Supreme Court of India
Sakhawat Ali vs The State Of Orissa on 25 November, 1954

PETITIONER:
SAKHAWAT ALI

Vs.

RESPONDENT:
THE STATE OF ORISSA.

DATE OF JUDGMENT:
25/11/1954

BENCH:

ACT:
Constitution of India, arts. 14,19(1)(g)-Orissa Municipal Act, 1950 (Orissa Act XXIII of 1950), ss. 1(3),1(5),16(1)(x)-Nomination filed and rejected, effect of-Disqualification for nomination if violates fundamental right--Orissa General Clauses Act, 1937 (Orissa Act I of 1937), s. 23-Scope of.

HEADNOTE:
The provisions of section 16(1)(x) of the Orissa Municipal Act, 1950, by which a paid legal practitioner on behalf of or against the Municipality is disqualified for election to a seat in such Municipality do not violate the fundamental rights guaranteed to such legal practitioner under article 14 or under article 19(1)(g) of the Constitution of India.
The Orissa Municipal Act, 1950, having received the Governor's assent on November 7, 1950, all preliminary steps specified in section 1(5) of the Act which were taken for the purpose of a Municipal election after such assent are valid even though the Act itself had not then come into force in terms of section 1(3).
Accordingly a nomination filed on March 15, 1951, was validly subjected to the test of disqualification contained in section 16(1) (x) of the Act and the rejection of such nomination on March 25, 1951, was not defective though the Act came into force on April 15, 1951, in the area to which the rejected nomination relates. Section 23 of the Orissa General Clauses Act, 1937, does not authorise the making of rules or bye-laws, which are to come into
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operation before the commencement of the Act, but they will be valid under the express provision of section 1(5).

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 81 of 1953. Appeal under article 132(1) of the Constitution of India from the Judgment and Order, dated the 18th April, 1951, of the High Court of Judicature for the State of Orissa at Cuttack in Judicial Case No. 60 of 1951.

H. J. Umrigar, Sri Narain Andlay and Rajinder Narain for the appellant.

Porus A. Mehta and P. g. Gokhale for the respondent. 1954. November 25. The Judgment of the Court was delivered by BHAGWATI J.-The appellant who is a legal practitioner residing within the limits of the Kendrapara Municipality and practising as a mukhtar in the criminal and the revenue Courts there filed his nomination paper for election as a Councillor of the Municipality on the 15th March, 1951. That nomination paper was rejected by the Election Officer on the 25th March, 1951, on the ground that he was employed as a legal practitioner against the Municipality in a case U/S 198 of the Bihar and Orissa Municipal Act which was pending in the Sub-Divisional Magistrate Court. The appellant then filed on the 4th April, 1951, a petition before the High Court of Orissa under article 226 of the Constitution praying that a writ or order of prohibition be issued to the State Government and the Election Officer restraining them from holding the election to the Kendrapara Municipality under the Orissa Municipal Act, 1950 or the Municipal Election Rules, 1950. This petition was rejected by the High Court but the High Court granted the appellant a certificate under article 132(1) of the Constitution for leave to appeal to this Court.

The Orissa Municipal Act, 1950 (Orissa Act 23 of 1950) was passed by the local Legislature and received the assent of the Governor on the 7th November, 1950, and was published in the official gazette on the 11th November, 1950. Section I of the Act runs as under (1) This Act may be called the Orissa Municipal Act, 1950. (2) It shall extend to the whole of the State of Orissa. (3) It shall come into force in such area or areas on such date or dates as the State Government may appoint from time to time (5) Any notification, order or rule and any appointment to an office, may be made or election held under this Act, after it shall have received the assent of the Governor and shall take effect on this Act coming into force. Section 16 of the Act prescribes the disqualifications of candidates for election and provides (1) No person shall be qualified for election to a seat in a Municipality, if such person (ix ) is employed as a paid legal practitioner on behalf of the Municipality or as legal practitioner against the Municipality On the 11th November, 1950, the Secretary to the Government, Local Self-Government Department addressed to all District Magistrates of the State letter No. 1336/L.S.G. intimating that the Government had decided that general elections should be held on the basis of adult suffrage as provided in the Act in 12 Municipalities including the Kendrapara Municipality. Notification No. 2015 L.S.G. was issued on the 13th December, 1950, under section 13 read with section 1 (5) of the Act fixing- the 1st day of March, 1950, as the relevant date for voters in the election as regards their residential qualification in the Municipality. Notification No. 65 L.S.G. issued on the 4th January, 1951, published rules made in exercise of the powers conferred by clauses (1) and (2) of sub-section (2) of section 387 of the Act called the "Municipal Election Rules, 1950." Redistribution of wards was effected by Notification No. 167 L.S.G. dated the 10th January, 1951, and two Notifications Nos. 519 and 521 L.S.G. were issued on the 24th January, 1951, fixing the numbers of Councillors and of the reserved

seats for each Municipality. The 15th March, 1951, was fixed as the date for filing the nominations and the 25th March, 1951, for scrutiny of nomination papers. The 20th April, 1951, was the date fixed for the holding of the election. All these steps were taken by the Government in anticipation acting under the powers reserved under section 1 (5) of the Act and it was only on the 15th April, 1951, that the Act was extended to the Kendrapara Municipality by a notification under section 1 (3) of the Act. The appellant contended (1) that the Act had not come into operation in the Kendrapara Municipality till the 15th April, 1951, that the disqualification- prescribed by section 16(1) (ix) could not consequently have been incurred by him on the 15th March, 1951, when he filed his nomination paper, that the rejection of his nomination paper therefore on that ground by the Election Officer on the 25th March, 1951, was illegal and no election could be held on the 20th April, 1951, as was sought to be done under the provisions of the Orissa Municipal Act, 1950, or the Municipal Election Rules, 1950, and (2) that in any event the disqualification prescribed under section 16(1) (ix) of the Act violated his fundamentals rights guaranteed under article 14 and article 19(1) (g) of the Constitution.

Both these contentions were in our opinion rightly negatived by the High Court. Section 1 (5) of the Act in express terms provides that after the Act has received the assent of the Governor elections could be held under the Act but were only to take effect on the Act coming into force, which means the coming into force of the Act in such area or areas on such date or dates which the State Government might appoint from' time to time under section 1 (3) of the Act. There is thus contemplated under the very provisions of sec- tion 1 (5) the holding of elections under the Act in spite of the fact that the Act had not come into force in a particular area. Ordinarily the statute enacted by a State Legislature comes into force as soon as it receives the assent of the Governor. Section 1 (3) of the Act however postpones the commencement of the Act which means that section 1 (3) came into operation immediately the Governor gave his assent to the Act. Section 1 (5) is nothing but a proviso to section 1 (3) and must be regarded also to have come into operation simultaneously with section 1 (3). Section 1 (5) having thus come into force at once on the Act having received the assent of the Governor on the 7th November, 1950, if elections were to be held under the Act before the rest of the Act came into force in any particular area.' all incidental steps for the holding of such elections were certainly contemplated to be taken and those steps which would be thus taken in anticipation of the Act coming into force in a particular area were certainly authorised by the terms of section 1(5) by necessary implication, because no elections could be held unless all the preliminary steps for holding the same were taken. It would be necessary for holding elections to prescribe the residential qualification, to distribute the wards, to fix the numbers of Councillors and of reserved seats, to frame election rules with reference to the filing of nominations, the scrutiny of the nomination papers and also the holding of elections. All these preliminary steps would have to be taken if the elections were to be held and section 1(5) clearly contemplated the taking of these steps in authorising elections to be held under the Act. No doubt the Act was not to be in force in a particular area until the relevant notification was issued by the State Government and until the Act came into force the disqualifications prescribed in section 16(1) of the Act would not normally attach to candidates for election. The election rules also would be framed in exercise of the power reserved under the Act and if the -Act had not come into force much less could the election rules come into operation and bind the candidates. This argument could have availed the appellant if the State Legislature had not enacted section 1(5) of the Act and the defect could not have been cured by the

provisions of section 23 of the Orissa General Clauses Act (Orissa Act I of 1937) which was relied upon by the respondent. That section only enables the making of rules or bye-laws or the issue of the preliminary orders in anticipation of the Act coming into force, which rules, bye- laws or orders however would not come into effect till the commencement of the Act. The clear provisions of section 1(5) of the Act however expressly empowered the State Government to hold elections and thereby validated all the preliminary steps taken for the purpose of holding such election, the only reservation made being that even though the election under the Act be held such election was not to take effect till the Act came into force in the particular area. This contention of the appellant therefore fails. The contention that the disqualification prescribed in section 16(1)(ix) violates the fundamental rights of the appellant under article 14 and article 19(1)(g) is equally untenable. Article 14 forbids class legislation but does not forbid reasonable classification for the purposes of legislation. That classification however cannot be arbitrary but must rest upon some real and substantial distinction bearing a reasonable and just relation to the things in respect of which the classification is made. In other words the classification must have a reasonable relation to the object or the purpose sought to be achieved by the impugned legislation. The classification here is of the legal practitioners who are employed on payment on behalf of the Municipality or act against the Municipality and those legal practitioners are disqualified from standing as candidates for election. The object or purpose to be achieved is the purity of public life, which object would certainly be thwarted if there arose a situation where there was a conflict between interest and duty. The possibility of such a conflict can be easily visualised, because if a Municipal Councillor is employed as a paid legal practi- tioner on behalf of the Municipality there is a likelihood of his misusing his position for the purposes of obtaining Municipal briefs for himself and persuading the Municipality to sanction unreasonable fees. Similarly, if he was acting as a legal practitioner against the Municipality he might in the interests of his client misuse any knowledge which he might have obtained as a Councillor through his access to the Municipal records or he might sacrifice the interests of the Municipality for those of his clients. No doubt having regard to the best traditions of the profession very few legal practitioners would stoop to such tactics, but the Legislature in its wisdom thought it desirable to eliminate any possibility of a conflict between interest and duty and aimed at achieving this object or purpose by prescribing the requisite disqualification. The classification thus would certainly have a reasonable relation to the object or purpose sought to be achieved.

It was however urged that besides this category there are also other categories where there would be a possibility of conflict between interest and duty and that in so far as they were not covered by the disqualifications prescribed by section 16(1) of the Act the provision disqualifying the category to which the appellant belonged was discriminatory. It was particularly pointed out that a client who had a litigation against the Municipality was not prevented from standing as a candidate for election whereas the legal practitioner who held a brief against the Municipality was disqualified, though the ban against both these categories could be justified on ground of avoidance of conflict between interest and duty. The simple answer to this contention is that legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is for the Legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in any manner

discriminatory and violative of the fundamental right guaranteed by article 14 of the Constitution.

The right of the appellant to practise the profession of law guaranteed by article 19(1) (g) cannot be said to have been violated, because in laying down the disqualification in section 16(1) (ix) of the Act the Legislature does not prevent him from practising his profession of law but it only lays down that if he wants to stand as a candidate for election he shall not either be employed as a paid legal practitioner on behalf of the municipality or act as a legal practitioner against the Municipality. There is no fundamental right in any person to stand as a candidate for election to the Municipality. The only fundamental right which is guaranteed is that of practising any profession or carrying on any occupation, trade or business. There is no violation of the latter right in prescribing the disqualification of the type enacted in section 16(1) (ix) of the Act. If he wants to stand as a candidate for election it is but -proper that he should divest himself of his paid brief on behalf of the Municipality or the brief against the Municipality in which event there will be certainly no bar to his candidature. Even if it be taken as a restriction on his right to practice his profession of law, such restriction would be a reasonable one and well within the ambit of article 19 clause 5. Such restriction would be a reasonable one to impose in the interests of the general public for the preservation of purity in public life. We therefore see no substance in this contention of the appellant also. The appeal accordingly fails and stands dismissed with costs.

Appeal dismissed.