



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10346 OF 2023

Puja Balu Kholse And Ors.

...Petitioners

Versus

The State Election Commission And Ors.

...Respondents

Adv. Jay Patil for the Petitioner.

Adv. Sachindra B. Shetye for Respondent No. 1.

Adv. P. J. Gavhane, AGP for the State.

Coram : Sharmila U. Deshmukh, J.

Date : August 9, 2024.

P. C. :

1. By this petition, the challenge is to the Judgment and Order dated 21st April, 2023 passed by the Respondent No.1- State Election Commission in Special Application No.2 of 2023 and the order dated 14th February 2023 passed by the Collector in the Dispute Application.

2. The facts of the case are that the Petitioner had contested the panchayat elections from village Kothale and was elected. The affidavit of election expenses had to be filed within a period of 30 days, which expired on or about 17th February 2021. The case of the Petitioner is that the Petitioner affirmed the affidavit of election expenses, however, in spite of affirmation of the same before the Tahsildar, the affidavit of election expenses remained to be submitted

by the Petitioner. Subsequently, notice came to be issued on 4th November, 2022 by the Respondent No.3-Tahsildar under Section 14B(2) of the Maharashtra Village Panchayat Act, 1958 and after hearing the Petitioner, the order of disqualification was passed on 14th February 2023. Being aggrieved by the order of disqualification, the Petitioner filed Special Application before the State Election Commissioner to modify the impugned order to reduce the period of disqualification from five years up to the next general election.

3. Heard Mr. Patil learned counsel for the Petitioner, Mr. Shetye, learned counsel for Respondent No. 1 and Mr. Gavhane, learned AGP.

4. Learned counsel appearing for the Petitioner would point out the affidavit at page 19 to 21 of the Petition and would submit that the same was affirmed before the Executive Magistrate Malshiras on 16th February 2021. He would further point out that the election expenses as disclosed in the affidavit was a meagre amount of Rs.9423/- and inadvertently, the affidavit was taken back instead of submitting the same. He would further submit that in the Appeal before the State Election Commission, a specific ground was taken about the Covid pandemic and the fact that thereafter the Petitioner tried to file their affidavit of election expenses, but on the ground of delay, the concerned officer refused to accept the same. He would further submit that the order does not take into consideration the

decision of the Apex Court in *Suo Motu*, Writ Petition (C) No.3 of 2020 where the Apex Court had excluded the period from 15th March, 2020 till 28th February 2022 while computing the limitation. He submits that in view of the extension of period of limitation, the decision of disqualification could not have been passed by the Collector. He submits that the notice came to be issued in November 2022 and the present Petition was filed after the decision of the State Election Commission.

5. *Per Contra*, learned counsel appearing for the State Election Commission submitted that the provision of Section 14B of the Maharashtra Village Panchayat Act, 1958 provides for disqualification where a person has failed to lodge account of election expenses within time and in the manner required by the State Election Commission. He would further submit that after the elections were held for Kothale Gram Panchayat, the candidate was required to furnish details of the expenses to the returning officer within a period of 30 days, which was not done in the present case and therefore, there was a default resulting in violation of the mandatory provisions and therefore the Collector had rightly disqualified the Petitioner.

6. Considered the submissions and perused the record.

7. The affidavit to which the attention of this Court has been

drawn by the learned counsel for the Petitioner would in fact establish the case of the Petitioner that the affidavit of election expenses were affirmed on 16th February, 2021. The case would have taken different turn if there was no such affidavit of expenses produced on record. Though the affidavit was affirmed, the same remained to be filed after being affirmed before the same authority to whom it was required to be submitted. I also find considerable force in the submission of Mr. Patil, learned counsel for the Petitioner that the period of limitation stood extended by virtue of the decision of the Apex Court. Despite the ground being taken in the Appeal as regards the Covid pandemic and that the concerned officer refused to accept affidavit on the ground of delay, perusal of the impugned order of the State Election Commission does not indicate consideration of the said issue.

8. In view of the above, in my opinion, the matter is required to be remanded to the State Election Commission to be decided afresh in light of the decision of the Apex Court in Suo Motu Writ Petition (C) No.3 of 2020.

9. The Petitioner is directed to appear before the State Election Commissioner on 26th August 2024 at 11:00. The State Election Commissioner is requested to decide the issue afresh in light of the decision of the Apex Court and uninfluenced by the observations

made in the impugned order.

10. Petition stands disposed of in the above terms.

11. Considering that the Petitioner has been disqualified, the State Election Commissioner is requested to decide the Appeal expeditiously and in any event on or before 20th September, 2024.

[Sharmila U. Deshmukh, J.]