
(1992) 01 GAU CK 0013
In the Gauhati High Court
Case No : Civil Rule No. 4956 of 1991

Mantaj Ali

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 27-01-1992

Acts Referred:

Assam Panchayati Raj Act, 1986 — Section 12(2)(e), 12(2)(e)

Citation : (1992) 1 GLJ 98 : (1992) 1 GLR 279

Hon'ble Judges : R.K.Manisana Singh, J and J.Sangma, J

Bench : Division Bench

Advocate : A.B.Choudhary, B.Dutta, A.R.Barthakur, P.Roy, K.Basar,
H.R.A.Choudhary, A.Sharma, Advocates appearing for Parties

Judgement

R.K. Manisana, J.—In this application under Article 226 of the Constitution of India, the petitioner Shri Mantaj Ali has challenged the vires of a part of section 12 (2) (e) of the Assam Panchayati Raj Act, 1986 (for short `Act').

2. The petitioner is a government contractor who is now holding contract under the Government of Assam. A notification for holding election to Gaon Panchayat and Anchalik Panchayats has been issued by the Government of Assam fixing dates for filing of nomination paper, etc. The petitioner intends to stand for an election to Gaon Panchayat, but he shall be disqualified for being chosen as member of a Gaon Panchayat under section 12 (2) (e) as he holds a contract under the Government of Assam. Therefore, the petitioner has challenged that part of section 12 (2) (e) in respect of disqualification for being chosen as a member of Gaon Panchayat for holding a contract under the Government as violative of Article 14 of the Constitution.

3. Section 12(2) (e) of the Act would read thus :

"No person shall be elected (or coopted and remain as President or VicePresident or Member of the Gaon Panchayat, if he or she holds any service of profit under Government (or any educational institution recognised by and receiving grant

from the Government) or holds any remunerated office under Gaon or Anchalik Panchayat or Mahkuma Parishad or holds any contract under any of the aforesaid bodies or under the Government."

Gaon Panchayat, Anchalik Panchayat and Mahkuma Parishad are within the meaning of "local authority" defined under section 2 of the Act. The word 'Government' used in section 12 (2) (e) has not been defined under the Act. However, under section 4(26) of the Assam General Clauses Act, the word 'Government' or 'the Government' shall include the State Government as well as the Central Government. Therefore, in respect of disqualification for holding any contract under section 12 (2) (e), the contract must be either under the Central Government, or the State Government, or any of the three local authorities, namely, Gaon Panchayat, Anchalik Panchayat and Mahkuma Parishad.

4. Mr. A. Sarma, learned counsel for the petitioner, has contended that the right of a person to stand for an election is valuable right, and that the restriction imposed on the persons holding contract under the Government for being chosen as a member of Gaon Panchayat is arbitrary and does not have a reasonable relation to the object or purpose sought to be achieved by the impugned legislation.

5. Mr. Sarma has referred us to section 9A of the R.P. Act. Under section 9A of the R.P. Act, a person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by that Government.

Appropriate Government has been defined in section 7 of the R.P. Act to mean "in relation to any disqualification for being chosen as or for being a member of either House of Parliament, the Central Government, and in relation to any disqualification for being chosen as or for being a member of the Legislative Assembly or Legislative Council of a State, the State Government.

6. A reading of sections 7 and 9A of the R.P. Act it discloses that, if the contract is with the Central Government, the contractor is not disqualified for being chosen as a member of Legislative Assembly or Legislative Council of a State; and if the contract is with the State Government, the contractor is not disqualified for being chosen as a member of either House of Parliament. The view taken by us finds support from the decision of the Supreme Court in *Satya Dev vs. Padam Dev*, AIR 1954 SC 587, para 8.

7. In *Kanappa vs. Vishwanath*, AIR 1969 SC 447, the Supreme Court has, while considering section 9A of the R.P. Act, 1951, observed :

"It is of the essence of the law of Elections that candidates must be free to perform their duties without any personal motives being attributed to them. A contractor who is still holding a contract with Government is considered

disqualified, because he is in a position after successful election to get concession for himself in the performance of his contract. That he may not do so is not relevant. The possibility being there, the law regards it necessary to keep him out of the elections altogether." (emphasis added)

8. Adopting the above principles, the object or purpose sought to be achieved by section 12 (2) (e) of the Act is that the contractor should not be in a position to get concession for himself in the performance of his contract as a member of the Gaon Panchayat after he is elected to the Gaon Panchayat.

9. Let us now examine as to whether the disqualification for holding any contract under the Government has reasonable relation to the object and purpose sought to be achieved by the part of the legislation impugned.

10. It is settled that, while Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question.

11. As already stated, the object or purpose sought to be achieved by the legislation impugned is that a contractor should not be in a position to get concession for himself in the performance of his contract after successful election. Therefore, there is possibility that, if a contractor under Gaon or Anchalik Panchayat or Mahakuma Parishad is elected as a member of the Gaon Panchayat, he would be in a position to get the concession from the said Panchayat or Parishad, and as such, contractor is to be considered disqualified. This position is not disputed by the learned counsel for the petitioner.

12. As stated earlier, the Government is defined under section 4(26) of the Assam General Clauses Act. Under Section 4(26) "Government" of "the Government" shall include the State Government as well as the Central Government. It has already been stated that Gaon Panchayat, Anchalik Panchayat or Mahakuma Parishad are within the meaning of local authority defined under section 2 (4) of the Act. Therefore a local authority differs from the Government in the context. In such a situation, we are of the view that a member of the Gaon Panchayat holding a contract with the Government will not be in a position to get concession for himself in the performance of his contract from the Government. At the same time, we also cannot ignore the principle underlying section 9A. of the R.P. Act which we have discussed above. For these reasons we are of the view that "a contract under the Government has no reasonable relation to the object or purpose sought to be achieved by the part of the legislation impugned. Therefore, this piece of legislation disqualifying a person who holds any contract under the Government for being chosen as a member of Gaon Panchayat is violative of Article 14 of the Constitution and is,

therefore, struck down. Accordingly, section 12 (2)(e), of the Act shall be read without the words "or under the Government".

13. In the result, the petition is allowed and disposed of.