

Amrutlal Chunilal Raval

Vs

Dattatraya Pandurang Hajarnis and Others

Civil Appeal No. 707 of 1978

(R. S. Pathak, O. Chinnappa Reddy JJ)

20.11.1980

JUDGMENT

PATHAK, J. –

1. This appeal by special leave is directed against the Judgment of the Bombay High Court maintaining an order of the District Court, Poona by which the appellant's election as President of the Bhor Municipal Council was set aside on an election petition filed by the respondent.
2. The appellant stood for election to the office of President of the Bhor Municipal Council. He filed his nomination paper on October 21, 1974, and the election was held on November 17, 1974. The appellant was declared elected the next day and the result of the election was published in the Government Gazette on November 25, 1974.
3. The first respondent filed an election petition before the District Court, Poona challenging the appellant's election. He alleged that the appellant had been convicted on December 26, 1973 by the Judicial Magistrate, Bhor under Section 16 of the Prevention of Food Adulteration Act and sentenced to undergo imprisonment till the rising of the court and to pay a fine of Rs. 200. Accordingly, he said, by virtue of Section 51 (2) read with Section 16 (1) (a) of the Maharashtra Municipalities Act, 1965, the appellant was not qualified for election as President of the Municipal Council. During the pendency of the election petition the Maharashtra Government made an order under clause (a) of the sub-section (1) of Section 16, Maharashtra Municipalities Act, 1965 ("the Act") declaring :

In exercise of the powers conferred by clause (a) of the sub-section (1) of Section 16 of the Maharashtra Municipalities Act, 1965, the Government is pleased to order that the disqualification incurred by Shri Amrutlal Chunilal Raval, residing of Bhor, Tehsil Bhor, District Poona should remain in force for a period of six months only from his release on December 26, 1973.

By order and in the name of the Governor of Maharashtra

(Sd) M. N. Tadkod, Desk Officer.##

4. The election petition was allowed and the election of the appellant was set aside. The appellant filed a writ petition in the Bombay High Court against the order setting aside his election, but the writ petition was dismissed by the High Court on March 21, 1978.

5. In this appeal, the only point pressed by the petitioner before us is that the order dated November, 20, 1975 made by the State Government was retrospective in operation and consequently removed the disqualification imposed on the appellant on the date he filed his nomination paper.

6. Sub-section (2) Section 51 of the Act provides that every person qualified to be elected as a Councilor under Section 15 shall be qualified for election as President. Sub-section (1) of Section 15 of the Act provides that every person, whose name is included in the list of voters maintained under Section 11 and who is not disqualified for being elected a Councilor under this Act or any other law for the time being in force, shall be qualified and every person whose name is not included in the list or who is so disqualified for being a Councilor shall not be qualified, to be elected as a Councilor at any election. Section 16 (1) (a) of the Act provides :

16. (1) No person shall be qualified to become a Councillor whether by election, co-option or nomination, who -

(a) has been convicted by a Court in India of any offence the maximum punishment for which (with or without any other punishment) is imprisonment for a term of two years or more and sentenced to imprisonment for any term, unless a period of five years, or such lesser period as the State Government may allow in any particular case, has elapsed since his release; or

7. The appellant was convicted on December 26, 1973 for an offence under the prevention of Food Adulteration Act, which, it is not disputed, fell within the terms of clause (a) of sub-section (1) of Section 16. He was sentenced to imprisonment until the rising of the court. Because of the conviction and sentence he suffers the disqualification contemplated by clause (a), and the disqualification enures for a period of five years from the date of his release from imprisonment. But by virtue of the same clause, the State Government has been empowered to substitute a shorter period of disqualification. In other words, the ordinary run of the clause period of disqualification. In other words, the ordinary run of the clause may be altered by the State Government. A modification of the normal operation of the statute is contemplated. Such a modification, to be retrospective, must indicate clearly that it is so. There is nothing in the order dated November 20, 1975 from which it can be inferred that it has retrospective operation. What it says merely is that the disqualification incurred by the appellant shall remain in force for a period of six months only from his release on December 26, 1973. The disqualification was incurred by the appellant on December 26, 1973 and the disqualification was in force when he stood for election. The date when the disqualification for five years was incurred is the relevant date; the subsequent operation is merely the consequence of the incurring of the disqualification. If the order was to be beneficial to the appellant, it should have been made retrospective from the date when the disqualification was incurred. On the plain language, it must be read as an order reducing the period of disqualification to six months, but to be applied to a disqualification arising after the date when the order was made.

8. In our opinion, the appellant does not benefit from the order of the State Government insofar as his election as President in 1974 is concerned. In the circumstances, we consider it unnecessary to go into the question whether the State Government has the power under clause (a) to make an order with retrospective effect.

9. In the result, the appeal is dismissed with costs to the fifth respondent.

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