

RAJASTHAN HIGH COURT

Hanuman Prasad

Vs.

District Judge Merta

Civil Writ Petn. No. 726 of 2001

(B.S. Chauhan, J.)

16.03.2001

ORDER

B. S. Chauhan, J.

1. The instant writ petition has been filed challenging the order of the Election Tribunal dated 7-2-2001 (Annex. 4), by which the election of the petitioner has been declared void and direction has been issued to hold fresh election.

2. The facts and circumstances giving rise to this case are that petitioner was declared elected as *Sarpanch* of *Gram Panchayat*, Peeh, tehsil Merta, district Nagaur and respondents Nos. 2 to 6 stood defeated. Respondent No. 2 filed Election Petition No. 12/2000 before the District Judge, Merta on the grounds, inter alia, that petitioner was involved in a criminal case and on the date of filing the nomination papers, charges had been framed against him, therefore, under the provisions of Section 19(gg) of the Rajasthan *Panchayati Raj* Act, 1994 (for short, "the Act"), he was disqualified to contest the election. During pendency of the election petition, criminal trial stood concluded and petitioner was acquitted. Thus, he took the plea that as the acquittal related back to the date of framing the charges and the alleged offence, he could not be held disqualified on the date of filing the nomination paper. The Tribunal rejected the plea of the petitioner and allowed the election petition. Hence this petition.

3. A large number of issues are involved herein. However, the sole point urged before this Court is that if petitioner stood acquitted during pendency of the criminal trial, whether it can still be held that he had incurred the disqualification and his election was void ?

4. On 18-1-1989, an F.I.R. was lodged against the petitioner for the offences punishable under various provisions, including Sections 323 and 326 of the Indian Penal Code. After investigation, charge-sheet was filed and charges were framed against the petitioner on 24-7-90. Petitioner filed the nomination papers on 30-1-2000, the date on which Criminal Case No. 103/69 was pending against him and charges had been framed, and won the election. Petitioner stood acquitted vide order dated 15-12-2000, when the election petition was pending.

5. Section 19 of the Act, 1994 provides for qualification for election as a Panch or a member and declares that every person registered as a voter in the list of voters of a *Panchayati Raj* Institution, shall be qualified for an election as a Panch or, as the case may be, a member of such *Panchayati Raj* Institution. Clause (g) thereof declares a person disqualified if he has been convicted by a competent Court for an offence involving moral turpitude. The Act was amended by adding Clause (gg) thereto to make a person ineligible if "he is under trial in the competent Court which has taken cognizance of the offence and framed the charges against him of any offence punishable with imprisonment for five years or more".

6. The only question remains is : whether petitioner, against whom the charges had been framed prior to filing of the nomination papers, was disqualified to contest the election in spite of his subsequent acquittal by the trial Court after being elected ?

7. A Constitution Bench of the Hon'ble SC in *N. P. Poonuswami v. Union of India*,¹ observed that the Representation of the People Act is self-contained enactment so far as elections are concerned, which means that whenever the true position in regard to any matter connected with elections is to be ascertained, the Court has only to look at the Act and the Rules made there under.

8. In *Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram*,² the Hon'ble SC held that election is a continuous process consisting of several stages and embarrassing many steps, of which nomination is one. Nomination is the foundation of candidate's right to go to the polls and must be treated as an integral part of the election. If a person is disqualified on the date of nomination, he cannot be chosen as a candidate because of the disqualification attaches to him on that day. The Hon'ble Court rejected the submission that the disqualification, being a transient one, can be completely wiped off by subsequent developments so that there could be nothing against the

person being chosen on the polling day. The wiping off the disqualification does not have any retrospective effect and, therefore, the disqualification, which subsisted on the date of filing the nomination, does not cease to subsist at the later stage.

9. In *Sewaram v. Sobaran Singh*,³ the Apex Court held that if a person stands disqualified on the date of filing of the nomination papers and the date of scrutiny of the nomination papers, he incurs disqualification and becomes ineligible to contest the election.

10. In *Dilip Kumar Sharma v. State of Madhya Pradesh*,⁴ the Hon'ble SC considered the case of imposing the penalty of death under the then existing Section 303 of the Indian Penal Code and held that if the sentence once imposed stands set aside at a later stage and does not remain executable, it cannot be taken into account while imposing punishment under Section 303, viz., in a case of murder by a life convict, for the reason that the acquittal wipes out the effect of conviction.

11. In *Manni Lal v. Parmai Lal*,⁵ the Hon'ble SC held that the question of disqualification on the ground of a candidate being convicted by a criminal Court, has to be considered by the Court at the time of deciding the election petition and if on that date the conviction is set aside, the person cannot be held to be disqualified as the acquittal takes away the effect of conviction. The Court observed as under (Para 4) :-

"It is significant that the High Court under Section 100(1)(a) of the Act is to declare the election of a returned candidate to be void if the High Court is of the opinion that, on the date of his election, a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or the Act. It is true that the opinion has to be formed as to whether the successful candidate was disqualified on the date of his election; but this opinion is to be formed by the High Court at the time of pronouncing the judgment in the election petition."

12. In that case, the last date for filing the nomination paper was 9-1-69 and the returned candidate stood convicted on 11-1-69. His conviction was set aside in appeal on 30-9-69 and the election petition was decided on 17-10-69. The Hon'le Apex Court held that as prior to the decision of the election petition the returned candidate stood acquitted, the disqualification disappeared. But the special features of the case

remained that the candidate was not disqualified on the date of filing the nomination papers. 12A. In *Vidya Charan Shukla v. Purshottam Lal Kaushik*,⁶ the Apex Court considered that undoubtedly the issue : whether a person is qualified or disqualified for being chosen, is to be decided giving reference to the crucial date of filling of the nomination form and date of scrutiny but if before the election petition is decided, the disqualification of being a convict is wiped out by his acquittal, acceptance of his nomination does not remain open to challenge. The Court observed as under (Para 38) :-

"that the acquittal of appellant in appeal prior to the pronouncement of judgment by the High Court in the election petition had the result of wiping out his disqualification as completely and effectively as if it did not exist at any time including the date of scrutiny of the nomination papers and that his nomination paper was properly accepted by the returning officer. The challenge to the election of the appellant on the ground under Clause 100(1)(d)(i) must, therefore, fail."

13. In *Bhagwan Singh v. Rameshwar Prasad Shastri*,⁷ the Hon'ble SC considered the question of disqualification as validity of the nomination of the returned candidate had been challenged on the ground that on the date of nomination he had an interest in the contract for the execution of works undertaken by the State of Bihar. The Hon'ble Apex Court held that the question of validity of the contract was immaterial and "would not affect the merits" of the case but as in the said case the contract had been executed by the returned candidate, not in his personal capacity but as a Head of the Village *Panchayat*, the contract was for the *Panchayat* and not for him personally and, thus, his nomination was valid.

14. In *Laliteshwar Prasad Sahi v. Bateshwar Prasad*,⁸ the Hon'ble SC considered the applicability of the provisions of Section 7(d) of the Representation of the People Act, 1951 (for short, "the Act, 1951") imposing the disqualification on the person having contract with the Government and majority view has been that if the contract was void and unenforceable for non-compliance of the provisions of Article 299(1) of the Constitution, the contractor would be saved from the mischief of Section 7(d) of the Act, 1951. But this view was not followed by the Constitution Bench of the Hon'ble SC in *Vishwanatha Reddy v. Konappa R. Nadgouda*,⁹

15. In *Abdul Rahiman Khan v. Sadashiva Tripathi*,¹⁰ a similar view has been

reiterated by the Hon'ble SC holding that even if the contract resulting from acceptance of its tender, though may not be enforceable for non-observance of the provisions of Article 299 of the Constitution, still the petitioner incurred disqualification under the Act, 1951 from standing as a candidate for election to the State Legislature.

16. In *Konappa Rudrappa Nadgouda v. Vishwanatha Reddy*,¹¹ the Apex Court held that merely because the contract had been entered into without complying with the provisions of Article 299 of the Constitution, it would not save bar of Election Law to the candidature.

17. The Constitution Bench of the Hon'ble Supreme Court, in *Vishwanatha Reddy* (AIR 1969 SC 604) (supra) while considering the Review Petition in *Konappa R. Nadgouda* (AIR 1969 SC 447) (surpa), reaffirmed the earlier judgment observing that when there are only two contesting candidates, and one of them is under a "statutory disqualification", votes cast in favor of the disqualified candidate may be regarded as thrown away, irrespective of whether the voters who cast the votes for him were aware of the disqualification.

18. Thus, the afore-referred judgments clearly show that even if the contract is void/unenforceable, the party to such contract shall not be eligible to contest the election.

19. The Constitution Benches of the Hon'ble Supreme Court, in *Bhikraj Jaipuria v. Union of India*,¹² and *State of West Bengal v. M/s. B. K. Mandal and Sons*,¹³ held that if the statutory provisions are mandatory, action taken or thing done, not in the manner or form prescribed, can have no effect or validity and it remains unenforceable and inexecutable. Non-observation of mandatory requirement of law inevitably follows that contravention of said clause implies "nullification of the contract".

20. In *New Marine Coal Co. (Bengal) Pvt. Ltd. v. Union of India*,¹⁴ the Apex Court held that any contract in violation of the provisions of Article 299 of the Constitution is void and unenforceable.

21. In *Mulamchand v. State of Madhya Pradesh*,¹⁵ the Apex Court, while dealing with the provisions of Article 299 of the Constitution, held as under (Para 6) :-

"If the plea of the respondent regarding estoppel or rectification is admitted, that would mean, in effect, the repeal of an important constitutional provision

intended for the protection of the general public. That is why the plea of estoppel or rectification cannot be permitted in such a case."

22. In *State of U.P. v. Murari Lal and Bros. Ltd.*¹⁶ the Hon'ble Apex Court held as under (Para 3) :-

"The consensus of opinion is that a contract entered into without complying with the conditions laid down in Article 299(a) is void. If there is no contract in the eye of the law, it is difficult to see how Section 230(3) of the Contract Act would become applicable."

23. In *Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. v. Sphi Singh*¹⁷ the Apex Court reiterated the law, holding that failure to comply with the conditions incorporated in Article 299 of the Constitution "nullifies the contract and renders it void and unenforceable".

24. In *M/s. Hansraj Gupta and Co. v. Union of India*,¹⁸ a similar view has been reiterated by the Hon'ble SC observing that the constitutional provisions of Section 175(3) of the Government of India Act, 1935 would bar "mere assertion of this ground from operating as evidence of a contract".

25. In *Sohan Lal v. Union of India*,¹⁹ the Hon'ble SC held that a judgment and decree passed by a competent Court of law, which have attained finality, as has not been challenged in an appellate Court, still remains unenforceable and inexecutable merely on the ground that it was based on a contract wherein the mandatory provisions of Article 299 of the Constitution had not been observed.

26. In *Amrit Vanaspati Ltd. v. State of Punjab*,²⁰ it had been observed that any promise or agreement which is prohibited by statute or is against public policy or made in violation of the provisions of Article 299 of the Constitution, cannot be enforced in Court.

27. In *Lalji Khimji v. State of Gujarat*,²¹ the Apex Court held that the provisions of Article 299 of the Constitution are mandatory in character and their non-compliance would render a contract void.

28. In *Bihari Lal v. Buri Devi*,²² the Apex Court held that substantial compliance of

the mandatory requirement of Article 299 (1) of the Constitution is necessary and the said requirement may be fulfilled if the Rules made by the Government modifies or modulates the said provisions of Article 299 and authorizes a particular person or authority to enter into the contract and if the contract has been signed by the persona designate, it cannot be held to be void or unenforceable.

29. In *Bishandayal and Sons v. State of Orissa*,²³ the Apex Court reiterated the law observing that any contract in violation of Article 299 of the Constitution remains unenforceable in law.

30. Void has been defined as : ineffectual; nugatory; having no legal force or legal effect: unable in law to support the purpose for which it was intended : nugatory and ineffectual so that nothing can cure it; not valid. (Vide Black's Law Dictionary). "Void" means a contract entirely devoid of legal effect or it is devoid of main result contemplated. In *Smt. Kalawati v. Bisheshwar*²⁴ the Apex Court held that "void" means non-existent from its very inception and a ban against its recognition. It also means merely a nullity and may be ignored even in collateral proceeding as if it never were. "Void" does not have any legal force or effect, the validity of which may be ascertained by any person whose rights are affected at any time or at any place directly or indirectly. "Void" means without any legal force, effect or consequence, invalid; null; worthless; sipher; useless and ineffectual. (Vide Full Bench judgment of Allahabad High Court in *Nutan Kumar v. II Additional District Judge*,²⁵

31. In *State of Kerala v. M.K. Kunhikannan Nambiar*,²⁶ the Apex Court held that the words "Void" has a relative rather than an absolute meaning. It only conveys the idea that the order is invalid or illegal. It can be avoided. There are degrees of invalidity depending upon the gravity of infirmity as to whether fundamental or otherwise. A thing which is found non est and does not require to set that aside though it is sometimes convenient to do so, and a void order does not require setting aside. (Vide *Suresh Chandra v. State of West Bengal*)²⁷

32. In *Tek Chand v. Dile Ram*,²⁸ the Hon'ble Apex Court considered the case where a Government employees tendered an application for voluntary retirement before the date of filing the nomination paper. He was not communicated anything either accepting or rejecting his application before filing the nomination paper. As voluntary retirement became effective from the date of expiry of period specified, it was held

that he could not continue till actual acceptance of the application. He would be deemed to have retired on expiry of the statutory period of notice and, thus, did not hold office of profit on the relevant date. Therefore, it cannot be held that his nomination had improperly been accepted.

33. Mr. Govind Mathur has urged that while deciding the aforesaid case, the Hon'ble SC did not take note of its earlier judgments in *State of Jammu and Kashmir v. Triloki Nath Khosa*,²⁹ and *Ajaib Singh v. Sirhind Co-operative Marketing-cum-Processing Service Society Ltd.*,³⁰ wherein it has been held that unless the statute provides for a deeming clause, the Court should not accept the contention of deeming clause for the reason that fiction cannot be introduced by judicial interpretation as it would amount to legislation, which is not permissible in law.

34. In *Union of India v. Deoki Nandan Aggarwal*,³¹ the Hon'ble Apex Court observed as under (Para 14) :-

"It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts."

35. Even if the statute provides for a legal fiction/deeming provision, it must be limited to the purposes indicated by the context and cannot be given a larger effect. (Vide *Radhakissen Chamria v. Durga Prosad Chamria*,³² *State of Travancore, Cochin v. S.V. Cashewnut Factory, Quilon*,³³ and *Bengal Immunity Co. Ltd. v. State of Bihar*,³⁴ In *Modi Cement Ltd. v. Kuchil Kumar Nandi*,³⁵ the Hon'ble Apex Court explained the distinction between the "deeming provisions" and "presumption" and held that the distinction was well discernible.

36. Similar view has been taken by the Hon'ble Apex Court in *State of Kerala v. Dr. S.G. Sarvothama Prabhu*,³⁶ *Commissioner of Income-tax v. Mysodet (P) Ltd.*,³⁷ and *Garden Silk Mills Ltd. v. Union of India*,³⁸

37. In fact, in such a matter, no general formula can be laid down. Court has to draw the inference after considering the Scheme of the Act/Rules and the language used therein, and if language thereof suggests a fiction even by necessary implication, it

has to be interpreted accordingly.

38. Where the contracts were found to be void/unenforceable for non-observance of the provisions of Article 299 of the Constitution, the Apex Court consistently held that that would not relieve the contractor from being disqualified for contesting the election under the relevant law, i.e. notwithstanding that the contract could not be enforced against the Government it was a contract which fell within the mischief of Section 7(d) of the Act, 1951.

39. Thus, it becomes clear that the view in case of void contract and conviction being set aside by the Appellate Court have been dealt with by the Hon'ble SC differently.

40. Be that as it may, a Division Bench of this Court in *Shiv Ram v. State of Rajasthan*³⁹ has upheld the validity of the provisions of Section 19(gg) of the Act, 1994. The Court explained the purpose of bringing such an amendment and observed as under (Para 22) :-

"The accused has also right to approach the High Court under Section 482, Criminal Procedure Code and to satisfy the Court that continuation of proceedings are abuse of process of the Court. Thus, by impugned ordinance, prohibition to contest the election is provided at the stage when correctness of the allegations constituting the offence punishable with imprisonment for five years has been thoroughly investigated by the police and filtered by judicial scrutiny. Thus, after the charge is framed, the accused cannot be heard to say out side the trial that he has been falsely implicated for certain ulterior motive. Thus, in our view, the impugned amendment with an object to check criminalization in politics and also to warn people in public life not to indulge in criminal activities is in larger public interest."

41. In *Bhiva Ram v. State of Rajasthan*,⁴⁰ this Court considered the aspect of the provisions contained in Section 19(gg) and held that the said provision clearly provides that a person shall stand disqualified to contest the election if he is under-trial, wherein cognizance of the offence had been taken and the charges had been framed against him for any offence punishable with imprisonment for five years or more. In the said case, the charges had not been framed prior to the election. The Court observed as under (Para 12) :-

"The Legislature, it is wisdom, has used three different phraseology and

according to literal meaning of the provision, there must be a trial by the competent criminal Court which has taken cognizance of the offence and the Court had framed the charges against him. Undoubtedly, the criminal trial commences with the framing of the charges and not prior to it, the proceedings can simply be termed as inquiry /investigation."

42. In the said case, it was held that as the charges had not been framed, the candidate could not be saddled with the disqualification. Disqualification of a person requires to be considered by strict adherence to the statutory provisions applicable in a given case. Inclusion of persons in the electoral roll by a Competent Authority, though they were not qualified to be enrolled, cannot be a ground for setting aside an election of a returned candidate under Section 100 of the Act, 1951 (Vide *Shyamdeo Pd. Singh v. Nawal Kishore Yadav*, ⁴¹

43. In *Pradyut Bordoloi v. Swapan Roy*, ⁴² the Hon'ble Apex Court observed that the "totality of the facts and circumstances viewed in the light of the provisions of relevant Act, would lead to an inference being drawn." whether the person incurred the disqualification.

44. From the above case law, it would be apparent that the disqualifications mentioned in the Act, 1994 and the Act , 1951 are entirely different. It must be kept in mind that both are creation of statute. Actually, the democratic rights of voting or contesting the election are statutory rights and have to be exercised in accordance with the statute creating the same. The provisions, of Section 19(gg) of the Act, 1994 have been enacted by amendment and having been up- held by the Division Bench of this Court, are required to be enforced as they are in letter and spirit. It will be necessary to keep in mind the distinction between "Charge" and "Conviction. " After charge is framed, a person can be discharged or tried and acquitted. A person who is acquitted is absolved of the guilt but the fact that he was charged with commission of an offence always remains, whereas on a discharge of a person, the charge itself stands abrogated. Therefore, being charged with a criminal offence of a particular description is an entirely different thing than conviction of a particular offence. Both are distinct happenings and have to be distinctly considered. The Act, 1951 has considered conviction for a particular offence whereas the Act, 1994 considers the charge with particular offence as a disqualification. The entire case law in relation to conviction resulting in acquittal would, therefore, have no application in the present case as being charged for a particular offence itself, being a distinct happening, is made statutorily a

disqualification which cannot be wiped off by a subsequent acquittal.

45. The case requires to be examined from one more aspect: Had petitioner's nomination been rejected by the Returning Officer on the ground of being charged in a criminal case, could he file an election petition after quashing of the charges or acquittal on the ground that his nomination had improperly been rejected. If he cannot, I fail to understand, how could he be permitted to raise such a plea. In a given case where the trial is not concluded or appeal against conviction is not decided prior to the decision of the election petition, it will lead entirely different result.

46. Thus, the judgments above referred to on behalf of the petitioner have, therefore, to be distinguished. The fact that petitioner was charged with particular offences at the time of filing his nomination the impugned judgment and order does not warrant interference.

47. In view of the above, petition is devoid of any merit and hereby rejected.

Petition dismissed.

Cases Referred.

1. AIR 1952 SC 64
2. AIR 1954 SC 236
3. AIR 1993 SC 212
4. AIR 1976 SC 133
5. AIR 1971 SC 330
6. AIR 1981 SC 547
7. AIR 1959 SC 876
8. AIR 1966 SC 580
9. AIR 1969 SC 604
10. AIR 1969 SC 302
11. AIR 1969 SC 447
12. AIR 1962 SC 113
13. AIR 1962 SC 779
14. AIR 1964 SC 152
15. AIR 1968 SC 1218

16. AIR 1971 SC 2210
17. AIR 1977 SC 2149
18. AIR 1973 SC 2724
19. AIR 1991 SC 955
20. AIR 1992 SC 1075
21. 1993 (supp) 3 SCC 567
22. AIR 1997 SC 1879
23. (2001) 1 SCC 555
24. AIR 1968 SC 261
25. AIR 1994 All 298
26. AIR 1996 SC 906
27. AIR 1976 Cal 110
28. 2001 AIR SCW 540
29. AIR 1974 SC 1
30. (1999) 6 SCC 82
31. AIR 1992 SC 96
32. AIR 1940 PC 167
33. AIR 1953 SC 333
34. AIR 1955 SC 661
35. AIR 1998 SC 1057
36. AIR 1999 SC 1195
37. AIR 1999 SC 1271
38. (1999) 8 SCC 744
39. (2000) 2 Raj LR 801
40. AIR 2000 Raj 407
41. (2000) 8 SCC 46
42. (2001) 2 SCC 19