

A
AMRUTLAL CHUNILAL RAVAL

v.

DATTATRAYA PANDURANG HAJARNIS & ORS.

November 20, 1980

B
[R. S. PATHAK AND O. CHINNAPPA REDDY, JJ.]

C
The Maharashtra Municipalities Act 1965, S. 16(1)(a)—Appellant elected President of Municipal Council—Election challenged—Appellant sought to be disqualified on account of prior conviction by court of Law—State Government order that disqualification to remain in force for a period of six months from appellant's release—Such order—Whether beneficial and removes disqualification.

D
The Maharashtra Municipalities Act, 1965 by sub-section (2) of section 51 provides that every person qualified to be elected as a Councillor under section 15 shall be qualified for election as President. Section 16(1)(a) provides that no person shall be qualified to become a Councillor whether by election, co-option or nomination, if he had been convicted by a Court for any offence the maximum punishment for which is imprisonment for a term of two years or more and sentenced to imprisonment for any term, unless a period of five years, or such lesser period as the State Government may allow, has elapsed since his release.

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The appellant stood for election to the office of President of the Municipal Council, filed his nomination paper on 21st October 1974, and was declared elected at the election held on 17th November, 1974. The first respondent filed an election petition before the District Judge challenging the election alleging that the appellant had been convicted on 26th December, 1973 under section 16 of the Prevention of Food Adulteration Act 1954 and sentenced to undergo imprisonment till the rising of the court and to pay a fine of Rs. 200/- and that by virtue of section 51(2) read with section 16(1)(a) of the Act the appellant was not qualified for election as President of the Municipal Council. During the pendency of the election petition the State Government made an order dated 20th November 1975 under clause (a) of sub-section (1) of section 16, declaring that the disqualification incurred by the appellant 'should remain in force for a period of six months only from his release on 26th December, 1973'.

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The District Judge allowed the election petition and the election of the appellant was set aside. The appellant filed a writ petition, which was dismissed by the High Court.

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In the appeal to this Court, it was contended that the order dated 20th November, 1975 made by the State Government was retrospective in operation and consequently removed the disqualification imposed on the appellant on the date he filed his nomination paper.

Dismissing the appeal

A

HELD: (1) The appellant does not benefit from the order of the State Government insofar as his election as President in 1974 is concerned. [270 A]

(2) By virtue of clause (a) of sub-section (1) of section 16, the State Government had been empowered to substitute a shorter period of disqualification. A modification of the normal operation of the statute by the State Government is contemplated. Such a modification to be retrospective must indicate clearly that it is so. [269 E-F]

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In the instant case, disqualification was incurred by the appellant on 26th December, 1973 when he was convicted and sentenced, and the disqualification was in force when he stood for election. The date when the disqualification for five years was incurred is the relevant date, the subsequent operation is the consequence of the incurring of the disqualification. If the order was to be beneficial to the appellant, it should have been made retrospective from the date when the disqualification was incurred. On the plain language, it must be read as an order reducing the period of disqualification to six months, but to be applied to a disqualification arising after the date when the order was made. [296 G-H]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 707 of 1978.

Appeal by Special Leave from the Judgment and Order dated 20/21st March, 1978 of the Bombay High Court in SCA No.2868/76.

E

V. N. Ganpule and *Mrs. Veena Devi Khanna*, for the Appellant.

V. S. Desai and *M. N. Shroff* for Respondents 1 to 4.

Mrs. Jayashree Wad for Respondent No. 5.

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The Judgment of the Court was delivered by

PATHAK, J.—This Appeal by special leave is directed against the judgment of the Bombay High Court maintaining an order of the District Court, Poona by which the appellant's election as President of the Bhor Municipal Council was set aside on an election petition filed by the respondent.

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The appellant stood for election to the office of President of the Bhor Municipal Council. He filed his nomination paper on 21st October, 1974, and the election was held on 17th November, 1974. The appellant was declared elected the next day and the result of the

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election was published in the Government Gazette on 25th November, 1974.

The first respondent filed an election petition before the District Court, Poona challenging the appellant's election. He alleged that the appellant had been convicted on 26th December, 1973 by the **B** Judicial Magistrate, Bhore under s. 16 of the Prevention of Food Adulteration Act and sentenced to undergo imprisonment till the rising of the court and to pay a fine of Rs. 200/-. Accordingly, he said, by virtue of s. 51(2) read with s. 16(1)(a) of the Maharashtra Municipalities Act, 1965, the appellant was not qualified for election as President of the Municipal Council. During the pendency of the **C** election petition the Maharashtra Government made an order under cl. (a) of sub-s.(1) of s. 16, Maharashtra Municipalities Act, 1965 ("the Act") declaring :

D "In exercise of the powers conferred by clause (a) of sub-section (1) of Section 16 of the Maharashtra Municipalities Act, 1965, the Government is pleased to order that the disqualification incurred by Shri Amrutlal Chunilal Raval, resident of Bhore, Tehsil Bhore, District Poona should remain in force for a period of six months only from his release on 26th December, 1973.

E By order and in the name of the Governor of Maharashtra.

sd/- M. N. Tadmok,
Desk Officer."

F The election petition was allowed and the election of the appellant was set aside. The appellant filed a writ petition in the Bombay High Court against the order setting aside his election, but the writ petition was dismissed by the High Court on 21st March, 1978.

G In this appeal, the only point pressed by the petitioner before us is that the order dated 20th November, 1975 made by the State Government was retrospective in operation and consequently removed the disqualification imposed on the appellant on the date he filed his nomination paper.

H Sub-s.(2) of s. 51 of the Act provides that every person qualified to be elected as a Councillor under s. 15 shall be qualified for election as President. Sub-s.(1) of s.15 of the Act provides that every person, whose name is included in the list of voters maintained under s.11 and who is not disqualified for being elected a Councillor under this

Act or any other law for the time being in force, shall be qualified, and every person whose name is not included in the list or who is so qualified, to be elected as a Councillor at any election. Section 16(1) (a) of the Act provides :

“16. (1) No person shall be qualified to become a Councillor whether by election, co-option or nomination, who—

(a) has been convicted by a Court in India of any offence the maximum punishment for which (with or without any other punishment) is imprisonment for a term of two years or more and sentenced to imprisonment for any term, unless a period of five years, or such lesser period as the State Government may allow in any particular, has elapsed since his release; or

XX XX XX XX XX ”

The appellant was convicted on 26th December, 1973 for an offence under the Prevention of Food Adulteration Act, which, it is not disputed, fell within the terms of cl.(a) of sub-s.(1) of s.16. He was sentenced to imprisonment until the rising of the court. Because of the conviction and sentence he suffers the disqualification contemplated by cl.(a), and the disqualification enures for a period of five years from the date of his release from imprisonment. But, by virtue of the same clause, the State Government has been empowered to substitute a shorter period of disqualification. In other words, the ordinary run of the clause may be altered by the State Government. A modification of the normal operation of the statute is contemplated. Such a modification, to be retrospective, must indicate clearly that it is so. There is nothing in the order dated 20th November, 1975 from which it can be inferred that it has retrospective operation. What it says merely is that the disqualification incurred by the appellant shall remain in force for a period of six months only from his release on 26th December, 1973. The disqualification was incurred by the appellant on 26th December, 1973 and the disqualification was in force when he stood for election. The date when the disqualification for five years was incurred is the relevant date; the subsequent operation is merely the consequence of the incurring of the disqualification. If the order was to be beneficial to the appellant, it should have been made retrospective from the date when the disqualification was incurred. On the plain language, it must be read as an order reducing the period of disqualification to six months, but to be applied to a disqualification arising after the date when the order was made.

- A** In our opinion, the appellant does not benefit from the order of the State Government insofar as his election as President in 1974 is concerned. In the circumstances, we consider it unnecessary to go into the question whether the State Government has the power under cl. (a) to make an order with retrospective effect.
- B** In the result, the appeal is dismissed with costs to the fifth respondent.

N.V.K.

Appeal dismissed.