

Shri Bhagwan Dass Sehgal

Vs

State of Haryana and Others

Civil Appeals Nos. 1188 and 1 of 1973

A. Jaiswami, R. S. Sarkaria JJ)

05.11.1974

JUDGMENT

SARKARIA, J. -

1. The common question that arises for determination in these appeals is : Whether clause (i) in Section 2 of the Punjab State Legislature (Prevention of Disqualification) Act 7 of 1952 (hereinafter referred to as the Disqualification Act) inserted by Haryana Amendment Act 25 of 1959 suffers from the vice of discrimination and, as such, is an invalid piece of legislation ? Both these appeals will therefore be disposed of by this judgment.

2. The appellant and respondents, as rival candidates, contested the election to Haryana Legislative Assembly from Ambala Cantonment Constituency in March 1972. Hans Raj Suri, respondent was declared elected. The appellant, Bhagwan Dass Sehgal challenged this respondent's election on the ground that his nomination papers had been improperly and illegally accepted. It was alleged that on the material dates, the respondent being a Chairman of the Ambala Improvement Trust was holding an office of profit under the Government of the State, and as such was disqualified from contesting the election. It was further pleaded that clause (i) of Section 2 of the Disqualification Act 1952 (added by the Haryana Amendment Act 25 of 1969) which purported to take the office of the Chairman of an Improvement Trust out of the purview of an 'office of profit' was invalid as it offended Article 14 of the Constitution.

3. The validity of the aforesaid clause (i) was also challenged separately, under Article 226 of the Constitution in a writ petition on the same grounds.

4. The learned Single Judge before whom the writ petition first came up for hearing, got it referred to a Division Bench of the High Court, which dismissed the writ petition. In consequence, the election petition, also, was dismissed. Hence these appeals.

5. A few facts may now be set out :

5a. It is not disputed that at the date of filing the nomination papers and also on the date of their scrutiny, the respondent was Chairman of the Ambala Improvement Trust. He was appointed by the State Government under Sections 4 and 5 of the Improvement Act by a notification dated May 21, 1970. As Chairman he was receiving a salary of Rs. 1,000 p.m. plus Dearness and Conveyance Allowances. It is also not disputed that the power of appointment and removal of the Chairman of the Trust vests in the State Government and his remuneration is paid out of the public revenues. In short, the office of the Chairman has all the attributes of an 'office of profit'. But for the impugned

provisions the respondent would have been disqualified from contesting the election.

6. By virtue of the powers conferred by Article 191 of the Constitution. The Legislature of Haryana State enacted the Amendment Act 25 of 1969, whereby it inserted the impugned clause (i) in the original Section 2 of the Disqualification Act. The effect of this amendment is that a person holding the office of the Chairman of an Improvement Trust constituted under the Punjab Town Improvement Act or the office of the Chairman of the State Agricultural Marketing Board constituted under Section 3 of the Punjab Agricultural Produce Markets Act, 1961, does not incur the disqualification for being chosen as, and for being a member of the Haryana State Legislative Assembly.

7. Mr. D. V. Patel, learned Counsel for the appellant contends that the impugned provision is discriminatory inasmuch as it enables the Chairman of the Trust to contest an election to the State Assembly by removing his disqualification but does not accord the same treatment to the members of the Trust appointed under Section 4 (i)(c) of the Improvement Act. It is further urged that the impugned provision has created an unreasonable classification between the members of the statutory bodies falling under clause (e), and a Chairman of the Improvement Trust falling under clause (i) of Section 2 of the Disqualification Act.

8. To us, these contentions appear to be devoid of merit.

9. In the case of members of the Trust appointed under Section 4 (i)(c) of the Improvement Act, the disqualification on the ground of their holding the office of profit, had already been removed by clause (e) of Section 2 of the Disqualification Act, 1952, which runs thus :

A member of any statutory body or authority, or a member of any Committee or other body, appointed or constituted by the Punjab Government, and who is not in receipt of a salary but who is paid only travelling and daily allowance during the performance of his duties.

10. It is therefore not correct to say that the members of the Trust have been discriminated against in the matter of removing the disqualification.

11. It is noteworthy that the status, administrative responsibilities and other conditions which go with the office of the Chairman of the Improvement Trust are not the same as those of the members of the Trust or other statutory bodies. The mere fact therefore, that for the purpose of removing the disqualification, the Chairman of the Improvement Trusts have been put in clause (i) as a class separate from that of the members of the Trust and other statutory bodies in clause (e) of Section 2 does not offend the guarantee of equal treatment enshrined in Article 14 of the Constitution.

12. It must be remembered that Article 191(1)(a) of the Constitution gives a wide power to the State Legislature to declare by law what office or offices of profit held under the Government shall not disqualify the holder thereof from being chosen or for being a member of the State Legislature. Classification of such offices for the purpose of removing the disqualification has thus been left primarily to legislative discretion. It follows that so long as this exemptive power is exercised reasonably and with due restraint and in a manner which does not drain out Article 191(1)(a) of its real content or disregard any constitutional guarantee or mandate, the Court will not interfere. Nothing of this kind has been done by the impugned provisions which would justify the invocation of the extraordinary powers of the Court under Article 226 of the Constitution.

13. No other point has been argued before us.

14. In the result the appeals fail and are hereby dismissed with costs - hearing fee limited to one set.

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