
(2019) 01 BOM CK 0149
In the Bombay High Court
Case No : Writ Petition No. 6176 Of 2014

Shantaram

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 31-01-2019

Acts Referred:

Indian Penal Code, 1860 — Section 302
Representation Of Peoples Act, 1951 — Section 8(1), 8(2), 8(3)
Agricultural Produce Market Committee Rules, 1966 — Rule 41, 41(1)(a)
Constitution Of India, 1950 — Article 14, 21

Citation : (2019) 2 AllMR 375

Hon'ble Judges : T.V. Nalawade, J; Sunil K. Kotwal, J

Bench : Division Bench

Advocate : A.N. Nagargoje, M.M. Nerlikar, B.R. Warma

Final Decision : Dismissed

Judgement

T.V. Nalawade, J.

1. The petition is filed to challenge the order made by the State Government, dated 8.5.2013, by which it is declared that respondent No.6 Baliram Sonawane was qualified to remain on the post of Chairman of Agricultural Produce Market Committee, Jalgaon. This respondent was elected as a Member of the A.P.M.C. and then he had become Chairman. Present petitioner had filed complaint dated 21.9.2012 before respondent No.4 District Deputy Registrar, Co-operative Societies for declaring that present respondent No.6 was disqualified in view of provisions of Rule 41(1)(a) of the Agricultural Produce Market Committee Rules (hereinafter referred to as the A.P.M.C. Rules for short), but during the pendency of that proceedings, application was moved to the Hon'ble Minister by respondent No.6 and aforesaid order came to be passed. Both sides are heard. Learned A.G.P. supported the impugned order.

2. It is not disputed that, in the year 1970 respondent No.6 was convicted for offence of murder, punishable under Section 302 of the Indian Penal Code in

Sessions Case bearing No.54/1970, which was pending in the Sessions Court, Jalgaon. He was sentenced to suffer imprisonment for life and this decision was challenged in High Court by respondent No.6. Respondent No.6 has undergone the sentence and he was kept in jail for 20 years. This period came to end in the year 1990 and he contested the election to A.P.M.C. in the year 2007 i.e. after about 17 years of completion of the period of sentence.

3. Rule 41 of the A.P.M.C. Rules, 1966 is as under : -

"41. Disqualifications of membership :-

(1) A person shall be disqualified for being chosen as, or for being, a member of a Market Committee -

(a) If he has been convicted by a Court in India of any offence and sentenced to imprisonment for a term exceeding six months unless such disqualification has been removed by an order by the State Government;

(b) if he has not attained the age of 21;

(c) if he is of unsound mind and stands so declared by a competent Court;

(d) if he is an undischarged insolvent;

(e) if he is a deaf-mute;

(f) if he has failed to pay any fees or charges due to the Market Committee;

(g) if he is a servant of the Market Committee or holds a licence from such Committee other than that of a trader or commission agent;

(h) if he has directly or indirectly or by his partner any share or interest in any contract or employment with or on behalf of or under the Market Committee;

(i) if he has committed breach of the Act or the rules or bye-laws made thereunder more than once.

(2) A person shall not be chosen as a member -

(i) representing the traders' constituency if he does not ordinarily reside in the market area or if the licence issued to him is cancelled, or suspended or not renewed;

(ii) representing agriculturists' constituency if his main income is not from agriculture or possesses a trader's, commission agent's or broker's licence or has interest in a joint family or a firm which has a trader's or commission agent's licence.

Explanation : For the purpose of this sub-rule, a person shall be deemed to be ordinarily residing in the market area, if he resides in such area for not less than 180 days in a calendar year.

4. The aforesaid rule shows that, if a person is convicted and sentenced to

imprisonment for a term exceeding six months, he incurs disqualification for contesting the election unless such disqualification has been removed by an order by the State Government. In the present matter, the election was contested in the year 2007 and the order of removal of disqualification came to be passed on 8.5.2013. Though the respondent No.6 completed his term as member of A.P.M.C. and even as the Chairman of the A.P.M.C., the point remains as to whether he could have contested the election in the year 2007 and whether the order of the State Government which is shown to be signed by Desk Officer as per the order shown to be made by the Governor, can have retrospective effect.

5. The aforesaid rule shows that, no particular period is fixed in the rule after which the person who has undergone the sentence comes out of the disqualification mentioned in the rule. In this regard, the provision of Section 8(1), (2) and (3) of Representation of Peoples Act, 1951 need to be seen to ascertain the policy in this regard. If a person can contest the election to Parliament after expiry of the period mentioned in this provision of Representation of Peoples Act, 1951, then the question arises as to whether for other elections like of local bodies, there can be period more than mentioned in the Representation of Peoples Act, 1951. The relevant provisions of Section 8(1), (2) and (3) of Representation of Peoples Act, 1951 read as under :

8. Disqualification on conviction for certain offences.

(1) A person convicted of an offence punishable under :-

(a) section 153A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) or section 171E (offence of bribery) or section 171F (offence of undue influence or personation at an election) or sub-section (1) or sub-section (2) of section 376 or section 376A or section 376B or Section 376C or Section 376D (offences relating to rape) or section 498A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section

(2) or sub-section (3) of section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code (45 of 1860); or

(b) the Protection of Civil Rights Act, 1955 (22 of 1955) which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising therefrom; or

(c) section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962 (52 of 1962); or

(d) sections 10 to 12 (offence of being a member of an association declared

unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or

(e) the Foreign Exchange (Regulation) Act, 1973 (46 of 1973); or

(f) the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(g) section 3 (offence of committing terrorist acts) or section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(h) section 7 (offence of contravention of the provisions of sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988); or

(i) section 125 (offence of promoting enmity between classes in connection with the election) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) of clause (a) of sub-section (2) of section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act; [or] [(j) section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act, 1991;] [or] [(k) section 2 (offence of insulting the Indian National Flag or the Constitution of India) or section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (69 of 1971),] [; or] [(l) the Commission of Sati (Prevention) Act, 1987 (3 of 1988); or (m) the Prevention of Corruption Act, 1988 (49 of 1988); or (n) the Prevention of Terrorism Act, 2002 (15 of 2002),] [shall be disqualified, where the convicted person is sentenced to-

(i) only fine, for a period of six years from the date of such conviction;

(ii) imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.]

(2) A person convicted for the contravention of

(a) any law providing for the prevention of hoarding or profiteering; or

(b) any law relating to the adulteration of food or drugs; or

(c) any provisions of the Dowry Prohibition Act, 1961 (28 of 1961);

and sentenced to imprisonment for not less than six months, shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(3) A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (1) or sub-section (2)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.]"

6. The aforesaid provision shows that the offences are grouped into three categories. The present offence, offence of murder, falls under the third category. For this category, it is provided that, there will be automatic removal of disqualification after expiry of the period of six years from the last date of the sentence undergone. Along with this provision, provision of Article 21 of the Constitution of India also needs to be kept in mind. Considering the policy of the State, which can be found in Probation of Offenders Act, 1958 and also various other legislations, which provide for compounding of the offences, it can be said that, the State has accepted the reformation theory also as the policy in criminal matters. The possibility that Courts also can commit mistake and due to such mistake a person was convicted and he was required to undergo the sentence, also needs to be kept in mind in such cases.

7. If the reformatory policy is to be implemented in real sense, then there has to be some limit put on the period of disqualification incurred due to conviction for the present purpose. The rules of A.P.M.C. do not show that any particular period is mentioned. Though the rule shows that the power is left with the State Government to declare that the disqualification is removed, unless there is some period mentioned in the rule, it becomes difficult to ascertain as to whether and when the State Government can exercise or would exercise the power given under aforesaid Rule 41. Though we expect that the Government formed by any political party, which is elected to power needs to be impartial, the fact remains that the persons ruling belong to particular political party and particular ideology. The possibility that there may not be impartial exercise of this power by the party elected to power cannot be ruled out. Thus, there needs to be a specific period mentioned in the said rule. Further, the power cannot be left with the Government as there is a possibility of misuse of such power.

8. At present, there is no such period mentioned in Rule 41, but in view of the right of privacy, which arises out of Article 21 of the Constitution of India and in view of the policy accepted by the Parliament, which can be seen in Representation of Peoples Act, 1951, it can be said that we have to presume that the period must be reasonable period if such period is not mentioned in the regulations and rules made by the State Government for the purpose of disqualification or eligibility to contest the elections.

9. When there is no period mentioned in cases like present one and there is possibility of violation of the fundamental right under Article 21 and also 14 of the Constitution of India, for doing justice, the Court can exercise the writ jurisdiction and hold that some reasonable period needs to be read in such rule. In view of the provisions of Section 8(1), (2) and (3) of Representation of Peoples Act, 1951, this Court holds that the period of at the most six years can be read into Rule 41 of the A.P.M.C. Rules, 1966. If such period is read, it can be further held that, on the date of filing of nomination paper, which was given in election programme, respondent No.6 was not disqualified as his disqualification had come to an end in the year 2007. So, in such case, it can be said that the

order made subsequently was also a formality. Though validity of Rule 41 is not under challenge in the present proceedings, this Court holds that, in view of provisions of Articles 14 and 21 of the Constitution of India and also the provisions of aforesaid Section of the Representation of Peoples Act, 1951, the period of six years needs to be read in Rule 41 as the period of disqualification after suffering the sentence of imprisonment.

10. Some period for disqualification needs to be there as during this period society and the agencies can observe and form opinion as to whether the convict has improved his conduct. This can be also a period during which the convict can have introspection. If there is no revengeful attitude, then it can be said that the period of six years for such offences will be more than sufficient to presume that the convict has improved his conduct and he has decided to lead peaceful life in the society. Such persons cannot be kept away from the systems and such persons need to be used by the systems. Further they have the right which can be seen in Articles 14 and 21 of the Constitution of India. After undergoing the sentence, it can be said that the convict has right to say that he needs to be allowed to forget the past and he needs to be allowed to make new beginning. The others also cannot be allowed to harass him and to deprive him of aforesaid rights and the previous conviction cannot be allowed to haunt him for the remaining period of his life. It is learnt that a Commission headed by Justice B.N. Shrikrishna, Former Hon'ble Judge of Supreme Court, is appointed to prepare a draft of personal Data Protection Bill, 2018, which will protect right to privacy and steps are likely to be taken to see that the data of criminal activity of a person is erased after particular period from the relevant records of the agencies. It will be proper step on the part of the State to take such steps in view of the right of privacy of such persons. From that angle also, it can be said that the society will have right to know the past of such persons, but the period of past needs to be fixed by the State and only in respect of that period there will be liability of a person to disclose his past, for contesting such elections. The wrongful acts of period prior to such fixed period need to be forgotten as the past of such person and unless that is done, there will not be proper assimilation of such person in the society. It is in the interest of society and individual, and this Court expects the State Government to make proper provision in Rule 41 of A.P.M.C. Rules, 1966 to see that there is automatic removal of disqualification on the same line on which it is available under Representation of Peoples Act, 1951.

11. Fundamentalism in our society has already increased. Allegations are there that the political parties who are getting power are not acting impartially. There are allegations of misuse of agencies by the Government. In such a situation, the Courts need to be on guard. To protect fundamental rights, the Courts need to have a shift in approach. The contentions of the Government that a particular action is taken or particular provision in Act is made in 'public interest' needs to be examined thoroughly by the Courts, and Courts need to make an attempt to see that fundamental rights are first protected. The steps taken recently by the Apex Court, in following reported case are on aforesaid line :- (2017) 10 SCC 1

(K.S. Puttaswamy & others Vs. Union & others.) To prevent misuse of political power, the reading of specific period of disqualification and reading of automatic removal of disqualification in the provisions like Rule 41 of A.P.M.C. Rules is such a step which this Court is taking.

12. In the result, the petition stands dismissed. Copy of this decision is to be sent to the Chief Secretary of the State Government and the Principal Secretary of Law & Judiciary Department, Government of Maharashtra.