

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 4590/2014

ASHOK SHANKARRAO CHAVAN Petitioner

**Represented by: Mr. Kapil Sibal, Senior
Advocate with Mr. Abhimanyu
Bhandari, Mr. Ankit Bhakkad,
Ms.Aanchal Mullick,**

Mr. Samanvya D. Dwivedi, Ms. Kartika Sharma and

Mr. Saket Sikri, Advocates.

Versus

ELECTION COMMISSION OF INDIA and ORS. Respondents

**Represented by: Mr.Jayant Bhushan, Senior
Advocate with Mr. Dilip
Annasaheb Taur and Mr. Amil
V. Deshmukh, Advocates for
Respondent No.1.**

Mr.Rajesh Ranjan and

Mr. Balendu Shekhar, Advocates for Respondent Nos. 3 and 4.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

O R D E R

28.07.2014

1. Vide the present petition, the petitioner has assailed the order

dated 13.07.2014 passed by the Election Commission of India and seeks direction to set aside the impugned order to the extent of holding that he has failed to lodge his account of election expenses within time and in the manner required by the Act and the Rules.

2. Also seeks direction to quash and set aside the consequential order to issue show cause notice under Rule 89(5) of the Conduct of Election Rules, 1961 (for short ?the 1961 Rules?).

3. Mr. Kapil Sibal, learned senior counsel appearing on behalf of the petitioner submits that seven advertisements dated 05.10.2009, twelve advertisements dated 12.06.2009, three advertisements dated 07.10.2009 and four advertisements dated 25.10.2009 were published during the ?Assembly Election? by the State of Maharashtra. The allegations on the petitioner are that he did not disclose the expenditure incurred by him on the aforementioned advertisements.

4. He further submits that the total pro-rata expenditure on the alleged advertisements which can be attributed to the share of the petitioner was Rs.16,924/-. The permissible limit set-out as per Rule 90 of the 1961 Rules is Rs.10,00,000/-. Whereas, as per the return filed by the petitioner he had spent a total amount of Rs.6,85,192/- on his Assembly Election.

5. Learned senior counsel submits that for the sake of arguments, though not admitted, if the aforesaid pra-rata expenditure of Rs.16,924/- spent on all the advertisements mentioned above is added in his election expenditure, i.e., Rs.6,85,192/-, then also his expenses are within the permissible limit of Rs.10,00,000/-.

6. Mr.Sibal further submits that the petitioner was the then Chief Minister of Maharashtra. He contested the election from 85 Bhokar Legislative Assembly Constituency from Indian National Congress and declared won. Thereafter, the opponent losing candidate, i.e., Dr. Madhavrao Kinhalakar, the respondent No.1 herein, filed the complaint before the Commission. He submits that the petitioner, thereafter, resigned from the said Constituency and contested the Parliamentary Election from Nanded and elected as a Member of Parliament.

7. Mr.Sibal has referred to an advertisement at page 587, annexure P-14 (colly.), showing photographs of seven other leaders of United Progressive Alliance (UPA) including deceased father of the petitioner. In the said advertisement, the meeting was fixed for 05.10.2009, however, the same was postponed to 06.10.2009, and the similar advertisement showing the meeting date as 06.10.2009 is at page 589.

8. I note, the said advertisement depicts UPA Chairman Smt.Sonia Gandhi, the then Prime Minister Dr. Manmohan Singh, the President of National Congress Party Mr. Sharad Pawar and the other prominent leaders of the Party. It is an admitted fact that the said meeting was attended by the petitioner and his proportionate share of expenditure incurred on the said meeting was disclosed by the petitioner in his account in the Statutory Register provided by the Election Commission of India.

9. Mr. Sibal further referred to an advertisement at page 591, wherein all leaders have been shown as were shown in the advertisement mentioned at page 587 except depicting Central Minister Mr. Jyotiraditya Sindhia in

place of Smt. Sonia Gandhi. The advertisement at page 593 shows photograph of Salman Khan, a 'Bollywood Star' in place of the aforesaid Central Minister alongwith all other leaders as mentioned above.

10. Learned senior counsel drawn the attention of this Court to the advertisement shown at page 589, and submits that it was published by Mr. Amar Rajurkar, Secretary, Maharashtra State Congress Committee and the advertisement at page 591, was published by Mr. Ajay Bhisen, President, Nanded City District Congress Committee and Mr. Munna Abbas, President, Nanded City District Youth Congress Committee. He submits that these two meetings were attended by the petitioner and, accordingly, he disclosed the expenditure incurred on these meetings in his accounts as election expenses.

11. He further submits that all three publishers had filed their affidavits before the Election Commission of India and claimed that the advertisements in question were neither published with the consent of the petitioner nor the same was brought to the knowledge of the petitioner. He also submits that the Party had also spent MONEY in the election, in addition to claim by the petitioner.

12. Learned senior counsel further submits that despite the affidavits filed by the publishers and the explanation given by the petitioner, the Commission passed the order as under:-

?108. The Commission hereby has decided that the respondent has failed to lodge his account of election expenses in the manner required by the Act

and rules. The Commission directs the respondent to show cause in terms of Rule 89(5) of the 1961-Rules why he should not be disqualified under section 10A of the 1951-Act. The respondent is directed to submit his representation, if any, to the Commission within 20 days from the date of receipt of this order.?

13. Mr.Sibal, learned senior counsel submits that the petitioner has raised the issue before the Commission that under Rule 89(6) of the 1961 Rules, he was entitled to get an opportunity for giving such explanation within twenty days of receipt of the notice.

14. Learned senior counsel has also drawn the attention of this Court to para 47 of the order dated 02.04.2011, wherein the Commission had observed that the Commission has to arrive at satisfaction on two counts, namely, (a) that the candidate has failed to lodge an account of election expenses within the time and in the manner required by or under the law, (b) that the candidate has no good reason or justification for the above failure. The commission had further observed in that para that the enquiry in question by the Commission is for the purpose of coming to a satisfaction on the first count and that if the Commission is satisfied on the first count that there has been a failure on the part of the petitioner in lodging his account of election expenses in the manner required by law, then the petitioner would require a notice whether he has any good reason or justification for the said failure and whether he should be disqualified under Section 10A of the Act.

15. Learned senior counsel further submits that the preliminary issue raised by the petitioner before the Commission was that the petitioner

was entitled to file a revised account of election expenses under Rule 89(6) of the 1961 Rules pursuant to notice under Rule 89(5) of the 1961

Rules. However, this plea has been discarded by the Commission by recording that it is not correct that the petitioner could have filed a revised account of election expenses under Rule 89(6) of the 1961 Rules had he been put to a notice in terms of Rule 89(5) of the 1961 Rules.

16. The Commission further recorded that Rule 89(6) of the 1961 Rules permits a candidate to file his account of election expenses where he has not previously filed any account at all under Section 78 of the Act and not where he has filed an account alleged to be false or incorrect.

17. Mr.Sibal drawn the attention of this Court to para 44 of Civil Appeal bearing No.5044/2014, between the same parties (herein), decided by the Apex Court on 05.05.2014 regarding the legal responsibility of the

Election Commission and while passing the order under Section 10A of the Act, the Apex Court has observed as under:-

?44. In our considered opinion if such a onerous responsibility has been imposed on the Election Commission while scrutinizing the details of the accounts of the election expenses submitted by a contesting candidate, it will have to be stated that while discharging the said responsibility, every care should be taken to ensure that no prejudice is caused to the contesting candidate. The Election Commission should also ensure that no stone is left unturned before reaching a satisfaction as to the correctness or the proper manner in which the lodgment of the account was carried out by the concerned candidate. If such a meticulous exercise has to be made as required under the law, it will have to be held that the onerous responsibility imposed on the Election Commission should necessarily contain every power and authority in him to hold an appropriate enquiry. Only such an exercise would ensure that in ultimately arriving at the satisfaction for the purpose of examining whether an order of disqualification should be passed or not as stipulated under Section 10A, the high expectation of the electorate, that is the citizens of the country reposed in the Election Commission is fully ensured and also no prejudice is caused to the contesting candidate by casually passing any order of disqualification without making proper ascertainment of the details of the accounts, the correctness of the accounts and the time within which such account was lodged by the candidate concerned.?

18. On the other hand, Mr. Jayant Bhushan, learned senior counsel appearing on advance notice on behalf of the respondent No.1, i.e., the complainant before the Commission raised the preliminary objection that the present petition is not maintainable for the reason that the Election Commission has issued the notice to show cause as to why the petitioner should not be disqualified for contesting the elections for three years as envisaged in the Act. In such an eventuality, if the petitioner files the reply and the Commission gives its opinion disqualifying the petitioner to contest the election, then in that case only, the petitioner can approach the appropriate Forum challenging the said order.

19. Mr. Bhushan submits that the impugned order passed by the Commission is not a final order, however, has issued only the show cause notice to explain as to why he should not be disqualified.

20. Learned senior counsel has drawn the attention of this Court to the observations made by the Apex Court in para 111 of the case bearing Civil Appeal No.5044/2014, titled as Ashok Shankarrao Chavan Vs. Dr. Madhavrao

Kinhalkar, i.e. the case inter se the same parties. The same is as under:-

?111. In our considered view, if the above basics of democracy and purity in elections have to be maintained, it is appropriate to hold that the decision of the Election Commission as upheld by the High Court to the effect that Section 10A clothes the Election Commission with the requisite power and authority to enquire into the allegations relating to failure to submit the accounts of election expenses in the manner prescribed and as required by or under the Act, is perfectly justified and we do not find any scope to interfere with the same. Inasmuch as the period of membership is likely to come to an end, it will be in order for the Election Commission to conclude the proceedings within 45 days and pass appropriate orders in accordance with law. In order to ensure that within the said period the Election Commission is not prevented from passing the orders due to non-cooperation of any of the parties, it will open for the Election Commission to hold the proceedings on a day to day basis and conclude the same within the said period.?

21. He submits that the Apex Court directed the Commission to pass an order on the enquiry under Rule 89(4) of the 1961 Rules within a time limit of 45 days.

22. Mr. Bhushan submits that in view of the directions passed by the Apex Court vide judgment dated 05.05.2014, the limit of 45 days was upto 19.07.2014, however, the Commission has passed the impugned order on 13.07.2014. Hence, he raised the objection that the petitioner has come pre-maturely as this is not a final order passed by the Commission.

23. He further submits that entertaining the present petition and staying the impugned order dated 13.07.2014, passed by the Election Commission, would come in the way of the directions passed by the Apex Court in the above noted case.

24. Admittedly, the Election Commission did not pass the order as per the directions within 45 days as noted above.

25. In rejoinder, Mr.Sibal submits that so far as the limit of 45 days for the enquiry is concerned, the same pertains to an enquiry under Rule 89(4) of the 1961 Rules and it does not bar the procedure of an enquiry under Rules 89(5) and 89(6) of the 1961 Rules. However, the Commission has passed the impugned order under Section 10A of the Act, while bypassing the provisions prescribed under the Rules noted above.

26. It is submitted that the legal question before this Court is that, whether the impugned order dated 13.07.2014 has been passed by the Election Commission of India, under the Act and Rules prescribed therein??.

27. Notice issued.

28. Mr. Dilip Annasaheb, learned counsel accepts notice on behalf of the respondent No.1 and wishes to file response to the instant petition.

29. Liberty granted. Let the needful be done within a period of two weeks with an advance copy to the other side. Rejoinder thereto, if any, shall be filed within a period of two weeks thereafter.

30. Let notice be served upon the remaining respondents by way of ordinary post, speed post and dasti as well on petitioner?s taking necessary steps, returnable on 05.11.2014.

CM No. 9137/2014 (for stay)

Notice issued.

Mr. Dilip Annasaheb, learned counsel accepts notice on behalf of the respondent No.1 and wishes to file response to the instant petition.

Liberty granted. Let the needful be done within a period of two weeks with an advance copy to the other side. Rejoinder thereto, if any, shall be filed within a period of two weeks thereafter.

Let notice be served upon the remaining non-applicants by way of ordinary post, speed post and dasti as well on applicant?s taking necessary steps, returnable on 05.11.2014.

Till further orders, the operation of the impugned order dated 13.07.2014 shall remain stayed.

A copy of this order be given dasti to the learned counsel for the parties.

SURESH KAIT, J.

JULY 28, 2014

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