
(2013) 09 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : C.M.P.M.O. No. 59 of 2013

Govind Ram

APPELLANT

Vs

Mehar Chand and Others

RESPONDENT

Date of Decision : 02-09-2013

Acts Referred:

Citation : (2013) 3 ShimLC 1633

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : R.K. Bawa and Mr. M.S. Thakur, for the Appellant; Digvijay Singh, Advocate for the Respondent No. 1, Ms. Meenakshi Sharma, Additional Advocate General, Mr. Vivek Singh Attri, D.A.G. for the State, Mr. Jagan Nath, Advocate for the Respondent No. 3 and Mr. Raghunandan Chaudhary, Advocate for the Respondents No. 4 and 6, for the Respondent

Judgement

Rajiv Sharma, J.—This petition is directed against the order dated 29.1.2013 passed by the Deputy Commissioner, Mandi in file No. 11/2012 and order dated 24.7.2012 passed by the Authorized Officer-cum-Sub Divisional Officer (Civil), Sundernagar in case No. 1/2011. "Key facts" necessary for the adjudication of this petition are that respondent No. 1 filed election petition u/s 163 of the Himachal Pradesh Panchayati Raj Act, 1994 for setting aside the election of the Pradhan on the ground that his nomination was wrongly rejected by the A.R.O. However, his nomination paper was wrongly rejected by the Assistant Returning Officer on the ground that an FIR has been registered against him. According to him, mere registration of FIR against a candidate would not amount to disqualification and it is only when the Court takes cognizance, the nomination paper can be rejected. His further case is that on the date of scrutiny, i.e. 15.12.2010, the Court had not taken the cognizance and the charges were not framed against him, as such, the action was illegal.

2. Respondent No. 1 has examined himself and AW-2, Megh Singh, Sub-Inspector office of the Block Development Officer. The petitioner examined four

witnesses, namely, RW-1 Govind Ram petitioner himself, RW-2 Vishwa Nath, RW-3 Madhvender Sharma and RW-4 Piru Ram.

3. The Authorized Officer-cum-Sub Divisional Officer allowed the election petition on 24.7.2012 and the election of the petitioner for the post of Gram Panchayat Batwara was set aside and he ordered fresh election. The petitioner preferred an appeal bearing file No. 11/2012 on 1.8.2012 against the order dated 24.7.2012 before the Deputy Commissioner, Mandi. He dismissed the same on 29.1.2013. Hence, the present petition.

4. Mr. R.K. Bawa, learned Senior Advocate has vehemently argued that the nomination paper of respondent No. 1 has rightly been rejected by the A.R.O. According to him, the Court has already taken the cognizance of the matter. He has also argued that respondent No. 1 has not signed each page of Annexure, as provided under Regulation 5(3).

5. Mr. Digvijay Singh has supported the orders passed by both the authorities below.

6. Respondent No. 5 was proceeded ex parte. Respondents No. 3, 4 and 6 have adopted the arguments of Mr. R.K. Bawa, learned Senior Advocate.

7. The respondent-State was directed to produce the record. The record has been produced.

8. I have heard the learned Counsel for the parties and have perused the record carefully.

9. Respondent No. 1 Mehar Chand has appeared as AW-1. According to him, his nomination paper was rejected on 15.12.2010 vide order Ex. P-1 on the ground that the Court has taken cognizance against him u/s 406, 409 and 420 of the Indian Penal Code. No charge has been framed against him and the case was fixed for 31.10.2011 for consideration of charge. According to him, he has remained Pradhan of the Gram Panchayat four times and his nomination paper was wrongly rejected. He has admitted in his cross-examination that FIR has been filed against him. However, he has not mentioned this fact in the nomination paper since he was not charged at that time.

10. AW-2 Megh Singh, Sub Inspector Office of the Block Development Officer has produced the documents regarding election Ex. P-2 to Ex. P-14.

11. Petitioner Govind Ram has appeared as RW-1. According to him, he has filed the objections to the nomination paper of respondent No. 1 Vide Ex. RW-1/A. He has proved copy of FIR Ex. RW-1/B. According to him, respondent No. 1 has not disclosed in his nomination paper that the case was pending against him. In his cross-examination, he has testified that the case pertained to MNREGA. He has shown his ignorance that the case was fixed for charge on the next date. He has further deposed that he had no legal knowledge about the term "summon" and "warrant" case. He did not know the meaning of expression "cognizance".

According to him, he has objected to the nomination of respondent No. 1 only on the ground that FIR has been registered against him.

12. RW-2 has proved documents RW-1/A, RW-1/B, Ex. P-1 and P-14.

13. RW-3 Madhvender Sharma has testified that he was A.R.O in the election for the post of President, Gram Panchayat, Batwara. The petitioner and other people objected to his nomination paper Ex. RW-1/A. He has written Ex. RW-1/A-1 on scrutiny of nomination papers and passed the order of cancelling the nomination of respondent No. 1. According to him, learned Judge has ordered the investigation in case under Sections 420, 409, 468, 467, 471 and 120B and the punishment under these Sections was more than two years and in view of this, he rejected the nomination paper. According to him, cognizance means when the Court orders the registration of the case. He has also deposed that he has rejected the nomination paper of respondent No. 1 and he did not know whether respondent No. 1 has been charged or not. He has denied the suggestion that offence is to be mentioned only when the charge has been framed. He again reiterated that cognizance means when the Court ordered the registration of the case.

14. RW-4 Piru Ram has testified that he objected the nomination of respondent No. 1. In his cross-examination, he has admitted that he did not know the purpose of the objection.

15. Respondent No. 1 has proved the proceedings before the Court of Judicial Magistrate 1st Class vide Zimini orders Ex. PA, Ex. PB, Ex. PC, Ex. PE, Ex. PF and Ex. PG. According to these orders upto 23.6.2011, the case was fixed for consideration of charge and the charge was not framed against respondent No. 1. The date of scrutiny in the present case was 15.12.2010. Even on 23.6.2011, the case was fixed for consideration of charge. The case was adjourned for consideration of charge on 29.8.2011.

16. It will be apt at this stage to refer the Himachal Pradesh Panchayats and Municipalities Elections (Disclosure of Specified Information by the Candidates) Regulations, 2004 notified on 17.2.2004. Regulation 3 reads as under:

3. Disclosure of Information by Candidates for election to a Gram Panchayat.-- Every candidate for election to the office of a Member of Up-Pradhan or Pradhan of a Gram Panchayat shall furnish or cause to furnish alongwith his nomination paper the specified information indicated in Annexure to these Regulations pertaining to his conviction or acquittal or discharge in criminal cases, if any, in the past, the criminal cases pending against him for which the maximum punishment provided in the relevant law is imprisonment for two years or more and in which charge has been framed or cognizance has been taken by a Court, his assets and liabilities and the particular of his children on the lines given in the Annexure.

Explanation.--Such a candidate shall not be bound to submit details about his

educational qualifications, as envisaged in part-V of the Annexure.

17. It is evident from the plain language of Regulation 3 that every candidate for election to the office of a Member or Up-Pradhan or Pradhan of a Gram Panchayat is required to furnish or cause to furnish alongwith his nomination paper the specified information indicated in Annexure-1 to the Regulations pertaining to his conviction or acquittal or discharge in criminal cases, if any, in the past, the criminal cases pending against him for which the maximum punishment provided in the relevant law is imprisonment for two years or more and in which charge has been framed or cognizance has been taken by a Court, his assets and liabilities and the particulars of his children on the lines given in the Annexure. The candidate is required to disclose the case number, Section of the Act and description of the offence of which the cognizance has been taken, the Court which has taken cognizance, date of order of the Court taking cognizance, details of appeal/application for revision/review/writ petition, if any, filed against the order of the Court taking cognizance. Foot note of Sr. No. 3 of Annexure-I reads as under:

A Court shall be deemed to have taken cognizance of a case when it frames charges or where the framing of a charge by a Court is not necessary where the Court in a prima facie finding decided to issue process to the accused with a view to proceeding with the trial.

18. Respondent No. 1 has filled Annexure in Hindi vide Annexure P-14. He has put cross mark against all the columns of Sr. No. 3 of Annexure-I. Respondent No. 1 has put his signatures on Annexure P-14 and the same was attested by the A.R.O., Block Development Officer. The fact of the matter is that all the papers have not been signed by respondent No. 1 though attested by A.R.O.

19. What emerges from the facts enumerated hereinabove is that FIR has been registered against respondent No. 1 on 18.11.2008 under Sections 406, 409 and 420 of the Indian Penal Code. The minimum punishment under these Sections is more than two years. The charge has not been framed by the Court.

20. Mr. R.K. Bawa, learned Senior Advocate has referred to Section 190 of the Code of Criminal Procedure/1973. According to him, the Court has taken cognizance in the matter.

21. Section 246 of the Code of Criminal Procedure provides that when evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under Chapter-XIX, which the Magistrate is competent to try and which in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused. The manner in which the charge has to be drawn is provided under Sections 211 and 224 of the Code of Criminal Procedure, 1973.

22. It is clear from the plain language of the note appended to Sr. No. 3 of Annexure that Court shall be deemed to have taken cognizance of a case when it

frames charges or, where the framing of a charge by a Court is not necessary, the Court after recording prima facie finding, decides to issue process to the accused with a view to proceed with the trial. In view of this, Section 191 would not be applicable since the charge was required to be specifically framed under Sections 406, 409 and 420 of the Indian Penal Code against respondent No. 1.

23. Their Lordships of the Hon"ble Supreme Court in Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and Another, has explained the expression "cognizance" as under:

34. The argument of the learned Attorney General that the question of granting sanction for prosecution of a public servant charged with an offence under the 1988 Act arises only at the stage of taking cognizance and not before that is neither supported by the plain language of the Section nor the judicial precedents relied upon by him. Though, the term "cognizance" has not been defined either in the 1988 Act or the Cr.P.C. the same has acquired a definite meaning and connotation from various judicial precedents. In legal parlance cognizance is "taking judicial notice by the Court of law, possessing jurisdiction, on a cause or matter presented before it so as to decide whether there is any basis for initiating proceedings and determination of the cause or matter judicially.

35. In R.R. Chari Vs. The State of Uttar Pradesh, the three Judge Bench approved the following observations made by the Calcutta High Court in Superintendent and Remembrancer of Legal Affairs, West Bengal v. Abni Kumar Banerjee (supra):

What is taking cognizance has not been defined in the Criminal Procedure Code and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any magistrate has taken cognizance of any offence u/s 190(1)(a), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter - proceeding u/s 200 and thereafter sending it for inquiry and report u/s 202. When the magistrate applies his mind not for the purpose of proceeding under the subsequent Sections of this Chapter, but for taking action of some other kind, e.g. ordering investigation u/s 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence.

36. In Mohd. Khalid's case, the Court referred to Section 190 of the Cr.P.C. and observed:

In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word "cognizance" indicates the point when a Magistrate or a Judge first takes judicial notice of an

offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons.

37. In Pastor P. Raju's case, this Court referred to the provisions of Chapter XIV and Sections 190 and 196(1-A) of the Cr.P.C. and observed:

There is no bar against registration of a criminal case or investigation by the police agency or submission of a report by the police on completion of investigation, as contemplated by Section 173 Cr.P.C.. If a criminal case is registered, investigation of the offence is done and the police submits a report as a result of such investigation before a Magistrate without the previous sanction of the Central Government or of the State Government or of the District Magistrate, there will be no violation of Section 196(1-A) Cr.P.C. and no illegality of any kind would be committed.

38. The Court then referred to some of the precedents including the judgment in Mohd. Khalid's case and observed:

It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the Court decides to proceed against the offenders against whom a prima facie case is made out.

24. No charge was framed against respondent No. 1 at the time when the nomination paper of respondent No. 1 was rejected on 15.12.2010. Since no charge was framed against respondent No. 1, he has rightly crossed all the columns of Sr. No. 3 of Annexure-1. In view of this, the nomination paper has been wrongly rejected by the A.R.O. on 15.12.2010.

25. Mr. R.K. Bawa, learned Senior Advocate has also argued that respondent No. 1 has not signed all the pages of Annexure-1, i.e. Annexure P-14. Respondent No. 1 has signed Annexure P-14 before the A.R.O. All the pages are attested by the A.R.O. Respondent No. 1 has not signed all the pages. It will not amount to illegality. It is clear from Regulation 11 that the failure or omission of a candidate to furnish the specified information in the manner laid down in these Regulations shall render the nomination paper of the candidate concerned liable to be rejected by the Returning Officer/Assistant Returning officer concerned. This means that if the candidate has not furnished the specific information the manner laid down in the Regulations, his nomination can be rejected. This declaration has to be given as per Annexure-1 comprising Part-1. Merely not signing of all the pages would not incur disqualification, more particularly, when all the pages have been signed and attested by the A.R.O. The nomination of respondent No. 1 has been rejected by the A.R.O. vide Ex. P-10 by specifically stating that he has not filled columns of Sr. No. 3 of Annexure-1 and cognizance

has been taken against him u/s 406, 409 and 420 of the Indian Penal Code. The nomination paper of respondent No. 1 has not been rejected mat he has not signed all the pages of Annexure-1 by A.R.O. This ground was also not taken by the petitioner in his reply. The petitioner has also not stated anything whether the charge has been framed against respondent No. 1 or not. The ARO while appearing as RW-1 has testified that he was under the impression that cognizance means when the Court orders the registration of a case. He has categorically admitted, as discussed hereinabove, that though he has rejected the nomination of respondent No. 1 but did not know whether charge has been framed against respondent No. 1 or not. Petitioner while appearing as RW-1 has stated that he did not know the difference between summon and warrant case and what is the meaning of cognizance. He has deposed that he has objected to nomination of respondent No. 1 only on the ground that an FIR has been registered against him. There is neither any illegality nor any perversity in the orders passed by the authorities below. The authorities below have passed speaking orders and the issues raised by the parties have duly been addressed. Accordingly, in view of the observations and analysis made hereinabove, there is no merit in the petition and the same is dismissed. Pending application(s), if any, also stands disposed of. No costs.