

104

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CWP-28011-2022****Date of Decision: March 01, 2023****Pramod Bagri @ Parmod Kumar**

..... Petitioner

Versus**Election Commission of India and another**

..... Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Mr. Suneet Kumar, Advocate for the petitioner.

Ms. Shruti Jain Goyal, DAG, Haryana.

LISA GILL, J.

Prayer in this writ petition is for setting aside order dated 18.05.2022 (Annexure P5) passed by the Principal Secretary, Election Commission of India whereby petitioner has been declared to be disqualified for being chosen as and for being a member of either House of the Parliament or Legislative Assembly or Legislative Council of the State or Union Territory for a period of three years from the date of order in terms of Section 10A of The Representation of the People Act, 1951 (hereinafter referred to as an 'Act').

It is submitted that petitioner, who is a resident of District Hisar contested the General Election for Legislative Assembly, Hisar – 52 held in the year 2019. Elections were held and result declared on 24.10.2019.

Admittedly, petitioner did not submit details of the expenditure incurred by him in terms of Section 77 of the Act. It is submitted that the concerned register related to the expenditure incurred by the petitioner alongwith original bills of expenditure, pass book relating to the account held by the petitioner of the Union Bank, Aadhar card, voter card, photographs and photocopies alongwith other documents were somehow lost on 14.11.2019. In this respect, petitioner is stated to have lodged a Lost Property Report with Police Station Hisar Civil Lines on 14.11.2019. It is further stated that petitioner immediately on 19.11.2019 itself filed an application before the District Election Officer, Hisar for non-submission of election related expenses due to the documents being lost.

Notice dated 10.09.2020 (Annexure P3) was issued to the respondent seeking response as to why he should not be disqualified for non-submission of account details. Reply dated 27.10.2020 is stated to have been submitted by the petitioner in response to notice dated 10.09.2020. Impugned order dated 18.05.2022 was passed holding the petitioner to be disqualified in terms of Section 10A of the Act on the ground that no good reason or justification for failure to furnish the details of the expenses was set forth by the petitioner. Aggrieved therefrom, present writ petition has been filed.

Learned counsel for the petitioner vehemently argues that once it was intimated by petitioner that record relating to the expenditure alongwith original bills etc. were lost and police report had been duly lodged in this respect, impugned order has been incorrectly passed in a totally unjustified manner. It is further contended that the petitioner had duly applied before the District Election Officer, Hisar for non submission of the election related

expenses while giving cogent reason for the same. In this respect, issuance of notice dated 10.09.2020 after such a long period, is itself unjustified. Furthermore, it is vehemently argued that there is no discussion whatsoever regarding reason set forth by the petitioner for non-submission of the details of the expenses incurred by him during election. Learned counsel for the petitioner further argues in the alternate that there are sufficient grounds for reducing the period of disqualification under Section 11 of the Act. It is, thus, prayed that this petition be allowed.

Heard learned counsel and have gone through the file.

It is a matter of record that petitioner having contested the General Elections for legislative Assembly, Hisar - 52 in the year 2019, did not submit the account of election expenses incurred by him. At this stage, it is relevant to refer to Sections 77 and 78 of the Act, which read as under:-

“ **77. Account of election expenses and maximum thereof.**— (1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed.”

“ **78. Lodging of account with the district election officer.**— Every contesting candidate at an election shall, within thirty days from the date of election of the returned candidate or, if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates, lodge with the district election 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 77.”

Applicable Rule 89 of The Conduct of Elections Rules, 1961 is reproduced as hereunder:-

“ 89. Report by the district election officer as to the lodging of the account of election expenses and the decision of the Election Commission thereon.—

(1) As soon as may be after the expiration of the time specified in section 78 for the lodging of the accounts of election expenses at any election, the district election officer shall report to the 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.

(2) Where the district election officer is of the opinion that the account of election expenses of any candidate has not been lodged in the manner required by the Act and these rules, he shall with every such report forward to the Election Commission the account of election expenses of that candidate and the vouchers lodged along with it.

(3) Immediately after the submission of the report referred to in sub-rule (1) the district election officer shall publish a copy thereof by affixing the same to his notice board.

(4) As soon as may be after the receipt of the report referred to in sub-rule (1) the 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 Election Commission decides that a contesting candidate has failed to lodge his account of election expenses within the time and 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 under section 10A for the failure.

(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 Election Commission, and shall at the same time send to the district election officer 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 officer shall, within five days of the receipt thereof, forward to the 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 officer and after such inquiry as it thinks fit, the Election Commission is satisfied that the candidate has no good reason or justification for the failure to lodge his account, it shall declare him to be disqualified under section 10A for a period of three years from the date of the order, and cause the order to be published in the Official Gazette.”

Section 10A of the Act, which provides for disqualification for failure to lodge account of election expenses reads as under:-

“ **10A. Disqualification for failure to lodge account of election expenses.**—If the 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 Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of three years from the date of the order.”

Section 11 of the Act, which provides for removal of any disqualification under the Chapter or reduction of the period of such disqualification reads as under:-

“ **11. Removal or reduction of period of disqualification.**—The Election Commission may, for reasons to be recorded, remove any disqualification under this Chapter or reduce the period of any such disqualification.”

Perusal of the applicable provisions reveal that it was incumbent upon the petitioner to have submitted the entire details of the expenditure incurred in connection with the election by him or authorised by him or by his election agent between the date on which he was nominated and the date of declaration thereof, with both the dates being inclusive.

Section 78 of the Act clearly provides that account of election expenses shall

be submitted within thirty days from the date of election of the returned candidate.

In the present case, we find that an extremely specious ground has been taken by the petitioner for not submitting his election expenses. It is a mere bald statement that entire documents and details regarding the expenditure incurred by the petitioner was lost from the Court complex, Hisar. Mere lodging of police report in respect to lost property cannot in any manner entitle the petitioner for exemption from submission of the details of the expenses incurred by him in terms of categorical specific and mandatory provisions of law. It is relevant to note that there is no detail whatsoever as to how the concerned register and other documents relating to the day to day expenses incurred by the petitioner, were lost in the office of the petitioner. It is admittedly a simplistic assertion without any detail forthcoming. Even at the time of arguments, despite pointed query, learned counsel for the petitioner was unable to explain as to how and in what manner, the document/record in question was lost and furthermore what efforts were ever made by the petitioner to retrieve the same except the perfunctory 'Lost Property Report'.

It is relevant to note at this stage that during the course of hearing learned counsel for the petitioner informed that the petitioner is a lawyer and the record/documents etc. were, thus, misplaced at the court premises. Thus, sufficient explanation, it is stated, had been put forth by the petitioner, which should have been accepted.

Trite it is to say that any candidate contesting an Assembly election is expected to be vigilant and exercise due care and caution in respect to securing safe custody of the record regarding expenditure

incurred, especially keeping in view the stringent provisions of law. Moreover, in case the petitioner is an advocate, it is expected that necessary caution would definitely have been exercised by him, being aware of the consequences. There is nothing on record to indicate that due vigilance was exercised in this regard by the petitioner. It is further to be noted that petitioner has taken a stand that the entire record of expenditure incurred has been lost with not an iota of documentation left with him.

In our considered view such a stand/explanation cannot be countenanced, because acceptance of the same would amount to giving a carte blanche to the candidates to circumvent the provisions of law regarding submission of account/s of election expenses incurred by them simply by stating that record is lost and 'Lost Property Report' has been lodged.

It has been correctly observed in the impugned order dated 18.05.2022 that petitioner has failed to put forth any good reason or justification for his failure to submit the account of election expenses, as required by the applicable provisions of law. By no stretch of imagination, can it be said that loss of documents which is statedly followed by lodging of lost property report is a good and sufficient reason or justification for the failure of candidate to submit absolutely no details or account of election expenses incurred by him.

In the peculiar circumstances of this case, we do not find any merit whatsoever in the argument raised on behalf of the petitioner that on account of there being no specific discussion about the 'Lost Property Report' etc., impugned order should be set aside.

Learned counsel for the petitioner is unable to point out any ground whatsoever, which would justify a direction to the authorities to consider reduction of the period of disqualification.

No other argument has been addressed.

Keeping in view the facts and circumstances as above, this writ petition is dismissed with no order as to costs.

(LISA GILL)
JUDGE

March 01, 2023
Rts

(RITU TAGORE)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No