
(2013) 12 MP CK 0167
In the Madhya Pradesh High Court
Case No : W.A. No's. 85 and 89 of 2013

Smt. Ahilya Bai

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2013) 12 MP CK 0167

Hon'ble Judges : A.M. Khanwilkar, C.J; Krishn Kumar Lahoti, J

Bench : Division Bench

Advocate : Dinesh Singrore, for the Appellant; Kumaresh Pathak, Learned Dy. Advocate General for the Respondent Nos. 1 to 4 and Shri U.S. Jaiswal, Learned Counsel for the Respondent No. 5, for the Respondent

Final Decision : Disposed Off

Judgement

1. Both these cross appeals are directed against the decision dated 19.12.2012 passed by the learned Single Judge in Writ Petition No. 21353/2012. The said writ petition was filed by the appellant in Writ Appeal No. 85/2013 praying for setting aside of the order dated 18.11.2012 (Annexure-P/9 to the writ petition) and order dated 12.12.2012 (Annexure-P/10 to the writ petition) passed by the Collector and Commissioner, respectively and to affirm the order passed by the Sub Divisional Officer dated 29.12.2010 (Annexure-P/6 to the writ petition). The learned Single Judge has upheld the view taken by the Commissioner that recourse taken to the provision u/s 40 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as "the Act of 1993") by the appellant was ill advised as that provision governs the procedure for removal of the elected members in specified circumstances. On the other hand, in the fact situation of the present case, the appropriate remedy was u/s 36 of the Act of 1993, on the ground that the respondent No. 5 (Appellant in Writ Appeal No. 85/2013) had suffered disqualification and could not have participated in the elections held for the post of Sarpanch in the year 2010. The fact that the respondent No. 5 (Appellant in Writ Appeal No. 85/2013) was disqualified in

terms of the order dated 21.12.2009 passed by the Sub Divisional Officer and Competent Officer (Panchayat) Dindori, is not in dispute. It is also not in dispute that the said decision of the Sub Divisional Officer passed in exercise of power u/s 40(1) of the Act of 1993 has attained finality. As a concomitant thereof, the respondent No. 5 (Appellant in Writ Appeal No. 85/2013) was ineligible to contest any election for the post of Sarpanch till expiry of six years from the date of that order. On this admitted facts, there is hardly any doubt that the respondent No. 5 was disqualified and was not eligible to contest the election for the office of Sarpanch of Gram Panchayat Khamha. It is in this backdrop, the Commissioner observed that the action with regard to this matter be taken by the Collector in exercise of power u/s 36 of the Act of 1993. That finding of the Commissioner has been upheld by the learned Single Judge, which in our opinion, is in consonance with the express provisions contained in the Act of 1993. As a result, the appeal filed by the writ petitioner, in our opinion, is ill advised.

2. As regards the appeal filed by the original respondent No. 5 that the order passed by the Sub Divisional Officer dated 21.12.2009 merely mentioned the fact that the said respondent No. 5 has been disqualified in terms of Section 40(1) of the Act of 1993, without prescribing any time limit, thus the said disqualification would not preclude him from contesting the elections held in the year 2010 for the post of Sarpanch. We are afraid, this submissions merely deserves to stated to be rejected. This submission clearly overlooks the purport of Section 40(2) of the Act of 1993, which is self-operating. Once it is declared that the candidate has incurred disqualification u/s 40(1) of the Act, due to the mandate of Section 40(2) of the Act of 1993, the only consequence is that the candidate who has been declared disqualified u/s 40(1) suffers disqualification for a period of six years from the date of such declaration without doing anything more. In the circumstances, non-mentioning of the term for which respondent No. 5 is disqualified by the Sub Divisional Officer in the order dated 21.12.2010 will make no difference.

3. Taking any view of the matter, therefore, we deem it appropriate to dismiss both the appeals and direct the Collector, Dindori to ensure that the proceedings regarding disqualification of respondent No. 5 (Appellant in Writ Appeal No. 85/2013) be taken forward expeditiously and be concluded not later than two weeks from the receipt of the copy of this order either from the Registry of this Court or from any of the parties before him. The Collector shall pass appropriate orders within two weeks and communicate the same to the parties after following due procedure prescribed u/s 36 of the Act of 1993. Both the parties shall appear before the Office of the Collector on 12.12.2013 at 11.00 a.m. on which date he may proceed with the hearing after taking on record the explanation or defence to be submitted by the respondent No. 5, if any. The respondent No. 5 (Appellant in Writ Appeal No. 85/2013) through counsel waives notice for appearance before the Collector in the disqualification proceedings.

4. The Collector shall submit compliance report before this Court within four

weeks from today failing with the matter be notified for issuance of appropriate direction against the Collector, Dindori including to initiate contempt action for not complying the order because the grievance made by the counsel for the appellant is that inspite of the direction of the learned Single Judge in impugned order dated 19.12.2012, the Collector has still not complied with that order, to conclude the hearing within 90 days.

5. Both the appeals disposed of accordingly. C.C. as per rules.