

(1975) 04 OHC CK 0011
In the Orissa High Court
Case No : O.J.C. No. 922 of 1975

Banchanidhi Sahu

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 22-04-1975

Acts Referred:

Constitution of India, 1950 — Article 311(2)
Criminal Procedure Code, 1973 (CrPC) — Section 110
Orissa Grama Panchayat Act, 1964 — Section 25(1), 7, 8
Penal Code, 1860 (IPC) — Section 379

Citation : (1975) 41 CLT 744

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : G.A.R. Dora, for the Appellant; Additional Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—Steps were taken to hold election for the post of Sarpanch for the Gopalpur Grama Panchayat within the Ranapur Police Station of the district of Puri under the provisions of the Orissa Grama Panchayat Act. On 5th of March, 1975, Petitioner and one Dhruba Charan Manasingh filed their nominations for such election. 5th of March, 1975 was also fixed for scrutiny of nominations. Dhruba Charan challenged the nomination of Petitioner on the ground that he had been convicted of an offence punishable u/s 379 of the Indian Penal Code and sentenced to seven months" rigorous imprisonment and as such was disqualified u/s 25(1)(g) of the Orissa Grama Panchayat Act (hereinafter referred to as the" Act") from contest. Petitioner did not dispute his conviction but took the stand that he had preferred an appeal in the Court of the Sessions Judge of Puri and that appeal was pending disposal. Until the conviction had become final, the disqualification could not operate. Opposite party No. 3 upheld the objection raised by Duruba Charan and rejected the nomination of Petitioner. This writ application challenges the order of rejection of nomination.

2. Dhuruba Charan, upon whose objection the nomination of Petitioner has been rejected, has not been impleaded as a party to this application. Since upon his objection. Petitioner's nomination had been rejected, it was appropriate that Dhuruba Charan should have been impleaded and afforded an opportunity of being heard before his contention which had been accepted at the original stage was disturbed, if at all, by this Court. Petitioner has not offered any reasonable explanation as to why Dhuruba Charan has not been impleaded.

3 In the counter affidavit filed by the Block Development Officer on behalf of the opposite parties. the details of facts leading to the rejection of the nomination of Petitioner have been furnished and also a copy of the order of rejection of nomination has been provided as Annexure-B.

4. Section 25(1)(g) of the Act provides:

25.(1) A person shall be disqualified for being elected or nominated as a Sarpanch or any other member of the Grama Panchayat constituted under the Act, if he

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(g) is convicted for an offence involving moral- turpitude and sentenced to imprisonment of not less than six months unless a period of five years has elapsed since his release or is ordered to give security for good behaviour u/s 110 of the Code of Criminal Procedure....

Mr. Dora for Petitioner does not dispute the position that a conviction for theft involves moral turpitude. He also does not dispute the position that the punishment given being more than six months and a period of five years having not elapsed as provided in Clause (g), Petitioner would be subjected to the disqualification. He, however, claims that the conviction has not become final and an appeal is still pending. According to him, the phrase "is convicted" occurring in Clause (g) stipulates a "conviction that has become final". In support of his stand Mr. Dora relies upon three decisions of the Allahabad High Court and some other decisions. We may now refer to these decisions.

In the case of R.S. Das Vs. Divisional Superintendent, Allahabad, , a learned Single Judge was examining the applicability of Clause (a) of the Proviso to Article 311(2), of the Constitution. The words occurring in the said Article are "led to his conviction on a criminal charge". Two employees of the Railway Administration had been convicted for criminal offences and; had been acquitted in appeal. Before their acquittal, they were dismissed from service by application of the Proviso to Article 311(2) of the Constitution. At page 539 of the Reporter the following has been stated:

A proceeding will not be said to have led to his conviction if it has not resulted ultimately in conviction or as a consequence of appeal, has failed in an acquittal. Appeal is continuation of the proceedings commenced on the criminal charge and it does not conclude in a conviction where an appeal is preferred against the

order of the trial Court or of any subsequent Court until these subsequent proceedings have finally ended. There is no conclusion of the proceedings which therefore, cannot be said to have resulted in a conviction until either the order has become final by efflux of time or has been upheld, where an appeal or revision is preferred by the higher Court.

This decision does not throw any light for resolving the dispute arisen in this case.

In the case of *The Divisional Superintendent, Northern Railway, Allahabad Vs. Ram Saran Das, , Tandon, J's* judgment in the aforesaid decision was dealt with in appeal. The Division Bench emphasised on the feature that with the acquittal by the lower appellate Court, the conviction must be deemed to have been there at all and, therefore, the proviso to Article 311(2) of the Constitution could not be attracted. A disciplinary proceeding in terms of Article 311(2) of the Constitution being a condition precedent to an order of dismissal from service, the dismissal was bad in the absence of such proceedings.

In the case of *Kunwar Bahadur Vs. Union of India (UOI) and Others, ,* the same provision of the Constitution came up for consideration. Here, a Government servant had been convicted by a Special Judge for receiving a bribe. Soon after the conviction, the delinquent was removed from service from the date of conviction. There was no proceeding taken under Article 311(2) of the Constitution. The delinquent preferred an appeal against his conviction and the appeal was allowed and the conviction was set aside. The Court came to hold that the dismissal from service was unauthorised in the absence of a proceeding in conformity with Article 311(2) of the Constitution. His decision also is of no avail to Petitioner. Reliance has been placed by Mr. Dora on two Punjab decisions being *Dilbagh Rai v. Divisional Superintendent, Railway AIR 1959 Pun. 401* and *Dhanji Ram v. Union of India AIR 1965 Pun. 153*. Both the judgments have been delivered by the same learned Judge and deal with cases of railway servants. Undoubtedly in the first case, the learned Single Judge referring to the Proviso to Article 311(2) of the Constitution came to hold that it refers to conviction on a criminal charge which has become final. In the second case emphasis on the contents of the Rule 1706 of the Discipline and Appeal Rules for Non-Gazetted Staff of Railway Establishment was relied upon. The special provisions in the Rule led the Court to hold that the punishment of dismissal from service imposed on the delinquent officer was contrary to law. Both these judgments do not support the case of Petitioner because they are not applicable to the facts.

We are referred to a decision of the Andhra Pradesh High Court and some other decisions of the Calcutta and the Madras High Courts. These are cases with reference to special Service Rules applicable to the facts of those cases and are not relevant for our purpose.

5 Mr. Dora also referred to the decision of the Supreme Court in the case of *Manni Lal Vs. Parmai Lal and Others, .* The Court was dealing with the disqualification provided in Section 8(2) of the Representation of the People Act,

1951. The Supreme Court accepted the finding of the High Court that the returned candidate had no disqualification on the footing:

Once an order of acquittal has been made, it has to be held that the conviction has been wiped out and did not exist at all. The disqualification, which existed on the 9th or 11th February, 1962 as a fact, was wiped out when the conviction recorded on 11th January, 1969 was set aside and that acquittal took effect from that very date

This decision too has, therefore, no application.

6. Learned Additional Government Advocate has relied upon a Bench decision of the Assam High Court in the case of Khagendranath v. Umesh Chandra AIR 1958 Gau 183. In that case, disqualification reference to the Representation of the People Act 1951 was being considered. The provision ran thus:

7. Disqualification for membership of Parliament or of a State Legislature A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State

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(b) if, whether before or after the commencement of the Constitution, he has been convicted by a Court in India of any offence and sentenced to imprisonment for not less than two years, unless a period of five years, or such less period as the Election Commission may allow in any particular case, has elapsed since his release;

Sarjoo Prasad, C.J. spoke for the Court thus:

In order to attract the disqualification referred to in Section 7(b) of the Act, it is not necessary that the person should have undergone any part of the sentence imposed upon him. What is necessary is the actual sentence imposed by the Court, and where the sentence is two years or above, the mischief of the section begins to operate against the person concerned.

The fact that the person had preferred an appeal against the conviction and sentence and the appeal was pending at the time when his nomination papers were being considered would not remove the disqualification u/s 7(b), except in the case of a sitting Member, who has been convicted after his election, as Provided u/s 8(a) of the Act.

The decision in the Assam case according to us is in all fours with the facts before us. To accept the argument of Mr. Dora would necessarily require incorporation of words not in the Statute, namely, "conviction which has become final". It may be, as Mr. Dora pointed out strenuously, that while on the basis of the conviction, the nomination would be invalidated, in case where the pending appeal is allowed and, the conviction is wiped out, there is no scope for the accused who has since been acquitted to seek for undoing the mischief done to

him on the basis of such conviction. In one sense, this is not a matter for the Court to consider particularly where the statutory provision is clear. Again, the right to an elective office is not a right at common law. Where the statute creating the right provides conditions and limitations in the matter of acquisition of the right, those provisions have got to be followed.

The submissions of learned Additional Government Advocate that the intention of the statute is to keep away certain undesirable persons from public offices and once there is a conviction of a particular type, the disqualification starts operating; the possibility of the conviction being wiped out in appeal does not suspend the disqualification and allow the legislative purpose to be frustrated are, we think, well merited.

7. We accordingly uphold the rejection of the nomination and dismiss this writ application. There shall be no order as to costs.

B.K. Ray, J.

8. I agree.