

(1958) 03 BOM CK 0057

In the Bombay High Court

Case No : Civil Revision Application No. 865 of 1956

Sadasheo Jagannath Barapatre

APPELLANT

Vs

Hemaji Hiranman Bakde

RESPONDENT

Date of Decision : 05-03-1958

Acts Referred:

Central Provinces and Berar Municipalities Act, 1922 — Section 12(1), 12(2), 12(3), 14(1), 15

Civil Procedure Code, 1908 (CPC) — Section 115

General Clauses Act, 1897 — Section 6

Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 — Rule 114(5)

Representation of the People Act, 1951 — Section 143, 3, 7, 74, 74(1)

Citation : AIR 1958 Bom 507 : (1959) 61 BOMLR 1141 : (1958) ILR (Bom) 1361

Hon'ble Judges : S.P. Kotval, J

Bench : Single Bench

Advocate : V.M. Kulkarni, for the Appellant; B.R. Mandlekar, for the Respondent

Judgement

S.P. Kotval, J.—This is an application for revision u/s 20-A (5) of the Central Provinces and Berar Municipalities Act and it raises a somewhat interesting and important question as to the construction, and effect of Section 74(2) of the Representation of the People (Second Amendment) Act (Central Act 27 of 1956).

2. The question arises in the following circumstances. The applicant Sadasheo Jagannath Barapatre had at one time stood for election to the former Madhya Pradesh Legislative Assembly and had been disqualified under the then existing provisions of Section 143 read with Section 7, Clause (c), of the Representation of the People Act, 1950 (Act 43 of 1951). The notification (No. 69-4-53), dated 1-9-1953 issued in this behalf by the Election Commission of India was published in the then Madhya Pradesh Gazette of 10-9-1953. The disqualification mentioned in the notification under the said sections read with Rule 114, Sub-rule (5) of the Representation of the People Rules, 1951 was from voting at any election for a period of five years horn the date by which the return was required

to be lodged. The date of the filing of the return as stated in the notification, was 24-3-1952, and therefore the applicant Sadasheo was upon the notification disqualified from voting till 24-3-1957.

3. After the incurring of this disqualification by the applicant, there were held municipal elections for filling up the membership of the Municipal Committee of Khapa in Saoner tahsil. The relevant dates of the election programme in connection with this election were as follows:

4. Before the date of withdrawal of nominations, the non-applicant apparently withdrew his candidature, and therefore the applicant Sadasheo was declared elected. Shortly after the publication of the results, however, the non-applicant Hemaji filed an election petition u/s 20-A (2) of the, Central Provinces and Berar Municipalities Act, seeking to set aside the election of the applicant. Hemaji alleged that he had never withdrawn his candidature and that the so-called withdrawal application was a forged document. He therefore prayed that he had been wrongly declared to have withdrawn and the applicant could not have been declared elected. He also urged that the applicant had incurred a disqualification from voting by virtue of the notification of the Election Commission, referred to above, that therefore the applicant was not qualified to stand for election as a member at all and that his election should be declared void and the non-applicant Hemaji should be declared elected.

5. The election petition came up for hearing before the 1st Civil Judge, Nagpur, and the Civil Judge held that Hemaji's withdrawal application was a forged application and therefore his nomination was not validly withdrawn. The Civil Judge also held the other grounds urged in Hemaji's election petition in his favour, and held that the applicant Sadasheo had incurred a disqualification within the meaning of Section 12 (3) (d) of the Central Provinces and Berar Municipalities Act, read with Section 15 (j) thereof and that therefore his election was void and ought to be set aside. The Civil Judge declared Hemaji as having been duly elected as a member for ward No. 8.

6. On behalf of Sadasheo, the applicant in revision, the finding as to the withdrawal of the nomination of Hemaji has not been challenged, but what has been challenged before me is the finding given that Sadasheo had incurred a disqualification for voting and so could not stand for election as a member and therefore his election was void.

7. In order to appreciate the contentions raised on behalf of the applicant it is necessary to state the relevant provisions of law. Section 12, Sub-sections (1) and (2), of the Municipalities Act prescribes the qualifications which entitle a person to vote at a municipal election. Sub-section (3) thereof prescribes the disqualifications and particularly Sub-section (3), Clause (d), is relevant in the instant case. Sub-section 3 (d) runs as follows :

"Notwithstanding anything contained in Sub-section (1) or Sub-section (2), no person shall be entitled to vote at any election if

.....

(d) he is subject to any disqualification which may be imposed in this behalf by any law for the time being in force."

Section 14 (1) requires that a candidate for election in a ward shall be a resident within the limits of the municipality and shall be qualified as a voter on the electoral roll of the ward of such a municipal committee. Therefore, if a candidate standing for election in a ward is not qualified to be a voter, he cannot stand for election, Section 15 (j) runs as follows:

"No person shall be eligible for election or nomination as a member of a committee, if such person

.....

(j) is, under the provisions of any law for the time being in force, ineligible to be a member of any local authority;"

8. The Civil Judge hold that by virtue of the provisions of Section 12 (3) (d) read with Section 14 (1), and the notification issued u/s 143 of the Representation of the People Act, 1951, the applicant was disqualified because that notification showed that a disqualification had been imposed upon the applicant. The order refers to Section 143 of the Representation of the People Act and the notification issued thereunder and holds that this disqualification was a disqualification imposed by the law for the time being in force within the meaning of Section 12 (3) (d) of the Municipalities Act. The applicant was therefore disqualified for standing for election.

9. Mr. V.M. Kulkarni on behalf of the applicant has substantially raised two contentions against the order of the Civil Judge. His first contention has been that Section 12 (3) (d) refers to a disqualification imposed "in this behalf" by any law for the time being in force, and according to Mr. Kulkarni "in this behalf" means a disqualification imposed "m behalf of the municipal elections or elections to local bodies", but it cannot mean a disqualification which may be imposed under law relating to ejections to State Legislatures or Houses of Parliament. Mr. Kulkarni then invited attention to the provisions of Section 74 of the Representation of the People (Second Amendment) Act, 1956 (27 of 1956) and ho urged that by virtue of Section 74 (2) the alleged disqualification against the applicant had ceased consequent upon the repeal or Section 143 of the Representation of the People Act of 1951, and therefore the Civil Judge was in error in holding the applicant disqualified on that ground.

10. To the second contention raised by Mr. Kulkarni, Mr. Mandlekar on behalf of the non-applicant has raised a preliminary objection which may now be disposed of! Mr. Mandlekar urges that this contention, founded upon the provisions, of Section 74 of Act 27 of 1956, was available to the applicant before the date of the order of the Civil Judge in the election petition, but it was not raised before the Civil Judge and therefore could not be raised in revision. Secondly, Mr.

Mandlekar urges that even in revision there is no ground raised upon which such a contention could be founded.

11. The Act 27 of 1956 was assented to by the President on 6-6-56 and it was published in the Official Gazette on 8-6-1956. By virtue of Notification No. S. R. O. 1931/A, dated 25-8-1956, and published in the Gazette Extra-ordinary of the Government of India, Part II, Section 3, dated 28-8-1956 the Representation of the People (Second Amendment) Act, 1956, came into force on 28-8-1956. The order of the Civil Judge upon the election petition before him was passed on 22-9-1956. Therefore, Mr. Mandlekar is correct when he urged that it was open to the applicant to have raised this question before the Civil Judge. So far as the second preliminary objection of Mr. Mandlekar is concerned, I am unable to accept it because grounds Nos. 1-A, 1-B and 2-D raised in the revision petition before me, in my opinion, sufficiently cover the contention raised on behalf of the applicant. These grounds give sufficient notice of the contention to the opposite side that the applicant was contending that Section 143 could not be invoked in the present case.

12. As to the objection that the ground was not raised before the Civil Judge, it is to be pointed out that the Act came into force only on 8-8-1956 and the order impugned was passed on 22-9-56, and it is possible that neither party nor even the Court was aware of its provisions or its effect. At any rate, the question raised is a question which affects the very jurisdiction of the Civil Judge to pass the order which he has passed, and in my opinion, is of such fundamental importance that it ought to be allowed to be raised in revision. I am unable to accept the preliminary objections against the second contention raised by Mr. Kulkarni.

13. The first contention of Mr. Kulkarni may now be disposed of. According to Mr. Kulkarni, the provisions of Section 12 (3) (d) of the Municipalities Act refer only to a disqualification imposed in respect of municipal elections or elections to local bodies only and not elections to State legislative bodies or to Parliament. Mr. Kulkarni stressed the words "in this behalf occurring in Clause (d), but if Sub-section (3) of Section 12 is read as a whole, it is clear that the words "in this behalf" in Clause (d) refer back to the opening words of Sub-section (3) "no person shall be entitled to vote at any election", and the words used in the opening clause are "any election" and not "any municipal election or election to a local body". Therefore the subsequent words "in this behalf" can only refer to the words "any election". I am unable to read into the wording of Sub-section (3) the words "any election relating to municipal or local bodies" as Mr. Kulkarni would have it. This contention therefore fails.

14. There is, however, much substance in the second contention raised by Mr. Kulkarni. The provisions of Section 74 of Act 27 of 1956 are as follows :

"74. (1) Section 143 of the principal Act shall be omitted.

(2) It is hereby declared that any disqualification for voting incurred by any

person under the said section for default in making a return of election expenses shall stand removed."

The effect of Section 74 was first of all to repeal Section 143 of the principal Act (The Representation of the People Act, 1951).

15. The rules of construction governing the effect to be given to a repealing statute are now well settled. The normal effect of repealing a statute is to obliterate it from the statute book as completely as if it has never been passed; it must, be considered as a law that never existed. But to this rule an exception is engrafted by the provisions of Section 6 of the General Clauses Act. Clauses (a), (b) and (c) of Section 6 prescribe that notwithstanding the repeal, the repeal shall not (a) revive anything not in force at the time, or (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. Mr. Mandlekar urged that having regard to the Clauses (a) to (c) of Section 6 of the General Clauses Act, the disqualification incurred by the applicant by virtue of the notification of the Election Commission would still continue.

16. The several clauses of Section 6 of the General Clauses Act are preceded by the words "unless a different intention appears" and Mr. Kulkarni submitted that in Section 74 (2) of Act 27 of 1956 such a different intention has been expressed. The crucial question therefore that arises for decision in this revision is what is the exact effect of the provisions Section 74 (2) of Act 27 of 1956. Mr. Mandlekar urged that the words "shall stand removed" in Section 74 (2) can only mean shall stand removed from the date the section comes into force i.e. from 28-8-56, and that the intention of the Sub-section was not to remove the disqualification which has been incurred in the past, retrospectively. Mr. Kulkarni, however, pointed to the words "any disqualification" and to the generality of the expression and urged that any disqualification would include disqualification incurred in the past or the future, and therefore the effect of Sub-section (2) of Section 74 was retrospective.

17. In my opinion, the effect of Sub-section (2) is clear that all disqualifications, howsoever incurred, whether in the past or the present, were to be removed by virtue of its provisions. In the first place, it is to be remembered that Sub-section (1) of Section 74 repeals Section 143 of the Representation of the People Act of 1951, and therefore if that section was once repealed and Sub-section (2) of Section 74 uses the words "disqualification under the said section", it must necessarily follow that in order to give it proper effect it must be construed to include past disqualifications. Otherwise, the Sub-section (2) and the intent of the Legislature behind it would be rendered nugatory in a large measure because with Section 143 repealed there would be very few cases to which Sub-section (2) of Section 74 could apply. No doubt, the disqualification u/s 143 is for a period of five years and there may be cases where that period of five years has only partially elapsed and the disqualification continued, but such cases were

very few and it is difficult to believe that the legislature when it enacted Sub-section (2) of Section 74, intended to apply it only to those cases. On the other hand, it seems to me that the Legislature advisedly used the very general words "any disqualification for voting incurred by any person under the said section which necessarily includes any disqualification incurred in the past. Nothing turns upon the subsequent word "shall stand removed". They are equally capable of application to past disqualification as also to present or future disqualification.

18. The intention of the Legislature in removing Section 143 from the statute book was that Section 7(c) of the Representation of the People Act of 1951 was already on the statute book and it disqualified a person from standing for election to the membership of the legislature of the State or of Parliament if he had not made a return of his election expenses. Therefore, it was unnecessary also to further disqualify such a person from voting, and with that object Section 143 was repealed. That being so, it seems to me that the same reason could as well apply to past disqualifications as also to present and future disqualifications. I hold that Section 74 (2) of Act No. 27 of 1956 was retrospective in operation and removed even the disqualifications incurred by a person prior to the coming into force of that Act on 28-8-56. Therefore, in the instant case the only ground upon which the applicant was disqualified and his election was declared void and set aside, was not a ground for disqualification and his election was not liable to be declared void or to be set aside.

19. The question then is what should be done in the instant case. Now, it is no doubt true that the non-applicant Hemaji was upon the findings of the Civil Judge, which have not been challenged before me, also held entitled to contest the election and could not do so because a forged withdrawal of nomination was filed before the Election Officer. In the result, therefore, both Hemaji and Sadasheo were entitled to contest another election. In view of these facts, I consider that it would be proper to declare under Rule 18 of the Madhya Pradesh Election Petition Rules, 1957, that a casual vacancy has been created.

20. The application for revision is allowed. Mr. Mandlekar urges that he should not be saddled with costs. As the application for revision has been allowed on the ground which the applicant never raised in the trial Court, I think it fair to order that each party shall bear its own costs.

21. Application allowed.