

HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR

WRIT PETITION No.21158 of 2020

ORDER:

This Writ Petition is filed questioning the proceedings No.2985/TSECPR/Chinthapally/GPs/2019(10), dated 03-10-2020 issued by the 2nd Respondent/Election Commission in exercise of its power under Section 23 of Telangana Panchayath Raj Act, 2018 (hereinafter referred to as 'the Act, 2018) declaring that the petitioner is disqualified for contesting any post in the Election conducted under the Act, 2018 and also declaring that he shall be ceased to hold any post, if he is already elected.

02. It is the case of the petitioner that he contested for the post of 1st Ward Member of Chinthapally Grampanchayat, Chinthapally Municipality of Nalgonda District, in the Election that was held in the month of January, 2019 and he was got elected as 1st Ward Member of the said Grampanchayath. It is the further case of the petitioner that immediately after completion of elections, he submitted the account of Election

Expenses as required under law in proforma-III and the receipt of the same was also stated to have been acknowledged by the sixth respondent, but the sixth respondent once again required the petitioner to submit the account of Election Expenses on the ground that the account of Election Expenses earlier submitted by the petitioner was lost. According to the petitioner after submission of Account of Election Expenses, the petitioner was not issued with any notice except the Notice, dated 16-12-2019 and thereafter, the impugned Proceedings came to be issued disqualifying the petitioner to hold the post of 1st ward member of Grampanchayath. Thus the petitioner claim to have submitted his account of Election Expenses as required under law on 27.02.2020 and the same is also said to have been acknowledged by the respondent. It is further stated that the respondents have issued Show-cause Notice dated 16-12-2019 with predetermined mind to disqualify the petitioner from contesting elections, and the respondents instead of issuing notice to the candidates immediately after conducting the elections, waited for three

years and issued Show-cause notice and that the respondents have not taken any steps to educate the contesting candidates who contested for the first time, about requirement of submitting account of Election Expenses. Along with this Writ Petition the petitioner has filed a copy of Receipt dated 27.02.2019 stated to have been issued by the respondent No.6 acknowledging the receipt of account of Election Expenses from the petitioner and copy of account of Election Expenses said to have been submitted by the petitioner to the sixth respondent is also filed along with the Writ Petition.

03. In response to the notice issued by this Court, the sixth respondent filed counter denying the averments contained in the writ affidavit and further contended that in terms of Section 238 of the Act, 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 and the the Mandal Parishad

Development Officer shall submit the copies of election expenditure statements in respect of the members of Gram Panchayat and Mandal Parishad directly to the State Election Commission. It is further stated that in terms of Section 23 of the Act, in the event, the State Election Commission is satisfied that the elected candidate has failed to lodge an account of Election Expenses within the time and in the manner required under the provisions of the Act, 2018 and has no good reason or justification for the failure to substantiate the same, the State Election Commission shall, after following the procedure prescribed, by Order published in the Telangana Gazette declare such candidate 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 such person shall cease to hold office in case he is an elected candidate.

04. Heard Sri.Pulla Rao Yellanki, learned counsel for the petitioner and Sri.G.Vidyasagar, learned Senior Counsel for appearing on behalf of Sri.P.Sudheer, learned counsel for

the respondent No.2 and learned Government Pleader for Panchayath Raj.

05. Though impugned Order is passed by the respondent that State Election Commission, no separate counter-affidavit is filed on behalf of the State Election Commission. However, learned Senior Counsel placed reliance on the counter affidavit filed by the respondent No.6 to sustain the impugned Order.

06. The contention of the petitioner is that he has submitted his Account of Election Expenses on 27-02-2019 under the acknowledgment dated 27-02-2019, is specifically denied by the sixth respondent. It is on record that as the petitioner failed to submit his account of Election Expenses, the sixth respondent issued Showcause Notice dated 16.12.2019, to the petitioner to show cause as to why he should not be declared as disqualified. In response to the said Showcause Notice, the petitioner has submitted written reply stating that he could not file the account of Election Expenses within time due to ill-health and submitted his Account of

Election Expenses along with Medical Certificate. Thus it is evident that the contention of the petitioner that he has submitted his account of Election Expenses on 27.02.2019 is false.

07. A perusal of the relevant provisions of the Act, i.e., Section 238, 23 of the Act, 2018 and Rules 103 to 107 of Telangana State Panchayath Raj (Conduct of Elections) Rules, 2018 (hereinafter referred to as “the Rules, 2018”) shows that they deals with filing of Election Expenses to be maintained and submitted by the candidates in an election conducted under the provisions of the Act. Section 238 of the Act, mandates 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 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 in terms of Section 237 of the Act, 2018.

08. The Procedure for maintaining the account of Election Expenses, and submitting the same before Mandal

Parishad Development Officer etc., are dealt with under Rules 103 to 107 of the Telangana State Panchayath Raj (Conduct of Elections) Rules, 2018. A perusal of these provisions make it clear that it is mandatory on the part of any contesting candidate in the Elections conducted under this Act, to maintain and submit the account of Election Expenses within 45 days from the date of declaration of result. There is no dispute about the said mandatory requirement.

09. Section 23 of the Act deals with declaring the candidate as disqualified for contesting any post in the Election conducted under the Act, 2018 for failure to lodge account of Election Expenses. In terms of the said provision, if the State Election Commission is satisfied that a person failed to lodge account of Election Expenses within stipulated time or in the manner required by the Act, 2018 and has no good reason or justification for such failure to submit the same, the State Election Commission shall, after following the procedure prescribed, by Order published in the Telangana Gazette declare such candidate 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 such person ceased to hold office in case he is an elected candidate. Thus the provisions of the Act referred above, are clear and categorical and the said provisions cast legal obligation on the candidates, who contest the elections conducted under the Act, 2018 and a legal duty is cast upon the State Election Commission to take action in the event of failure to file the account of Election Expenses, as required under the above referred provisions.

10. Learned counsel for the petitioner placed reliance on the Judgment of this Court in the case of **Rajaiah Maraveni Vs. State of Telangana and others**¹ and contended that there is abnormal delay in issuing the Showcause notice and passing impugned Order and sought to take support from the said Judgment wherein it was declared that abnormal delay caused in taking action under Section 23 of the Act, to disqualify the candidate for failure in lodging account of Election Expenses, was declared to be illegal. The Judgment relied upon by the

¹ 2019 (4) ALD 388 (TS)

petitioner is a case where there was abnormal delay of more than three years in initiating the proceedings for disqualification of the candidate. But in the instant case, the election took place in the month of January, 2019 and in the month of December, 2019 the Showcause notice was issued and as such the same cannot be construed as abnormal delay in initiating the proceedings unlike in the above referred case. Therefore, the case of **Rajaiah Maraveni**, has no application to the facts of the present case.

11. The State Election Commission having satisfied that the petitioner herein who contested the election to the Ward Member of Grampanchayath in question has failed to submit his account of Election Expenses within stipulated time and thus issued Showcause notice dated 16-12-2019 to the petitioner. Showcause Notice received by the petitioner and he had submitted his explanation stating that he could not submit his account of Election Expenses within time due to ill-health. The State Election Commission having taken into consideration the explanation submitted by the petitioner,

arrived at a conclusion that the reason given by the petitioner for his failure to submit the account of Election Expenses is not sustainable and passed the impugned Order.

12. Surprisingly, the petitioner having submitted his explanation to the Showcause notice stating that he could not submit his account of Election Expenses within stipulated time, in the affidavit filed in support of this Writ Petition stated that he has submitted his Account of Election Expenses within time, but in view of the information given to him by the second respondent that such account Election Expenses was lost, he has once again submitted his account of Election Expenses on 27-02-2020. Thus the explanation submitted by the petitioner in response to the Showcause notice and the stand taken by the petitioner in this writ petitioner is contradictory to each other.

13. As already pointed out above, the contention of the petitioner that he submitted account of Election Expenses on 16-12-2019 is denied by the sixth respondent. In response to the said denial in the counter affidavit, no reply is filed nor any

material is placed on record supporting the contention of the petitioner that he has submitted his account of Election Expenses on 27-02-2020.

14. In view of the contradictory stands taken by the petitioner in explanation and affidavit filed in support of the Writ Petition, this Court is of the view that the petitioner has not came forward to speak truth before this Court and tried to change his stands to suit his convenience and approached this Court with unclean hands by filing this Writ Petition. The fact remains that the petitioner failed to submit his account of Election Expenses within the time and it is only when a showcause notice was issued, the petitioner has submitted his account of Election Expenses along with explanation to the Showcause Notice. In the light of the above, the petitioner failed to submit his account of Election Expenses as required under law and also failed to give any good or sufficient reason for his failure to submit his account of Election Expenses within time as required under law. Therefore, this Court does not find any illegality or error in the impugned Order issued

by the Respondent-Election Commission disqualifying the petitioner from contesting the election for a period of three years and declaring that the petitioner ceased to be a Ward Member of concerned Grampanchayth and there is no merit in the Writ Petition and the same is liable to be dismissed.

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

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

MUMMINENI SUDHEER KUMAR, J

Dated: 29-Jul-2022
KHRM

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR

WRIT PETITION No.21158 of 2020

Dated: 29-Jul-2022
KHRM