

(2008) 01 MP CK 0070
In the Madhya Pradesh High Court

Shiv Singh Rawat

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 29-01-2008

Acts Referred:

Arms Act, 1959 — Section 25
Penal Code, 1860 (IPC) — Section 326

Citation : (2008) ILR (MP) 491 : (2008) 2 JLJ 124 : (2008) 2 MPHT 41 : (2008) 2 MPLJ 573

Hon'ble Judges : Prakash Shrivastava, J; Dipak Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Dipak Misra, J.

The petitioner, a resident of Village Shahpura Bhitoni, District Jabalpur, a social worker and a voter of Shahpura Panchayat as a pro bono publico has preferred this writ petition for debarring the respondent No. 9, Gulab Singh Gond, from continuing on the post of President, Janpad Panchayat, Shahpura as he is not entitled to continue on the said post because he has incurred the disqualification as envisaged u/s 36(1)(a)(ii) of the M.P. Panchayat Avam Gram Swaraj Adhiniyam, 1993 (for brevity "the Act").

At the very outset we are obliged to state that colossal objections were raised by Mr. Bhati, learned Counsel appearing for the ninth respondent about the locus standi of the petitioner and immense emphasis was put on the language employed u/s 36 requiring this Court to place an interpretation on the said language to highlight that the structure which is sought to be built by the petitioner relating to the disqualification of the said respondent is absolutely misconceived being shorn of any infrastructure or foundation and further the petitioner has invoked the extra-ordinary jurisdiction of this Court to wreak personal vengeance in the guise of filing a public interest litigation putting forth an adroit stand that he is a public spirited person.

Be it noted, when the hearing commenced the learned Counsel for the respondent propounded with immense astuteness that the said respondent No. 9 cannot be put into the category of a disqualified person under the aforesaid provision and such a stand was taken on the base that purposive interpretation has to be given to the term "release", used in the said provision, but, Mr. Shashank Shekhar, learned Counsel appearing for the petitioner brought to our notice that the stand and the proponent canvassed on behalf of respondent No. 9 have to be thrown overboard because he has not stated the real facts before this Court and deliberate suppression is writ large in the asseverations made in Paragraph 9 wherein it has been mentioned with imprudence that the Criminal Appeal No. 2573/07 preferred by the said respondent is still pending adjudication before this Court. The said affidavit has been filed on 23-10-07.

To appreciate the lis in question it is apposite to note certain dates. Respondent No. 9 filled up nomination papers for member of Janpad Panchayat, Shahpura on 26-12-2004 and the election thereof was held in January, 2005. Thereafter, the said respondent was elected as the President of Janpad Panchayat, Shahpura in the year 2005.

The question that emerges for consideration is whether the said respondent is disqualified or not as per the said provision. In this context we may refer with profit to Section 36(1)(a), which reads as under:

36. (1)(a) No person shall be eligible to be an office-bearer of Panchayat who-
(a) has, either before or after the commencement of this Act, been convicted:

(i) of an offence under the Protection of Civil Rights Act, 1955 or under any law in connection with the use, consumption or sale of narcotics or any law corresponding thereto in force in any part of the State, unless a period of five years or such lesser period as the State Government may allow in any particular case has elapsed since his conviction; or

(ii) of any other offence and had been sentenced to imprisonment for not less than six months, unless a period of five years or such less period as the State Government may allow in any particular case has elapsed since his release....

Mr. Shashank Shekhar, learned Counsel for the petitioner has invited our attention to Section 36 (1) (ii) to buttress the submission that a person shall not be eligible to be an office-bearer if he is convicted for any offence and has been sentenced to imprisonment for not less than six months unless a period of five years or such less period as the State Government may allow in any particular case since his release.

The respondent, as is beyond dispute, was convicted u/s 326 of the IPC and Section 25 of the Arms Act. He was sentenced to Rigorous Imprisonment for a period of three years and to pay a fine of Rs. 500/- on the first count and Rigorous Imprisonment for a period of one year and fine of Rs. 100/- on the second score. This Court on 16-10-2000 suspended the sentence and released

him on bail. On 24-4-02 this Court dismissed the appeal by recording as under:

It is submitted on behalf of appellant Gulab @ Annilal that though bail was granted to him he did not furnish the bail and he has completed the sentence imposed upon him by the Trial Court. Learned Counsel for the appellant does not press this appeal. It is, therefore, dismissed.

In view of the aforesaid, the concept of "release" that was endeavoured to be scanned by Mr. Bhati remains in the realm of much ado about nothing as the said respondent has remained in custody for a period of three years and was not released. It is worth noting here that the respondent No. 9 was convicted by the judgment dated 28-9-2000. The same is perceptible from the judgment passed in Criminal Appeal. We would be failing in our duty if we do not state that, as it was mentioned before us that the appeal of the respondent No. 9 was dismissed, we called for the record and perused the order.

The election was held for the post of member in the year 2004 and that of President in 2005. On a bare reading of Section 36(1)(a)(ii) it is quite clear that a person will not be eligible to hold a post for a period of 5 years if he has been sentenced for not less than six months. In the case at hand the respondent No. 9 was sentenced for a period of three years. He remained in custody, as is patent, till 2003. He could not have contested till 2008. Yet, for unexplainable reasons, he was allowed to contest and also got elected. Thus, indubitably he is disqualified to be in the office in question.

Ordinarily so holding we would have parted with the case but an eloquent and significant one, we are compelled to observe certain aspects. In a Court of law a litigant is required to come with clean hands. There cannot be any denial that the duty of justice is to search for truth. Not for nothing it has been said that justice is the candle of truth and, by no stretch of imagination, the power of truth should be allowed to be corroded or marred. Its light should never be extinguished. Though the respondent No. 9 very well knew that he had spent three years in custody, yet he suppressed the fact before this Court that the criminal appeal preferred by him is subjudice. This is not only a blatant lie but also an unscrupulous assertion to pyramid the contention which is absolutely in the realm of impermissibility. We cannot be oblivious of the fact that the respondent No. 9 has been elected as the President of Janpad Panchayat. Janpad Panchayat has its own significance in a democratic polity. A person who has been elected to the said post has made an effort to succeed by taking recourse to such a stand.

It is condign to state here that the politics neither at the grass root level nor at any level can be allowed to have any nexus with criminalization. Criminalization requires to be ostracized from the periphery of body polity. The citizens in democratic set up should not be compelled to suffer criminalization on the ground that they are helpless. A convict cannot be allowed to occupy an elected post where a statute clearly prohibits. In this context, we may refer with profit to the decision rendered in *Ram Udgar Singh Vs. State of Bihar*, wherein Their

Lordships have stated thus:

Politics, which was once considered the choice of noble and decent persons is increasingly becoming a haven for law breakers. The "Nelsons" eye" turned by those wielding power to criminalisation of politics by their solemn and determined patronage and blessings by vying with each other has been encouraging and facilitating rapid spread and growth with rich rewards and dividends to criminals. The alarming rate of social respectability such elite gangsterism gaining day by day in the midst of people who chose and had given unto themselves the right to elect their rulers, mostly guided by misdirected allegiance to party politics and self oriented profit making endeavours seem to provide the required nectar for its manifold and myriad ways of ventilation with impunity. Though it is an irony, yet accepted truth is that the "Home rule" we could achieve by "non-violence" has become the root cause for generating "homicidal" culture of political governance effectively shielded by unprincipled mass sympathies and highly profit-oriented selfish designs of unscrupulous "people" who have many faceted images to present themselves at times to the extent of their deification. For some it brings seal for respectability and for some others, it is intended to be used as a shield for protection against law enforcing agencies and that is how reports of various Commissions and Committees have become sheer cry in wilderness.

We have referred to the aforesaid passage to highlight that the criminalization of politics by any form is impermissible in democracy which is the basic feature of our Constitution. We would have thought of directing prosecution against him for filing a false affidavit before this Court but we restrain ourselves from doing so. We only deprecate the conduct of the respondent No. 9.

In view of our aforesaid analysis, the respondent No. 9 ceases to continue to hold the post of President of Janpad Panchayat, Shahpura and direct the Commissioner, Jabalpur and the Collector, Jabalpur to see that he does not hold the said post even for a single day. The Competent Authority shall take prompt steps to fill up the vacancy as per law.

Resultantly, the writ petition is allowed. There shall be not order as to costs.