

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 18TH DAY OF APRIL, 2022

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.3415 OF 2022(LE-ELE)

BETWEEN:

1. K SRINIVAS,
.....

2. SMT. S LALITHA,
.....

3. SMT. HEMALATHA C K,
.....

...PETITIONERS

(BY SRI. M R RAJAGOPAL, SENIOR COUNSEL A/W
SMT. SARASWATHI M, ADVOCATE)

AND:

1. THE KARNATAKA STATE ELECTION COMMISSION,
NO.8, 1ST FLOOR KSCMF BUILDING,
CUNNINGHAM ROAD,
BANGALORE-560 052.
REPRESENTED BY ITS SECRETARY

2. THE DEPUTY COMMISSIONER,
BANGALORE URBAN DISTRICT,
K G ROAD, BANGALORE-1.
3. THE TAHSILDAR,
ANEKAL TALUK, ANEKAL.
BANGALORE URBAN DISTRICT -562 106.
4. THE CHIEF OFFICER,
MUNICIPALITY, ANEKAL,
BANGALORE URBAN DISTRICT – 562 106.

... RESPONDENTS

(BY SRI. R SUBRAMANYA, AAG A/W
SRI. K R NITHYANANDA, AGA FOR R1 TO R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTICE ISSUED BY THE R1 VIDE ORDER DATED 15.11.2021 AS PER ANNEXURE-H AND ETC.,

THIS PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Petitioners having been disqualified from continuing as the elected members of the Municipality are knocking at the doors of the Writ Court for assailing the disqualification order dated 15.11.2021, a copy whereof is at Annexure – H issued by the 1st Respondent – State Election Commission. The operative portion of the said order reads as under:

“ಆದೇಶ ಸಂಖ್ಯೆ:ರಾಚುಆ:17: ಇಯುಬಿ 2020, ಬೆಂಗಳೂರು,

ದಿನಾಂಕ:15-11-2021

ಪ್ರಸ್ತಾವನೆಯಲ್ಲಿ ವಿವರಿಸಿರುವ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ನಗರ ಸ್ಥಳೀಯ ಸಂಸ್ಥೆಗಳ ಸಾರ್ವತ್ರಿಕ ಚುನಾವಣೆ- 2019ರಲ್ಲಿ ಬೆಂಗಳೂರು ನಗರ ಜಿಲ್ಲೆಯ

ಆನೇಕಲ್ ಪುರಸಭೆಯಿಂದ ಸ್ಪರ್ಧಿಸಿದ್ದ ಅಭ್ಯರ್ಥಿಗಳ ಪೈಕಿ ಒಟ್ಟು ಹನ್ನೆರಡು ಅಭ್ಯರ್ಥಿಗಳಿಗೆ ಆಯೋಗದಿಂದ ನೀಡಿದ ನೋಟೀಸಿಗೆ ಸಮಜಾಯಿಷಿ ಹಾಗೂ ಚುನಾವಣಾ ವೆಚ್ಚ ವಿವರಗಳನ್ನು ಸಲ್ಲಿಸಿಲ್ಲವೆಂದು ದೃಢಪಟ್ಟಿರುವುದರಿಂದ, ರಾಜ್ಯ ಚುನಾವಣಾ ಆಯೋಗವು ಅನುಬಂಧದಲ್ಲಿ ನಮೂದಿಸಿರುವ ಅಭ್ಯರ್ಥಿಗಳನ್ನು ಕರ್ನಾಟಕ ಮುನಿಸಿಪಾಲಿಟೀಸ್ ಅಧಿನಿಯಮ, 1964ರ ಪ್ರಕರಣ 16(ಸಿ) ಅನುಸಾರ ಈ ಆದೇಶದ ದಿನಾಂಕದಿಂದ ಮೂರು ಮಂಷಗಳ ಅವಧಿಗೆ ಅನರ್ಹರೆಂದು ಘೋಷಿಸಿರುತ್ತದೆ.”

2. After service of notice, the respondents having entered appearance through their learned advocates oppose the petition, making submission in justification of the impugned order and the reasons on which it has been constructed.

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court declines to grant indulgence in the matter as under and for the following reasons:

(a) Section 16C of the Karnataka Municipalities Act, 1964 provides for disqualification of elected members on the ground that they have failed to lodge a true and correct account of electoral expenditure with the Returning Officer within 30 days to be reckoned from the date of declaration of the result of victorious candidate.

This provision enacted w.e.f. 10-11-2003 has the following text:

"16C. Failure to lodge an account of election expenses.- If the State Election Commission is satisfied that any 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 State 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."

It is to be noted that Section 16C of the 1964 Act, corresponds to Section 77(1) & 78 of the Representation of Peoples Act, 1951, read with Rule 86 of the Conduct of Election Rules, 1961.

(b) A few prefatory observations are necessary before considering the explanation offered by the petitioners for not lodging the account of election expenses. MAX LERNER in his book, *NINE SCORPIONS IN A BOTTLE* at page 22 writes:

"Man as a political animal lives in a world riddled with bugbears and taboos. Political thinkers as diverse as the English idealist and the classical Marxist have labored under a common fallacy: they have taken their own sense of the logical relation of things and read

into it the way men behave. Actually, men behave in their political lives with disheartening illogicality..."

To the notices dated 27.01.2020 copies whereof avail at Annexures – A, B & C, that are issued by the State Election Commission, petitioners have sent their reply on 17.06.2020. These copies are at Annexures D, E & F wherein they specifically admitted that they have not filed their accounts of election expenditure with the Returning Officer. The Apex Court in *HARCHARAN SINGH vs. MOHINDER SINGH* 1969 (1) SCR 198 observed as under:

"The primary purpose of the diverse provisions of the election law which may appear to be technical is to safeguard the purity of the election process..."

It hardly needs to be stated that an election is a *politically sacred public act, not of one person or of one official, but of the collective will of the whole constituency*. Adjudication of disputes of the kind at the hands of the competent authority is governed by the statutes, common law, equity & the like ordinarily remaining strangers vide *JYOTI BASU vs. DEBI GHOSAL* 1982 (3) SCR 318.

(c) C. RAJAGOPALACHARI (1878 –1972), a veteran Freedom Fighter in his prison diary in 1922 had noted: *"...Elections and their corruption, injustice and tyranny of wealth, and inefficiency of administration, will make a hell of life as soon as freedom is given to us..."*. The rationale of imposing a limit on expenditure incurred or authorized by a candidate in an election is to eliminate, as far as possible, the pernicious influence of 'big money' on the election process. The Law Commission of India in its Report No. 255 on *Electoral Reforms* (March 2015) at paragraph 2.4 notes:

"...It is now well established that money plays a big role in politics, whether in the conduct, or campaigning, for elections. The Election Commission of India, in its guidelines issued on 29th August 2014, recognised that, concerns have been expressed in various quarters that money power is disturbing the level playing field and vitiating the purity of elections..."

The Law Commission Report also provides the comparative views obtaining in other jurisdictions, as under:

UNITED KINGDOM (paragraphs 2.24.1 – 2.24.15):

"...In the UK, there are limits on party and candidate expenditure, and these limits differ depending on the type of election

(parliamentary or local body)... All registered parties must maintain accounting records, which show all the money received and expended by the party...a fine or one year imprisonment for being indicted for making false statements to auditor...The Electoral Commission's Enforcement Policy prescribes the varying nature of penalties..."

UNITED STATES OF AMERICA (paragraphs 2.25.12 – 2.25.24):

"...At the federal level, the Federal Election Commission (hereinafter "FEC"), an independent federal agency, enforces these laws. There are no limits on election expenses by candidates or political parties...The FECA mandates the disclosure of all sources and spending of funding for candidate, party committees and PACs. A treasurer is mandatorily appointed for every party, and all contributions must be forwarded to this person within a specific time...Further, failure to or late submissions of FEC reports or any other violations of such nature are subject to the FECA's Administrative Fine Program..."

AUSTRALIA (paragraphs 2.26.1 – 2.26.16)

"There are no limits on expenditure by political parties or candidates...Both parties and candidates are required to publicly disclose their expenditure; and both donors and parties have to disclose the contributions over a disclosure threshold...while candidates are required to file election returns...that failure to file a return, by a person required to do so...will result in a fine payable..."

(d) The Apex Court in *KANWAR LAL GUPTA vs. AMAR NATH CHAWLA* 1975 (2) SCR 269 considering the evil of 'big money' observed as under:

"The other objective of limiting expenditure is to eliminate, as far as possible, the influence of big money in the electoral process. If there were no limit on expenditure, political parties would go all out for collecting contributions and obviously the largest contributions would be from the rich and affluent who constitute but a fraction of the electorate. The pernicious influence of big money would then play a decisive role in controlling the democratic process in the country. This would inevitably lead to the worst form of political corruption and that in its wake is bound to produce other vices at all levels."

The legislature enacted the provisions of section 16C in the 1964 Act mandating the lodging of accounts of electoral expenditure is for the purpose of bolstering the transparency in and purity of the election process in general and accountability of the candidates in particular. This apart, the prescription of lodging of accounts of electoral expenditure with default clause of disqualification is aimed at removing the propensity for corruption and bribery in election process. The Apex Court in *MANOJ NARULA vs. UNION OF INDIA* (2014) 9 SCC 1 deliberating on corrupt practices observed as under:

"A democratic polity, as understood in its quintessential purity, is conceptually abhorrent to corruption and, especially corruption at high places, and repulsive to the idea of criminalization of politics as it corrodes

the legitimacy of the collective ethos, frustrates the hopes and aspirations of the citizens and has the potentiality to obstruct, if not derail, the rule of law. Democracy, which has been best defined as the Government of the People, by the People and for the People, expects prevalence of genuine orderliness, positive propriety, dedicated discipline and sanguine sanctity by constant affirmance of constitutional morality which is the pillar stone of good governance..."

(e) Indisputably, corruption in general is an insidious plague with detrimental effects on societies. Electoral corruption in particular has a corrosive effect on the democratic polity. Maintaining the purity of the electoral process, requires a multi-pronged approach, which includes removing the influence of money and criminal elements in politics and introducing strict standards of financial transparency in the functioning of the political parties or candidates. Regulating election expenditure is the first step toward combating corruption. It is in this light that the obligation to file accounts of electoral expenditure as enacted by law needs to be scrupulously complied with, failing which its very purpose would be defeated. It is also for the preservation of purity & probity of elections and maintenance of 'public trust'. Normally, although a mere

failure to lodge a correct election accounts does not amount to a corrupt practice, it cannot be gainsaid that failure to lodge accounts of electoral expenditure in general and correct accounts of electoral expenditure in particular sullies the process of elections, giving scope for a strong assumption that unethical & dishonest forces have been at play as nearly observed by the Apex Court in *ASHOK SHANKARRAO CHAVAN vs. MADHAVRAO KINHALKAR* (2014) 7 SCC 99.

(f) In their parrot like reply to the notices as aforementioned, petitioners have given two reasons for not lodging the accounts of electoral expenses in time and with the Returning Officer: (i) they were busy in attending to the problems of the electoral constituencies and (ii) that they were not aware of the requirement of lodging the accounts of electoral expenditure. They have specifically prayed for accepting the delayed filing of these accounts. The first explanation offered by the petitioners that they were busy and preoccupied in attending to the problems of the electors, cannot be said to be plausible. To qualify an exemption from this obligation, a strong ground has to be made out. The

explanation offered is unreasonable to say the least and, if countenanced would lay a very bad precedent with abundant potential for abuse. It also militates against the very intent of legislature prescribing such an obligation. Fortunately, they have not sought refuge under the umbrella of COVID-19, the pandemic having significantly receded by that time. Indisputably, it is the duty of every elected representative to cater to the cause of constituency. Other elected members have not defaulted, quoting similar grounds. In matter like this, no leniency is admissible. An argument to the contrary offends the policy content of the provision. Therefore, such an explanation hardly constitutes a ground for the condonation of lapse.

(g) The second explanation offered by the petitioners for not lodging the account is that they were not much aware of its legal requirement. It is dangerous to countenance such a contention, to say the least. The sages of law since centuries have said: '*Ignorantia legis neminem excusat*'. Any standard treatise of law like *BROOM'S LEGAL MAXIMS*, Tenth Edition, page 169-171 tells that ignorance of law is no excuse. This age old

norm obtaining in all civilized jurisdictions applies equally if not more to the elected representatives, as the trustees of public offices. An argument to the contrary cannot be sustained on any count.

(h) The contention of the petitioners that the Election Commission has proceeded on a wrong premise that no explanation is offered by the petitioners for not lodging the accounts of electoral expenditure, cannot be agreed to for the reasons already mentioned above. After all, an explanation which is neither plausible nor probable is no explanation at all. Even reversing the observation of the election commission that the petitioners had sent their reply would not make any difference to the case, in the light of discussion made above.

(i) The vehement submission of learned Senior Advocate appearing for the petitioners that the law requires an opportunity of hearing whilst making the punitive order of the kind, need not be addressed by the Court inasmuch as no such plea is taken in the petition, as rightly pointed out by the learned AAG, Mr. R. Subramanya. Not even a whisper is made as to any

prejudice having been caused because of the absence of hearing. The principles of natural justice cannot be invoked as a mindless priest ritualistically chanting the *mantra*. Our legal system has evolved from the *form to substance*. Some prejudice because of violation of these principles has to be demonstrated; after all, the principles of natural justice are not immutable axioms. Even here it is not shown as to how the impugned order would have been different, had the petitioners been heard in the matter by the State Election Commission, already the battle lines having been drawn up by the stand they have taken up in their reply to the notice. In such a circumstance, the impugned order cannot be treated as having infirmity of the kind vide *S.L. KAPOOR vs. JAGMOHAN* (1980) 4 SCC 379: "...*natural justice may always be tailored to the situation...*"

In the above circumstances, this Writ Petition being thoroughly devoid of merits is liable to be dismissed and accordingly it is, costs having been made easy.

This Court places on record its deep appreciation for the research & assistance rendered by Mr.Faiz Afsar Sait, Law Clerk-cum-Research Assistant.

**Sd/-
JUDGE**

Bsv