

Rakesh Ghatiwal Vs. State of Rajasthan and Others

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SooperKanoon Citation : sooperkanoon.com/755653

Court : Rajasthan

Decided On : May-26-2000

Reported in : 2001(4)WLC731; 2000(2)WLN1

Judge : B.S. Chauhan, J.

Acts : Rajasthan Municipalities Act, 1959 - Sections 26, 34 and 63(4); Rajasthan Panchayati Raj Act, 1994 - Sections 38

Appeal No. : S.B. Civil Writ Petition No. 1544 of 2000

Appellant : Rakesh Ghatiwal

Respondent : State of Rajasthan and Others

Advocate for Def. : Kailash Joshi,;Prakash Tatial &; Mahesh Bora, Advs.

Advocate for Pet/Ap. : Vineet Kothari, Adv.

Judgement :

ORDER

Chauhan, J.

(1). The instant writ petitioner has been filed challenged the impugned order dated 8.5.2000 (Annx.6), by which the petitioner has been suspended from the Membership of the Municipal Corporation, Jodhpur.

(2). The facts and circumstances giving rise to this case are that petitioner was declared elected as a Member of the Municipal Corporation, Jodhpur on 27.11.99. On compliant, preliminary enquiry was held and prima facie the respondents were of the view that petitioner was disqualified for contesting the election by virtue of the provisions of Section 26 of the Rajasthan Municipalities Act, 1959 (for short, 'the Act') as the 4th child was born to him after the cut off date. A show cause notice was served upon the petitioner and he submitted his reply to the said notice on 29.3.2000 contending that the notice was without jurisdiction as his election could not be challenged by any means other than by filing an election petition as provided under the provisions of Section 34 of the Act and the provisions of Section 63(4) of the Act were not attracted.

(3). After considering his reply, the impugned order dated 8.5.2000 (Annx. 6) has been passed suspending the petitioner from the Membership of the Corporation and a judicial inquiry under Section 63(4) has been initiated as to whether he had incurred the disqualification under Section 26 of the Act.

(4). The main contention raised by Mr. Vineet Kothari, learned counsel for the petitioner, has been that once the petitioner stood elected and the statute provides a particular mode of challenging the election by filing an election petition, the proceedings of judicial inquiry and suspension order are null and void being without jurisdiction and the only mode of removing the petitioner from the Membership was by election petition under Section 34 of the Act and no other mode is permissible.

(5). The submission made by the petitioner is not worth acceptance in view of the judgment of this Court in *Magna Ram vs. State of Rajasthan & ors.* (1). The said case was in respect of the analogous provisions under Section 38 of the Rajasthan Panchayati Raj Act, 1994. Petitioner therein had been declared disqualified after holding inquiry under the provisions of the said Act. The Government reviewed its decision and petitioner contested the election and was duly elected. Before the Returning Officer, objection had been raised that petitioner stood declared disqualified after holding a full-fledged inquiry and the Government had reviewed the earlier order declaring him disqualified vide order dated

2.2.2000, was nullity for want of competence and, therefore, he was disqualified to contest the election. The Returning Officer rejected said submission and accepted his nomination. His election was immediately challenged by filing the writ petition and this Court held that as the Government had no competence to review its earlier order declaring him disqualified, the subsequent order was nullity, thus, the petitioner order was nullity, thus, the petitioner was disqualified to contest the election and his election was declared to be inconsequential. In the said case, this Court placed reliance very heavily on the judgments the Hon'ble Supreme Court in *K. Venkatachalam vs. Swamichan & Anr.* (2) and a Full Bench judgment of Punjab & Haryana High Court in *Lal Chand vs. State of Haryana* (3) wherein it has been held that in case of disqualification, election petition is not the only mode of challenge the election and it can be challenged by any alternative and available mode including the writ petition. (6). Undoubtedly, suspension of a public representative is a matter of serious concern because the duly elected person loses his status during the suspension period and the loss is of such immense nature that it cannot be compensated in terms of money or the harm cannot be undone by any other means. Therefore, the suspension order should be passed with great care and circumstance. (Vide *Prem Prakash vs. State of Rajasthan* (4). Moreover, the reply of the petitioner, in response to the show cause notice after preliminary enquiry, should be dealt with properly. (Vide *Nauratan Mal Tak vs. State of Rajasthan & ors.* (5).

(7). There is a catena of decisions of this Court laying down that an elected representative should not be suspended putting him at par with a Government employee, for the reason that in a democratic set up, the duly elected officer is to be considered entirely on a different pedestal than that of the government employee and gravity of the charges should be of high magnitude warranting suspension of the erring elected officer. (Vide *Bajrang Lal vs. State of Rajasthan & ors.* (6) and *Radhey Shyam Sharma vs. State of Rajasthan & ors.* (7).

(8). The basic question remains whether a person who has made a misrepresentation at the time of filing his nomination, can be held entitled to take a technical plea that he cannot be removed by any means other than that of election petition presuming that the allegations made in the complaint are true for the time-

being till the inquiry is concluded.

(9). It is settled proposition of law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent Authority, such order cannot be sustained in the eyes of law. 'Fraud avoids all judicial acts ecclesiastical or temporal.' (Vide S.P. Chengalvaraya Naidu (Dead) by LRs. vs. Jagannath (dead) by LRs. & ors. (8). In Lazarus Estate Ltd. vs. Besalay (9), the Court observed without equivocation that 'no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything,'

(10). In Andhra Pradesh State Financial Corporation vs. M/s. Gar Re-Rolling Mills & Anr. (10) and State of Maharashtra & ors. vs. Prabhu (11), the Hon'ble Apex Court has observed that a writ Court, while exercising its equitable jurisdiction, should not act as to prevent perpetration of a legal fraud as the Courts are obliged to do justice by promotion of good faith. 'Equity is, also, known to prevent the law from the crafty evasions and sub-letties invested to evade law.'

(11). In United India Insurance Company Ltd. vs. Rajendra Singh & ors. (12), the Apex Court observed that 'Fraud and justice never dwell together' (fraus et jus nunquam cohabitant) and it is a pristine maxim which has never lost its temper over all these centuries.

(12). The ratio laid down by the Hon'ble Supreme Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud by entertaining the petitions on their behalf. In Union of India & ors. vs. M. Bhaskaran (13), the Apex Court, after placing reliance upon and approving its earlier judgment in District Collector & Chairman, Vizianagaram Social Welfare Residential School Society vs. M. Tripura Sundari Devi, (14), observed as under:-

'If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a Court of Law as the employment secured by fraud renders it voidable at the option of the employer.'

(13). In *Ratan Lal vs. Union of India & ors.* (15), this Court has considered this aspect and placed reliance upon judgments in *Mangi Lal & ors. vs. State of Rajasthan & ors.* (16), *Temple of Thakurji, Village Kansar vs. State of Rajasthan & ors.* (17), and came to the conclusion that an order obtained by fraud or misrepresentation, if cancelled by the authority should not be interfered by the Court while exercising its writ jurisdiction.

(14). In *Maharaja Chintamani Sarannath vs. State of Haryana & ors.* (18), the Hon'ble Supreme Court has categorically held that even if the order is found to be bad/illegal/without jurisdiction, the Court not interfere 'if setting-aside the order amounts to reviving an invalid order.'

(15). A Full Bench of this Court in *Chiman Lal vs. State of Rajasthan & ors.* (19), vide judgment and order dated 18.2.2000, has held that the Court may not accept the argument of the party if he has obtained the order in clear violation of statutory provisions and if his action/order is against public policy or it has been obtained by misrepresentation, collusion or fraud because the action shall be void ab initio. The Court the action shall be void ab initio. The Court observed as under:-

'The Common Law doctrine of public policy can be enforced wherever an action affects/offends public interest or where harmful result of permitting the injury to the public at large is evident, in such type of cases,.....power can be exercised by the Authority at any time either suo moto or as and when such orders are brought to their notice.'

(16). Moreso, if initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. Subla Fundamento credit opus'-a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. Nullus Commodum capere Potest De Injuria Sua Propria. (Vide *Union of India vs. Maj. Gen. Madan Lal Yadav* (20). The violators of law cannot be permitted to urge that their offence cannot be subject matter of Inquiry, trial or investigation. (Vide *Lily Thomas vs. Union of India & ors.* (21).

(17). As per the allegations in the inquiry against the petitioner that he was not entitled to file the nomination paper being disqualified under the provisions of Section 26 of the Act and by suppressing this material fact he filled up the nomination, therefore, he cannot claim any right arising out of his wrong doing. (Juri Ex. Injuria Non Oritur)

(18). There is another aspect of the matter as it requires consideration from the angle that non-disclosure of disqualification at the time of filling the nomination itself may amount to indulging in moral turpitude. The term 'moral turpitude' has not been defined anywhere and, therefore, a certain amount of vagueness is attached to it. Notions about moral and morality differ in certain respects from country to country and they have also been varying from time to time. This term is, therefore, capable of being given different meanings, therefore, capable of being given different meanings in different countries or at different times in different contexts. Yet, in spite of its capability of being given diverse meanings, the term 'moral turpitude' has generally been taken to be a conduct contrary to justice, honesty, modesty, good character and morals, or contrary to what a man owes to a fellow-man or to society in general. There are a number of cases in which this term has been interpreted by eminent Judges in the context of different facts and circumstances. On the basis of those cases, the meaning of term 'turpitude' and 'moral turpitude' has been given in Black's Law Dictionary, Fourth Edition, as follows:-

'Turpitude-In its ordinary sense, inherent baseness or vileness of principle or action; shameful wickedness; depravity. In its legal sense, everything done contrary to justice, honesty, modesty, or good morals. *Stale vs. Anderson*, 117 Kan. 117, 230 P. 315; *Hughes vs. State Board of Medical Examiners*, 162 Ga. 246; 134 S.E. 42, 46. An action showing gross depravity. *Traders & General Ins. Co. vs. Russell*, 10 Te & Civ. App. 99; S.W. 2-D 1079, 1084.'

'Moral Turpitude- A term of frequent occurrence in statutes, especially those providing that a witness conviction of a crime involving moral turpitude may be shown as tending to impeach his credibility. In general, it means neither more nor less than 'turpitude', i.e. anything done contrary to justice, honesty, modesty, or good morals.'

(19). A Division Bench of this Court in Lachuram vs. Inderlal (22), has considered this aspect and took note of various Indian and foreign judgments and also quoted Bartos vs. United States District Court, for District of Nebraska (23), wherein the Court held as under:-

'An act of baseness, vileness, or depravity, in the private and social duties, which a man owes to his fellow-men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man' and 'conduct contrary to justice, honesty, modesty or good morals.'

The Court further observed as under:-

'It would appear from the above that the meanings given to the terms 'turpitude' and 'moral turpitude' indicate almost the same type of failing in a man's character or moral make-up. In our view, no absolute standard or no hard and fast rule can be laid down for deciding whether a particular act should be considered as one involving moral turpitude, because it would mostly depend on the facts and circumstances in which the act or omission is committed whether it involves moral turpitude or not.'

(20). The Court placed reliance on the judgment of Allahabad High Court in Buddha Pitai vs. Sub-Divisional Officer, Malihabad, Lucknow 7 ors. (24), wherein the Allahabad High Court held as under.

'Now, coming to the second question, learned counsel has urged that in deciding the question whether an offence involves moral turpitude, the Court should confine its consideration only to the nature of the offence and it should not be swayed in its opinion by the facts and circumstances in which it was committed.'

The Court further observed as under:-

'Whether an offence involves moral turpitude, will depend on its nature and the circumstances in which it is committed. An offence of a certain class may generally be considered to involve moral turpitude but it may not be so if committed in particular circumstances, for example, an offence of murder may ordinarily involve moral turpitude but if it is committed in a spirit of patriotism or with a laudable

object, it may not shock the public conscience and instead of being decried by the public the offender may be considered a hero....Again an offence of theft will generally be considered mean, vile and anti-social and a thief would be simply scorned at. However, if a starving and emaciated person steals food is caught, prosecuted and convicted, people will take a charitable and sympathetic view of the offender's conduct and his offence may not be considered as involving moral turpitude. Thus, the case of every offence will have to be judged in the light of the circumstances in which it is committed. It is not the gravity of the offence or the quantum of punishment imposed on a person which will determine such question.'

(21). Similarly, in *Mangali vs. Chhakkital* (25), it was observed as follows:-

'From consideration of the dictionary meaning of the words 'moral' and 'turpitude' as well as the real ratio decidendi of the cases, the principle which emerges appears to be that the question whether a certain offence involves moral turpitude or not, will necessarily depend on the circumstances in which the offence is committed.'

(22). In *Pawan Kumar vs. State of Haryana* (26), where the Apex Court has observed as under-

'Moral turpitude' is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity.'

(23). The aforesaid judgment in *Pawan Kumar* case (supra) has been considered by the Hon'ble Supreme Court again in *Allahabad Bank and another vs. Deepak Kumar Bhole* (27), and Pleaded reliance on *Baleshwar Singh vs. District Magistrate and Collector* (28), wherein it has been held as under:-

'The expression 'moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the person owes to his

fellowmen or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man.'

(24). A large number of cases of employment in Police Department, where appointment letters were not issued to the successful candidates on the ground of suppressing the required material information, which could incur diseligibility to them, this Court in crystal clear language held that not furnishing such information itself amounted to moral turpitude and such candidates had rightly been refused appointment. (Vide Girdhari Singh vs. State of Rajasthan (29), decided on 27.7.1998; and Hanumana Ram vs. State of Rajasthan (30). The said judgment stood approved by the Full Bench in Dharampal Singh vs. State (31), decided on 10.3.2000.

(25). In view of the above, there is no ground for interference. I find no force in the petition and it is accordingly dismissed. However, in the facts and circumstances of the case, the respondents are directed to conclude the judicial inquiry expeditiously, preferably within a period of six weeks from the date of filing the certified copy of the order before the respondent No.1. Petitioner undertakes to co-operate with the inquiry. There shall be no order as to costs.