

Ram Kumar Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Apr-16-2013

Appellant : Ram Kumar

Respondent : The State of Madhya Pradesh

Judgement :

HIGH COURT OF MADHYA PRADESH AT JABALPUR Writ Petition No.18423/2010 Ram Kumar.....Petitioner Versus The State of Madhya Pradesh and others.Respondents For the petitioner : Shri A. K. Mishra, Advocate. For respondent : Shri Vivek Agrawal, Government Advocate. Nos. 1,3 and 4. For respondent : Shri Rahul Rawat, Advocate. No.7. ***** Present: HONOURABLE SHRI JUSTICE AJIT SINGH *****

ORDER

(16.4.2013) The following order of the Court was delivered by : Ajit Singh, J.By this petition, the petitioner has prayed for quashing of the election of respondent no.7 Mohan Singh to Janpad Panchayat, Anuppur as Member and Vice President.

2. The facts in brief are that the petitioner is a resident of Village Lohasur, District Anuppur. His name also appears in the voter list at Serial No.714, Janpand Panchayat, Anuppur. Respondent no.7 has been convicted for offences under sections 302/149, 307/149 and 148 of the Indian Penal Code and sentenced to imprisonment for life and 10 years vide judgment dated 11.7.2008 passed by the Special Judge, Shahdol in Sessions Trial No.286/2000. Aggrieved, respondent

no.7 has filed Criminal Appeal No.1637/2008 before the High Court and the same is pending for final decision. The High Court vide order dated 23.10.2008 has suspended the jail sentence of respondent no.7 and directed for his release on bail. In the result respondent no.7 after spending few months in jail has been released on bail. Respondent no.7 despite being disqualified to be an office bearer of Janpad Panchayat submitted his nomination form on 29.12.2009, Annexure P4, for his election as Member. In the nomination form respondent no.7 did not mention about his conviction under section 302 of the Indian Penal Code and sentence of life imprisonment. His nomination form was, therefore, accepted. He was then first declared elected as Member and thereafter as Vice President of 2 Janpad Panchayat. It in this background, the petitioner has filed the present petition for quashing of the election of respondent no.7 as Member and Vice President of Janpad Panchayat.

3. Respondent no.7 in his return has not denied regarding his disqualification for being office-bearer of the Janpad Panchayat. The sole objection raised by him is that having regard to Article 243-0 of the Constitution his election can be challenged only by filing election petition under section 122 of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (in short the Adhiniyam.).

4. Section 36 of the Adhiniyam provides for disqualification for being office-bearer of Panchayat. Its relevant sub-section (1)(a) read as under :

36. Disqualification for being office-bearer of Panchayat.- (1) No person shall be eligible to be an office-bearer of Panchayat who.- (a) has, either before or after the commencement of this Act, been convicted.- (i) of an offence under the Protection of Civil Rights Act, 1955 (No.22 of 1955) or under any law in connection with the use, consumption or sale of narcotics or any law corresponding thereto in force in any part of the State, unless a period of five years or such lesser period as the State Government may allow in any particular case has elapsed since his conviction; or (ii) of any other offence and had been sentenced to imprisonment for not less than six months, unless a period of five years or such less period as the State Government may allow in any particular case has elapsed since his release;

or 5. Respondent no.7 after his conviction under sections 302/149, 307/149 and 148 of the Indian Penal Code and sentence of imprisonment for life and 10 years is apparently disqualified under above quoted section 36(1)(a) of the Adhiniyam for being an office-bearer of Janpad Panchayat. In the nomination paper he deliberately suppressed the fact of his conviction in a serious crime of murder and attempt to commit murder and sentence of life imprisonment. He, therefore, by playing fraud got himself elected as Member and Vice President of Janpad Panchayat

6. The objection of respondent no.7 that his election can be challenged only by filing an election petition under section 122 of the Adhiniyam is without any substance and cannot be accepted. The Supreme Court in *K. Venkatachalam Vs. A. Swamickan* AIR 199.SC 172.has held that Article 329 (b) does not prevent the High Court from declaring under Article 226 that a person elected to the legislative assembly of a State was not qualified to be chosen as a member and in restraining him to function as a member and directing realisation from him of penalty under Article 193. In this case the person concerned was not an elector in the Assembly Constituency which fact he knew and he got elected by impersonating another person of the same name entered in the electoral roll. The election was not challenged by election petition as the rival candidate, who later moved the High Court, came to knot of the fraud long after the period for challenging the election by election petition had expired. Also Article 243-O, which relates to election to Panchayats, and Article 243ZG, which relates to election to Municipalities, were brought in by the Constitution 74th Amendment Act and which are similarly worded as Article 329 have been similarly construed but subject to the qualification that a Constitution Amendment cannot destroy the basic structure of judicial review enshrined in Article 32, 136 and 226 of the Constitution. (See Principles of Statutory Interpretation by Justice G.P.Singh 13th Edition, 2012 PP 81.and 814).

7. Therefore, in suitable cases the High Court is not prevented from declaring under Article 226 that a person elected to Janpad Panchayat was not qualified to be chosen as a Member and Vice President and in restraining him to function as a Member and Vice President. The case in hand is one such suitable case which deserves interference by the High Court under Article 226. I accordingly quash the

election of respondent no.7 to Janpad Panchayat, Anuppur as Member and Vice President and direct that henceforth he shall not function as Member and Vice President.

8. The petition is allowed with cost of Rs.2000/- which shall be payable to the petitioner by respondent no.7 within one month from today. JUDGE

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