

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30<sup>TH</sup> DAY OF MAY 2022

PRESENT

THE HON'BLE MR. RITU RAJ AWASTHI, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

**WRIT APPEAL No.408 OF 2022 (LB-ELE)**

BETWEEN:

1 . SRI. K. SRINIVAS

2 . SMT. S. LALITHA

3 . SMT. HEMALATHA C K

...APPELLANTS

(BY SRI. M.R. RAJAGOPAL, SR. ADVOCATE FOR  
SRI. H N BASAVARAJU, ADVOCATE)

AND:

- 1 . THE KARNATAKA STATE ELECTION COMMISSION  
NO.8, 1<sup>ST</sup> FLOOR, KSCMF BUILDING,  
CUNNINGHAM ROAD,  
BENGALURU-560 052,  
REPRESENTED BY ITS SECRETARY.
- 2 . THE DEPUTY COMMISSIONER  
BENGALURU URBAN DISTRICT,  
KANDAYA BHAVANA, K.G.ROAD,  
BENGALURU-560009.
- 3 . TAHASILDAR  
ANEKAL TALUK, ANEKAL 562106,  
BENGALURU URBAN DISTRICT.
- 4 . THE CHIEF OFFICER  
TOWN MUNICIPAL COUNCIL,  
ANEKAL 562106,  
BENGALURU URBAN DISTRICT.

....RESPONDENTS

(BY SRI. K.N. PHANINDRA, SR. ADVOCATE FOR  
SMT. VAISHALI HEDGE, ADVOCATE FOR R-1  
SRI. R. SUBRAMANYA, AAG A/W  
SRI. G.V. SHASHIKUMAR, AGA FOR R-2 AND 3)

-----

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF  
THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO  
SET ASIDE THE ORDER DATED 18.04.2022 PASSED BY  
THE LEARNED SINGLE JUDGE IN WP No.3415/2022(LB-  
ELE) 2 CONSEQUENTLY ALLOW WP No.3415/2022 (LB-  
ELE) FILED BY THE APPELLANTS HEREIN AS PRAYED.

THIS WRIT APPEAL COMING ON FOR ORDERS THIS  
DAY, **ASHOK S. KINAGI, J.**, DELIVERED THE  
FOLLOWING:

## **JUDGMENT**

This is an intra court appeal filed by the appellants challenging the order dated 18<sup>th</sup> April 2022 passed in W.P.No.3415/2022.

2. Brief facts giving rise to the filing of this appeal are as under : .

The appellants were elected as Councilors to respondent No.4-Municipal Council from the respective wards. Respondent No.1 issued a notice on 27.1.2022 calling upon the appellants to submit the explanation in writing for non submission of details of election expenditure spent in the election and directed the appellants to furnish the details to respondent No.3. In pursuance to the aforesaid notice issued by respondent No.1, the appellants submitted details of expenditure to respondent No.3. The appellants have not replied to the said show cause notice of respondent No.1. Respondent No.1,

considering the records, has passed an order dated 15.11.2021 under Section 16-C of the Karnataka Municipalities Act, 1964 (hereinafter referred to as the Act of 1964), disqualifying the appellants as Councilors of the respective wards on the ground that they have failed to lodge true and correct account of expenditure with the Returning Officer within the time prescribed under Section 16-B of the aforesaid Act of 1964. The appellants aggrieved by the disqualification order dated 15.11.2021 have filed the writ petition in W.P.No.3415/2022. The writ Court after hearing the parties dismissed the writ petition. Hence, this writ appeal.

3. Heard Sri M R Rajagopal, learned Senior counsel for the appellants, Sri N. Phanindra, learned Senior counsel for respondent No.1 and Sri R Subramanya, learned Additional Advocate General.

4. Learned Senior counsel for the appellants, Sri M.R.Rajagopal submits that notices were issued by

respondent No.1 in respect of non submission of details of election expenditure and also directed the appellants to submit full details of the election expenditure to the Tahsildar of the concerned Taluk. He submits that the appellants have replied to the said show cause notices. He submits that before passing an order of disqualification, no enquiry was held. He further submits that respondent No.1 without considering the reply has proceeded to pass the order of disqualification. He further submits that the said order is in violation of the principles of natural justice. Further, he has placed reliance on the judgments of the Hon'ble Apex Court in the following cases :

1. **D Sanjeevayya v. the Election Tribunal, Andhra Pradesh and Others**  
(AIR 1967 SC 1211)
2. **Thomasmates Gudinho v. The Election Commission of India and Others**  
(ILR 2002 KAR 3078;
3. **Election Commission of India v. Telangana Rashtra Samithi And Another**  
(2011) 1 Supreme Court Cases 370

3. **ASHOK SHANKAR RAO CHAWAN V. MADHAV RAO KINHALKAR**  
(2014) 7 SCC 99.

He further submits that the writ court without considering the material placed on record, dismissed the writ petition. The impugned order is arbitrary and erroneous. He submits that after dismissal of the writ petition, respondent No.1 issued notification dated 28.4.2022. The issuance of said notification does not set the process of election into motion. He submits that this court can interfere even after issuance of notification dated 28.4.2022. Hence, on these grounds he prays to allow the writ appeal.

5. Per contra, learned Senior counsel for respondent No.1 Sri K N Phanindra, submits that respondent No.1 issued notice to the appellants calling upon them to furnish details of election expenditure to the Tahsildar. He further submits that the matter is covered by the decision of a Co-ordinate Bench of this court in W.A.2634/2015 disposed of on

18<sup>th</sup> March 2019. He submits that after the disposal of the writ petition, respondent No.1 issued notification dated 28.4.2022 notifying the calendar of events. He further submits that the writ appeal was filed after issuance of calendar of events. He places reliance on Article 243ZG of Constitution of India and submits that no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner. He submits that the writ court was justified in passing the impugned order. Hence, prayed to dismiss the writ appeal.

6. Learned Additional Advocate General adopts the arguments of the learned counsel for respondent No.1.

7. Perused the records and considered the submissions of the learned counsel for the parties.

8. Admittedly, the appellants were elected as councilors to the Town Municipal Council, Anekal on 31.5.2019 for the respective wards. Consequently, they were required to submit to the Returning Officer the account of election expenses. The appellants have not submitted the account of election expenses to the Returning Officer. Respondent No.1 issued notices to the appellants dated 27.1.2022. The appellants have replied to the said notices issued by respondent No.1. The appellants have stated in their reply that they were busy in attending to the problems of the electoral constituencies and they were not aware of the requirements of lodging accounts of electoral expenditure and prayed to condone the delay in filing accounts. In order to consider the case on hand, it is necessary to examine the provisions of the Act of 1963. Sections 16-B and 16-C of the said Act reads as under :

**"16B. Lodging of account with the returning officer.- Every contesting**



*candidate at the election under this Act 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 the election are different, the later of those two dates lodge with the Returning Officer appointed at an election under this Act 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 16A.*

**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.”*

9. A bare perusal of the said provisions clearly reveals that it is the duty of the contesting candidate to submit the account of election expenses with the returning officer within 30 days of the declaration of result. In case there is a failure, according to Section 16-C of the Act, the candidate must show a good reason or justification for such failure. But, in case the candidate fails to submit the election expenses within a period of 30 days, according to Section 16-C of the Act respondent No.1 has sufficient power to declare the elected person as 'disqualified'. Co-joint reading of Section 16-B and Section 16-C of the Act of 1963 clearly reveals that Section 16-B is a mandatory provision and Section 16-C clearly stipulates the consequences of flouting the mandate of Section 16-B of the said Act of 1963. Thus, duty has been imposed by the law upon the contesting candidate to submit the election expenses within the period of 30 days. The learned Single Judge considering the aforesaid

provision, in paragraph No.3(f) and 3(g) has recorded a finding as follows :

*"(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."*

10. An identical issue came up for consideration in W.P No.34978/2015 before this Court in the case of

**Smt.Khamar Nizami vs. State Election Commission, Karnataka and others**

wherein the court has held as follows :

*"8. Section 16-B and Section 16-C of the Act have specific purpose for the submission of the election expenses. Since one of the bane of elections in India is the amount of unaccounted money which is pumped into an election, therefore, Section 16-B and Section 16-C of the Act are merely an attempt to wipe out corruption which has crept into the election process. Such a beneficial purpose of Section 16-B and Section 16-C cannot be lost sight of while examining the legal validity of the impugned order. Since the petitioner has failed to submit any good reason or justification for her failure, the learned Commissioner was very well justified in declaring the petitioners as disqualified under Section 16C of the Act".*

11. The said writ petition was dismissed by the writ court vide order dated 19.8.2015. The said order

was challenged in Writ appeal No.2634/2015. The Division Bench dismissed the aforesaid writ appeal vide order dated 18<sup>th</sup> March 2019. The issue involved in the present writ appeal is squarely covered in the aforesaid writ petition. Thus, the appellants are bound to submit the list of election expenses before the State Election Commission within 30 days from the date of declaration of election. Admittedly, the appellants have failed to do so. The appellants have not shown any good reasons or justification for failure to do so. The reasons assigned by the appellants are not justified. The writ court considering the material on record and also the law laid down by the Hon'ble Apex court has dismissed the writ petition filed by the appellants. We do not find any illegality in the impugned order.

12. Learned Senior Counsel for the appellants submits that by mere issuance of notification dated 28.4.2022, process of election cannot be deemed to

have commenced. It is well established principles of law that the election process commenced with publication of the provisional list of voters. In the instant case, after the dismissal of the writ petition, respondent No.1 has notified the calendar of events dated 28.4.2022. From the perusal of the notification, it discloses that the date and time of issuance of election notification by the Deputy Commissioner is on 2.5.2022 and if voting is necessary, the date and day of conducting voting is on 20.5.2022. Thus, the election process has set in motion. The Hon'ble Apex Court in ***N.P.PONNUSWAMI VS. THE RETURNING OFFICER, NAMAKKAL CONSTITUENCY, NAMAKKAL, SALEM DIST. AND OTHERS*** reported in AIR 1952 SUPREME COURT 64 held that interference in the process of election once the calendar of events are notified would fall foul of the law. Same view has been reiterated by the Hon'ble Apex court in the case of ***State of Goa and another v. Fouziya Imtiaz Shaikh and Anr.***

reported in (2021) 8 SCC 401, wherein the Hon'ble Apex Court has held as follows :

*"65. A conspectus of the aforesaid judgments in the context of municipal elections would yield the following results.*

*1. Under Article 243 ZG(b), no election to any municipality can be called in question except by an election petition presented to a Tribunal as is provided by or under any law made by the Legislature of a State. This would mean that from the date of notification of the election till the date of the declaration of result a judicial hands-off is mandated by the non-obstante clause contained in Article 243ZG debarring the writ court under Articles 226 and 227 from interfering once the election process has begun until it is over. The constitutional bar operates only during this period. It is therefore a matter of discretion exercisable by a writ court as to whether an interference is called for when the electoral process is "imminent" i.e., the notification for elections is yet to be announced."*

13. As observed above, respondent No.1 has notified the calendar of events on 28.4.2022 and the



appellants filed this writ appeal on 4.5.2022. By the time writ appeal was filed, the process of election was set in motion. Therefore, in our considered view, the writ appeal filed by the appellants cannot be entertained at this stage.

14. The learned senior counsel for the appellants has contended that the fault committed by the appellants could be condoned. However, in the case of **Balaji Yadav C.M. v. State Election Commission**, Writ Petition No.26662/2013, decided on 13<sup>th</sup> July 2015, this Court has clearly held that once the law mandates a particular action to be taken by the State Election Commissioner, and once the law imposes certain duty upon the elected candidate, the delay in submitting the election expenses cannot be condoned by this Court. Since the provisions of Section 16-B and Section 16-C of the Act are mandatory in nature, any deviation from the mandate of Section 16-B of the Act can be justified only under Section 16-C of the Act. The explanation

offered by the appellants does not fulfill the requirement of Section 16-C of the Act.

The judgments relied upon by the learned counsel for the appellants are not applicable to the case on hand.

15. In the above circumstances, we proceed to pass the following order :-

ORDER

The writ appeal is dismissed.

**Sd/-  
CHIEF JUSTICE**

**Sd/-  
JUDGE**

rs