
(2012) 08 UK CK 0029

In the Uttarakhand High Court

Case No : Election Petition No. 01 of 2012

Gajendra Singh Jangpangi alias Gangu

APPELLANT

Vs

Bishan Singh Chupal and Others

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 386
Penal Code, 1860 (IPC) — Section 325, 332, 34, 427, 506
Representation of the People Act, 1951 — Section 8, 8(1), 8(3)

Citation : AIR 2013 Utt 11 : (2013) 1 ALJ 442

Hon'ble Judges : V.K. Bist, J

Bench : Single Bench

Advocate : Navnish Negi and Mrs. Prabha Naithani, for the Appellant;

Final Decision : Dismissed

Judgement

V.K. Bist, J.—Present Election Petition has been filed for following reliefs:

I. Declare the election of the respondent No. 1 from 43 Didihat Legislative Assembly Constituency void.

II. Direct for the fresh election in 43 Didihat Legislative Assembly Constituency.

III. Pass appropriate order against Returning Officer who intentionally and deliberately rejected the nomination/candidature of the petitioner.

IV. Grant any other and further relief which this Hon"ble Court may deem fit and proper in the circumstances of the case.

V. Award the cost of the petition to the Election Petitioner.

Election of third Legislative Assembly of State of Uttarakhand was notified by the Election Commission for seventy constituencies. In pursuance of the said notification, the petitioner filed his nomination form for 43-Didihat Legislative Assembly Constituency on 11.01.2012. The Returning Officer of 43-Didihat Legislative Assembly Constituency rejected the nomination paper of the

petitioner by declaring him disqualified u/s 8(3) of Representation of Peoples Act, 1951 (hereinafter referred to as the Act). The Returning Officer observed in his order that the petitioner in his affidavit filed in support of nomination paper has admitted that he has been convicted for three years and six months. The Returning Officer also observed that the papers annexed by the petitioner relating to pending appeal in the High Court do not suggest that conviction order has been suspended by the High Court.

2. Learned counsel for the petitioner submitted that in his affidavit filed alongwith nomination paper the petitioner fairly stated that he has been convicted by the judgment and order dated 31.05.2011 passed by District Judge, Pithoragarh in session trial No. 03 of 2010 under Sections 34, 332, 506 and 427 of I.P.C. against which appeal No. 119 of 2011 has been filed by the petitioner before the High Court. The said appeal has been admitted and petitioner has been enlarged on bail. Copy of judgment dated 31.05.2011 and bail order were also placed before the Returning Officer. They argued that the Returning Officer misconstrued the provision of law as appeal against the said conviction is admitted for hearing by the appellate court and the petitioner has been enlarged on bail, therefore, there would be no conviction from the date when the appeal is admitted. The conviction is yet to be confirmed by the appellate court and, therefore, the principle of innocence of the accused/convict should be presumed until it attains finality. They further submitted that order of conviction is not executable. It cannot be suspended or stayed as there is no provision for suspension of conviction by the appellate court and the appellate court cannot go beyond the provision of section 386 of Cr.P.C. They submitted that in view of these facts the Returning Officer should not have rejected the nomination paper of the petitioner and election of respondent No. 1 from 43-Didihat Legislative Assembly Constituency should be declared void and direction should be issued for holding fresh election. In support of their submission, the learned counsel for the petitioner relied upon the judgment of Bombay High Court reported in Ramesh Narang Vs. Rama Narang and others .

3. I have heard learned counsel for the petitioner, I have seen the judgment of Session Judge in session trial No. 03 of 2010 and also the order passed by the Returning Officer. The Session Judge convicted the appellant under Sections 325, 332 and 506 I. P.C. He was sentenced to rigorous imprisonment for a period of three years and directed to pay fine of Rs. 1000/- u/s 325 I.P.C., rigorous imprisonment for a period of one year u/s 506 of I.P.C. and fine of Rs. 500/- u/s 506 I.P.C.

4. Section 8 of the Act provides for disqualification on conviction for certain offences. Section 8(1), inter alia, provides that a person convicted of an offence punishable under clauses (a) to (n) thereof shall be disqualified where the affected person is sentenced to imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release. The offence punishable u/s 376(1) or (2) is one of the offences

enumerated in clause (a) of sub-section (1) of Section 8. Sub-section (3) of Section 8 provides that a person convicted of any offence and sentenced to imprisonment for not less than two years shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release. The qualification or disqualification is to be determined with reference to the date fixed for scrutiny of the nomination. Section 8(3) of the Representation of People Act is being reproduced below:

(3) A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (1) or sub-section (2)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

5. The Hon''ble Supreme Court in Ravikant S. Patil Vs. Sarvabhuma S. Bagali, has held that stay of conviction can be granted by the court u/s 389 C.P.C. but such stay should be granted in exceptional and rare circumstances where non-grant of stay would lead to injustice and irrepressible consequence. Grant of stay of conviction by court would be to render the order of conviction non-operative from the date of stay and consequently disqualification arising out of conviction would also cease to operate. If conviction is not stayed, the appellant would incur disqualification to contest the election. Relevant portion of the judgment is reproduced below:

15. It deserves to be clarified that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case. Where the execution of the sentence is stayed, the conviction continues to operate. But where the conviction itself is stayed, the effect is that the conviction will not be operative from the date of stay. An order of stay, of course, does not render the conviction non-existent, but only non-operative.

16.3 In K.C. Sareen v. CBI it was held that though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, its exercise should be limited to very exceptional cases. It was further held that merely because the convicted person files an appeal to challenge his conviction, the court should not suspend the operation of the conviction and the court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance.

In the present case, the petitioner was convicted for more than two years. There is no stay of conviction. Only sentence of imprisonment is suspended. The Returning Officer rightly rejected his nomination paper as petitioner stood disqualified u/s 8(3) of Representation of the People Act, 1951. The case law cited by the learned counsel for the petitioner is not a good law in view of various subsequent judgments of the Hon''ble Supreme Court. Accordingly, the election petition is dismissed.