

(1955) 07 AHC CK 0019

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 79 of 1955

Sri Prabhu Dayal Dwivedi

APPELLANT

Vs

Pt. Ganesh Prasad Chaturvedi and Others

RESPONDENT

Date of Decision : 13-07-1955

Acts Referred:

Uttar Pradesh Municipalities (Amendment) Act, 1953 — Section 13D(j)

Citation : (1955) 25 AWR 490

Hon'ble Judges : Gopalji Mehrotra, J

Bench : Single Bench

Advocate : Kajeshji Verma, for the Appellant; S.N Dwivedi, for the Respondent

Final Decision : Dismissed

Judgement

Gopalji Mehrotra, J.—This is an application under Article 226 of the Constitution praying that a writ of Certiorari Be issued quashing the order passed by Sri S.M. Ahsan Kazmi (Election) Tribunal, District judge, Jhansi, by his order dated the 17th of December, 1954.

2. The facts, as set out in the affidavit filed along with the petition, are that the Petitioner and opposite parties Nos. 1 to 3 were candidates for the presidentship of the Municipal Board, Konch, District Jalaun, and, as a result of a poll held on 26th October, 1954, the apposite party No. 1 was declared duly elected; the votes polled in his favour were 3649 as against 2864 cast in favour of the Petitioner and 747 in favour of opposite party No. 3. The Petitioner filed an election petition challenging the election of opposite party No. 1. After hearing the parties the tribunal delivered its judgment on the 17th December, 1954 and dismissed the said election petition. The sole ground which was pressed before the Tribunal was that the opposite party No. 1 who was declared as duly elected was disqualified for being a member of the Municipal Board under the provisions of Section 13-D(j) of the U.P. Municipalities (Amendment) Act (VII) of 1953. The present petition is based on the same ground and it is contended that the opposite party was disqualified under the provisions of Section 13-D(j) of the U.P.

Municipalities (Amendment) Act (VII) of 1953. The facts were that the opposite party No. 1 had been convicted for an offence u/s 392/397, I.P.C. and 19(f), Arms Act, and sentenced to nine years" rigorous imprisonment on July 17, 1941 for having robbed the R.M.S. compartment in the train running between Kaunch and Ait. In April, 1946 the sentence of imprisonment of nine years" passed against the opposite party was remitted by the then Government u/s 401, Code of Criminal Procedure and the opposite party was set at liberty. On November 27, 1947 in the exercise of the powers u/s 14(3)(e) of the Municipalities Act the disqualification of the opposite party on that account was also removed by the State Government. Section 13-D(f) provides, that a person notwithstanding that he is otherwise qualified, shall be disqualified for being hosen as, and for being, a member of the board if he has been sentenced to imprisonment for a term exceeding six months or to transportation, for contravention of any order made under the Essential Supplies (Temporary Powers Act) 1947 or for an offence which is declared by the State Government to imply such moral turpitude as to render the man unfit to be a member or has been ordered to furnish, security for good behaviour in consequence of proceedings taken u/s 109 or u/s 110 of the Code of Criminal Procedure such sentence or order not having been subsequently reversed or remitted or the offender pardoned. The contention of the Petitioner is that Section 43 of the Municipalities Act provides that all the members and persons qualified to be members of the Board shall be eligible to the post of the president of the board. If, therefore, the opposite party No. 1 was disqualified to be a member, he was not eligible to be elected as president. The question, therefore, to be considered is whether the opposite party was disqualified to be a member of the board in view of the provisions of Section 13-D(j) of the Act. The contention of the Petitioner is that the opposite party had been convicted for an offence for a term exceeding six months and consequently was disqualified to be elected as a member. Before the disqualification clause could be operative against the opposite party, it is necessary to establish that he had been sentenced to imprisonment for a term exceeding six months for an offence which was declared by the State Government to imply such a moral turpitude as to render him unfit to be a member. By a notification dated 12 September, 1953 certain specific sections of the Penal Code have been notified by the State Government as the sections, convictions under which were declared to be offences involving moral turpitude. Sections 392 and 397 of the Penal Code have been mentioned in the said notification and it is contended by the Petitioner that as the opposite party had been convicted u/s 392 in the year 1941, he is disqualified u/s 13 of the Municipalities (Amendment) Act (VII) of 1953. The removal of disqualification u/s 14 cannot be availed of by the opposite parties as those provisions have been deleted by the Amending Act.

3. Two points have been urged in reply by the counsel for the opposite party. It is firstly contended that a sentence of more than six months for an offence notified by the State Government to be one involving moral turpitude cannot operate as disqualification u/s 13-D(j), if the sentence had been subsequently remitted. In

the present case, in 1946, the sentence was remitted by the State Government u/s 401 of the Code of Criminal Procedure. This argument of the opposite party is met by the Petitioner on the ground that if the remission of the sentence still leaves a sentence of more than six months, such a remission cannot be relied upon by the opposite party, as an exception u/s 13-D(j). Reliance is placed on the words "such a sentence or order u/s 13-D(j)". The contention is that such a sentence or order necessarily means the whole of the sentence awarded to a person and does not mean a part of the sentence. Section 401 of the Code of Criminal Procedure empowers the State Government to remit the whole or part of the sentence. The order of remission is necessarily to be passed sometime after the accused has already undergone some period of sentence and if the interpretation placed by the applicant is accepted, then in no case where a sentence has been remitted an elector member can take advantage or such a remission as an exemption u/s 13-D(j). The Petitioner realised the weakness of this argument and he therefore modified his contention and contended that if the unremitted portion of the sentence exceeds six months then and then the elector cannot take advantage of Section 13-D(j) and if the unremitted portion is less than six months the elector is not disqualified. There is no warrant for such a contention. In my judgment, if the whole or part of the sentence passed against an elector is remitted he is not disqualified u/s 13-D(j).

4. The next contention of the opposite party is that a person is disqualified to be eligible for presidentship only if he is sentenced to a term exceeding six months for an offence declared by the State Government to imply a moral turpitude. The notification in the present case, which specifies certain sections of the Penal Code refers to the existing Penal Code at the time of the notification and not to the Penal Code under which the opposite party had been convicted in 1941. After the coming in force of the Constitution, laws which were in force in British India were adapted and the Penal Code was one of them. The argument of the opposite party is that the Penal Code as adapted was not the same as was in force at the time when in 1941 the opposite party had been convicted. It is also contended that in some of the native states which have merged in the State of U.P., the Penal Code as such was not in force. The present notification of the State Government specifies sections of the Indian Penal Code which are in force at present in the State including the territories of the native states which have merged into the State. It cannot therefore, be said that the opposite party was convicted in 1941 in respect of an offence which has now been declared by the State Government involving moral turpitude. There appears some force in this contention of the applicant and it cannot be said that the opposite party was sentenced to an imprisonment more than six months in respect of the offence declared by the State Government involving moral turpitude. In view of my decision on this point it is not necessary to decide some of the other points raised by the opposite party.

5. It was contended by the opposite party that the removal of this disqualification by the State Government in 1947 can be availed of by the opposite party now,

and the effect of the removal will be as if the disqualification never existed. It has also been contended by the counsel for the opposite party No. 1 that the notification of the State Government declaring certain sections of the Penal Code as involving moral turpitude is contrary to Article 14 of the Constitution. The argument is that the persons who were convicted under various sections mentioned in the notification of the Penal Code in British India will be disqualified while others who reside in the native states whose territories merged in the State and were convicted for the same offence will not be disqualified as the Penal Code was not in force in those states. If the notification issued by the State Government is interpreted to cover a conviction of persons under the Penal Code which is in force after the coming in of the Constitution in the merged territories there will be no discrimination as suggested by the counsel for the opposite party. The discrimination will arise only if the notification is interpreted to cover the cases of persons who were convicted and sentenced to imprisonment under various sections of the Penal Code operative prior to the coming in force of the Constitution. As I have already observed in the earlier part of my judgment that in my opinion the notification of the State Government dated...cannot be interpreted to cover the case of persons who were convicted and sentenced under the Indian Penal Code in force prior to the Constitution, this point does not arise.

6. There is no force in this petition and is rejected with costs.