
(2011) 12 GAU CK 0083
In the Gauhati High Court
Case No : Writ Petition (C) No. 247 of 2011

Tourid Ali

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Tripura Panchayats Act, 1993 — Section 10(2), 16, 16(2)

Citation : (2011) 1 GLD 709

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Advocate : R. Datta, for the Appellant; G.S. Bhattacharjee, G.A., for the respondent Nos. 1, 2 and 3, D. Sarkar, for the respondent No. 4 and K. Das, for the respondent No. 5, for the Respondent

Final Decision : Allowed

Judgement

B.D. Agarwal, J.—This writ petition under Article 226 of the Constitution of India has been filed challenging order dated 9th June, 2011 issued by the Block Development Officer, Gournagar R.D. Block, North Tripura, declaring that the writ petitioner has earned disqualification as a member of Lakhimpur Gram Panchayat under sub-Section (2) to Section 16 of Tripura Panchayats Act, 1993. The writ petitioner is also challenging consequential order dated 10th June, 2011 issued by the same authority declaring that the writ petitioner has ceased himself to be a member of the aforesaid Gram Panchayat. Heard Mr. R. Dutta, learned counsel for the petitioner and Mr. G.S. Bhattacharjee, learned counsel, appearing for the respondent Nos. 1, 2 and 3 as well as Mr. D. Sarkar, learned counsel for the respondent No. 4. Respondent No. 5 is represented by Mr. K. Das, learned counsel.

2. It may be mentioned here that vide order dated 2nd November, 2011, the last opportunity was given to the respondents to file their affidavits. However, none of them have filed any affidavit.

3. The writ petitioner's case is that he had contested the election as Member of Gram Panchayat under the banner of a political party (CPIM) and was declared elected on 23.7.2009 by the Returning Officer. The petitioner's further case is that although he had continued to be a member of the same political party, his election has been set aside on the ground that he has changed his political affiliation to another political party.

4. Learned counsel for the petitioner submitted that even if the writ petitioner has changed his affiliation from one political party to another political party, his election cannot be set aside, in as much as, Section 16(2) of the Act is applicable only to Independent candidates and not to the candidates who are elected on party symbols.

5. Section 16(2) of Tripura Panchayats Act, 1983 is reproduced below :

16(2). A member of a Gram Panchayat who has been elected as such, otherwise than as a candidate set up by any political party, shall be disqualified for being a member of the Gram Panchayat if he joins any political party after such election.

6. Learned State counsel submitted that there are enough materials and conclusive evidence that the writ petitioner has resigned from CPIM and joined another political party and as such, his disqualification u/s 16(2) of the Act is legal and valid. However, learned counsel for the petitioner submitted that the writ petitioner had never resigned from the aforesaid political party and he had reiterated this fact, while giving a statement before Block Development Officer on 9.6.11. In fact, the Block Development Officer has not discussed anything about the oral statement given by the writ petitioner in his order dated 9th June, 2011. Be that as it may, I am of the view that legality of order dated 10th June, 2011 can be examined on the basis of interpretation of Section 16(2), sans allegations and assertions of both parties about changing political affiliation by the petitioner.

7. A careful reading of sub-Section (2) to Section 16 clearly shows that only a member of Gram Panchayat, who is elected as an Independent candidate, without being sponsored by any political party, can be disqualified, if such candidate subsequently joins a political party.

8. In the case before me, the writ petitioner was elected as member of Gram Panchayat on being sponsored by a political party and as such, Section 10(2) will not be applicable to such candidate.

9. In other words, the writ petitioner cannot be considered as an Independent candidate within the meaning of Section 16(2) of the Act, and his change of affiliation from one party to another will have no effect upon his continuing as a member of the Gram Panchayat.

10. Paragraph 2(2) of the Tenth Schedule of the Constitution of India, which relates to disqualification of Members of Parliament and Legislative Assemblies on the ground of defection, is identical to Section 16(2) of the Tripura Panchayats Act, 1983, the language of both the provisions is similarly worded. For ready

reference, paragraph 2(2) of the Tenth Schedule is reproduced below :

2(2). An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.

11. The vires and validity of the aforesaid paragraph 2 of the Tenth Schedule came up for consideration before the Hon'ble Supreme Court in the case of *Shri Kihota Hollohon Vs. Mr. Zachilhu and others*, . Their Lordships have held that, except paragraph (7), the remaining paragraphs of Tenth Schedule have been held to be within the bounds of the Constitution of India. The relevant observations (per majority) with regard to paragraph 2 of the Tenth Schedule are reproduced below for ready reference :

Accordingly we hold : "that the Paragraph 2 of the Tenth Schedule to the Constitution is valid. Its provisions do not suffer from the vice of subverting democratic rights of elected Members of Parliament and the Legislatures of the States. It does not violate their freedom of speech, freedom of vote and conscience as contended.

The provisions of Paragraph 2 do not violate any rights or freedom under Arts. 105 and 194 of the Constitution.

The provisions are salutary and are intended to strengthen the fabric of Indian parliamentary democracy by curbing unprincipled and unethical political defections.

The contention that the provisions of the Tenth Schedule, even with the exclusion of Paragraph 7, violate the basic structure of the Constitution in that they affect the democratic rights of elected Members and, therefore, (sic) of the principles of Parliamentary democracy is unsound and is rejected.

12. Paragraph 2(2) read with paragraph 6 of the Tenth Schedule were again put in the scanner of *Jagjit Singh Vs. State of Haryana and Others*, . In this case, the petitioner was elected to the State Assembly as an independent member and he was disqualified by the Speaker of that House for having joined a political party. The writ petition was decided upholding the disqualification of the petitioner. While doing so, the Hon'ble Judges followed the ratio of the law laid down in the case of *Kihota Hollohon (supra)*. The petitioner's challenge to his disqualification was repelled basically on the ground that there is a fundamental difference between an elected independent member and one who is elected with declared political affiliation. Upholding of disqualification and that too referring to the case of *Kihota Hollohon* sufficiently indicates that there is no Constitutional infirmity in para 2(2) of Tenth Schedule. In view of the aforesaid authorities of the Apex Court, I find no difficulty to hold that the disqualification of the petitioner as a member of the Gram Panchayat is de hors to Section 16(2) of the Act. It appears to me that impugned orders have been passed on the basis of misinterpretation of the language of the law. Consequently, impugned orders dated 9th June, 2011

and 19th June, 2011 are hereby set aside. The writ petitioner shall be allowed to hold the office of member of Laxmipur Gram Panchayat for the remaining period of the term, unless he stands disqualified on other grounds.