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wp3639-20

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO.3639 OF 2020**

Rohini Balasaheb Lawande

PETITIONER

VERSUS

The Additional Commissioner,  
Nashik Division, Nashik and Others

RESPONDENTS

**WITH  
WRIT PETITION NO.3640 OF 2020**

Tarabai Vikram Athre

PETITIONER

VERSUS

The Additional Commissioner,  
Nashik Division, Nashik and Others

RESPONDENTS

**WITH  
WRIT PETITION NO.3641 OF 2020**

Bhamabai Kanifnath Lawande

PETITIONER

VERSUS

The Additional Commissioner,  
Nashik Division, Nashik and Others

RESPONDENTS

**WITH  
WRIT PETITION NO.3642 OF 2020**

Suvarna Ravindra Athre

PETITIONER

VERSUS

The Additional Commissioner,  
Nashik Division, Nashik and Others

RESPONDENTS

**WITH  
WRIT PETITION NO.3643 OF 2020**

Jayshree Balasaheb Athre

PETITIONER

VERSUS

The Additional Commissioner,  
Nashik Division, Nashik and Others

RESPONDENTS

**WITH  
WRIT PETITION NO.3644 OF 2020**

Sunita Krushna Salve

PETITIONER

VERSUS

The Additional Commissioner,  
Nashik Division, Nashik and Others

RESPONDENTS

**WITH  
WRIT PETITION NO.3645 OF 2020**

Narayan Jaganath Athre

PETITIONER

VERSUS

The Additional Commissioner,  
Nashik Division, Nashik and Others

RESPONDENTS

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Mr. Jiwan J. Patil h/f Mr. R. S. Kasar, Advocate for the  
petitioners

Mr. S. K. Tambe, AGP for respondent - State

Mr. A. B. Kadethankar, Advocate for Maharashtra State  
Election Commission

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**[CORAM : S. V. GANGAPURWALA &  
SUNIL P. DESHMUKH, JJ.]**

**RESERVED ON : 5<sup>th</sup> MARCH, 2021**  
**PRONOUNCED ON : 4<sup>th</sup> MAY, 2021**

**ORAL ORDER (PER SUNIL P. DESHMUKH, J.)**

. The reference comes before us pursuant to judgment and order dated 6<sup>th</sup> March, 2020 passed by learned single judge in a group of writ petitions bearing No. 3639 of 2020 and other companion matters.

2. Learned single judge, hearing writ petition No. 3639 of 2020 and others, had found that the issue raised in the matters is as to whether a candidate elected unopposed is required to tender account of election expenses, and that petitioners rely on *Dipmala w/o Ravindra Chachane V/s. Additional Commissioner, Nagpur, 2020 (1) Mh.L.J. 900* to contend that a candidate elected unopposed is not required to campaign for contesting election and, as such, does not incur election expenses.

3. Case submitted before the learned single Judge on behalf of the State had been that in *Dipmala's case (supra)*,

section 77 of the Representation of People Act, 1951 which mandates a candidate to keep account of all the expenditure incurred in connection with election, from the stage of nomination to the date of declaration of result as well as order dated 15<sup>th</sup> October, 2016 issued by the Maharashtra State Election Commission with regard to submission of expenses in election to the Parliament, Legislative assembly and local bodies had not been referred to or cited. The Resolution refers to, *inter alia*, that expenditure incurred even for tendering nomination form would be an election expenditure.

In said group of petitions viz; W. P. No.3639 of 2020 & others, order of the State election commission dated 7<sup>th</sup> February, 1995 was referred to whereunder a candidate was supposed to maintain an abstract of accounts of expenditure including amount spent on the items specified in proforma in Annexure 1 as election expenses which contains thirty one heads, *inter alia*, cost of nomination form, expenditure on security deposit, purchase of copies of electoral rolls, etc. Information according to Annexure 1 was required to be submitted by a candidate within thirty days

of declaration of election result with the election officer, to be accompanied by affidavit on oath. The candidate was also required to maintain day to day accounts of expenditure and submit the same to returning officer on following day by 2.00 p.m.

4. It had been considered by the learned judge that in "*Laxmibai V/s The Collector, Nanded and Others*" the Supreme Court in its decision dated 14<sup>th</sup> February, 2020 had concluded that section 14B of the Maharashtra Village Panchayat Act gives discretion to the district collector whether proper and just reasons have been given by the candidate for failure to tender account of election expenses.

5. It had further been found by him that in "*Abhishek Vinod Patil V/s The Divisional Commissioner and Another*" *Writ Petition No. 11477 of 2018*, a division bench at Aurangabad on 27<sup>th</sup> February, 2020 had considered that delay of two months in tendering election accounts entails disqualification.

6. It is observed by the learned judge that order dated

15.10.2016 of the State Election Commission, has been issued with a view to eradicate corrupt and evil practices and to eliminate money power imposing limitations on election expenditure by a candidate, obligating maintenance of its accounts including the books/bills/vouchers etc. and to tender the same to competent authority. Analyzing the order, the learned judge considered that accounts of expenditure on various heads are to be maintained by a person (observing that it is not restricted to an elected candidate) including expenses incurred over filing nomination forms (as some forms are likely to be rejected) bearing in mind that trend, of late had been, candidates submit nominations with fanfare, processions, road-show etc. involving lot of expenditure. He noticed that provisions under the order of State Election Commission do not make any distinction between a single candidature for a post and two or more candidates vying for the same post in election fray and as such starting point of expenditure would be from nomination form ending with declaration of election result.

7. He went on to observe that with a view to put curbs

on increasing use of money (economic) power having pernicious effect on society at large, reducing election process to a mere farce, the Maharashtra State Election Commission had thought it appropriate to issue an order on 07-02-1995 exercising powers conferred upon it under various statutory enactments, in the interest of purity of elections to local democratic authorities, in free, fair and efficient way, putting limit on expenditure. The learned judge found that, going by clauses of Government Resolution of 1995 a candidate has to account for entire expenses incurred by him on the election which is without qualification as to whether there was contest in the election or the candidate was elected unopposed.

8. It was considered by the learned judge in the order of reference, paragraphs 7, 8 and 9 of judgment in the case of *“Dipmala w/o Ravindra Chachane V/s Additional Commissioner, Nagpur, 2020 (1) Mh.L.J. 900*, give an indication of that for a particular post only if there are two or more candidates, it would amount to contest and candidates incurring expenditure in the contest are only obliged to tender their accounts.

9. As the order dated 07.02.1995 issued by the State Election Commission as well had not been brought to the notice of the court in the case of *Dipmala (supra)* as is the case in respect of order of the State Election Commission dated 15.07.2016, he was as such digressed in appreciating the controversy. He, thus, considered it appropriate that a larger bench would resolve the issue.

10. While in said group of writ petitions, the learned single judge had deemed it appropriate, in the given facts and circumstances, limiting operation of order of the district collector to the period of the term of election and, as such, order of the district collector had been modified making the same to be operative only till the elections, which were to take place in August/September, 2020, enabling the petitioners therein to contest ongoing/forthcoming elections and petitions were disposed of.

11. Albeit, the learned single judge considered, presumably situation has arisen to frame following question for reference;



*“Whether a candidate elected unopposed, is required to tender his accounts of election expenditure under Section 14B (1) of the Maharashtra Village Panchayat Act, Section 16 (1-D) of the Maharashtra Municipalities Nagar Panchayats and Townships Act 1965 and section 15B (1) under the Maharashtra Zilla Parishad and Panchayat Samities Act, 1961, in view of the order dated 07.02.1995 and the Government Resolution dated 15.10.2016? ”*

12. Learned advocate Mr. Jiwan Patil for the petitioners submits that in the recent past, perceptibly, lot of money is being expended by candidates over elections mal-utilizing value of money to sway voters in their favour. In order to prevent and deter candidates from mal/mis-utilization of money, provisions have been introduced and incorporated in various statutes viz. Section 14B(1) in Maharashtra Village Panchayat Act and the ones referred to in the question framed for reference. He draws our attention to that, provisions of section (14-B) of the Maharashtra Village Panchayat Act, are similar to the provisions from other enactments in the referral.

13. Mr. Patil submits that, however, non furnishing of accounts within time, would not in all cases entail disqualification. Relevant facts would be required to be

necessarily taken into account and mechanical approach has to be eschewed. Discretion invested in the authority has been conferred with a view not to interrupt the election of returned candidates, but with a view to see that there is sanctity to the same. The vested discretion is to be exercised as far as possible to maintain election of a person who has been democratically elected.

14. He goes on to submit that, however, in many a case, the candidate goes elected without any contest, unopposed, eliminating expenses required over election contest and in such a clear/obvious case, non submissions of accounts while there are no election expenses worth the name, non compliance of procedure, may have to be appropriately construed and constructed without disturbing election of a person who has been democratically elected.

15. In support of his case, he places heavy reliance on decision in *Dipmala's case (supra)* as well as on the decision in the case of "*Sahebrao Dashrathrao Patole V/s State of Maharashtra and Others*", 2010 (5) *Mh.L.J.* 462. He submits that the Supreme Court in the case of "*L. R. Shivarama*

*Gowda and Others V/s T. M. Chandrashekar (Dead) by LRs and Others” (1999) 1 SCC 666* has considered that failure to maintain true and correct accounts by itself does not amount to corrupt practice of incurring or authorizing excess expenditure justifying setting aside the election.

16. Learned counsel for the State, Mr. S. K. Tambe reiterates the submissions as were advanced during hearing of the group of writ petitions and requests a proper view be taken to prevent the elections from being affected/infected by economic malady.

17. Mr. Ajit Kadethankar, the counsel for the State Election Commission has participated in the hearing providing valuable assistance. He has tendered a compilation of relevant papers/documents prefaced with notes on historical background of election processes and developments taking place chronologically including legal ones. He has taken us through various orders passed by the State Election Commission from time to time viz; the orders dated 07.02.1995 and 15.10.2016 highlighting their features and has pointed out relevant aspects and the underlying

purpose and purport.

18. In the present case, when the question has been posed as referred to above earlier, the provisions would be required to be referred to and while the provisions are verbatim the same save duration of disqualification, it may be useful to reproduce the provision from the Maharashtra Village Panchayat Act, as the reference primarily originates from matters under the same, which is as under;

“ **14B. Disqualification by State Election Commission** - (1) *If the State 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 the State Election Commission, and*

*(b) has no good reason or justification for such failure,*

*the State Election Commission may, by an order published in the official gazette, declare him to be disqualified and such person shall be disqualified for being a member of panchayat or for contesting an election for being a member for a period of five years from the date of this order*

*(2) The State Election Commission may, for reasons to be recorded, remove any disqualification under sub-section (1) or reduce the period of any such disqualification. ”*

19. Statutory provisions are in *pari materia* in all the enactments, empowering the State election commission to disqualify “a person” for failure to submit election expenses within the timeline and in the manner regulating the same, for want of good or justifiable reasons. The provisions are aimed at fair, pure and transparent election process in civilised democratic society.

20. The provisions show that disqualification would be incurred for failure to lodge account of election expenses within time, which has no good reason or justification.

21. Going by the statutory provisions, the term “election expenses” would enter the center, as to what would constitute the same and what are its implications and connotations.

22. Election Commission has power of superintendence, has control over affairs concerning elections and is empowered to issue directions. The provision empowers the state election commission to legislate on the issues concerning elections expenses. In the State of Maharashtra,

the State election commission after its establishment had for the first time in 1994, issued mandate requiring candidates to submit election expenses within a timeline. The same went on developing and improving from time to time.

23. Regulations have been introduced and brought in by the State Election Commission issuing orders with a view to have and maintain purity in elections, have check and control over financial affairs and transactions of the candidates and political parties, during elections as the same is essential, including putting limit/rider on quantum of election expenses, requiring furnishing of details of election expenses by the candidates and to oblige its observance and legislation provides for consequences on its non compliance.

24. Money, its power and influence have strong propensity to subserve the cause of privileged class putting them in distinctly advantageous position. It appears that provisions have emergence in unethical, unlawful and corrupt use of money to influence, entice, induce people rather corrupting

their conscience and/or may be a case to take disadvantage of poor condition of people forcing them to surrender their conscience and obtain votes. The money and with its aid the means employed had been leading to unlawful practices, reversely affecting underlying object of democratic governance of polity.

25. The regulatory provisions and measures work to keep the candidates in check, control and restrict their unbridled tendencies, desires and ambitions and puts on guard and warns them not to drift to unethical means to have themselves elected. This would give preference to persons who have potential for doing greater good of large number of people on their own rather than get elected by corrupt means using money and economic tools, which have concomitant propensity to have recoupment of the expenses incurred by indulging into further unethical ways of functioning and to hoard money, wealth, to preserve their positions, to get elected and/or re-elected on the positions of power meant for public good, with selfish motives, objects creating sort of fiefdoms which have latent potential at the core in the process to create

provinces/empires losing out on the purpose of election which is incisively subversive to the object and purpose of democracy rather does dis-service to the process and object.

26. To effectively monitor election expenses, there have been orders issued by the State Election Commission from time to time improving and developing mandatory requirements.

27. Orders had been issued in 2011 putting limit on the election expenses. An order dated 3<sup>rd</sup> August, 2016 had been issued by Maharashtra State Election Commission superseding all the earlier orders. Same has been further elaborated issuing orders subsequently about time and manner to lodge election expenses, forms of affidavits and vouchers to be lodged in respect of the same.

28. Order dated 15<sup>th</sup> October, 2016, *inter alia*, provides time and manner in which the election expenses are to be furnished and prescribes Form No. 2 under its schedule, wherein it includes among others, expenses on nomination



and further refers to fee of nomination, earnest amount, expenses over campaigning offices, campaigning grounds, vehicles, candidates own vehicles, office vehicles and vehicles provided to workers, etc. Clauses thereunder prescribe limit on the election expenditure by candidate. The orders are enforceable.

29. Learned single judge deciding *Dipmala's case (supra)*, had observed to the effect that while petitioners therein, were the only validly nominated candidates in the election to be members of Gram Panchayat were elected unopposed, further election process was not required to be undertaken. Since there was no contest in election, petitioners were not required to canvass and expend over election. In the facts of the case, indication had been, there were good reasons and justification for not lodging account of election expenses for the purposes of section 14-B and good enough for non-insistence on submission of election expenses. While such a reason had been advanced in response to the show cause notice, the same had not received its due, which was a case worth consideration, having regard to clause "(a)" of sub section (1) section 14B of the Maharashtra Village

Panchayat Act.

30. In *Dipmala's* case (*supra*) it would emerge that neither the order of the election commission dated 15<sup>th</sup> October, 2016 showing what would comprise elections expenses had been addressed to at all nor provisions of the Representation of People Act were adverted to and brought to the notice of the court as submitted on behalf of the State nor earlier order of the State Election Commission dated 07.02.1995 had been pointed out. The matter was viewed, it appears, from the facts which were emphasized, were about expenses post validation of nomination were not required, as candidates were unopposed and as such no occasion for a contest. The matter, discernibly, appears to have been pressed, addressed and contested, without reference to and/or oblivious of the orders issued by the State Election Commission and relevant provisions and aspects. The facts emphasized, had been appreciated in the matter, in the given circumstances unwary of relevant orders issued by the State Election Commission. There is no firm much less pronounced laying down of any ratio that in all the cases of unopposed election and/or contest free

elections, account of elections expenses would not be required to be furnished at all.

31. Nomination fee, earnest money, etc. all form part of election expenses, as would emanate from the order issued by the State Election Commission in 2016. Election schedule Form No. 2 shows total election expenses comprise, inter-alia, spendings as referred to thereunder including the ones referred to above. All pre-arrangements made for election by the candidates even before filing nomination, over the items as referred to in form No. 2 may also be relevant aspect.

32. Stages of election can be seen, generally begin for candidates, with purchasing nomination form, its submission and its validation by the returning officer and/or even with purchase of voters' list before nomination. There is lot of time gap between submission of nomination, scrutiny and validation. It would not be out of place to consider that as referred to by the learned single judge referring the matter to larger bench, recent trend of candidates has been to declare and publicize their

candidature with much fanfare, submitting nomination forms by procession, with bands, road-show, putting cut-outs, advertisements, celebrating the same etc. even before submission, scrutiny and validation of their nomination. Naturally, lot of expenditure is involved in the same. On many occasions, candidates have been indulging into filing multiple nomination forms with a view to see that their candidature is not blocked / debarred / excluded / sidelined or held up on account of defect/deficiency in a form and at least one of the nomination forms would make them survive to stand in the fray. With such approach, preparations, candidates in elections on many occasions make substantial arrangements for campaigning offices, grounds, advertising, payments to workers, securing voters' lists etc, even before the date of finalization of nomination which indeed involves expenditure.

33. It would not be that expenses for election would be only when there would be a contest in the elections. It, thus, cannot be said in all the cases that, there would be no election expenses in contest free or unopposed elections and candidates getting elected unopposed, would stand

exempted from tendering election expenses.

34. In view of aforesaid, we deem it appropriate to affirmatively regard the question posed. The question referred to above is answered accordingly. Answer, however, does not purport to affect in any way and/or to do away with exercise of power, discretion with the authorities under the provisions referred to.

**(SUNIL P. DESHMUKH, J.) (S. V. GANGAPURWALA, J.)**

drp/wp3639-20