

(2013) 02 MP CK 0113
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 1202 of 2012

Sunil Rathi

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 25-02-2013

Acts Referred:

Essential Commodities Act, 1955 — Section 7
Explosives Act, 1884 — Section 9
Madhya Pradesh Municipalities Act, 1961 — Section 31, 35, 35(hh), 38, 38(1)
Representation of the People Act, 1951 — Section 8(4)

Citation : AIR 2013 MP 65

Hon'ble Judges : S.A. Bobde, C.J.;Ajit Singh, J

Bench : Division Bench

Advocate : Naman Nagrath and Swapnil Sohgaura, for the Appellant; Vivek Agrawal, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. This writ appeal is directed against the order dated 24.8.2012 passed by the learned Single Judge whereby he has dismissed the appellant's Writ Petition No. 4788/2011. Briefly stated the facts giving rise to this appeal are these. On 26.2.2002 a criminal case was registered against the appellant. During the pendency of this criminal case the appellant contested the election of the office of President, Nagar Panchayat, Ichhawar, district Sehore, and was declared elected on 17.12.2009. The appellant was, however, convicted for offences u/s 9 of the Indian Explosives Act, 1884 and section 7 of the Essential Commodities Act, 1955 by the Judicial Magistrate First Class, Ichhawar, vide judgment dated 19.7.2010 and sentenced to six months rigorous imprisonment and a fine of Rs.500/-. The appellant's appeal against his conviction and sentence was also dismissed by the appellate court vide judgment dated 8.11.2010. Aggrieved, he has filed a criminal revision before the High Court and the same is pending for final decision. The High Court has admittedly vide order dated 16.10.2010 suspended the jail sentence of appellant and directed for his release on bail. In

the result, the appellant after spending few days in jail has been released on bail.

2. Due to the aforesaid conviction, the Collector, Sehore, was of the view that the appellant had become disqualified u/s 35(hh)/(hhh) of the Madhya Pradesh Municipalities Act, 1961 (in short, "the Act, 1961") to hold the office of President. The Collector, therefore, issued a show cause notice u/s 38 of the Act, 1961 to the appellant as to why he should not be removed from that office. The appellant submitted his reply on 21.12.2010 with which the Collector was not satisfied. The Collector finally removed the appellant from the office of President vide order dated 28.12.2010 because of the subsequent disabilities provided in section 38. The appellant challenged the legality of order dated 28.12.2010 in Writ Petition No. 4788/2011 which has been dismissed by the impugned order. It is in this background, the appellant has filed the present appeal.

3. The learned senior counsel for appellant mainly submitted that, as provided in section 8(4) of the Representation of the People Act, 1951 (in short, "the Act, 1951"), the disqualification of candidates for election as a President will not take effect for a period of three months from the date of conviction of the President and if an appeal or revision is filed until such appeal or revision is disposed of by the Court. The learned Government Advocate, on the other hand, defended the order of disqualification of the appellant and also the order passed by the learned single Judge.

4. The question which calls for our consideration is whether the appellant is disqualified u/s 35(hh)/(hhh) of the Act, 1961 to hold the office of President on his conviction despite his release from jail on bail by the order of the High Court.

5. The relevant extract of section 35 and section 38 of the Act, 1961 read as under:

35. Disqualification of candidates.- No person shall be eligible for election as a President or election or nomination as a Councillor if he--

(hh) has been convicted by a Court in India for any offence not falling under clause (h) and sentenced to imprisonment for a period of not less than two years unless a further period of six years has elapsed since his release after undergoing the sentence; or

(hhh) for contravention of any provisions of the Madhya Pradesh Nagariya Kshetro Ke Bhoomihin Vyakti (Pattadhruiti Adhikaron Ka Pradhan Kiya Jana) Adhiniyam, 1984 or of any law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs unless a further period of six years has elapsed since his release after undergoing the sentence.

38. Effect of subsequent disabilities.- (1) If any Councillor or President -

(a) becomes disqualified under sub-section (1) of Section 31 and his name is struck off from the electoral roll under sub-section (1-A) of that section; or

(b) becomes subject to any of the disqualifications specified in Section 35 and

such disqualification is not removable or being removable is not removed; or

(c) absents himself during six consecutive months from the meetings of the Council, except with the leave of the Council; or

(cc) becomes disqualified for being chosen as and for being a President or Councillor u/s 32-C;

(d) becomes incapable of acting; or

(e) acts as Councilor or President in any matter --

(i) in which he has directly or indirectly, by himself or his partner, any share or interest, as is described in clause (i) of Section 35;"or

(ii) in which he is professionally interested on behalf of a client, principal or other person; or

(ee) Omitted;

(f) fails to pay any arrears of any kind due by him to the Council on a demand made therefor u/s 53, within the period specified therein, he shall, subject to the provisions of subsection (2), cease to be a Councillor or President and his seat shall become vacant with effect from a date to be notified by the State Government except the case falling under clause (cc) and clause (r) of Section 35;

(2) No Councillor shall cease to be a Councillor under sub-section (I) until the prescribed authority on its own motion or on application made to it by any person in this behalf, decides that such a Councillor, has incurred the disqualification on any of the grounds specified therein and communicates the decision in relation thereto to such Councillor:

Provided that no order shall be passed by the prescribed authority under this sub-section against any Councillor without giving him a reasonable opportunity of being heard.

6. One of the disqualifications provided in section 35 of the Act, 1961 of an elected President or a Councillor is under the above quoted section 35(hh)/(hhh). The expression "unless a further period of six years has elapsed since his release after undergoing the sentence" in section 35(hh)/(hhh) clearly means that the period of disqualification of the President will continue for six years after he has served out the sentence. The release of such President on bail only means that his jail sentence has been suspended and not the conviction. The disqualification shall, therefore, continue even during the period he is on bail unless the disqualification specified in section 35(hh)/(hhh) is removed as provided u/s 38(b), for instance on setting aside of the conviction by the superior court. Also reading of section. 38(1) which deals with the subsequent disabilities of President and Councillor reveals that in the event of President becoming subject to any disqualifications specified in section 35, till the removal of such disqualification he

automatically ceases to be a President and for his removal as President no formal order is needed although his seat shall become vacant with effect from the date to be notified by the State Government. This we say because for the removal of a Councillor a specific order as provided under sub-section (2) of section 38 is required to be passed by the prescribed authority after giving an opportunity of hearing before deciding that such a Councillor has incurred a disqualification whereas no such requirement of passing an order for the removal of President is provided.

7. We are also unable to agree with the submission of learned counsel for the, appellant that the disqualification of a President will not take effect as provided u/s 8(4) of the Act, 1951 for a period of three months from the date of conviction or if an appeal or revision is filed until such appeal or revision is disposed of. Admittedly, no provision like section 8(4) occurs in section 35 or 38 of the Act, 1961. It is also to be noted that even in the Act 1951, section 8(4) does not cover all the cases of conviction, for example conviction mentioned in section 11A. For the reasons stated above, we find no merit in the appeal. It is accordingly dismissed but without any order as to costs. In the result, all interim orders and directions stand vacated.