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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 23.10.2019

+ W.P.(C) 11310/2019

SAMARENDRA BEURA

..... Petitioner

versus

PRINCIPAL SECRETARY TO HIS EXCELLENCY THE
GOVERNOR OF ODISHA & ORS Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Sudarsh Menon with Mr. Ravindra A. Lokhande, Advocates.
For the Respondent: Mr. Soumyajit Pani, Advocate for respondent No.1.
Mr. P.R. Chopra, Advocate for respondent No.2.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.46567/2019 (exemption)

Exemption is allowed subject to all just exceptions.

CM APPL.46566/2019 (seeking permission to file lengthy synopsis and list of dates)

1. For the reasons stated in the application, the application is allowed.
2. Lengthy synopsis is taken on record.

W.P.(C) 11310/2019

1. Petitioner has filed this petition under Article 226 of the Constitution of India seeking a direction to the Governor of Odisha to obtain opinion of the Election Commission of India and to dispose of the petitions dated

28.05.2019 and 27.09.2019 and further to convey his decision after obtaining the opinion of the Election Commission of India. Petitioner further seeks a direction to the Government of Odisha to take appropriate action if it is found that the members have incurred disqualification by operation of law.

2. It is contended by learned counsel for the petitioner that there are certain persons who had been elected to the Odisha Legislative Assembly and they were disqualified from being chosen as members of the Legislative Assembly under Article 191(1)(a) of the Constitution of India in violation of Article 164(1A) of the Constitution of India being holders of the Office of Profit under the Government.

3. It is contended in the petition that the Legislative Assembly of the State Legislature of Odisha enacted “The Odisha Offices of Profit (Removal of Disqualification) Amendment Act, 2016” with retrospective effect from 18.01.2016.

4. It is contended that under this Act *inter alia* the Offices of the Chairperson, Vice Chairperson or member, by whatever name called, in any statutory or non-statutory body were removed from the ambit of the Office of Profit under Article 191 (1) of the Constitution of India. It is alleged that there were further amendments to various Acts to pave the way for the Members of the Legislative Assembly to head Statutory or Non-Statutory bodies as Chairperson, Vice Chairperson, etc.

5. It is contended that the same violates Articles 164(1A) and 191 of the Constitution of India.

6. It is contended that the petitioner has made representations to the Governor of Odisha on 28.05.2019 and 27.09.2019 pointing out the disqualification and requesting him to take action after seeking an opinion from the Election Commission of India.

7. It is contended by learned counsel for the petitioner that since the Governor of Odisha has not sought any opinion from the Election Commission of India, petitioner has filed the subject petition.

8. It may be noted that though petitioner is not challenging the validity of the Odisha Offices of Profit (Removal of Disqualification) Amendment Act, 2016 but contends that the effect of the same is ultra vires Article 164(1A) and 191 of the Constitution of India.

9. It is observed that the indirect challenge of the petitioner is to the provisions of the Odisha Offices of Profit (Removal of Disqualification) Amendment Act, 2016 which exempts certain categories of persons/posts from the definition of the Office of Profit under Article 191(1) of the Constitution of India.

10. Said Act was enacted by the State Legislature of Odisha and the alleged inaction contended by the petitioner is by the Governor of Odisha in not seeking an opinion of the Election Commission of India.

11. No cause of action has arisen in Delhi. There is no relief sought against the Election Commission of India. The relief sought is that the Governor of Odisha should seek the opinion of the Election Commission of India.

12. Learned Counsel for the Petitioner has not been able to satisfy the court as to how the petitioner seeks to invoke the jurisdiction of the High Court of Delhi for any action taken by the State Legislature of Odisha and for any alleged inaction of the Governor of Odisha without any cause of action or part of cause of action arising in Delhi and without the seat of both the Respondents being within the territorial jurisdiction of the High Court of Delhi.

13. Article 226(1) & (2) of the Constitution of India read as under:

“226. Power of High Courts to issue certain writs

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.”

14. Article 226 (1) stipulates that every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue directions, orders or writs to any person or authority, including in appropriate cases, any Government, within those territories. Article 226(2)

stipulates that power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

15. So as per Article 226 power to issue directions, orders or writs to any Government, authority or person may be exercised by the High Court if the seat of such Government or authority or the residence of such person is within the territories, in relation to which it exercise jurisdiction or if the cause of action, wholly or in part, arises for the exercise of such power, within those territories, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

16. Reliance is placed by the learned counsel for the petitioner on *Brundaban Naik vs. Election Commission of India and Anr.:(1965) 3 SCR 53* to contend that any citizen is entitled to make a complaint to the Governor alleging that any member of the Legislative Assembly has incurred one of the disqualifications mentioned in Article 191(1) and should therefore vacate his office.

17. Reliance placed by the learned counsel for the petitioner on *Brundaban Naik (supra)* is misplaced. The question that is arising for consideration is not as to whether the petitioner, as a citizen, could have made a complaint to the Governor or not. The question is as to whether the petitioner could have invoked the jurisdiction of the Delhi High Court under Article 226 of the Constitution of India assailing the action of the

State Legislature of Odisha or the alleged inaction of the Governor of Odisha, both of whom do not have the seat within the territories, in relation to which the High Court of Delhi exercises jurisdiction, as required under Article 226(1) of the Constitution of India or without any cause of action or part of cause of action having arisen within such territories, as is required under Article 226(2) of the Constitution of India.

18. It is also noticed that the petitioner had approached the Supreme Court of India by a writ petition being W.P.(C) No.1102/2019 and the Supreme Court of India, by its order dated 04.10.2019, permitted the petitioner to withdraw the writ petition with liberty to approach the High Court.

19. Learned counsel for the petitioner submits that since there is an indefinite boycott call given by the Orissa High Court Bar Association, he has not filed a petition in the Orissa High Court and has approached this Court.

20. I find that the reason given by learned counsel for the petitioner to approach this Court and not the Orissa High Court is not sustainable. The Supreme Court of India in *Ex.-Capt. Harish Uppal vs. Union of India: (2003) 2 SCC 45*, has categorically laid down that the Bar Association/Council cannot call for boycott or strike and only in rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake, the courts may turn a blind eye for one day and further that all lawyers must boldly refuse to abide by any call for strike or boycott and no lawyer can be visited with any adverse consequences by the Association or the Council and no threat or coercion of any nature

including that of expulsion can be held out.

21. In view of the above, it is held that the Petition is not maintainable before the High Court of Delhi as this court does not have the territorial jurisdiction to entertain the present petition. The Petition is, accordingly, dismissed on this ground alone.

22. Order *Dasti* under the signatures of the Court Master.

OCTOBER 23, 2019
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SANJEEV SACHDEVA, J

