
(2008) 09 SC CK 0081

In the Supreme Court Of India

Case No : Civil Appeal No. 5743 of 2008 (Arising out of S.L.P. (C) No. 26226 of 2005)

Dhirendra Pandua

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-09-2008

Acts Referred:

Constitution of India, 1950 — Article 136, 14
Orissa Municipal Act, 1950 — Section 15, 16, 16(1), 17, 17(1)

Citation : AIR 2009 SC 163 : (2008) 56 BLJR 3078 : (2008) 10 JT 347 : (2008) 8 MLJ 624 : (2008) 12 SCALE 612

Hon'ble Judges : D. K. Jain, J;C. K. Thakker, J

Bench : Division Bench

Advocate : Kedar Nath Tripathy, H.P. Sahu and Abhish Kumar, for the Appellant; K. Sarda Devi, Aparna Bhat and Kirti Renu Mishra, for the Respondent

Final Decision : Disposed Of

Judgement

D.K. Jain, J.—Leave granted.

2. This appeal, by special leave, is directed against the judgment and order dated 7th October, 2005 rendered by the High Court of Orissa at Cuttack in W.P. (C) No. 12860 of 2004. By the impugned order, the High Court has dismissed the writ petition, preferred by the appellant assailing the decision of the Election Tribunal-cum-District Judge, Balasore, passed u/s 38 of the Orissa Municipal Act, 1950 (for short 'the Act').

3. The appellant as well as respondent No. 3 in this appeal, hereinafter referred to as the complainant, were elected as Councillors of two different municipal wards in the election held on 19th September, 2003 for the Notified Area Council. Subsequently, on 30th September, 2003, the appellant was also elected as the Chairperson of the Municipal Council. On 15th October, 2003, the complainant filed an Election Petition u/s 38 of the Act questioning the election of the appellant as Councillor and Chairperson, on the ground that being a leprosy

patient, he had incurred disqualification under Sections 16(1)(iv) and 17(1)(b) of the Act and, therefore, could not continue as such. It was alleged that the fact of his being a leprosy patient even at the time of filing of nomination was also suppressed by the appellant.

4. The appellant contested the petition. Denying the said allegations, it was stated that as on the date of election as Councillor as also the Chairperson, he was fully cured of the ailment and was, thus, qualified to contest the election. It was also pleaded that the Election Petition was barred by limitation. The Election Tribunal framed as many as five issues. The two main issues, with which we are concerned, were: (i) whether the petition was barred by limitation and (ii) whether the appellant is a leprosy patient and as such disqualified to contest and hold the posts of a Councillor and Chairperson of the Municipality. Taking into consideration the evidence led by both the sides and upon elaborate discussion on the provisions of the Act, the Tribunal came to the conclusion that the petition was not barred by limitation and hence maintainable and that on the date of filing of his nomination and election to the office of Councillor, the appellant was a leprosy patient and his status as a patient still continues as there is no finality of the medical opinion that he has been fully cured of the disease. Thus, the appellant was declared to be disqualified under Sections 16(1) (iv) and 17(1) (b) of the Act, to be elected and to continue as Councillor of the Municipality.

5. Aggrieved, the appellant unsuccessfully challenged the said decision in the High Court. The High Court, affirmed the order of the Election Tribunal-cum-District Judge on both the counts, namely, (i) Section 19 of the Act, prescribing the period of limitation for presentation of the Election Petition was not applicable and (ii) that the appellant was still suffering from risk prone leprosy. Aggrieved thereby, the appellant has preferred this appeal.

6. We have heard learned Counsel for the parties.

7. Learned Counsel appearing on behalf of the appellant contended that the High Court has committed manifest error of law in affirming the finding of the Election Tribunal that the appellant was still suffering from leprosy. It was urged that the said finding is patently perverse inasmuch as the Tribunal ignored the evidence adduced by the appellant, in particular the medical certificates issued by the doctors, certifying that the appellant was not suffering from leprosy on the date of filing of the nomination. It was urged that the High Court as well as the Election Tribunal have laid too much emphasis on the proceedings pending in this Court, which have no relevance to the controversy at issue. It was also asserted that the Election Petition was barred by limitation.

8. Before examining the stand of the appellant, it would be necessary to refer to the relevant provisions of the Act. Chapter III of the Act deals with election of the Councillors to the Municipalities and the Election Petitions. Sections 16, 17, 18, 19 and 38 are material for our purpose and, therefore, for ready reference, the relevant parts thereof are extracted below:

16. Disqualification of Candidates for election--(1) No person shall be qualified for election as a Councillor of a Municipality if such person--

xx xx xx xx (iv) has been adjudged by a competent Court to be of unsound mind or is a leprosy or a tuberculosis patient; or

xx xx xx xx

17. Disqualification of Councillor:--(1) Subject to the provisions of Section 38, a Councillor shall cease to hold his office, if he--

xx xx xx xx (b) becomes of unsound mind, a leprosy or a tuberculosis patient; or

xx xx xx xx

18. Power to question election by petition:--(1) The election of any person as a Councillor may be questioned by election petition on the ground.

(a) xx xx xx xx (b) xx xx xx xx (c) that such person though enrolled as elector was disqualified for election under the provisions of Sections 15, 16 and 29.

(2) xx xx xx xx 19. Form and presentation of petition:--(1) The petition shall be presented before the District Judge, together with a deposit of two hundred rupees as security for cost within fifteen days, after the day on which the result of the election was announced and shall specify the ground or grounds on which the election of the opposite party is questioned and shall contain a summary of the circumstances alleged to justify the election being questioned on such grounds.

(2) The petition may be presented by any candidate in whose favour votes have been recorded and who claims to be declared elected in place of the person whose election is questioned, or by twenty five or more electors of the Ward.

(3) xx xx xx xx 38. District Judge to decide question of disqualification of Councillors:

(1) Whenever it is alleged that any person, who has been elected as Councillor is disqualified u/s 16 or 17 and such person does not admit the allegation or whenever any Councillor himself is in doubt, whether or not he has become qualified for office u/s 16 or 17, such Councillor or any other Councillor may, and the Chairperson at request of the Municipality shall apply to District Judge of the district in which the Municipal area is situated.

(2) The said Judge after making such inquiry as he deems necessary shall determine whether or not such person is disqualified u/s 16 or 17 and his decision shall be final

(3) Pending such decision, the Councillor shall be entitled to act as if he were not disqualified.

9. Section 16 of the Act provides for disqualification of candidates for election as

a Councillor of a Municipality. It enumerates the grounds on which a person shall be regarded as disqualified for election. Clause (iv) of Sub-section (1) of Section 16 of the Act envisages that no person shall be qualified for election as a Councillor of a Municipality if he has been adjudged by a Competent Court to be of unsound mind or is a leprosy or a tuberculosis patient. Similarly, like Section 16, Section 17 enumerates certain grounds on which a Councillor would become disqualified to hold office but the said provision has been made subject to the provisions of Section 38 of the Act. Section 17(1)(b) lays down that a Councillor shall cease to hold his office if he becomes of unsound mind, a leprosy or a tuberculosis patient. Section 18 stipulates that the validity of election of any person as a Councillor may be questioned by a petition on the ground enumerated therein, one of them being that he was disqualified for election under the provisions of Sections 15, 16 and 29. Section 19 lays down the procedure for presentation of the Election Petition before the District Judge. The Election Petition is required to be filed within 15 days after the date on which the result of the elections was announced. It can be presented either by a rival candidate in the same ward, who claims to be declared elected in place of the person whose election is questioned or by a group of 25 or more electors of the ward, which means that unless a candidate was a contestant against the person whose election as a Councillor had been challenged, he cannot present the petition singularly. Section 38 of the Act, which is the pivotal provision, vests jurisdiction in the District Judge to decide the question whether the Councillor has incurred disqualification on any of the grounds mentioned in Sections 16 or 17 of the Act. But u/s 38, issue regarding disqualification of a Councillor can be raised only by a Councillor and by no other person.

10. A conjoint reading of the aforementioned provisions of the Act makes it clear that Sections 18 and 38 operate in two independent fields. The scope of Section 18 is limited as compared to Section 38. An election dispute u/s 18 of the Act can be raised only by a candidate who was contesting against the Councillor whose election had been challenged or by a minimum of 25 electors of the same ward, within 15 days from the date of declaration of the result of the election whereas u/s 38 any elected Councillor of the Municipality, irrespective of his constituency or the Chairperson, at the request of the Municipality can present a petition to the District Judge of the District to determine the question whether or not the person complained against has incurred disqualification on any of the grounds enumerated in Sections 16 or 17 of the Act. From a bare reading of Section 38, it is clear that the Section is wider in scope inasmuch as the issue of disqualification of a Councillor can be raised not only on the grounds mentioned in Section 17 i.e. on the grounds which come into existence after the person is elected as a Councillor, but also on the grounds mentioned in Section 16, i.e. on the grounds which had made him ineligible for election while he was a candidate i.e. before he came to be elected as a Councillor. It is, therefore, manifest that when a question with regard to the validity of election of a Councillor arises, it has to be dealt with in accordance with the procedure prescribed u/s 19 of the

Act. However, when the question raised is as to whether or not the Councillor has incurred any disqualification and thereby ceased to hold the office, it has to be referred and determined as per the procedure laid down in Section 38 of the Act. It is axiomatic that the question of disqualification to hold an office would arise at the stage posterior to the election i.e. after a person is elected as a Councillor. The provision appears to have been made to ensure that no Councillor, who has incurred disqualification on any of the grounds, mentioned in Sections 16 and 17 of the Act, either prior to the election or after the election at any time during the tenure for which he is elected should be allowed to hold the office. Precisely for this reason, unlike in Section 19, no period of limitation has been prescribed for presentation of a petition u/s 38 of the Act to the District Judge.

11. Having noted the scheme of Chapter III of the Act, we may now advert to the facts at hand. As noticed above, the Election Petition was filed by a Councillor elected from a different ward, for a declaration that the appellant has incurred disqualification under Sections 16 as well as 17 of the Act, on the ground that he was and is a leprosy patient. In our judgment, the petition clearly fell within the ambit of Section 38 of the Act and in the light of the legal position enunciated above, it was maintainable as such. We are, therefore, in complete agreement with the Courts below that the complainant's petition was not barred by limitation.

12. Now, coming to the merits of the Election Petition, it appears from the material on record that, unfortunately, the appellant did suffer from leprosy. Therefore, the question for adjudication before the Election Tribunal-cum-District Judge was whether the appellant is still a leprosy patient and is, thus, disqualified to hold the office as a Councillor?

13. Leprosy is a chronic infectious disease affecting mainly the skin and the nerves and was among the first infection to be associated with a specific causative organism - *Mycobacterium leprae*. In Sloane-Dorland Annotated Medical-Legal Dictionary, published some time in the year 1987, the disease of leprosy has been explained thus:

Leprosy, which is also known as Hansen's disease, is a mildly infectious degenerative disease caused by the micro-organism *Mycobacterium leprae*. The disease produces lesions in the skin, the mucous membranes, and the peripheral nervous system. In its more advanced stage, it affects internal organs and renders its sufferers vulnerable to other diseases such as diabetes and cancer.

14. Leprosy has been a major health problem for man since time immemorial. Till recently it was considered to be an incurable disease. Moreover, it not only leaves behind a terrifying image of disfigurement, the patient and his family is ostracized from the society.

15. It appears that the appellant was suffering from Multibacillary disease (for short 'MB'). According to the bulletin issued by the Indian Council of Medical Research (for short 'ICMR'), in February, 2002 MB patients when treated with

Multi-drug therapy (MDT) - a three drug combination, till smear negativity or for two years, the results have generally been very satisfactory. The MB patients treated and with regular follow up for over two to five years have responded well with very few relapses. It is noted that the length of multi drug therapy required or to be administered depends upon the aim, resources, motivation of the individual and his availability for the follow up. Nevertheless, the bulletin says that a few studies have shown that despite two years of regular therapy; almost 10% patients continue to harbour viable persisters. It is finally opined that it is essential that the patients be kept under follow up for varying periods as they were not sure of the long term effects of the multi drug therapy. Thus, it appears from the news report that despite various measures, at the relevant time, relapse/reactivation of leprosy was not completely ruled out and it depended on various factors, noticed above. It is, however, heartening to note that in a news bulletin issued by the World Health Organisation some time in the year 2006, it is claimed that India, which at one point of time had a prevalence rate of leprosy as high as 57 per ten thousand population, through its determined implementation of the National Leprosy Eradication Programmes, has achieved its set goal of Elimination of Leprosy as Health Problem; perhaps short of Eradication.

16. Bearing in mind the aforementioned facets of the leprosy disease and the advances made in its treatment therapies, we now proceed to examine, whether the findings of the District Judge, affirmed by the High Court, to the effect that the appellant has not been fully cured of leprosy and is still affected by the said disease, suffers from any apparent infirmity warranting interference. For the determination of this primarily factual issue, it would be necessary to delve a little deeply into the factual aspects of the matter which have weighed with the District Judge as well as the High Court in deciding the issue against the appellant.

17. As noted above, the stand of the complainant was that the appellant was a leprosy patient and his status as such has been continuing even prior to the date of election, which is evidently borne out from the fact that he had himself approached this Court, soliciting directions to the State Health Authorities to conduct requisite medical investigations and tests on him and to issue him a certificate on finding him cured and fit so as to obviate his disability arising out of the disease and that the said matter is still pending. In the reply affidavit before the District Judge, the initial stand of the appellant was that he was never a leprosy patient. Accordingly, the District Judge framed issues and permitted the parties to lead evidence in support of their respective stands. On an elaborate analysis of the evidence, so led by both the sides, the District Judge came to the conclusion that the appellant was still suffering from risk prone leprosy. In arriving at the said finding, the District Judge, has relied on the following material/circumstances:

(i) Once upon a time, the appellant was working as a para legal worker under the Government of West Bengal and being a leprosy patient he received treatment

whereafter he remained bacteriologically negative for three consecutive examinations and declared fit to resume his duties in Government service with a further advice to appear for further periodical check up at intervals of three months for one year and for further check up at intervals of six months for five years. However, since further periodical check ups were not conducted, the appellant moved this Court for directions to the State Health Authorities to conduct periodical investigations and tests of leprosy patients including the appellant.

(ii) In his testimony, the appellant has stated that he has privately undergone tests under Dr. P.C. Rath, Cuttack and has also been examined by some doctors at Bhadrak who found no leprosy in him. A certificate (Ext.A) dated 20th August, 2003 was also produced by him. In his cross-examination, he conceded that he had filed petitions in this Court on behalf of a leprosy organisation, wherein he had filed an affidavit admitting to be a leper but only with a view to secure a job.

(iii) Exhibit 11 is a letter dated 23rd May, 2003 issued by the Joint Director of Health Services (Leprosy/TB), Orissa to the Chief District Medical Officer, Balasore with a list of 46 leprosy patients for their bacteriological investigations and to submit progress report for onward transmission to this Court. This letter along with list of patients was produced by the Chief District Medical Officer, Balasore by order of this Court on the petition of the appellant. The list of patients accompanying the said letter includes the name of the appellant at serial No. 3.

(iv) On 7th April, 2003 the appellant had himself written to the Chief District Medical Officer for implementation of order dated 20th February, 2003 passed by this Court, inter alia, stating on affidavit that he had made a specific prayer before this Court for four time bacteriological investigations with subsequent follow up actions and that despite direction of this Court, no investigations had been conducted. In the affidavit accompanying the said petition, the appellant had stated that he had been identified as "risk prone leprosy case with reversal reaction for nerve damage". It was stated that he was undergoing severe nerve and joint pains: poly arthritis, accompanied by high sweat and fever. In the affidavit, the appellant had complained that the medical authorities have neither undertaken the required nerve function assessment nor adopted specific Flow Chart and even life saving drugs were not being supplied to him to prevent occurrence of any leprosy disability and unnatural death.

18. Accordingly, the District Judge held that the averments in the affidavit go to show that the appellant was still suffering from leprosy and that the order of this Court directing bacteriological and other tests etc. had not been conducted on the appellant. The District Judge, accordingly, concluded that at least by 20th March, 2004, on which date the State Government had filed an affidavit before this Court, complete investigations, tests and treatments in respect of the leprosy patients, including the appellant, had not been conducted and, therefore, the patients included in the list filed before this Court, including the appellant,

were not fully cured of leprosy.

19. Having bestowed our anxious consideration to the matter, we are of the opinion that none of the aforementioned circumstances taken into consideration by the District Judge, can be said to be either irrelevant or not germane to the issue for determination so as to warrant interference of this Court. It is trite that under Article 136 of the Constitution this Court does not ordinarily re-appraise evidence for itself nor determine whether or not the High court has come to a correct conclusion on facts. It is only where the High Court has completely missed the real point requiring adjudication or has missed or ignored the relevant material this Court would be justified in going into the evidence for the purpose of satisfying itself that grave injustice has not resulted in the matter, which is not the case here. It is perceptible that on appellant's own showing that he was having some doubts about at least the reactivation of the disease and had to approach this Court for appropriate directions to the concerned authorities for providing adequate facilities for periodical check ups including bacteriological tests and issue of fitness certificate. Thus, the District Judge as also the High Court was justified in coming to the conclusion that on facts obtaining at the relevant time, the appellant had not been fully cured of leprosy. We are unable to accept the stand of the appellant that his affidavit filed in this Court, detailing the past and present status of his health, was only meant for a limited purpose of securing a job. Such a plea deserves to be deprecated. We are, thus, of the opinion that the High Court was correct in law and on facts in affirming the decision of the District Judge.

20. Before closing the case, we may mention that in this appeal, a new ground has been urged, namely, that the provisions of Section 16 and 17 of the Act are discriminatory and, thus, violative of Article 14 of the Constitution. During the course of hearing, without much elaboration, learned Counsel for the appellant faintly referred to the said ground. In our opinion, this contention is also untenable. It is well settled that Article 14 forbids class legislation; it does not forbid reasonable classification for the purpose of legislation. Nonetheless, that classification should not be arbitrary but must rest upon some real and substantial distinction bearing reasonable and just relation to the things in respect of which the classification is made. To satisfy the Constitutional test of permissible classification, two conditions must be satisfied, namely: (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that such differentia must have a rational relation to the object sought to be achieved by the statute in question. (See: *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, , *Pathumma and Others Vs. State of Kerala and Others*, , *Javed and Others Vs. State of Haryana and Others*,

21. In the instant case, the impugned classification is that those persons who have been or have become of unsound mind or leprosy or tuberculosis patients are disqualified from either contesting for the post of a Councillor in the

Municipality or continuing as such after election. The obvious object and the purpose sought to be achieved by the said restriction appears to be that being a contagious disease, it can be transmitted via droplets from the nose and mouth during close and frequent contacts with untreated infected persons, therefore, the other elected Councillors or the members of the public with whom they are required to have day-to-day close contact as Municipal Councillors, may also get affected by the disease. It is true that now with aggressive medication a patient may be fully cured of the disease, yet the Legislature in its wisdom has thought it fit to retain such provisions in the statute in order to eliminate the danger of its being transmitted to other people from the person affected by the disease. Having regard to these circumstances, we are convinced that the said classification does bear a reasonable and just relation with the object sought to be achieved by the statute in question and cannot be said to be unreasonable or arbitrary. Accordingly, we hold that Sections 16(1)(iv) and 17(1)(b) of the Act are not violative of Article 14 of the Constitution.

22. Before parting with this case, we deem it appropriate to point out that having regard to the changed concept and knowledge gained about the disease of leprosy, on the recommendation of the Working Group on Eradication of Leprosy, appointed by the Government of India, many State Governments and Union Territories have repealed the antiquated Lepers Act, 1898 and subsequent similar State Acts, providing for the segregation and medical treatment of pauper lepers suffering from infectious type of disease. Therefore, keeping in view the present thinking and researches carried on leprosy as also on tuberculosis, and with professional input, the Legislature may seriously consider whether it is still necessary to retain such provisions in the statutes.

23. For the foregoing reasons, we do not find any infirmity or illegality in the impugned judgment warranting interference. The appeal, being devoid of any merit, is dismissed accordingly, but without any costs.