

Urmila Devi Vs. State of H.P. and ors.

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Court : Himachal Pradesh

Decided On : Apr-28-2009

Reported in : 2009(2)ShimLC148

Judge : Deepak Gupta and; V.K. Ahuja, JJ.

Appellant : Urmila Devi

Respondent : State of H.P. and ors.

Advocate for Def. : Mr. Ajay Sharma

Disposition : Petition allowed

Judgement :

Deepak Gupta, J.

1. By means of this writ petition, the petitioner has challenged the order of the Deputy Commissioner, Una exercising powers of the Appellate Authority under The H.P. Panchayati Raj Act, 1994 (hereinafter referred to as the Act) whereby he allowed the appeal filed by the respondent No. 2 and set aside the order of the Sub Divisional Officer (Civil) Una exercising powers of the Authorized Officer under the Act. By means of the impugned order, the Appellate Authority has allowed the election petition and set aside the election of the petitioner as Pradhan of Gram Panchayat, Batt Kalan, Tehsil Haroli, District Una, H.P.

2. Briefly stated the facts of the case are that the petitioner was elected as Pradhan, Gram Panchayat Batt Kalan, Tehsil Haroli, District Una, H.P. in the election held on 22nd December, 2005. Her election to this post was challenged by respondent No. 2 before the Sub Divisional Officer (Civil), Una exercising powers of the Authorized Officer under Section 161 of the H.P. Panchayati Raj Act, 1994. Though various points were raised in the election petition but we at this stage are only concerned with one issue which was the main subject matter of this election petition. According to the respondent No. 2, the father of the petitioner had encroached upon Government land and, therefore, the petitioner was not entitled to contest the election. The Sub Divisional Magistrate held that the father did not fall within the definition of the family of the petitioner and dismissed the election petition vide order dated 19th September, 2007. Aggrieved by this order, the respondent No. 2 filed an appeal before the Deputy Commissioner exercising the power of the Appellate Authority under the Act. The Deputy Commissioner relying upon some clarification issued by the H.P. State Election Commissioner has held that the father also falls within the definition of family and, therefore, has come to the conclusion that the petitioner was not entitled to contest the election and accordingly her election has been set aside.

3. For the purpose of this petition we have assumed, without going into the merits of the plea, that the father of the petitioner has encroached upon Government land and the petitioner has not separated from her father.

4. To appreciate the issue involved in this appeal, it would be appropriate to refer to the relevant portion of Section 122 of the Act which reads as follows:

122(i) A person shall be disqualified for being chosen as and for being office bearer of a Panchayat.

(a) xxx

(b) xxx

(c) If her or any of his family member (s) has encroached upon any land belonging to, or taken on lease or requisitioned by or on behalf of, the State Government, a

Municipality, a Panchayat or a Cooperative Society unless a period of six years has elapsed since the date on which he or any of his family member, as the case may be, is ejected therefrom or ceases to be the encroacher.

Explanation- For the purpose of this clause the expression 'family member' shall mean the spouse, their son(s) unmarried daughter (s) and adopted son and unmarried daughter.

Xxxxxxxxxxx

5. The main point which arises for consideration is whether a candidate whose parent has encroached upon a Government land can be said to be disqualified for being chosen as office bearer of a Panchayat. In our considered view on a consideration of the bare provisions of the Act, there can be no such disqualification attached to such a person.

6. 'Person' referred to in Section 122 (i) is the candidate and not the head of the family. In sub Clause (c) the word 'he' refers to the candidate. The explanation provides that the word family member shall mean the spouse, the sons, unmarried daughters and adopted sons and unmarried daughter. The word unmarried daughter has been used twice and it appears that there is some mistake while amending the Act and probably the second reference to unmarried daughter should have been to adopted daughter.

7. Be that as it may be, there can be only one interpretation to this explanation and that is that if the parent is the candidate, he may be disqualified if a spouse, son or unmarried daughter (adopted or otherwise) has encroached upon Government land.

8. However, this disqualification is not attracted when the child is the candidate and it is the parent who has encroached upon the Government land.

9. Mr. Ajay Sharma, learned Counsel for respondent No. 2 has urged that the intention of the legislation is to discourage encroachers and also to disqualify all those persons from contesting elections whose family member has encroached upon Government land. This may have been the intention of the legislature.

However, the law with regard to interpretation of statutes is very clear. When the words of a legislation admit of only one interpretation the court cannot use its own ingenuity to read something else into the statute. The intention of the legislation has to be deduced from the words used in the statute. The words as used and referred to hereinabove clearly indicate that the candidate can only be disqualified if the spouse of the candidate, the son of the candidate or the unmarried daughter of the candidate has encroached upon the Government land. It is for the legislature to decide whether the Act has to be amended and not for this Court to read words into the Act to give it some other meaning. As the Act stands today a candidate is responsible for the sins of the spouse and children but the children cannot be disqualified for the wrongs committed by the parents.

10. In view of the aforesaid discussion, we are clearly of the view that the order of the Deputy Commissioner disqualifying the petitioner is without any merit and is accordingly set aside and the order of the learned Authorized Officer is upheld.

11. The petition is allowed with no orders as to the costs.

CMP No. 750 of 2008

12. In view of the order passed in the main petition, no orders are required in this CMP.