

A STATE OF HIMACHAL PRADESH AND ORS.

v

SURINDER SINGH BANOLTA

NOVEMBER 24, 2006

B [S.B. SINHA AND MARKANDEY KATJU, JJ.]

Election laws:

C *Himachal Pradesh Panchayati Raj Act, 1994—ss. 122, 163, 175—Disqualification of elected candidate on the ground that he was declared encroacher—Election set aside by Deputy Commissioner—Held, election cannot be set aside except by an order of Authorized officer—Constitution of India. 1950—Article 243O.*

D *Interpretation of statutes:*

Literal interpretation giving rise to an anomaly or absurdity—Held, Same be avoided.

E *Statute found to be obscure—Same be interpreted having regard to the constitutional scheme—In such situation, doctrine of purposive construction be applied.*

Statute to be read as a whole—Relevant provisions of the Constitution as also those in the statute, thus, be read harmoniously.

F **On 5.01.2001, Respondent No. 1 was elected as a member of Zilla Parishad. An application was filed by Respondent No. 2 before the Deputy Commissioner, alleging that as Respondent No. 1 was declared an encroacher, hence was disqualified to hold the elected post. The Deputy Commissioner took cognizance of the said complaint and by reason of an order dated 4.06.2002 declared Respondent No. 1 as disqualified and consequently his**
G **election was set aside. Respondent No. 1 successfully filed writ petition before the High Court. Hence the present appeal.**

Dismissing the appeal, the Court

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HELD 1. Respondent No. 1 was declared to be an encroacher in the year 1998. He was directed to be ejected from the land in question. The notification for election of Zilla Parishad by the State Election Commission under the Act was issued on 16.11.2000 Respondent No. 1 was declared elected on 5.01.2001. In terms of the provisions of Article 243 O of Constitution of India read with Section 163 of the Himachal Pradesh Panchayati Raj Act, 1994, an election petition, therefore, was maintainable for setting aside his election.

[580-C]

2. It is no doubt true that Section 122 contemplates both the situations, viz., where a person shall be disqualified for being chosen, as also for being an office bearer of Panchayat *inter alia* if he has encroached upon any land belonging to any authority mentioned therein. In view of the language of the said provision, whereas an issue falling under clause (1) of Sub-section (2) of Section 122 of the Act must be determined before the Authorized Officer, any order of encroachment passed after the election process is over would be determined by the Deputy Commissioner. [580-H; 581-A-B]

3. The provisions of the Act, have been enacted pursuant to or in furtherance of the constitutional mandate contained in part IX of the Constitution of India. The provisions of the Act, therefore, are required to be construed strictly in terms thereof. Clause (b) of Article 243O of the Constitution of India mandates that no election shall be set aside save and except by an order passed by the Authorised Officer. Section 122 of the Act must be read in the light thereof. Section 162 of the Act expressly provides for the exclusive jurisdiction of the Authorised Officer to determine the existence or otherwise of any ground enumerated in Section 175 of the Act.

[581-C-D]

4. Once a person is declared to be an encroacher prior to the date on which he has been declared as elector and if the said order has attained finality, the question as to whether he stood disqualified in terms of the provisions of Section 122 of the Act, must be raised by way of an election petition alone.

[581-E]

5. If a candidate or a voter had the knowledge that the elected candidate was disqualified in terms of Section 122 of the Act, he may file an application. The order of eviction may come to the notice of some other person after the election process is over. A situation, thus, may arise where two different proceedings may lie before two different authorities at the instance of two different persons. Two parallel proceedings, cannot be allowed to continue at the same time. A construction of a statute which may lead to such a situation,

A therefore, must be avoided. It will also lead to an absurdity if two different Tribunals are allowed to come to contradictory decisions. [581-F-G]

6. It is a well-known principle of law that where literal interpretation shall give rise to an anomaly or absurdity, the same should be avoided.

[581-H]

B *Ashok Lanka v. Rishi Dixit*, [2005] 5 SCC 598 and *M.P. Gopalakrishnan Nair v. State of Kerala*, [2005] 11 SCC 45, relied on.

C 7. It is also a well-settled principle of law that in a case where a statute is found to be obscure the same must be interpreted having regard to the constitutional scheme. In a case of this nature, the doctrine of purposive construction should be applied. [582-A-B]

Bombay Dyeing & Mfg. Co. Ltd. (3) v. Bombay Environmental Action Group & Ors., [2006] 3 SCC 434; *Nathi Devi v. Radha Devi Gupta*, [2005] 2 SCC 271; *Lalit Mohan Pandey v. Pooran Singh & Ors.*, [2004] 6 SCC 626; **D** *Indian Handicrafts Emporium & Ors. v. Union of India & Ors.*, [2003] 7 SCC 589; *Balram Kumawat v. Union of India & Ors.*, [2003] 7 SCC 628 and *Secretary, Department of Excise & Commercial Taxes and Ors. v. Sun Bright Marketing (P) Ltd., Chhattisgarh and Anr.*, [2004] 3 SCC 185, relied on.

E 8. It is well-settled that the entire statute must be read as a whole. The relevant provisions of the Constitution as also those in the statute must, thus, be read harmoniously. [582-C]

F 9. The High Court was correct in its view. The matter might have been different if Respondent No. 1 was declared to be an encroacher after the election process was over and, thus, becoming disqualified to continue to be an office bearer of Panchayat or Zilla Parishad. [582-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5186 of 2006.

G From the Judgment and Order dated 10-6-2003 of the High Court of Himachal Pradesh at Shimla in C.W.P. No.1010/2002.

WITH

Civil Appeal No. 5187 of 2006.

J.S. Attri, A.A.G. for the Appellants.

H Rajesh Srivastava for the Respondent.

The Judgment of the Court was delivered by

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S.B. SINHA, J. Leave granted.

Constitution of India is *suprema lex*. Part IX of the Constitution of India was inserted by Constitution (Seventy-third Amendment) Act, 1992. Article 243B mandates that there shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of the said Part. Part IX speaks of composition of panchayats (Article 243C), reservation of seats (Article 243D), and duration of panchayats (Article 243E). It also provides for disqualifications for membership in terms of Article 243F stating:

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“243F. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat—

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned: Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

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(b) if he is so disqualified by or under any law made by the Legislature of the State.

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(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.”

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Article 243O of the Constitution of India imposes a bar to interference by courts in electoral matters stating:

“243O. Bar to interference by courts in electoral matters.— Notwithstanding anything in this Constitution—

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(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under article 243K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except

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A by an election petition presented to such authority and in such manner as is provided for by or under any Law made by the legislature of a State.”

The State of Haryana pursuant to the constitutional mandate as noticed hereinbefore enacted the Himachal Pradesh Panchayati Raj Act, 1994 (for short “the Act”). Chapter IX of the Act lays down general provisions relating to incorporation, duration, territorial constituencies of panchayat and qualifications, etc. of office-bearers. Section 122 of the Act provides for disqualifications, the relevant provisions whereof read as under:

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C “122(1) : A person shall be disqualified for being chosen as, and for being, an office bearer, of a Panchayat -

(a) if he is so disqualified by or under any law for the time being in force for the purposes of the election to the State Legislature:

Provided that no person shall be disqualified on the ground that he is less than 25 years, if he has attained the age of 21 years;

D (b) * * *

E (c) if he 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 Co-operative Society unless a period of six years has elapsed since the date on which he is ejected therefrom or he ceases to be the encroacher; or

* * *

F (2) The question whether a person is or has become subject to any of the disqualifications under sub-section (1), shall after giving an opportunity to the person concerned of being heard, be decided -

G (i) if such question arises during the process of an election, by an officer as may be authorized in this behalf by the State Government, in consultation with the State Election Commission; and

(ii) if such question arises after the election process is over, by the Deputy Commissioner.”

H Chapter IX deals with the officers and staff of panchayats. Clause (f) of Section 159 defines “election” to mean an election to fill an office under

the provisions of the Act. Section 162 of the Act, in tune with the provisions of Article 243O of the Constitution of India provides that no election under the Act will be called in question except by an election petition presented in accordance with the provisions of Chapter XI. A

Sections 163 of the Act reads as under:

“163(1) Any elector of a Panchayat may, on furnishing, the prescribed security in the prescribed manner, present within thirty days of the publication of the result, on one or more of the grounds specified in sub-section (1) of section 175, to the authorized officer an election petition in writing against the election of any person under this Act. B

(2) The election petition shall be deemed to have been presented to the authorized officer - C

(a) when it is delivered to him -

(i) by the person making the petition; or D

(ii) by a person authorized in writing in this behalf by the person making petition; or

(b) when it is sent by registered post and is delivered to the authorized officer or any other person empowered to receive it.” E

Section 174 of the Act provides for jurisdiction of the court to pass order in the manner laid down therein after inquiring into the election petition by the authorized officer.

Section 175 of the Act provides for the grounds upon which an election petition can be dismissed or an election can be set aside. F

Respondent herein was elected as a member of Zilla Parishad. The result of election was declared on 5.01.2001. An application was filed by Respondent No. 2 Daulat Ram before the Deputy Commissioner, Shimla District alleging that as he, having been declared an encroacher within the meaning of the provisions of Sections 4 and 7 of the Himachal Pradesh Public Premises (Rent Recovery and Land Eviction) Act, 1971 was disqualified to hold the elected post and, thus, should not be allowed to continue therein. The Deputy Commissioner took cognizance of the said complaint and by reason of an order dated 4.06.2002 declared Respondent No. 1 as disqualified for being chosen as a member of the Zilla Parishad and consequently his election was G H

A set aside.

It is not in dispute that a proceeding under the Himachal Pradesh Land Revenue Act was initiated against Respondent No. 1. He was held to be unauthorized occupant of a land measuring 13 biswas in terms of the provisions of the Himachal Pradesh Public Premises (Rent Recovery and Land Eviction) Act by the Collector, Sub-Division, Theog. The said order was confirmed by the Financial Commissioner of the Shimla Division by an order dated 6.08.1998. We will proceed on the basis that the said order has attained finality although there appears to be some dispute in relation thereto.

Respondent No. 1 was declared to be an encroacher in the year 1998. He was directed to be ejected from the land in question. The notification for election of Zilla Parishad by the State Election Commission under the Act was issued on 16.11.2000. As noticed hereinbefore, Respondent No. 1 was declared elected on 5.01.2001. In terms of the provisions of Article 243O read with Section 163 of the Act, an election petition, therefore, was maintainable for setting aside his election.

Disqualification as provided for under Article 243F has been laid down in Section 122 of the Act. Section 175 of the Act provides for disqualification as one of the grounds upon which an election petition could be filed. Interpreting the aforementioned provisions, a Division Bench of the Himachal Pradesh High Court opined that the order dated 27.06.2002 passed by the Deputy Commissioner is not sustainable in law.

Mr. J.S. Attri, learned AAG appearing on behalf of the appellants would submit that although the provisions of Section 163 are ordinarily required to be taken recourse to but having regard to the fact that in terms of Sub-section (2) of Section 122 of the Act, the question as regards declaring a candidate as disqualified may arise not only before an election is held but also after the election process is over; and thus, whereas in the former case, it will be the Authorised Officer concerned who can determine the question of disqualification but in a case where processes are initiated after the election, the Deputy Commissioner alone would be the prescribed authority.

Section 163 of the Act provides for filing of an election petition on one or more grounds specified in Sub-section (1) of Section 175 thereof. Clause (a) of Sub-section (1) of Section 175 of the Act *inter alia* lays down a ground for setting aside of an election if on the date of the election the elected person was not qualified or disqualified to be elected under the Act.

It is no doubt true that Section 122 contemplates both the situations, viz., where a person shall be disqualified for being chosen as also for being an office bearer of panchayat *inter alia* if he has encroached upon any land belonging to any authority mentioned therein. In view of the language of the said provision, we are of the view that whereas an issue falling under clause (1) of Sub-section (2) of Section 122 of the Act must be determined before the Authorised Officer, any order of encroachment passed after the election process is over would be determined by the Deputy Commissioner.

The provisions of the Act, as noticed hereinbefore, have been enacted pursuant to or in furtherance of the constitutional mandate contained in Part IX of the Constitution of India. The provisions of the Act, therefore, are required to be construed strictly in terms thereof. Clause (b) of Article 243O of the Constitution of India mandates that no election shall be set aside save and except by an order passed by the Authorised Officer. In our considered opinion, Section 122 of the Act must be read in the light thereof. Section 162 of the Act expressly provides for the exclusive jurisdiction of the Authorised Officer to determine the existence or otherwise of any ground enumerated in Section 175 of the Act.

Once, thus, a person is declared to be an encroacher prior to the date on which he has been declared as elector and if the said order has attained finality, the question as to whether he stood disqualified in terms of the provisions of Section 122 of the Act, in our opinion, must be raised by way of an election petition alone. If the submission of Mr. Attri is to be accepted, the same may result in an anomalous position.

If a candidate or a voter had the knowledge that the elected candidate was disqualified in terms of Section 122 of the Act, he may file an application. The order of eviction may come to the notice of some other person after the election process is over. A situation, thus, may arise where two different proceedings may lie before two different authorities at the instance of two different persons. Two parallel proceedings, it is well settled, cannot be allowed to continue at the same time. A construction of a statute which may lead to such a situation, therefore, must be avoided. It will also lead to an absurdity if two different Tribunals are allowed to come to contradictory decisions.

Furthermore, it is a well-known principle of law that where literal interpretation shall give rise to an anomaly or absurdity, the same should be

A avoided. [See *Ashok Lanka v. Rishi Dixit*, [2005] 5 SCC 598 and *M.P. Gopalakrishnan Nair v. State of Kerala*, [2005] 11 SCC 45]

B It is also a well-settled principle of law that in a case where a statute is found to be obscure the same must be interpreted having regard to the constitutional scheme. In a case of this nature, the doctrine of purposive construction should be applied. [See *Bombay Dyeing & Mfg. Co. Ltd. (3) v. Bombay Environmental Action Group & Ors.* [2006] 3 SCC 434, *Nathi Devi v. Radha Devi Gupta* [2005] 2 SCC 271, *Lalit Mohan Pandey v. Pooran Singh & Ors.* [2004] 6 SCC 626, *Indian Handicrafts Emporium & Ors. v. Union of India & Ors.* [2003] 7 SCC 589 and *Balram Kumawat v. Union of India & Ors.* [2003] 7 SCC 628]

C It is also well-settled that the entire statute must be read as a whole. The relevant provisions of the Constitution as also those in the statute must, thus, be read harmoniously. [See *Bombay Dyeing* (supra) and *Secretary, Department of Excise & Commercial Taxes and Ors. v. Sun Bright Marketing (P) Ltd., Chhattisgarh and Anr.*, [2004] 3 SCC 185]. So read, we are of the opinion that the Division Bench of the High Court was correct in its view. The matter might have been different if Respondent No. 1 was declared to be an encroacher after the election process was over and, thus, becoming disqualified to continue to be an office bearer of Panchayat or Zilla Parishad.

E For the reasons aforementioned, no fault can be found in the impugned judgment. It is, therefore, affirmed. The appeals are dismissed with costs. Counsel's fee assessed at Rs. 10,000/-

D.G.

Appeal dismissed.