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Court : Madhya Pradesh

Decided On : Dec-21-1956

Reported in : AIR1957MP88

Judge : Sen and ;Bhutt, JJ.

Acts : Central Provinces and Berar Municipalities Act, 1922 - Sections 15(1); Hindu Law; Constitution of India - Article 226; Representation of People Act, 1951 - Sections 7

Appeal No. : Letters Patent Appeal No. 218 of 1956

Appellant : Tejilal

Respondent : State

Advocate for Def. : R.K. Pandey, ;M. Adhikary and ;S.B. Seb, Advs.

Advocate for Pet/Ap. : R.S. Dabir, ;N.M. Golwalkar and ;C.S. Upadhya, Advs.

Disposition : Appeal allowed

Judgement :
ORDER

1. This is an appeal against the decision of Kotwal, .J., in Miscellaneous Petition No. 437 of 1956.

2. The appellant was a candidate for election to the office of the president of the Municipal Committee, Sakti. He was proposed by Kamswarup and seconded by Scwaram, who were voters bearing Nos. 36 and 66 of the electoral roll of Ward No. 4. An objection was raised by one Mageram to the nomination of the appellant as a candidate on the ground that he had taken a plot on contract from the Municipal Committee. The objection was disallowed by the Supervising Officer. The appellant was thereafter elected as President, and the result of the election was published in the Madhya Pradesh Gazette of 29th September 1956.

3. Respondent No. 4 is a voter bearing No. 146 OH the electoral roll of Ward No. 7 of the Municipal Committee. He filed a petition under Article 226 of the Constitution for a writ of quo warranto directing the appellant to justify his election as President of the Municipal Committee. The petition was heard and allowed by Kotwal, J. Hence this appeal.

4. The dispute relates to the lease of stall No. 192 in the Municipal market. There was a public auction of the stall on 9-5-1956 for the year 1956-57. The bid was offered by the appellant for his father Ramjilal. His bid of Rs. 25, which was the highest, was accepted and the amount was paid immediately. The learned single Judge held that the appellant had an interest in the contract and was, therefore, disqualified under Section 15 (1) of the C. P. and Berar Municipalities Act, 1922, to stand as a candidate for election to the office of President. In this view, his election as President of the Municipal Committee, Sakti, was declared to be null and void.

5. On facts, the case is covered by the decision of a Division Bench of this Court in K. C. Sharma v. Ramgulam Choubey, 1954 NLJ 124 : (AIR 1954 Nag 255) (A), Kotwal, J., however, was of the opinion that the decision in that case should be deemed to be overruled by Chaturbhuj Vithaldas v. Moreshwar Parashram, AIR 1954 SC 256 (B). The case of the Supreme Court was of a continuing contract for supply of goods to the Central Government and not of a contract of transfer of immovable property, which was the matter for consideration in the case of K. C. Sharma. However, it is not necessary to consider this question in the view that we hold of the present case.

6. The appellant had denied in his return that he took the stall for himself or had any interest in it. Kotwal, J., however, held against him on this point solely on the ground that he formed a joint Hindu family with his father. There is no prohibition under the Hindu Law to a member of a joint Hindu family acquiring property or carrying on business exclusively for his personal benefit. So far as the petitioner-respondent No. 4 was concerned, he did not allege that the appellant had taken the stall benami or that his father had taken it for his benefit. It was for him to plead and prove these facts before it could be held that the appellant had interest in the contract relating to the stall. In the absence of an enquiry on the point therefore, the finding of the learned single Judge that he had incurred a disqualification under Section 15 (1) of the C. P. and Berar Municipalities Act cannot be said to be well-based.

7. Where determination of controverted questions of fact is involved, Article 226 of the Constitution cannot properly be invoked. In the circumstances of the case, therefore, the appeal must be allowed. Accordingly, the order of the learned single Judge holding the election of the appellant as President of the Municipal Committee, Sakti, as null and void is set aside. In the result, the main petition stands dismissed.

8. Respondent No. 4 shall be liable for costs of the appellant and respondents Nos. 1 to 3 in both the original petition and the appeal. There shall, however, be only one set of counsel's fee for respondents Nos. 1 to 3. Hearing fee Rs. 50 in each Court.

9. The outstanding amount of the security shall be returned to the appellant.

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