

CHAPTER XXII

RETURN OF ELECTION EXPENSES

Amendment in the law. Important amendments were made in the law relating to returns of election expenses. The main changes made were the following:—

- (i) A candidate is required to keep the account of his election expenses only in respect of elections to the House of the People and the Legislative Assembly of a State. Candidates for no other elections need keep such accounts.
- (ii) The period for which the accounts are to be maintained has been limited to the interval between the date of publication of the notification calling for the election and the date of declaration of the result thereof.
- (iii) A candidate who has withdrawn his candidature or whose nomination papers have been rejected is no longer required to submit any account of election expenses.
- (iv) Under the old law, a candidate had to make a declaration on oath before a Magistrate and file it along with the return of his election expenses. This declaration has been dispensed with.
- (v) The disqualification arising out of a candidate's failure to lodge a return within the time and in the manner prescribed by law now attaches to the candidate only and not to his agent.
- (vi) The period for which such disqualification subsists has been reduced from six years to three years.
- (vii) Such disqualification entails disability only in respect of membership of Parliament and of the State Legislatures but no longer affects the candidate's right to vote.
- (viii) Every such disqualification already incurred by any person before the 28th August, 1956 for failure to lodge a return of election expenses was removed by sub-section (1) of section 2 of the Representation of the People (Miscellaneous Provisions) Act, 1956.

The result was that all the candidates disqualified for failure to lodge a return of election expenses during the 1951-52 elections, became eligible by operation of law to contest the second general elections. The position will be similar in future general

elections as well in as much as the penalty will be still subsisting at the time of any such general election only in respect of such bye-elections as may have been held within three years or so prior to the same.

(ix) The duty of maintaining a regular and separate account of all election expenses has been thrown primarily on the candidate himself. If he has an election agent, his agent may of course, maintain the account on behalf of the candidate.

(x) Only such expenditure as has been incurred or authorised by the candidate or his election agent during the period intervening between the date of the publication of the notification calling the election and the date of the declaration of the result thereof has to be entered in the account. The result is that no expense, however large the account may be, which is incurred by a party organisation in furthering the prospects of a candidate supported by it is required to be entered in the account of the election expenses of the candidate so long as he can make out that such expense was not authorised by him or by his election agent.

(xi) It is no longer necessary to lodge the account of expenses in a prescribed form with the expenses classified under different heads. It is sufficient under the amended law if a true copy of the account kept by the candidate is lodged in the form in which it has been maintained by him.

(xii) The number of persons who may be employed by a candidate on payment in connection with the election was limited to 4 under the previous law. This restriction has now been removed.

The maximum expenditure which a candidate in a Parliamentary constituency is entitled to incur in connection with his election has been fixed by law to be :—

Maximum election expenses for Parliament.

- (a) Rs. 35,000 if it is a two-member constituency in any State;
- (b) Rs. 25,000 if it is a single-member constituency in any State;
- (c) Rs. 15,000 if it is a two-member constituency in a Union territory; and
- (d) Rs. 10,000 if it is a single-member constituency in a Union territory.

The maximum expenditure that a candidate in any Assembly constituency is entitled to incur in connection with his election

Maximum election expenses for Legislative Assembly.

has been fixed by law according to the scale given in the following table:—

Name of the State	Single-member constituency	Two-member constituency
	Rs.	Rs.
Andhra Pradesh	7,000	12,000
Assam	6,000	11,000
Bihar	8,000	13,000
Bombay	8,000	13,000
Kerala	7,000	12,000
Madhya Pradesh	7,000	12,000
Madras	9,000	14,000
Mysore	6,000	11,000
Orissa	7,000	12,000
Punjab	7,000	12,000
Rajasthan	6,000	11,000
Uttar Pradesh	9,000	14,000
West Bengal	7,000	12,000

Account of election expenses.

Every candidate or his election agent, if he has one, is required to keep a separate and correct account of all expenses in connection with the election which have been incurred or authorised by him or by the election agent between the date of publication of notification calling the election and the date of declaration of the result, both dates inclusive.

Any candidate who incurs or authorises the incurring of expenditure in excess of the maximum prescribed by law is guilty of a corrupt practice and in case he has been elected, is disqualified for being a member of any Legislature.

Prescribed particulars for account.

The law requires the account of election expenses to contain the following particulars:—

- (a) the date on which each item of expenditure was incurred or authorised;
- (b) the nature of the expenditure (as for example, travelling, postage or printing and the like);
- (c) the amount of the expenditure:—
 - (i) the amount paid;
 - (ii) the amount outstanding;
- (d) the date of payment;
- (e) the name and address of the payee;
- (f) the serial number of the voucher, if the amount has been paid;
- (g) the serial number of the bill, if any, if the amount is still outstanding; and
- (h) the name and address of the person to whom the amount so outstanding is payable.

The candidate is required to obtain a voucher for every item of expenditure unless from the nature of the case (such as postage, travel by rail and the like), it is not practicable to obtain a voucher.

It is not necessary to give the particulars mentioned in item (e), in regard to items of expenditure in respect of which vouchers cannot be obtained.

All vouchers and bills are to be lodged along with the account of election expenses. They are to be arranged chronologically and serially numbered by the candidate or his election agent. These serial numbers are required to be entered in the account under items (f) and (g).

The law requires that a true copy of the account of the election expenses shall be lodged with the Returning Officer by every contesting candidate. The account has to be lodged within 30 days from the date of election of the returned candidate. If there are two returned candidates and the dates of their election are different, the account must be lodged within 30 days of the latter of those dates. The date of election of a returned candidate is the date on which the Returning Officer has declared him to have been elected whether it was a contested or an uncontested election. Lodging account. of

Under section 7(c) of the Representation of the People Act, 1951, a person shall be disqualified for being chosen as and for being a member of either House of Parliament or of the Legislative Assembly of a State if he has failed to lodge an account of his election expenses within the time and in the manner prescribed by law. Such disqualification will be effective until three years have elapsed from the date on which the account was due to have been lodged unless the Election Commission has removed the disqualification earlier. The disqualification will not, however, take effect until the expiration of two months from the date on which the Election Commission has decided that the account of election expenses has not been lodged within the time or in the manner required by law. If a returned candidate incurs the disqualification, he loses his seat in the Legislature. Penalty for failure to lodge return of election expenses.

Within two days from the lodging of the account of election expenses by a candidate, the Returning Officer issues a notice on his notice board specifying the name of the candidate and the date on which he lodged the account, as also the time and the place where the account can be inspected. On payment of a fee of Rupee one, any person can inspect the account. Scrutiny accounts. of

Soon after the expiration of the time limit for the lodging of election expenses accounts, the Returning Officer is required to

report to the Election Commission the names of all contesting candidates in the constituency and to state whether they have lodged their accounts of election expenses. The date on which each candidate has lodged his account is also to be reported and the Returning Officer is required to record his opinion whether the account has been lodged within the time and in the manner required by the law. The Returning Officer has to post a copy of such report on his notice board for general information. The Commission considers the report and decides whether any contesting candidate has failed to lodge his account of election expenses within the time and in the manner required by law.

Disqualification
and removal
thereof.

If the Commission decides that any contesting candidates have failed to lodge the account of election expenses within the time and in the manner required by law, their names are notified in the Gazette and every such candidate is informed of the decision. Any contesting candidate who has been so notified may at any time thereafter submit a representation in writing to the Election Commission for the removal of the disqualification incurred by him. He is required to supply the Returning Officer with a copy of his representation simultaneously with the account of his election expenses if it has not been lodged earlier. Within five days of the receipt of the copy, the Returning Officer forwards it to the Election Commission along with the account of the candidate's election expenses, if any, with such comments as he may wish to make thereon. The Election Commission then considers the representation submitted by the candidate and the comments of the Returning Officer thereon, and after making such inquiry as it thinks fit, decides whether or not the disqualification of the defaulting candidate should be removed.

Statistics.

The following table shows the number of candidates who incurred disqualifications in respect of the second general elections to the House of the People and the State Legislative Assemblies for failure to lodge the account of election expenses within the time and in the manner required by law and the number of cases in which the disqualifications have so far been removed by the Election Commission:—

TABLE

	House of the People	State Legislative Assembly
No. of candidates	1,594	10,794
No. of disqualifications imposed ..	267	2,562
No. of disqualifications removed ..	70	288

Some of the State Chief Electoral Officers have expressed the Comments opinion that the maximum scales of election expenditure prescribed by law are too low.

The Commission entirely agrees with this view. It is very often alleged that candidates find it impossible to restrict their election expenses to the legal maximum and that in order to avoid disqualification they are compelled to file incorrect accounts of their election expenses so as to keep the total expenditure incurred by them (as acknowledged in their accounts) below the prescribed limit.

The Commission is constrained to record that the amendments to the Representation of the People Act made in 1956 in so far as the account of election expenses is concerned have rendered the entire scheme of the Act on this subject practically nugatory. Too many loop-holes have been left in the law with the result that a candidate can easily evade the objectives of the law if he is so inclined. It will be noticed that the restriction of the period of accounting to the interval between the date of the notification and the date of the declaration of the result completely exempts all expenses incurred or authorised by a prospective candidate prior to the notification. An unscrupulous candidate is therefore legally free to flout the legal maximum of election expenditure by adopting several subterfuges. He may, for example,—

- (i) buy up and pay for all the petrol needed by him for his election campaign before the date of notification;
 - (ii) hire all the vehicles needed for the campaign and pay for them in full before that date;
 - (iii) pay the bulk or the whole of his printing and publicity charges before that date;
 - (iv) engage and pay all his workers and agents in advance before that date stipulating that they will render their services to him later during the election campaign;
 - (v) he may pay large sums of money to his party and to his friends before that date on the understanding that they will spend the amounts on his behalf before and during the election campaign without any further specific reference to him in respect of each individual item of expenditure;
- and so on.

However large the expenses actually incurred by a candidate in respect of his election may therefore be, there is ample scope for him under the present law to manage to keep the portion thereof *accountable in law* down to a figure well below the permissible maximum.

There were frequent complaints that even the old provisions of the Representation of the People Act limiting election expenses used to be flouted with impunity although they were very much stricter in their terms. The Commission is constrained to observe that the amended provisions of the law as they stand do not appear to serve any useful purpose whatsoever, and are now merely a source of unnecessary irritation to the candidates while their implementation still continues to throw a heavy burden of work upon the Commission which is required to check thousands of accounts of election expenses lodged by the candidates. For technical defects detected in these accounts, many of the candidates are first disqualified and subsequently those of them who make representations for the removal of their disqualifications have their disqualifications removed after they have removed such defects. The number of candidates who were disqualified after the second general elections was as many as 2,829. The disqualifications incurred by about 13 per cent of those persons have so far been removed. The maintenance of the staff required to deal with this work in the Commission cost the exchequer as much as Rs. 18,900 during the year 1957-58 and about Rs. 10,000 during the year 1958-59. All this expenditure of public time and money would have served some purpose if the provisions of the law relating to the maintenance of the accounts of election expenses had served as an effective check against candidates spending any money beyond the maximum permitted by law.

Recommendations.

The law on the subject obviously calls for drastic amendments. If an effective check cannot be devised and enforced by law for preventing candidates from spending too lavishly for their election, it would be more straightforward in the Commission's view to delete the present provisions altogether. This would not perhaps make the position any worse. It would be left to the good sense of the candidates themselves to limit their election expenditure to a reasonable figure and would undoubtedly save many of them from lodging incorrect returns of their election expenses. They would no longer be compelled to adopt ingenious and dubious methods for keeping the accountable amount low enough, so as not to exceed the legal maximum. The Commission feels, however, that although the present provisions of the law are substantially ineffective and call for an immediate amendment, such a desperate measure by way of wholesale deletion of the provisions need not be taken yet and that it would be sufficient for the time being to restore the original provisions of the Act and the Rules which were in force before the 1956 amendments. Such amendments may be incorporated therein as would make the procedure in this respect simpler and less

cumbrous but more effective. The legal maxima of election expenses may, for instance, be revised liberally to higher figures and all expenditure incurred on behalf of a candidate by his party or well-wishers with his constructive consent may be made accountable.

There have been numerous cases where candidates had defaulted in submitting the account of election expenses duly in accordance with law but subsequently made good the defects even before the Election Commission considered their cases and decided to impose disqualification upon them. In such cases it appears to be redundant to issue formal notifications disqualifying the candidates and subsequently removing such disqualifications. Failure to lodge the account of election expenses in time and in the manner prescribed by law results necessarily and compulsorily under the present law in the disqualification of a candidate and the Election Commission has in every such case no option but to notify the disqualification formally in the official Gazette. The candidate subsequently represents for the removal of his disqualification and usually offers a plausible explanation for the default. In the vast majority of such cases the Commission ultimately accepts the explanation of the candidate and removes the disqualification. This calls for another formal notification to that effect in the official Gazette. The procedure is too involved and cumbersome and could be simplified materially by providing that a candidate would incur disqualification only after the Commission has called for the defaulting candidate's explanation and the latter has failed to offer any explanation, or else, the explanation has been considered and rejected by the Commission. Where the Commission has accepted the explanation there should be no disqualification in law and no need to notify any disqualification. The law as it stands at present leads ultimately to the same result as the proposed amendment; but this result is achieved only after going through a considerable amount of unnecessary formalities.