Zilla Praja Parishad to the Chief Executive Officer, Zilla Praja Parishad concerned for onward submission to the State Election Commission.

The relevant statutory provisions as contained in Rules, 104, 105 and 106 of the Telangana Panchayat Raj (Conduct of Elections) Rules, 2018 are reproduced as under:-

“104. Notice by Mandal Parishad Development Officer or Chief Executive Officer of Zilla Praja Parishad as the case may be for inspection of accounts: *The Mandal Parishad Development Officer or Chief Executive Officer of Zilla Praja Parishad as the case may be shall, within two days from the date on which account of election expenses has been received by him/her under Rule 103, cause a notice to be affixed on his notice board, specifying:-*

(a) the name of the candidate;

(b) the date on which the account has been lodged before the Mandal Parishad Development Officer

(c) the amount reported as incurred and

(d) the time and place at which such account can be inspected by any intending person.

105. Inspection of account and the obtaining of copies thereof. *- Any person shall on payment of a fee of fifty rupees, be entitled to inspect any such account and on payment of Rs. 200/- or the actual cost of making copies whichever is lesser, be entitled to obtain attested copies of such account or any part thereof.*

106. Report by Mandal Parishad Development Officer or Chief Executive Officer of Zilla Praja Parishad as the case may be 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 238 for the lodging of the accounts of election expenses at any election, the Mandal Parishad Development Officer or Chief Executive Officer of Zilla Praja Parishad as the case may be shall, report to the State Election Commission -

(a) the name of each contesting candidate;

(b) whether such candidate has lodged his account of election expenses, and if so, the date on which such account has been lodged; and

(c) whether in his opinion such account has been lodged within the time and in the manner required by the Act and these rules.

He/she shall also publish the same information on the office notice board of the Mandal Praja Parishad or Zilla Praja Parishad as the case may be.

(2) Where the Mandal Parishad Development Officer or Chief Executive Officer of Zilla Praja Parishad as the case may be 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/she 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) 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.

(4) 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.

(5) Any contesting candidate who has been called upon to show cause under sub-rule (4) 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 Mandal Parishad Development Officer or Chief Executive Officer of Zilla Praja Parishad as the case may be a copy of his/her representation together with a complete account of his/her election expenses if he/she had not already furnished such an account.

(6) The Mandal Parishad Development Officer or Chief Executive Officer of Zilla Praja Parishad as the case may be, 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/she wishes to make thereon.

(7) If, after considering the representation submitted by the candidate and the comments made by the Mandal Parishad Development Officer or Chief Executive Officer of Zilla Praja Parishad as the case may be, 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, the Commission shall declare him/her by an order made under Section 23 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/she is an elected candidate declare him/her to have ceased to hold office with immediate effect and publish the order in the Official Gazette."

The aforesaid statutory provisions of law do not prescribe for any time limit for the election authority to issue show cause notice. However, it should be issued within a reasonable time.

In the present case, the elections took place in January, 2019 and the notice was issued in July, 2020. Meaning thereby, there was no inordinate delay in issuing notice to the writ petitioner, who has defaulted in the matter of furnishing of accounts, whereas in W.P.No.17075 of 2018 batch, which were decided by a learned Single Judge, there was an inordinate delay of about four years in issuing notice and in those circumstances, the aforesaid writ petitions were allowed on the ground of delay and laches.

In view of the aforesaid, this Court is of the considered opinion that as there is no inordinate delay in

the present case, the matter requires to be decided on merits by the learned Single Judge.

Resultantly, all the writ petitions are remitted back to the learned Single Judge to decide the matters on merits in accordance with law keeping in view the Telangana Panchayat Raj Act, 2018 and the Rules framed thereunder.

The Registry is directed to list all these matters before the learned Single Judge having roster, on 02.03.2022."

11. In the light of the said findings of the Hon'ble Division Bench of this Court, the ground of delay in issuing impugned proceedings, is not available to the petitioner, and the contention of the learned counsel for petitioner does not deserve any further consideration.

12. Even on the facts of the case, there is no much dispute that the petitioner failed to submit his account of Election Expenses within time stipulated under statute and also failed to substantiate the reason for not submitting the account of Election Expenses within time and no material is placed before respondent No.2 nor before this Court. Hence this Court does not find any merit in the contention of the learned

counsel for the petitioner with regard to non-consideration of the explanation submitted by the petitioner.

13. It is also not in dispute that every contesting candidate is required to give a declaration undertaking that he is fully aware of the process as well as various statutory obligations cast upon the contesting candidate. As seen from the counter affidavit filed by respondent No.2, the petitioner also furnished such declaration while submitting his nomination for the post of Sarpanch. Therefore, there is no obligation on the part of the respondent to issue any notice requiring the petitioner to submit account of Election Expenses, and it is the duty of the every contesting candidate elected or defeated, to submit their account of Election Expenses, in compliance of statutory mandate as provided under the provisions of Act, 2018, in particular Section 238 of the Act. The petitioner failed to comply such requirement and as such consequences as provided under the Act, 2018 are bound to follow. Therefore, this Court does not find any illegality or

perversity or error in the impugned order passed by the second respondent.

14. In view of the above discussion, this Writ Petition is liable to be dismissed.

15. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs.

The Miscellaneous Petitions, if any pending, in this Writ Petition shall stand closed.

MUMMINENI SUDHEER KUMAR, J

Dated: 28-Sep-2022
KHRM

HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR

WRIT PETITION No.7053 OF 2021

Dated: 28-Sep-2022
KHRM