
(2000) 04 RAJ CK 0041
In the Rajasthan High Court
Case No : Civil Writ Petition No. 827 of 2000

Bhaiya Ram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-04-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Panchayati Raj Act, 1994 — Section 19, 43

Citation : AIR 2000 Raj 407 : (2000) 3 RLW 1667 : (2000) 2 WLN 377

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : S.N. Sharma, for the Appellant; Chandralekha, Dy. Govt. Advocate and I.R. Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—The instant writ petition has been filed for setting aside the election of respondent No. 2 as the Sarpanch of Gram Panchayat, Panchu, tehsil Nokha, district Bikaner, as he stood disqualified even prior to the contest of the election u/s 19(gg) of the Panchayati Raj Act, 1994 inserted by the Ordinance issued on 25-12- 1997.

2. The facts and circumstances giving rise to this case are that the election of Gram Panchayat, Panchu was held on 31-1-2000 and respondent No. 2 Mr. Jetha Ram was elected as the Sarpanch. The instant writ petition has been filed on the ground that u/s 19 (gg) of the Rajasthan Panchayati Raj Act, 1994 (for short, "the Act"), as respondent No. 2 stood disqualified to become a candidate in the election for the reason that cognizance of the offences had been taken and the same is punishable with imprisonment for five years or more, therefore, this Court must declare him disqualified and restrain him to work" as "Sarpanch.

3. Mr. I. R. Choudhary, learned counsel for contesting respondent has raised a preliminary objection that the petition is not maintainable and if any person is aggrieved, he ought to have filed an election petition u/s 43 of the Act read with

Rule 80 of the Rajasthan Panchayati Raj (Election) Rules, 1994 (for short, "the Rules"), according to which election may be called in question by any candidate at such election only by presenting an election petition to the District Judge, having jurisdiction, within a period of thirty days from the declaration of result of the election on any of more of the grounds mentioned therein.

4. The preliminary objection is liable to be rejected on the ground that such an issue can be directly raised before the Writ Court in view of the judgment of the Hon'ble Supreme Court in *K. Venkatachalam Vs. A Swamickan and Another*, ; and a Full Bench judgment of Punjab & Haryana High Court in *Lal Chand Vs. State of Haryana and Others*, , observing that entertaining such a petition even in election matter is permissible.

5. In *K. Venkatachalam Vs. A Swamickan and Another*, , the Hon'ble Supreme Court has held that "Article 226 of the Constitution is couched in widest possible term and unless there is a clear bar to jurisdiction of the High Court, its power under Article 226 of the Constitution can be exercised when there is any act which is against any provision of law or violative of Constitutional provisions and when recourse cannot be had to the provisions of the Act for the appropriate relief. In the circumstances like the present one, bar of Article 329(b) will not come into play when case falls under Articles 191 and 193 and whole of the election process is over."

6. Similarly, in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, , the Hon'ble Supreme Court placed reliance upon its earlier judgments of the Constitution Bench in *T.C. Basappa Vs. T. Nagappa and Another*, and *P.J. Irani Vs. The State of Madras*, and observed as under :--

"This Article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of power, the purpose for which and the person or Authority against whom it can be exercised."

7. Similar view has been reiterated in *Shri Vallabh Glass Works Ltd. and Another Vs. Union of India (UOI) and Others*, and *Mewa Singh and Others Vs. Shiromani Gurdwara Prabandhak Committee*, .

8. Section 39 of the Act reads as under :--"Cessation of Membership.-- (1) Subject to the provisions of Section 40, a Member of a Panchayat Raj Institution shall not be eligible to continue to be such member if he:--

(a) is or become subject to any of the disqualifications fortified in Section 19; or

9. Section 19 provides for disqualification and Clause (gg) of the said Section reads as under :--

"Is under trial in the Competent Court which has taken cognizance of the offence and framed the charges against him of any offence punishable with

imprisonment for five years or more."

10. The said provision clearly provides that a person shall stand disqualified to contest the election if he is under trial wherein the cognizance of offence has been taken and the charges have been framed against him for any offence punishable with imprisonment for five years or more.

11. In the instant case, the case of the petitioner is that at the time of filing the nomination paper for election held on 31-1-2000, respondent No. 2 had been facing a trial u/s 452, 148, 504, 323 and 352 of the Indian Penal Code and cognizance had been taken by the competent criminal Court, therefore, he stood disqualified and as such his election is inconsequential. However, it appears from the order dated 4-4-1998 that in a criminal complaint u/s 202 Cr. P.C., the Court, after recording the evidence of the witnesses, had taken cognizance against him under the said sections of the Indian Penal Code. The offence u/s 452 I.P.C. is punishable up to the extent of seven years imprisonment, therefore, the case is to be examined: whether mere taking cognizance by the competent criminal Court makes the contesting respondent disqualified as per the said provision.

12. The Legislature, in its wisdom, has used three different phraseology and according to the literal meaning of the provision, there must be a trial by the competent criminal Court, which has taken cognizance of the offence and the court had framed the charges against him. Undoubtedly, the criminal trial commences with the framing of the charges and prior to it, the proceedings can simply be termed as inquiry/ investigation. (vide AIR 1945 18 (Privy Council) ; Ratilal Bhanji Mithani v. State of Maharashtra AIR 1979 SC 94 ; V.C. Shukla Vs. State through C.B.I., ; Union of India v. Maj. Gen. Madan Lal Yadav, AIR 1996 SC 1340 ; and Common Cause, A Registered Society Throough its Director Vs. Union of India and others,).

13. Mr. Sharma, learned counsel for the petitioners, has submitted that the word "trial" is superfluous and the provision must be read that a person would standing disqualified if a competent criminal court has taken cognizance of an offence "or" framed charges against him of any offence punishable with imprisonment for five years or more. The submission made by Mr. Sharma is preposterous for the reason that no word in a Statute has to be construed as superfluous.

14. No word in a Statute has to be construed as surplusage. No word can be rendered ineffective or purposeless. Courts are required to carry out the legislative intent fully and completely. While construing a provision, full effect is to be given to the language used therein, giving reference to the context and other provisions of the Statute. By construction, a provision should not be reduced as a "dead letter" or "useless lumber. An interpretation which renders a provision an exercise in futility, should be avoided, otherwise it would mean that enacting such a provision in subordinate legislation was "an exercise in futility" and the product came as a "purposeless piece" of legislation and provision had

been enacted without any purpose and entire exercise to enact such a provision was "most unwarranted besides being uncharitable." (Vide *M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa*, : *Institute of Chartered Accountants of India Vs. Price Waterhouse and Another, Martin Burn Ltd. Vs. The Corporation of Calcutta*, : *Patel Chunibhai Dajibhai etc. Vs. Narayanrao Khanderao Jambekar and Another*, : *Sultana Begum Vs. Prem Chand Jain*, , *State of Bihar and others, etc. etc. Vs. Bihar Distillery Ltd., etc.*, ; *The South Central Railway Employees Co-operative Credit Society Employees Union, Secundrabad Vs. The Registrar of Co-operative Societies and Others*, ; and *Subhash Chander Sharma and Another Vs. State of Punjab and Others*, .

15. The language of the Act is very clear and it does not require any interpretation because there is no ambiguity in it. In case the language of a Statute is unambiguous, there can be no need to interpret it or examine the intent or object of the Act and the Courts must give effect to it unless it leads to an absurdity or injustice. It is well recognised canon of interpretation that provision curbing the jurisdiction of the Court or Authority must normally receive strict interpretation unless the statute or the context requires otherwise. (Vide *Abdul Waheed Khan Vs. Bhawani and Others*, ; *Sachida Nand Singh and Another Vs. State of Bihar and Another*, ; *Jagdish Ch. Patnaik and Others Vs. State of Orissa and Others*, ; and *Arul Nadar Vs. Authorised Officer, Land Reforms*, ;

16. In *Rambul Singh Vs. Board of Revenue for Rajasthan and Others*, , this Court held that when the language of the law admits of no ambiguity and is very clear, it is not open to the Courts to put their own gloss in order to squeeze out some meaning which is not borne out by the language of the law.

17. Similarly, a Full Bench of this Court, in *Jairam Das v. Regional Transport* AIR 1957 Raj, 312, has held that "where the case falls within the plain meaning of the provision of law, its application thereto cannot be denied on any a priori consideration as to the supposed of the intention of the legislature, even though the Court may be satisfied that the legislature had not contemplated a particular consequence. While invoking a law, the Court is still bound to give effect to its clear language." While deciding the said case, the Court placed reliance upon a large number of foreign judgments and particularly, *Salomon v. Salomon & Co. Ltd.* 1897 AC 22; and *Cox v. Hakes* (1890) 15 AC 506. Similar view has been taken by the Full Bench of this Court in *Government of Rajasthan v. Sangram Singh* AIR 1962 Raj 43.

18. A Constitution Bench of the Hon"ble Supreme Court, in *Sales Tax Officer, Banaras and Others Vs. Kanhaiya Lal Mukundlal Saraf*, , held that where the terms of provisions in the Statute are plain and unambiguous, the Courts should not resort to interpretation for the reason that there was no latent or patent ambiguity and the Courts were not required to find what was the true intendment of the Legislature. In case the terms of the Statute do not admit of any ambiguity, it is a clear duty of the Courts to construe the plain terms of the

Statute and give them their legal effect. In this respect, the Court has got to turn to the very terms of the Statute itself, divorce from all considerations.

19. Same view has been reiterated in *Bharat General and Seeds Stores and Others Vs. Mahendra Singh and Another*, . In *Kanai Lal Sur Vs. Paramnidhi Sadhukhan*, , the Hon''ble Supreme Court observed as under :--

"If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged policy and object of the Act."

20. In *The Corporation of the City of Nagpur Vs. Its Employees*, , a similar view has been reiterated by the Hon''ble Apex Court.

21. In *Babu Manmohan Das Shah and Others Vs. Bishun Das*, , the Hon''ble Supreme Court observed as under :--

"The ordinary rule of construction is that a provision of a Statute must be construed in accordance with the language used therein unless there are compelling reasons. Such as, where a literal construction would reduce the provision to absurdity or prevent the manifest intention of the legislature from being carried out. There is no reason why the word "or" should be construed otherwise than in its ordinary meaning. If the construction suggested by Mr. Desai were to be accepted and the word "or" were to be construed as meaning "and", it would mean that the construction should not only be such as materially alters the accommodation but is also such that it would substantially diminish its value. It seems to us that the legislature intended to provide for both the contingencies.:....."

22. The aforesaid judgment has been approved and relied upon by the Hon''ble Supreme Court in the *Life Insurance Corporation of India Vs. D.J. Bahadur and Others*, ; *R.S. Nayak Vs. A.R. Antulay*, ; and *Idul Hasan and others Vs. Rajindra Kumar Jain*, .

23. In *MR. KAMTA PRASAD AGGARWAL ETC. Vs. EXECUTIVE OFFICER, BALLABGARH and Another*, , the Apex Court held that "depending upon the context, "or" may be read as "and" but the Court would not do it unless it is so obliged because "or" does not generally mean "and" and "and" does not generally mean "or". While deciding the said case, the judgment in *Green v. Premier Glynrhonwy State Co. Ltd. (1928) 1 KB 561* had been relied upon.

24. In *M/s. Hyderabad Asbestos Cement Products and Another Vs. Union of India and Others*, , the Court held as under :--

"The language of the rule is plain and simple. It does not admit of any doubt in interpretation. Provisos 1(i) and 2(i) are separated by the use of conjunction "and". They have to be read conjointly. The requirement of both the provisos has to be satisfied to avail the benefit."

25. In *Hakim Ali and another Vs. The Board of Revenue, U.P. and others*, , the Hon"ble Supreme Court, while confronted with a similar problem, observed as under :--

"It is no doubt, true that as a general rule, legislature may be presumed not to make a superfluous provision. But this presumption is not a strong presumption and it is not uncommon to find the legislature inserting superfluous provision under the influence of what may be abundant caution."

26. In a recent judgment in *State of Maharashtra and Others Vs. Nanded-Parbhani Z.L.B.M.V. Operator Sangh*, , the Apex Court held that "if the language of the Statute is fairly and reasonably clear then inconvenience and hardship are no consideration for refusing to give effect to that meaning unless giving effect to the plain meaning of the words used in the Statute leads to an absurdity or would make the Statute offend any provision of the Constitution. Thus, the intention of the legislature is required to be gathered from the language used and, therefore, a construction which requires for its support and additional substitution of the word and which results in rejection of the word as meaningless, has to be avoided."

27. While deciding the said case, the Hon"ble Apex Court placed reliance upon the judgment in *Sussex Peerage case (1844)* 8ER 1034 , wherein it has been observed as under :--

"If the words of the Statute are in themselves precise, and unambiguous, then no more can be, necessary than to expound those words in their natural and ordinary sense. The Words themselves do alone, in such cases, best declare the intent of the law-giver."

28. The Court further placed reliance on the judgment of the Privy Council in *AIR 1945 48 (Privy Council)* , wherein it has been held as under :--

"This Board has insisted that in considering enacted words, we are not concerned with the policy involved or with the results, injuries or otherwise, which may follow from giving effect to the language used."

29. In *Mool Chand Vs. Kedar (Deceased) By Lrs. and Others*, , the Hon"ble, Supreme Court has categorically held that the basic rule of interpretation of the Statute is that in order to find out the determination of the legislative intent, if the language of the Statute is plain and simple, it must be considered literally and paradoxical results must be accepted.

30. In *Raees Ahmad Vs. State of U.P. and Others*, , the Hon"ble Supreme Court had to interpret the provisions of U.P. Municipalities Act, 1916, regarding computation of 2/3 of the total number of members for the purpose of carrying out the No Confidence Motion against the Chairman of the Municipal Board. The question arose : whether the nominated members, for that purpose, have to be taken into account or not, for the reason that under the provisions of Section 9(d) of the Act, a nominated member had no right to vote in the meeting of the

Municipality, therefore, the contention was raised that even in the No Confidence Motion, they cannot be counted for determining 2/3 of the votes requisite for passing the Motion of No Confidence. The Hon"ble Court rejected the contention observing as under :--

"We find it difficult to accept the submission, given the plain words of the provisions quoted above. That nominated members may not vote does not imply that they cease to be the members of the Municipality or that their number should be ignored in determining whether the President has lost the confidence of two-third of the members."

31. The Court should not lose sight of that in a democratic set-up, a duly elected candidate should not be removed unless he reaches/incurs the disqualification as provided under the Statute as it Would offend the will of the electorates. Remoal of the duly elected member should not be compared with removal of State employees. (Rewat Dan v. State of Rajasthan 1975 RLW 116; and Rameshwari Devi Mewara v. State of Rajasthan AIR 1999 Raj 47).

32. Therefore, while construing the provisions of a Statute, it is not permissible for the Court to add to or subs tract from the statutory provision. (Vide Smt. Shyam Kishori Devi Vs. Patna Municipal Corporation and Another,). Moreso, cognizance is taken of the offence and there is nothing like taking cognizance of the offender at that stage. (Vide Hareram Satpathy Vs. Tikaram Agarwala and Others, ; and Ram Kristo Mandal and Another Vs. Dhankisto Mandal,). Therefore, unless charges are framed against the Office bearer, he cannot be subjected to disqualification.

33. Thus, in view of the aforesaid discussion, I reach to the inescapable conclusion that as the legislature has purposely provided, that disqualification would occur provided the charges had been framed after taking the cognizance, mere taking cognizance would not render the candidate disqualified.

34. The petition is devoid of any merit and accordingly dismissed. There shall be no order as to costs.