

DAYANAND RAYU MANDREKAR
v.
CHANDRAKANT UTTAM CHODANKAR & ORS.

JANUARY 18, 2007

[K.G. BALAKRISHNAN, CJI, DALVEER BHANDARI AND
D.K. JAIN, JJ.]

ELECTION LAW:

Member of State Legislative Assembly – Election – Disqualification – Candidate holding ‘office of profit’ at the time of filing nomination paper – Candidates holding offices of Chairman, Goa Khadi and Village Industries Board and Chairman, Goa State Scheduled Castes and Other Backward Classes Finance and Development Corporation Ltd. – Under relevant rules, the said office bearers entitled to salary/honorarium and allowances – They were also availing facilities of mobile phone, residential telephone, chauffeur driven car, services of PA, a clerk, a peon etc. – HELD: Perquisites availed by candidates cannot be said to have been given to them by way of compensatory allowance in terms of clause (9) of the Schedule to 1982 Act – Since by virtue of the rules, candidates were entitled to get salary or honorarium that by itself would show that they were not entitled to get protection under the 1982 Act – Whether the 1982 Act was adopted by State Assembly or not left open for consideration in appropriate case – High Court rightly held that candidates were holding office of profit and as such were not entitled to contest election as they were disqualified – Government Territories Act, 1963 – ss. 3 and 14(1) – Goa Daman and Diu Members of Legislative Assembly (Removal of Disqualification) Act, 1982 – Schedule – Clause (9) – Goa Daman and Diu Khadi and Village Industries Board Rules, 1967 – r. 7.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3578 of 2005.

A From the Judgment and Order dated 27.5.2005 of the High Court of Judicature at Bombay, Bench at Goa in E.P. No. 1/2002.

WITH

C.A. No. 3579 of 2005.

B Dhruv Mehta, Jha and Yashraj Singh Deora (for M/S. K.L. Mehta & Co.), for the Appellant.

M.N. Krishnamani, Dr. Abhishek M. Singhvi, Bhavanishankar V. Gadnis, S.U.K. Sagar, Bina Madhavan, A. Venayagam, Vinayakam (for C M/S. Lawyer's Knit & Co.), Srinivas Khalap and Ashok Mathur for the Respondents.

The following Order of the Court was delivered by

ORDER

D The appellants, in these two appeals, challenge the judgment in the Election Petition nos. 1 and 2 of 2002. In both these cases a common questions of law had arisen and, therefore, we heard the matter together and are disposing these appeals by way of a common order. The appellant in C.A. No. 3578/05 was elected to the Legislative Assembly of State of Goa from Siolim constituency in the election held on E 30.5.2002, whereas the appellant in C.A. No. 3579/05 was elected from Vasco-da-gama Assembly constituency of the State Legislature. The election petitions were preferred by two unsuccessful candidates in the elections alleging that these two appellants were holding 'office of profit' at the time when they contested the elections and, therefore, they were F ineligible to be elected to the legislature. At the time of filing their nominations, the appellant in C.A. No. 3578/05 was the Chairman of the Goa Khadi and Village Industries Board of the State of Goa, whereas the appellant in C.A. No. 3579/05 was the Chairman of the Goa State G Scheduled Castes and Other Backward Classes Finance & Development Corporation Ltd. of the State of Goa. The appellants in these two cases contended before the High Court that they were not holding an 'office of profit' and were not receiving any salary or allowances for the said post they held and by virtue of the provision contained in the Goa, Daman H and Diu Members of Legislative Assembly [Removal of Disqualifications]

Act, 1982 (for short 'the 1982 Act'), the disqualification, if any, was removed especially by clause (9) of the Schedule. The pleas set-up by the appellants were rejected and the High Court held that these appellants were holding the 'office of profit' and that they were not entitled to contest the election as they were disqualified and the election petitions were allowed and elections of appellants were set aside.

We have heard the counsel for the appellants and counsel for the respondents.

It is not disputed that the appellants were holding the office as alleged in the election petition, but contended that they were not receiving any salary or allowances and were only receiving some perquisites. It is not disputed that these two appellants, by virtue of their office, enjoyed the privilege of a chauffeur driven car with unrestricted use of petrol. The appellants were also given the services of a PA, a clerk and a Peon and they were provided with a residential telephone with unrestricted number of calls. They were also provided with a mobile telephone and newspapers were supplied at their residences and the expenses were paid from the funds of the office.

Under Rule 7 of the Goa, Daman and Diu Khadi and Village Industries Board Rules, 1967 (for short 'the 1967 Rules'), "The Chairman, the Vice-Chairman and other members of the Board shall be paid such salary or honorarium and allowances from the funds of the Boards as the Government may from time to time fix." The appellant in C.A. No. 3578/05 was not receiving any salary or honorarium as, according to him, the government had not fixed any such salary or honorarium. The question that arises for consideration is whether the appellants could seek the benefit of the 1982 Act. By virtue of clause (9) of the Schedule, the appellant contended, that the office of Chairman/Director or member of the statutory or non-statutory Board are exempted from any disqualification but the proviso to clause (9) of the Schedule makes it further clear that this disqualification is circumscribed by a further limitation.

Clause 9 of the Schedule reads as follows :

"9. The office of Chairman, Director or member of a statutory or non-statutory body or committee or corporation constituted by the

A Government of Goa, Daman and Diu :

Provided that the Chairman, Director or Member of any of the aforesaid committees or bodies or corporations is not entitled to any remuneration other than compensatory allowance.”

B An explanation was also added to clause (9). The same reads thus:

“Explanation – For the purpose of the aforesaid entries -

C “Compensatory allowance” means any sum of money payable to the holder of an office by way of daily allowance [such allowance not exceeding the amount of daily allowance to which a member of the Legislative Assembly is entitled under the Goa, Daman and Diu Salary, Allowances and Pension of the Members of the Legislative Assembly Act, 1964 (2 of 1965)], any conveyance allowance, house rent allowance or traveling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office”.

The proviso makes it abundantly clear that the compensatory allowance would only mean ‘any expense which is incurred by the holder of the office in discharge of his official function to be compensated by claim’ and if any other sum of money or other perquisites are made to the holder of office as compensatory allowance, he would not get the benefit of clause (9) of the Schedule which was added. In the instant cases, the appellants were certainly in receipt of variety of perquisites which cannot be said to be given to them by way of compensatory allowance.

F The mobile phone, telephone and the chauffeur driven car were all permitted to be used for unlimited purposes and they were not restricted to official purposes. Moreover, Rule 7 of the 1967 Rules specifically states that the Chairman, Vice-Chairman and other members of the Board shall be paid such salary or other honorarium and allowances from the

G funds of the Boards as the Government may from time to time fix. The appellants were entitled to get salary or honorarium by virtue of this rule. The mere fact that they had not received or they had not opted to get this salary or honorarium is immaterial. By virtue of the said rule, they are entitled to get salary or honorarium and that, by itself, would show

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that they were not entitled to get the benefit of the Schedule of the 1982 Act. A

The respondents in these two cases had raised a contention that the 1982 Act itself was not applicable to the State of Goa, Daman and Diu as the same was not adopted by the State Legislature. The respondents had contended that in the absence of adoption under Section 57 of the Goa State Re-organisation Act, 1987, the 1982 Act had no application to the State of Goa, Daman and Diu. This plea was accepted by the learned Single Judge of the High Court. The respondents in these cases contended that the finding of the learned Single Judge in this regard is not correct. B C

In this case, the appellants herein contended that Article 239A of the Constitution provided for creation of local legislatures or council of ministers or both for certain Union Territories and the Parliament enacted the Government Territories Act, 1963. As per Section 3 of the Act of 1963, the Legislative Assembly of the Union Territory of Goa, Daman and Diu came into existence and sub-Section (1) of Section 14 of the Act of 1963 provided that a person shall be disqualified for being chosen as, and for being a Member of the Legislative Assembly of the Union Territory, *inter alia*, if he holds any office of profit under the Government of India, or the Government of any State, or the Government of the Union Territory, other than the office declared by law made by Parliament, or the Legislative Assembly of the Union Territory, not to disqualify its holder, i.e., the Legislative Assembly of the Union Territory of Goa, Daman and Diu. The Act passed in 1982 provided for removal of certain disqualifications for being chosen and for being a member of the Legislative Assembly of Goa, Daman and Diu. That Act was passed under Section 14(1) of the Act of 1963. D E F

The respondent had contended that when Union Territory of Goa, Daman and Diu became a State, the Assembly of the State of Goa had not passed any law nor had adopted the 1982 Act which was in force. The appellants contended that as per Section 66 of the Goa, Daman and Diu Reorganization Act, 1987, the Act of 1982 continues to be in force but this plea was rejected by the learned Single Judge. G

A We have examined the claim of the appellants in the light of the 1982 Act and hold that the appellants are not entitled to get the protection of the Act. Therefore, whether this Act was adopted by the State Assembly of Goa or not, need not be considered at this stage and we leave open the question to be considered in other appropriate cases.

B We find r.o merit in these appeals and the appeals are dismissed accordingly.

R.P.

Appeal dismissed.