Vijay vs State Of Maharashtra & Ors on 26 July, 2006

Equivalent citations: 2006 AIR SCW 6130, 2006 (6) SCC 289, 2007 (1) AIR BOM R 564, (2007) 2 LANDLR 412, (2006) 7 SCJ 112, (2006) 2 WLC(SC)CVL 720, (2006) 5 MAH LJ 782, (2006) 3 PAT LJR 406, (2006) 5 SUPREME 809, (2006) 7 SCALE 370, 2006 BOM LR 3 2392, (2006) 45 ALLINDCAS 692 (SC), MANU/SC/3273/2006, 2006 ALL CJ 3 1886, (2006) 5 BOM CR 541

Author: S.B. Sinha

Bench: S.B. Sinha, Dalveer Bhandari

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           CASE NO.:
Appeal (civil)  3164 of 2006

PETITIONER:
Vijay

RESPONDENT:
State of Maharashtra & Ors

DATE OF JUDGMENT: 26/07/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
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J U D G M E N T (Arising out of SLP (C) No. 25219 of 2004) S.B. SINHA, J.

Leave granted.

The appellant herein was elected as a member of Grampanchayat Shipora Bazar in the year 2000. He was also elected as Sarpanch of the said village. He was thereafter elected as Councillor of Zilla Parishad.

The State of Maharashtra enacted Bombay Village Panchayats Act, 1958 ('the Act', for short). In view of amendment of Section 14(1)(J-2) of the said Act, he was held to have disqualified himself to hold the said post by the Additional Collector, Jalna. An appeal preferred thereagainst by the appellant herein was dismissed by the Additional Divisional Commissioner by an order dated 2.8.2004. A writ petition preferred by the appellant, questioning the legality of said orders was dismissed by the High Court by reason of the impugned judgment and order. The appellant is, thus, before us.

The short question raised by Mr. Sanjay V. Kharde, learned counsel appearing for the appellant is that Section 14(1)(J-2) of the Act is prospective in nature and thus, the concerned respondents as

also the High Court acted illegally and without jurisdiction in arriving at a finding that the appellant stood disqualified by reason thereof.

Section 14(1)(J-2) reads thus :

> "14. Disqualifications - (1) No person shall be a member of a Panchayat, or continue as such, who :
>
> * * * * (J-2) has been elected as Councillor of the Zilla Parishad or as a member of the Panchayat Samiti."

The said amendment came into force with effect from 8.8.2003. According to the appellant, having regard to the fact that he was elected as a member of Grampanchayat on 27.12.2000, he derived a vested right to continue in the said post and in that view of the matter, he could not have been held to be disqualified by reason of the said amendment.

The said Act is a disqualifying statute. A plain reading of the amended provision clearly shows that it was intended by legislature to have retrospective effect.

The general rule that a statute shall be construed to be prospective has two exceptions: it should be expressly so stated in the enactment or inference in relation thereto becomes evident by necessary implication.

In the instant case it is stated expressly that the amendment would apply also to a case where the elected candidate had been elected as a member of Panchayat earlier thereto. It not only incorporates within its purview all persons who would be members of the Panchayat in futuro, but also those who were sitting members. In other words, the bar created to hold the post of member of Panchayat would bring within its purview also those who were continuing to hold post.

It may be true the amendment came into effect on 8.8.2003. The legislative policy emanating from the aforesaid provision, in our opinion, is absolutely clear and unambiguous. By introducing the said provision, the legislature, inter alia, intended that for the purpose of bringing grassroot democracy, a person should not be permitted to hold two posts created in terms of Constitution (73rd Amendment) Act. It is true that ordinarily a statute is construed to have prospective effect, but the same rule does not apply to a disqualifying provision. The inhibition against retrospective construction is not a rigid rule. It does not apply to a curative or a clarificatory statute. If from a perusal of the statute intendment of the legislature is clear, the Court will give effect thereto. For the said purpose, the general scope of the statute is relevant. Every law that takes away a right vested under the existing law is retrospective in nature. [See Govt. of India & Ors. vs. Indian Tobacco Association, (2005) 7 SCC 396.] "The cardinal principle is that statutes must always be interpreted prospectively, unless the language of the statutes makes them retrospective, either expressly or by necessary implication. Penal statutes which create new offences are always prospective, but penal statutes which create disabilities, though ordinarily interpreted prospectively, are sometimes interpreted retrospectively when there is a clear intendment that they are to be applied to past

events. The reason why penal statutes are so construed was stated by Erle, C.J., in Midland Rly. Co. v. Pye, (1861) 10 C.B. NS 179 at p.191 in the following words:

> "Those whose duty it is to administer the law very properly guard against giving to an Act of Parliament a retrospective operation, unless the intention of the legislature that it should be so construed is expressed in clear, plain and unambiguous language; because it manifestly shocks one's sense of justice that an act, legal at the time of doing it, should be made unlawful by some new enactment."

This principle has now been recognised by our Constitution and established as a Constitutional restriction on legislative power."

While construing the beneficial provisions of 428 of the Criminal Procedure Code, 1973 in Boucher Pierre Andre vs. Superintendent, Central Jail, Tihar, New Delhi & Anr. [(1975) 1 SCC 192], this Court opined:

> "This section, on a plain natural construction of its language, posits for its applicability a fact situation which is described by the clause "where an accused person has, on conviction, been sentenced to imprisonment for a term". There is nothing in this clause which suggests, either expressly or by necessary implication, that the conviction and sentence must be after the coming into force of the new Code of Criminal Procedure. The language of the clause is neutral. It does not refer to any particular point of time when the accused person should have been convicted and sentenced. It merely indicates a fact situation which must exist in order to attract the applicability of the section and this fact situation would be satisfied equally whether an accused person has been convicted and sentenced before or after the coming into force of the new Code of Criminal Procedure. Even where an accused person has been convicted prior to the coming into force of the new Code of Criminal Procedure but his sentence is still running, it would not be inappropriate to say that the "accused person has, on conviction, been sentenced to imprisonment for a term".

Therefore, where an accused person has been convicted and he is still serving his sentence at the date when the new Code of Criminal Procedure came into force.

Section 428 would apply and he would be entitled to claim that the period of detention undergone by him during the investigation, inquiry or trial of the case should be set off against the term of imprisonment imposed on him and he should be required to undergo only the remainder of the term.

The appellant was elected in terms of the provisions of a statute. The right to be elected was created by a statute and, thus, can be taken away by a statute. It is now well-settled that when a literal reading of the provision giving retrospective effect does not produce absurdity or anomaly, the same would not be construed to be only prospective. The negation is not a rigid rule and varies with the intention and purport of the legislature, but to apply it in such a case is a doctrine of fairness. When

a law is enacted for the benefit of the community as a whole, even in the absence of a provision, the statute may be held to be retrospective in nature. The appellant does not and cannot question the competence of the legislature in this behalf.

For the reasons aforementioned, we are of the opinion that the High Court was correct in its view. We, thus, find no merit in this appeal. It is, accordingly, dismissed. No costs.