Writ Petition No.6174/2015

31.08.2016

Shri N.S.Ruprah, learned counsel for petitioner.

Shri A.P.Singh, learned Government Advocate for State of M.P. and its functionaries.

Shri Pradeep Kumar Dwivedi, learned counsel for respondent No.5.

With consent of learned counsel for the parties, the matter is finally heard.

Petitioner seeks writ of quo warranto against respondent No.5 that being convicted for an offence under Section 307, 323, 436, 435 and 148 read with section 149 of IPC he was not eligible to contest the election of Member, ward No.16, Janpad Panchayat Berasia, and having been elected he has no right to hold public office of President, Janpad Panchayat.

Briefly stated the relevant facts are that on 22.02.2015 election of member, Janpad Panchayat, ward No.16 was held wherein the petitioner and respondent No.5 contested the election with 2119 votes. Later on, the petitioner came to know that the respondent No.5 was tried for an offence under Section 307, 323, 436, 435 and 148 read with section 149 of IPC. That by a judgment dated 16.06.2005 passed by the

Ninth Additional Sessions Judge, Bhopal in Sessions Trial No.114/2002 he was convicted and sentenced to suffer rigorous imprisonment for six moths for offence under Section 148, five years for the offence under Section 307/149 with fine of Rs.1000/-, six months under Section 323/149, two years under Section 435/149 and fine of Rs.500/-. These sentences were to run concurrently. The judgment recording conviction has been challenged vide criminal Appeal No.1218/2005 wherein the jail sentence is suspended vide order dated 16.08.2005.

Section 36(1)(a)(ii) of Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1973 which entails disqualification is in the following terms :

> "36. Disqualification for being office-bearer of Panchayat.- (1) No person shall be eligible to be an office-bearer of Panchayat who.-
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> (a) has, either before or after the commencement of this Act, been convicted.-
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> (i) of an offence under the Protection of Civil Rights Act, 1955 (No.22 of 1955) or under any law in connection with the use, consumption or sale of narcotics or any law corresponding thereto in force in any part of the State, unless a period of five years or such lesser period as the State Government may allow in any particular case has elapsed since his conviction; or
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> **(ii) of any other offence and had been sentenced to imprisonment for not less than six months, unless a**

period of five years or such less period as the State Government may allow in any particular case has elapsed since his release; or

..."

The question is whether the term "release" means a person discharged and released, or released having undergone the entire term or released on bail.

The object for introduction of the provisions like Section 36 in the statute is with an object to keep the tainted person away from body politic.

In New India Assurance Co.Ltd. vs. Nusli Neville Wadia (2008) 3 SCC 279 it has been observed by their Lordships :

> "51. Except in the first category of cases, as has been noticed by us hereinbefore, Section 4 and 5 of the Act, in our opinion, may have to be construed differently in view of the decisions rendered by this Court. If the landlord being a State within the meaning of Article 12 of the Constitution of India is required to prove fairness and reasonableness on its part in initiating a proceeding, it is for it to show how its prayer meets the constitutional requirements of Article 14 of the Constitution of India. For proper interpretation not only the basic principles of natural justice have to be borne in mind, but also principles of constitutionalism involved therein. With a view to read the provisions of the Act in a proper and effective manner, we are of the opinion that literal interpretation, if given, may give rise to an anomaly or absurdity which must be avoided. So as to enable a superior court to interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable

> legislator/author. So done, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act fulfilled; which in turn would lead the beneficiary under the statutory scheme to fulfill its constitutional obligations as held by the court inter alia in Ashoka Marketing Ltd."
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> (Emphasis supplied)

In the present context since the object of the legislature is to keep the democratic set up free from criminalization, reference can be had of the observation by their Lordships in Shiv Singh Rawat vs. State of M.P. (2008) 2 MPLJ 573 :

> "11. It is condign to state here that the politics neither at the grass root level nor at any level can be allowed to have any nexus with criminalization. Criminalization requires to be ostracized from the periphery of body polity. The citizens in democratic set up should not be compelled to suffer criminalization on the ground that they are helpless. A convict cannot be allowed to occupy an elected post where a statute clearly prohibits. In this context, we may refer with profit to the decision rendered in Ram Udgar Singh v. State of Bihar, wherein Their Lordships have stated thus:
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> > Politics, which was once considered the choice of noble and decent persons is increasingly becoming a haven for law breakers. The 'Nelsons' eye' turned by those wielding power to criminalisation of politics by their solemn and determined patronage and blessings by vying with each other has been encouraging and facilitating rapid spread and growth with rich rewards and dividends to criminals. The alarming rate of social respectability such elite gangsterism gaining day by day in the midst of people

> who chose and had given unto themselves the right to elect their rulers, mostly guided by misdirected allegiance to party politics and self oriented profit making endeavours seem to provide the required nectar for its manifold and myriad ways of ventilation with impugnity. Though it is an irony, yet accepted truth is that the 'Home rule' we could achieve by 'non-violence' has become the root cause for generating 'homicidal' culture of political governance effectively shielded by unprincipled mass sympathies and highly profit-oriented selfish designs of unscrupulous 'people' who have many faceted images to present themselves at times to the extent of their deification. For some it brings seal for respectability and for some others, it is intended to be used as a shield for protection against law enforcing agencies and that is how reports of various Commissions and Committees have become sheer cry in wilderness.
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> We have referred to the aforesaid passage to highlight that the criminalization of politics by any form is impermissible in democracy which is the basic feature of our Constitution. We would have thought of directing prosecution against him for filing a false affidavit before this Court but we restrain ourselves from doing so. We only deprecate the conduct of the respondent No. 9."

The expression "release" has to be understood in the context of the convict having undergone the entire sentence is further borne out from further observation in the Shiv Singh Rawat (supra).

> "8. In view of the aforesaid, the concept of 'release' that was endeavoured to be scanned by Mr. Bhati remains in the realm of much ado about

> nothing as the said respondent has remained in custody for a period of three years and was not released. It is worthnoting here that the respondent No. 9 was convicted by the judgment dated 28-9-2000. The same is perceptible from the judgment passed in Criminal Appeal. We would be failing in our duty if we do not state that, as it was mentioned before us that the appeal of the respondent No. 9 was dismissed, we called for the record and perused the order.
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> 9. The election was held for the post of member in the year 2004 and that of President in 2005. On a bare reading of Section 36(1)(a)(ii) it is quite clear that a person will not be eligible to hold a post for a period of 5 years if he has been sentenced for not less than six months. In the case at hand the respondent No. 9 was sentenced for a period of three years. He remained in custody, as is patent, till 2003. He could not have contested till 2008. Yet, for unexplainable reasons, he was allowed to contest and also got elected. Thus, indubitably he is disqualified to be in the office in question."

Similar view has been expressed by a Coordinate Bench in Virendra Tyagi vs. State of M.P. 2011 (1) MPLJ 245 :

> "10. As per the aforesaid section 36(a)(ii), a person shall be ineligible to be an office-bearer of the Panchayat, if he had been sentenced to imprisonment for less than six months. In the present case, the respondent No.4 was sentenced and convicted for offence punishable under section 302 of Indian Penal Code and sentenced for life imprisonment. He has already undergone the aforesaid sentence. In such circumstances, the respondent No.4 has illegally suppressing the fact has been holding the post of Sarpanch, which is a public office."

Respondent No.5, though released on bail on 16.08.2005 will not mean that he has undergone the sentence and released; was therefore, not eligible to contest the election on 22.02.2015. In view whereof, he ceases to continue to hold the post of President of Janpad Panchayat Berasia as also the Member of ward No.16, Janpad Panchayat Berasia. Commissioner, Bhopal Division Bhopal, and Collector Bhopal are directed to ensure that respondent No.5 does not hold the post even for a single day. The Authority concerned to take steps to fill up the vacancy as per law.

Petition is **allowed** to the extent above. No costs.

(SANJAY YADAV)
JUDGE

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