
(2008) 09 CHH CK 0016
In the Chhattisgarh High Court
Case No : Writ Petition No. (C) 3027 of 2008

Laxman Prasad Jangde

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 22-09-2008

Acts Referred:

Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 36, 36(1)

Citation : (2009) 1 MPJR 20

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—With the consent of learned counsel appearing for the parties, the petition is heard Finally.

2. Challenge in this petition is to the order dated 4-6-2008 (Annexure-P/1) passed by the Director, Panchayat, Chhattisgarh, Raipur, in Appeal Case No. 150/A-89/07-08, whereby the appeal filed by the respondent No.4 herein, was allowed," setting aside the order dated 14-5-2008 (Annexur-P/2) passed by the Additional Collector, Bilaspur, in Panchayat Case No. 75/A-89 (3)/ 2007-2008.

3. The indisputable facts in nutshell as projected by the petitioner, are that the respondent No. 4 was elected as Sarpanch of Gram Panchayat pendri Talab, Tahsil Lormi, District Bilaspur, The petitioner made a complaint and filed an application u/s 36 of the Chhattisgarh Panchayat Raj Avan Gram Swaraj Adhiniyam, 1993 (for short "the Act, 1993"), stating that the respondent No. 4 is having three children and the third child was born on 13.4.2007. Thus the respondent No. 4 is disqualified to hold the office of Sarpanch under the provisions of Section 36 (1) (m) of the Act, 1993. The Additional Collector after hearing the parties held that the third child of respondent No. 4 was born after the 26th day of January 2001 i.e. On 13-4-2007 and, as such the respondent No. 4 became disqualified and deserves to be removed under the provisions of the

Act, 1993. Accordingly the post of Sarpanch of Gram Panchayat Pendri Talab, Tahsil Lormi District Bilaspur, was declared as vacant by order dated 14-5-2008 (Annexure-P/2).

4. Being aggrieved, the respondent No. 4 preferred an appeal before the Director, Panchayat, Chhattisgarh, Raipur. By order dated 4-6-2008 (Annexure-P/1) the Director, Panchayat, held that since the disqualification as contained in Section 36 (1) (m) of the Act, 1993 was omitted by the Chhattisgarh Panchayat Raj (Amendment) Act, 2008 (for short "the Amendment Act, 2008") with effect from 23-5-2008, the disqualification of respondent No.4 has been removed and he became entitled for holding the post of Sarpanch of Gram Panchayat Pendri Talab, Tahsil Lormi, District Bilaspur, Accordingly, the order dated 14-5-2008 passed by the Additional Collector was set aside and the appeal filed by the respondent No.4 was allowed. Thus, this petition.

5. Shri Roy, learned counsel appearing for the petitioners would submit that the Amendment Act, 2008 came into existence with effect from 23-5-2008 without having retrospective effect. Thus, the disqualification of respondent No.4 as on the date of election and as held by the Additional Collector by order dated 14-5-2008 cannot be set aside.

6. The Amendment Act, 2008 omitted the provision of Section 36 (1) (m) of the Act, 1993, not with retrospective effect and the same would be applicable prospectively. So far as the dispute with regard to birth of third child after 26th day of January, 2001 i.e. on 13-4-2007 is concerned, there was no dispute and the same is an admitted fact.

7. Per contra, Shri Pandey, learned counsel appearing for respondent No.4 would submit that the disqualification as prescribed under the provisions of Section 36 (1) (m) of Act, 1993 was omitted by the Amendment Act, 2008, which came into force with effect from 23-5-2008 and, as such, the disqualification of respondent No. 4 stood removed. There is no disqualification as on date; therefore, the respondent No.4 is entitled to hold the post of Sarpanch of Gram Panchayat Pendri Talab, Tahsil Lormi, District Bilaspur.

8. Having heard learned counsel appearing for the respective parties, perused the pleadings and the documents appended thereto, it is evident that the petitioner was disqualified on the day when he was elected as Sarpanch, because Section 36 (1) (m) of the Act, 1993 clearly provides that "no person shall be eligible to be an office-bearer of Panchayat who has more than two living children one of whom is born on after the 26th day of January, 2001." Clause (m) of sub-Section (1) of Section 36 of the Act, 1993 was inserted by M.P. Act 14 of 2000, w.e.f. 26-1-2001.

9. This Court while deciding the similar issue involved in the matter of Mahendra Budek Vs. State of Chhattisgarh & Others W.P. (227) No. 3106 of 2008, relying on various decisions of Hon"ble Supreme Court in the matters of Keshavan Madhava Menon Vs. The State of Bombay, Jayantilal Amrathlal Vs. The Union of

India (UOI), The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, , Govind Das and Others Vs. The Income Tax Officer and Another, , Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others, , Shyam Sunder and others vs. Ram Kumar and Another (2001) 18 SCC 24 , S.L. Srinivasa Jute Twine Mills P. Ltd. Vs. Union of India (UOI) and Another, & Sangam Spinners Vs. Regional Provident Fund Commissioner-I, , observed as under:

... the subsequent event taking place or change in law during the pendency of appeal cannot be looked into at the appellate stage, even if the law has ceased to be a good law by amendment.

.....unless contrary intention is shown, the applicability of the provisions would be prospective. In the facts of the case, no such intention has been expressed in the Amendment Act. 2008. Thus, the disqualification earned earlier cannot be cured or validated by the subsequent amendment i.e. Amendment Act, 2008.

10. In the matter of Mahendra Budek (supra), review petition was filed by the respondent No.4 therein being Review Petition No. 42 of 2008 (Radheshyam Das vs. State of Chhattisgarh & Others) which was dismissed by this Court by order dated 15-9-2008.

11. In view of the foregoing, the petition is allowed. The order dated 4-6-2008 (Annexure-P/1) passed by the Director, Panchayat, Chhattisgarh, Raipur, is hereby quashed and the order dated 14-5-2008 (Annexure-P/2) Passed by the Additional Collector, Bilaspur, is restored. No order as to costs.