
(2001) 03 MP CK 0074

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 355 of 1997

Jila Nirvachak Registrakaran Adhikari

APPELLANT

Vs

Sikandar Bakht

RESPONDENT

Date of Decision : 15-03-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468

Registration of Electors Rules, 1960 — Rule 26

Representation of the People Act, 1950 — Section 31

Citation : (2001) 2 JLJ 23

Hon'ble Judges : Fakhruddin, J

Bench : Single Bench

Advocate : Padam Singh, A.G.A. and Aijaz Gauri, for the Appellant; S.B. Mishra and S.K. Goswami, for the Respondent

Final Decision : Dismissed

Judgement

Fakhruddin, J.—This revision is directed against the order dated 5.8.97, passed in Cr. Rev. No. 85/96 (Sikandar Bakht v. Jila Nirvachak Registrakaran Adhikari, Gwalior, Distt. Gwalior), by the First Addl. Sessions Judge to the Court of District Judge, Gwalior.

2. The facts giving rise to this petition are that the Respondent preferred a claim in Form 6 prescribed under Rule 26 of the Registration of Electors Rules, 1960 for inclusion of his name in the revised electoral rolls of 1990 of Legislative Assembly Constituency No. 15, at serial Nos., 7 and 8 at No. 1791 thereof, declaring himself an ordinary resident of House No. 1469, situated near Mata Prasad's Crasher, Shinde Ki Chhawam, Lashkar, Gwalior.

3. It is stated that on 22.12.1993 and 28.12.1993, the Election Commission of India through its Secretary wrote to the Chief Electoral Officers of all States and Union Territories about the malpractice of registering persons on the electoral rolls of States and Union Territories where they are not ordinarily resident, and instructed them to look into the matter.

4. It is submitted that pursuant to such instructions, the enquiry was made by the Up Jila Nirvachan Adhikari and the District Nirvachan Registrikaran Adhikari and after holding enquiry, on 8.3.95 held that the Respondent is not an ordinary resident of Gwalior and vide order dated 6.5.94 (Annexure-P/1) directed deletion of his name from the electoral rolls of the said constituency. The complaint was also filed against the Respondent by the Petitioner, on 21.4.95, u/s 31 of the Representation of People Act, 1950 (hereinafter referred to as the Act), being Misc. Cri. C. No. 1327/95, as per Annexure-P/2, on the record, before the Judicial Magistrate First Class, Gwalior. Along with the complaint, the list of the witnesses and the requisite documents were also filed. The learned Magistrate, on the basis of the material placed before it, found ground to proceed in the matter and accordingly the process was issued.

5. The Respondent was said to have filed an application before the trial Magistrate to the effect that the punishment provided u/s 31 of the said Act itself is one year and the provisions of Section 468 Code of Criminal Procedure provide that no Court shall take cognizance of an offence after expiry of one year if the offence is punishable with imprisonment for a term not exceeding one year. It was pleaded that the incident is of 1990 and therefore the Court had no power to take cognizance in the matter in the light of the provisions of Section 468 Code of Criminal Procedure and the complaint as such be rejected being barred by time.

6. The learned trial Court having considered the material on record, under the order dated 15.2.96 (Annexure-P/3) held that the complaint was not barred by time. It was also held that the limitation would start from the date of the knowledge to the complainant, i.e. 6.3.94 and hence the complaint was not hit by the limitation and the Court had power to take cognizance in the matter. Against this order dated 15.2.92 passed by the trial Magistrate, the Respondent preferred a petition before the Revisional Court, i.e. the Sessions Court, which was registered as Cri Rev No. 85/96. The learned Sessions Court vide order dated 5.8.97 reversed the finding of the trial Court and held that the complaint was barred by time. It was also held that since the Chief Election Officer, M.P. has set aside the order dated 8.3.95 whereunder it was held that the Respondent is not an ordinary resident of Gwalior, by the District Electoral Officer, consequence of which the name of the Respondent was deleted from the electoral rolls and again re-instated the name of the Respondent in the said electoral rolls, thus it could not be said that prima facie, offence u/s 31 of the Act is made out against the Respondent.

7. The learned Sessions Court having considered the entire material on record and the relevant provisions of law, by the impugned judgment/order discharged the Respondent. The findings are recorded in paras 4 to 14 of the impugned order.

8. Shri Padam Singh, learned Counsel appearing for the Petitioner/State submitted that though the present revision-petition was filed, but subsequently

an order had been issued by the Joint Chief Electoral Officer, Bhopal on 18.11.97 to the Returning Officer/Collector, Gwalior to the effect that they are not in favour of the filing of the petition and pursuant to this, the Joint Collector, on 20.11.97 had written a letter to the office of the Addl. Advocate General to that respect. Shri S.B.Mishra, Counsel appearing for the Respondent also stated so and submitted that he has filed an application alongwith the copy of that order referred to above, it was further pointed out by the counsel representing the Respondent that the petition though was filed, but no permission was sought for and it was filed without permission. Learned Counsel for the State is not in a position to dispute this as well.

9. Learned Counsel for the Respondent further submitted that the controversy raised in this petition stands concluded by the decision of the Apex Court in the case of Election Commission of India and Another Vs. Dr. Manmohan Singh and Others, , in which it is held that to question the correctness of the statement as to his ordinary residence made by the holder of a declared office, the Electoral Registration Officer must be in possession of evidence to the contrary and he must inform and state the substance of such evidence so that the holder of the declared office may rebut it in the course of the inquiry and no inquiry can be initiated in absence of such evidence. Para 17 of the judgment has been referred to, which is quoted below :

It was contended on behalf of the Appellant that the order of the Chief Election Commissioner dated 1.3.1994 and the notices subsequent thereto showed that the inquiry also related to the statement of the first Respondent about the place of his ordinary residence in Form 6, that is to say, when he was not the holder of a declared office, and therefore, the inquiry should be allowed to proceed. In the first place, the inquiry commenced with the third Respondent's letter dated 2.2.1994 whereby the first Respondent was asked to furnish evidence in support of your claim of ordinary residence as stated in Form 1, that is to say, in support of the statement made by the first Respondent as the holder of a declared office. In the second place, and in any event, the inquiry cannot be allowed to proceed having regard to the order of the Chief Election Commissioner dated 1.3.94. The order referred to the findings of investigations that had been carried on, of which the first Respondent had no notice. It drew inferences therefrom that were very adverse to the first Respondent. It then directed the third Respondent to keep in view and pay due regard to the facts brought out in the foregoing paragraphs of this order while conducting the inquiry and passing the final order thereon. Having regard to the fact that the third Respondent was a subordinate of the then Chief Election Commissioner and given the nature of the inferences drawn by the latter without giving to the first Respondent the opportunity of a defence, there can be no doubt that allowing the inquiry to proceed would be detrimental to fair play and the interests of the first Respondent. The inquiry and all notices and orders pertaining thereto must stand quashed.

10. Learned Counsel for the Respondent further drew attention of this Court to

para 9 of the impugned order passed by the learned Sessions Court, whereunder it is noted by the learned Sessions Court that the order dated 8.3.95 holding the Respondent not an ordinary resident of Gwalior and directing deletion of his name from the electoral rolls was set aside by the Chief Election Officer, M.P. and order was passed, which could not be disputed by the counsel for the State.

11. Having considered the matter in the light of the submissions made hereinabove and the law laid down by the Apex Court in the case of Election Commission of India and Another Vs. Dr. Manmohan Singh and Others, , in the opinion of this Court, the revision fails and is dismissed.