
(2008) 08 CHH CK 0016
In the Chhattisgarh High Court

Mahendra Budek

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 11-08-2008

Acts Referred:

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

Citation : (2009) 4 MPHT 10

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 13-6-2008 passed by the Director, Panchayat, Chhattisgarh, Raipur, in Appeal Case No. 387/ A-89/06-07 (Annexure P-1) whereby appeal was allowed setting aside the order dated 5-9-2007 passed by the Collector, Mahasamund, in Case No. 100/A-89 (3)/06-07 (Annexure P-4).

3. The indisputable facts, in nutshell, as projected by the petitioner, are that the respondent No. 4 was elected as Sarpanch of Gram Panchayat Chhatigirola, Tehsil Saraipali, District Mahasamund. The petitioner made a complaint and filed an application u/s 36 of the Chhattisgarh Panchayat Raj Avam 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 14-11-2001. 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 Collector/respondent No. 3 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 14-11-2001 and, as such, the respondent No. 4 became disqualified and deserves to be removed under the provisions of Section 36(2) of the Act, 1993. Accordingly, the post of Sarpanch of

Gram Panchayat Chattigirola, Tehsil Saraipali, District Mahasamund, was declared as vacant by order dated 5-9-2007 (Annexure P-4).

4. Being aggrieved, the respondent No. 4 preferred an appeal before the Director, Panchayat, Chhattisgarh, Raipur. By order dated 13-6-2008 (Annexure P-I) 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, Gram Panchayat Chattigirola, Tehsil Saraipali, District Mahasamund. Accordingly, the order dated 5-9-2007 passed by the Collector was set aside and the appeal filed by the respondent No. 4 was allowed. Thus, this petition.

5. Shri Pradhan, learned Counsel appearing for the petitioner, 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 Collector by order dated 5-9-2007 cannot be set aside.

6. The Amendment Act, 2008 omitted the provisions of Section 36(1)(m) of the Act, 1993 is 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, Le., on 14-11-2001 is concerned, there was no dispute and the same is an admitted fact.

7. Per contra, Shri Koshy, learned Counsel appearing for respondent No. 4, would submit that the disqualification as prescribed under the provisions of Section 36(1)(m) of the 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, Gram Panchayat Chhattigirola, Tehsil Saraipali, District Mahasamund. Since the dispute was pending consideration before the Appellate Authority, the respondent No. 4 is entitled to have the benefit of the Amendment Act, 2008.

8. Shri Harit, learned Dy. Advocate General, appearing on behalf of the State/ respondent Nos. 1 to 3, did not offer any explanation.

9. 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 Sarpanch, as 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 or 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. No. 14 of 2000, w.e.f. 26-1-2001. It was contested before the Collector that since the first child was taken in adoption by the sister of the petitioner, therefore, he cannot be held

as living child for the purpose of disqualification. The first child was born within the wedlock of respondent No. 4 and his wife, even if he was taken in adoption by other relatives, he remains to be born child of respondent No. 4. Thus, the finding of the Collector on this issue is unexceptionable.

10. The Hon"ble Supreme Court in the matter of Keshavan Madhava Menon Vs. The State of Bombay, , observed as under:

7. It will be noticed that all that this clause declares is that all existing laws, in so far as they are inconsistent with the provisions of Part III shall, to the extent of such inconsistency, be void. Every statute is prima facie prospective unless it is expressly or by necessary implications made to have retrospective operation....

11. In the matter of Jayantilal Amrathlal Vs. The Union of India (UOI), , the Supreme Court observed as under:

8. ...In order to see whether the rights and liabilities under the repealed law have been put an end to by the new enactment, the proper approach is not to enquire if the new enactment has by its new provisions kept alive the rights and liabilities under the repealed law but whether it has taken away those rights and liabilities. The absence of a saving clause in a new enactment preserving the rights and liabilities under the repealed law is neither material nor decisive of the question-- See : State of Punjab v. Mohar Singh and T.S. Baliah v. Income Tax Officer, Central Circle VI, Madras.

12. In the matter of The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, , the Supreme Court observed as under:

16. ...It is difficult to appreciate this argument and impossible to accept it. It is wrong to characterise the operation of a service rule as retrospective for the reason that it applies to existing employees. A rule which classifies such employees for promotional purposes, undoubtedly operates on those who entered service before the framing of the rule but it operates in future, the sense that it governs the future right of promotion of those who are already in service. The impugned Rules do not recall a promotion already made or reduce a pay scale already granted. They provide for a classification by prescribing a qualitative standard, the measure of that standard being educational attainment. Whether a classification founded on such a consideration suffers from a discriminatory vice is another matter which we will presently consider but surely, the Rule cannot first be assumed to be retrospective and then be struck down for the reason that it violates the guarantee of equal opportunity by extending its arms over the past....

13. In the matter of Govind Das and Others Vs. The Income Tax Officer and Another, , the Supreme Court observed as under:

11. Now it is a well settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so

as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English Courts is that--

all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective,

and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only....

14. In the matter of Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others, , a Constitution Bench of the Supreme Court observed as under:

20. It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date of benefit which has been granted or availed of, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.

24. In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon v. B.S. Yadav and Raman Lal Keshav Lal Soni.

15. Further in the matter of Shyam Sunder and Another Vs. Ram Kumar and Another, , the Supreme Court observed as under:

28. ...We are, therefore, of the view that where a repeal of provisions of an enactment is followed by fresh legislation by an amendment Act, such legislation is prospective in operation and does not affect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. We are further of the view that there is a presumption against the retrospective

operation of a statute and further a statute is not to be construed to have a greater retrospective operation than its language renders necessary, but an amending Act which affects the procedure is presumed to be retrospective, unless the amending Act provides otherwise....

16. The ratio laid down by the Supreme Court in the case cited above, with regard to the concept of retrospective and prospective operation of an Act, provision, rule, etc., has been subsequently approved and followed in the matter of *S.L. Srinivasa Jute Twine Mills P. Ltd. Vs. Union of India (UOI) and Another*, , wherein clarifying the above ratio the Supreme Court further observed as under:

18. It is a cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective operation. (See: *Keshavan Madhava Menon v. State of Bombay*). But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only *nova constitutio futuris formam imponere debet, non praeleritis*. In the words of Lord Blanesburgh,

"provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment" (See : *Delhi Cloth & General Mills Co. Ltd. v. CIT* AIR p. 244).

"Every statute, it has been said", observed Lopes, LL, "which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect." (See: *Amireddi Rajagopala Rao v. Amireddi Sitharamamma*).

As a logical corollary of the general rule, that retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication, there is a subordinate rule to the effect that a statute or a section in it is not to be construed so as to have larger retrospective operation than its language renders necessary. (See : *Reid v. Reid*). In other words, close attention must be paid to the language of the statutory provision for determining the scope of the retrospectivity intended by Parliament. (See: *Union of India v. Raghubir Singh*). The above position has been highlighted in *Principles of Statutory Interpretation* by Justice G.P. Singh 2006 pp. 474 475.

17. Subsequently, in the matter of *Sangam Spinners Vs. Regional Provident Fund Commissioner-I*, , the ratio laid down, as above, was referred with approval.

18. It is well settled principles of law that the subsequent event taking place or change in law during the pendency of appeal cannot be looked into at the appellate state, even if the law has ceased to be a good law by amendment.

19. Applying the well settled principles of law to the effect of an enactment made by Legislature, it is clear that 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.

20. In view of the foregoing reasons, the petition is allowed. The order dated 13-6-2008 (Annexure P-1) passed by the Director, Panchayat, Chhattisgarh, Raipur, is hereby quashed and the order dated 5-9-2007 (Annexure P-4) passed by the Collector, Mahasamund, is restored. No order as to costs.