
(1974) 09 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 22 of 1974

Firoj Jal Moti Shaw

APPELLANT

Vs

Jagdish Prasad

RESPONDENT

Date of Decision : 30-09-1974

Acts Referred:

Payment of Bonus Act, 1965 — Section 10

Citation : (1975) RLW 15 : (1974) WLN 823

Hon'ble Judges : S.N. Modi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Modi, J.—Appellant Firoj Jal Moti Shaw and respondent Jagdish Prasad were candidates for the general seat from ward No. 6 for election as members to the Mount Abu Municipality. Mount Abu, hereinafter to be referred to as the municipality From the same ward. Bala was candidate for the reserved seat, The elections took place on 26-10-70 and the appellant and Bala were declared duly elected from ward No. 6 for the respondent who general election and reserved seats respetively. The secured less votes than the appellant, presented an election petition u/s 34 of the Rajasthan Municipality Act, 1959, hereinafter to be referred as the Act, calling in question the election of the appellant as also of Bala on the ground that both of them were guilty of corrupt practices. An additional ground was also taken by the respondent that the appellant was disqualified for being elected as member by reason of Clause (xii) of Section 26 of the Act. It was contended that the appellant on account of his being "sarvesarva" (all-in-all) employee of the Mount Abu Electric Supply Company, Mt. Abu, hereinafter described as the Company, had direct or in-direct interest in the contract for the supply of electricity entered into between the Company and the Municipality. The election petition was opposed by the appellant as also by Bala. The learned Civil Judge who tried the election petition, framed the following issues:

1. Whether the non-applicant No. 1 was disqualified to stand for the election in lieu of Section 26(12) of the Rajasthan Municipalities Act, 1959?
2. Whether the applicant proves that there was a pact between the non-applicants to fight the election and for this reason the election of the non-applicants is void?
3. Whether the non-applicant No. 1 used corrupt practices in the election as stated in para 4 of the election petition?
4. Whether the statement (speech) of Shri Khetsingh amounted to a corrupt practice in relation to the congress candidate (non-applicant No. 2) as well as non-applicant no, 1, and if so, on that ground the election of the non-applicants could be declared invalid?
5. Whether the election petition is without time?
6. Whether the court has jurisdiction to hear the petition?
7. Relief?

On a consideration of the evidence led by the parties, the learned Civil Judge found issue No. 1 in favour of the respondent. He held that the appellant being admittedly an employee of the company had both (sic) indirect interest in the contract between the Municipality and the company. He was THEREFORE DECLARED (sic) u/s 26(12) of the Act from contesting the election (sic) 2.3 and 14 which related to the various allegations of Corrupt practices were found (sic) the respondent. Issues Nos. 5 and, in view of his finding on (sic) party allowed the election petition and declared the election of the appellant void with the said order, the appellant has preferred this appeal,

2. The main controversy in the present appeal centres round to the first issue relating to the question whether the appellant was disqualified for being chosen as a member of the municipality u/s 26 (12) of the Act. In order to appreciate the point involved in the right perspective, it is necessary to narrate some facts which are no longer in dispute. It is an admitted case of the parties that at the filing of the filing of the nomination papers as also at the time of the (sic) and on the date of the election, the appellant was holding the post of (sic)-in charge of the Company During the relevant period he was operating the account of the Company and was looking after all the (sic) of the Company. The Company commenced (sic) electricity to the Municipality under an agreement (sic) into in the year 1939 (sic) agreement was for a period of 30 year. On the expiry of the period of 30 years, another agreement was entered into on 26-11-69 for a further period of 10 years. This agreement dated 26 11 69 was in force at the time of the fitting of the nomination paper by the appellant It is further not an dispute that the appellant was a paid employee of the Company dating the relevant period, The terms of his employment are contained in the agreement Ex A/1 It is also not in dispute that the Company is a partnership-firm and he own-; no share in it, The learned Civil Judge on the aforesaid admitted facts observed

"Having given my anxious consideration to the arguments advanced by the learned advocates for the parties, I am of the opinion that in the present petition the non-petitioner No. 1 being an employee of the Mount Abu Electricity Company and being highly interested in the (sic) of the Company, he cannot be said to be a person not interested in the Contract between the Municipal Committee, Mount Abu and the Electricity supply company and there would there world (sic) with his duty as a member of the Municipal Committee on account of his employment in the company. Secondly the non petitioner himself has stated that in case the company gets more profits, the non petitioner would get more bonus and therefore the non-petitioner would always be interested in looking to the pecuniary benefits of the company rather than to the interest of the Municipal Committee Mr. Abu He would thus get a financial benefit on account of the contract between the company and the Municipal Committee Therefore, through his employer in is interested in the contract."

3. The main target of attack on behalf of the appellant has been the judgment of the learned Civil Judge Mr. Mridul, the learned advocate for the appellant, in the first instance, contends that it was (sic) unnecessary for the learned Civil Judge to give any finding that the appellant was disqualified u/s 26(12) of the Act. Elaborating his argument, the learned Counsel emphasised that unless there is a living issue between the parties, the Court should not proceed to decide it. In the present case, it is contended, that the term for which the appellant and other members of the municipality were elected at the election had expired during the pendency of the election petition before the learned Civil Judge. On the date of the decision by the learned Civil Judge, the appellant was no longer the member of the municipality. That being the case, it is argued that it was a futile exercise on the part of the learned Civil judge to hold that at the date of the nomination, the appellant was disqualified u/s 26(12) of the Act. specially when he definitely arrived at the conclusion that issues nos 2,3 and 4 relating to charge of corrupt practices levelled against the appellant and (sic) were not proved, It is further contended that the findings on issues Nos. 2,3 and 4 were appealable u/s 46 of the Act and since no appeal or cross objection was presented by the respondent to challenge the findings of those issues, it is no longer open to the respondent to challenge the findings arrived at by the learned Civil Judge on issues nos 2,3 and 4.

4. On the other hand, it is argued by Mr. C.M Lodha, the learned advocate for the respondent that the Company entered into an agreement in 1939 with the Municipality to supply electricity for a period of 30 years and after the expiry of the said period of 30 years, another agreement was entered into in 1969 to supply electricity for a further period of 10 years. He submits that the appellant is still an employee of the Company and the contract between the Company and the Municipality is still subsisting. He therefore contends that in these circumstances, it cannot be said that there is no living issue to be decided between the parties. Mr. Lodha then drew my attention to two applications filed before this Court on 2-8-74 and 3-9-74 on behalf of the appellant wherein a

prayer was made for early hearing of the appeal on the ground that fresh municipal elections at Mount Abu were expected to be held shortly. From these applications as also from the fact that the contract between the Company and the Municipality is still subsisting and the fact that the appellant is still an employee of the Company, the learned Counsel submits that an inference be drawn that the issue for whether the appellant was disqualified to contest, the election is a living issue between the parties and the Court below rightly decided it even though the term of the appellant as a member of the Municipality had expired during the pendency of the election petition in the lower court. Mr Lodha has further contended that though it is true that the respondent has not filed any appeal or cross objection challenging the correctness of the findings on issues Nos. 2, 3 and 4, the respondent, according to him, is still entitled to support the judgment of the lower court by challenging the findings on the said issues.

5. Mr. Lodha, in connection with the allegations of corrupt practices pleaded by the respondent, confined his argument in respect of issue No. 4 only and in support thereof he read over to me the speech Ex. 6 said to have been delivered by the (sic) Minister Shri Khetsingh (as he then was) & the statements of PW 1; PW 2 and PW 4. He did not challenge the findings on issues Nos. 2 and 3 arrived at by the learned Civil Judge.

6. There is no manner of doubt that the issue relating to corrupt practice is always a living issue. The reason is obvious. If the candidate is found guilty of corrupt practice charged against him, not only his election would be declared void but he would also incur certain electoral disqualifications. Section 59 of the Act provides that a person guilty of corrupt practice specified in Section 35 shall entail disqualification from the membership of a Board for a period of five years from the date of the finding of the Judge as to such corrupt practice. Mr. Mridul, the learned (sic) for the appellant, has argued that finding on issue no 4 which relates to corrupt practice cannot be challenged by the respondent in this Court because no appeal or cross-objection challenging that finding has been filed by the respondent. I do not propose to express my opinion on this legal objection for I find that there exists no evidence worth consideration in support of issue no. 4. It is alleged that Shri Khetsingh gave a speech at Mount Abu on behalf of the Congress party to support candidature of Bala. It is further contended that the speech delivered by Shri Khetsingh amounted to corrupt practice and since Bala had an election pact with the appellant, the latter was also guilty of corrupt practice within the meaning of Section 35 of the Act. It is significant to note that there is no allegation whatsoever in the election petition that corrupt practice was committed by Shri Khetsingh with the consent of the appellant or his election agent. There is also no evidence except the bald statement of the respondent that the appellant had an election pact with Bala. The statement of the respondent in this connection is highly vague and deserves to be rejected outright. The learned Civil Judge, in my opinion, rightly decided issue No. 4 against the respondent.

7. The question now arises whether in the absence of proof of corrupt practice

having been committed by the appellant, I should go into the question of disqualification of the appellant u/s 26(12) of the Act even though the term for which the appellant was ejected as a member of the Municipality had undoubtedly expired during the pendency of the election petition. There cannot be two opinions that the decision of the issue, one way or the other, is not going to have any impact on the position of the parties. The decision of the question whether the appellant on the date of the nomination was disqualified would be wholly meaningless after the expiry of the term for which the appellant was elected. The disqualification even if it was there would only mean that he was not entitled to contest the election on the date when he filed his nomination. Such a decision would be of no (sic) operating in future. If that is so, how can it be said that the issue is a living issue, It is well settled that the Court should not undertake to decide an issue unless it is a living issue. See *Loknath Padhan Vs. Birendra Kumar Sahu*, Mr. Lodha's contention that the question relating to disqualification of the appellant is still a living issue because the appellant is still an employee of the company and the contract between the employee and municipality is still subsisting, is, in my opinion, without any substance. The finding of the learned Civil Judge even affirmed by this Court that the appellant was disqualified would be based on the facts existing on the date of the nomination and it would have no relevance so far as it (sic) to a future point of time. It is possible that by the time fresh elections are held, the appellant or even the Company may not have any interest in the contract. Mr. Lodha laid considerable stress on the two applications presented to this Court for early hearing of the appeal. These applications, in my opinion, have no bearing on the point in controversy between the parties. Since the decision of the issue would be wholly ineffective so far as future elections are concerned it would not be only (sic) and pointless but also inexpedient to decide such an (sic). I am therefore of the opinion that since the term of the Municipality had expired, it has now become academic to consider whether on the date of nomination the appellant was or was not disqualified u/s 26(12) of the Act.

8. The view which I have taken is entirely sufficient to dispose of this appeal & it is not necessary to enter into the merits of the case but I would like to advert to one point, namely the correct interpretation of Clause (12) of Section 26 of the Act.

9. Mr. Mridul, the learned advocate for the appellant, contends that the learned Civil Judge was entirely wrong in holding that because the appellant was an employee of the Company he was not only highly interested in the affairs of the Company but he was also interested in the contract between the Municipality and the Company. His further contention is that u/s (10) of the Payment of Bonus Act 1965, the employer is bound to pay minimum bonus irrespective of the fact whether there are profits or not. His further contention is that u/s 11 an employee becomes entitled to a maximum bonus not as a matter of course but only if in any accounting year the allocable surplus exceeds the amount of minimum bonus payable to the employees u/s 10. Mr. Mridul contends that the

statement of the appellant (sic) upon by the learned Civil Judge simply clarifies the legal position in respect of the payment of the bonus. There is nothing to show in his statement that the Company after entering into the contract in the year 1969 ever earned profits or earned profits over and above the minimum bonus payable u/s 10 of the Payment of Bonus Act, 1965 It is further contended that the appellant is one of several employees of the Company and similarly, the Municipality is one of the several consumers of the electricity generated by the Company In these circumstances, when it is proved that the appellant has no share in the profits of the Company, the view taken by the learned Civil Judge that the appellant on account of being an employee of the Company cannot claim to have no interest in the contract and further that his interest in the Company is bound to clash with his duty as member of the Municipality is wholly fallacious and unwarranted It is argued that such a sentimental or sympathetic interest of the appellant in the contract cannot disqualify the appellant u/s 26(12) of the Act.

10. On the other hand, it is argued by Mr. Lodha, the learned advocate for the respondent, that u/s 26(12) of the Act, the use of the words "employer and employee" are significant and they suggest that the interest of the candidates "employer or employee" or employee " in the contract is sufficient to disqualify the candidate u/s 26(12) of the Act. He further contends that the purpose or object of of prescribing several disqualifications enumerated in clauses of Section 26 of the Act is to ensure the purity of the administration of the Municipality and these clauses should not (sic) any narrow or restricted construction but should be given wide and liberal construction.

11. The scheme of the Act goes to show that the person seeking election as a member of a Municipal Board must not only positively possess (sic) fixations but be must also negatively not suffer from any disqualifications. These disqualifications are enumerated in Clauses (1) to (14) of Section 26 of the Act. It the case of any candidate seeking election as a member Of a Municipal Board falls within the purview of one of the fourteen clauses enumerated in Section 26, he will be declared disqualified to be elected as a member. Section 26 of the Act so far as it is material reads as under:

Section 26 General disqualifications for members-A person, notwithstanding that he is otherwise qualified shall be disqualified for being chosen as a member of a Board

(1) to (11) XX XX XX (12) who, save as hereinafter provided, has directly or indirectly, by himself or his partner, employer or employee and share or interest in any work done by order of such Board, or in any contract or employment with or under or by or on behalf of such Board, or

(14) XX XX XX XX?

The language of this clause is very near to the language used in Section 12(1) of the English Act the Municipal Corporation Act of 1882, the relevant portion of which reads as follows:

A person shall be disqualified for being elected if and while he...has (sic) or (sic), by himself or his (sic), any share (sic) any contract with by or on behalf of the Council

The aforesaid section was interpreted by Lord Darling in *Cox v. Truscott* (1907) 92 LT 650 in the following words:

Section 12 does not say that he shall be disqualified altogether. It provides:

A person shall be disqualified for being elected and for being a councillor if and while he has interest, direct or indirect, in any contract by or on behalf of council." He is only disqualified, if he has an interest in the contract while he has such interest. He gets rid of his disqualification when he gets rid of the contract; and the contract is got rid of it the contract is performed, that is, if there is no more to be done at the time of the acts.

Section 12(1) of the Municipal Corporation Act of 1882 was again construed in *England v. Inglis* (1920) (2) KB 636. The learned judge held that an "interest" must be something more than a sentimental interest such as arises from the natural love and affection of a father and his son, It need not, however, be only the possibility of a pecuniary advantage, it may equally be the likelihood of a pecuniary loss. The accruing benefit need not be direct. The possibility even (sic) of an actual resulting benefit will be sufficient As pointed out by (sic) L J. in *Nutton v Wilson* (1880) 22 QBD 744, the objection of sections of this kind is to prevent the (sic) between interest and duty that must otherwise inevitably arise.

12 Again, Section 12(2)(b) of the Bombay Municipal Boroughs Act, 1925, by and large" corresponds to Section 26 of the Act. It reads as under:-

Section 12-(2) No person

(a) XX XX XX b) who, save as hereinafter provided, has directly or indirectly, by himself or his partner any share of interest in any work done by an order of a Municipality, or in any contract or employment with or under or by or on behalf of a Municipality, may be a councillor of such Municipality.

The aforesaid section came for interpretation in *Ramayya Venkat Narsu Bura v The State of Bombay and Anr.* AIR 1960 Bom 46 In that case, the learned Judges posed the question whether the second respondent, namely. Shrinivas who was elected a councillor of the Municipality of Ahmednagar can be said to have direct or indirect interest in the employment of his wife with or under the municipality within the meaning of Section 12(2)(b). Their lordships placed reliance on an earlier decision in *Champaklal Parikh v Mahendra Govindlal* (Special Civil Application No. 1807 decided on 7-12-55) by Chagla C.J and Dixit J) where a son was wanting to be a Councillor of the Perlod Municipality and his father was a pleader representing that municipality in various cases of assessment. It was observed there in:

In our opinion, the interest here is not the interest which a man may have in the prosperity of his friend, There the interest is clearly sentimental or emotional When you have a person living jointly with his father, it seems to be inarguable that the son's interest in the prosperity of his father is purely sentimental or emotional. If the father earns more, he has more to spend on the family. His prosperity must affect the position of the son and the interest that the son has in the prosperity of his father is clearly a material or a substantial interest.

In Rammayya's case (supra), the above observations were followed and it was held that looking to the close relationship between the husband and wife, the husband Shrinivas had a substantial interest in the employment of his wife & therefore he suffered from disqualification u/s 12(2)(b) of the Bombay Municipal Boroughs Act. 1925.

13. The language of Section 12(2)(b) of the Bombay Municipal Boroughs Act was again the subject-matter of construction in M M Nandgaonkar v. The Collector, Thana (1955) Bom LR 212. In that case, the petitioner was an elected member of the Thana Borough Municipality. After his election, he was elected Vice President of the municipality. The petitioner also happened to be the President of Thana Municipal Kamgar Sangh since its inception in 1943 The petitioner as President of this Sangh was fighting the cause of the municipal employees and he was responsible for raising industrial disputes which were referred to the Industrial Tribunal. On these facts, the question arose whether it would be said of the petitioner that there was a conflict between interest and duty; the interest arising was in consequence of his fighting the cause of the municipal employees and his duty in consequence of his being a Vice-President of the municipality It was held that the disqualification contemplated by Section 12(2)(b) was not thereby incurred.

14. A provision exactly similar to Section 26(12) of the Act is found in Section 22(1)(f) of the Bengal Municipal Act (No. 15 of 1932). It reads as under:

Section 22 (1)- A person shall not be eligible for election or appointment as a commissioner if such person (f) has, directly or indirectly, by himself or by his partner or employer or any employee, and share or interest in any contract or employment with, by, or on behalf of, the commissioners." This section came up for consideration in (sic) Promode Lal Moitra Vs. Additional District Magistrate, 24 Parganas and Others, The relevant facts of that case were like this.

15. Motilall Moitra carried on a business in petrol and motor accessories at Baranagore under the name and style of Messrs Radha Motor Works. Motilal died leaving behind him four sons, namely, the petitioner Promodelal and his three brothers Kumudlal, Subodhlal and Sujanalal After the death of Motilal, he three brothers of the petitioner on 14-4-1950 entered into an agreement of partnership constituting the partnership-(sic) of Messrs Radha Motor Works The deed of partnership showed that the old business was continued by the partnership but the name of the petitioner was excluded therefrom. In the deed

of partnership, no share or interest in the said firm was shown of the petitioner Promodelal. But the four brothers did not separate and continued to live in a joint family and in jointness The joint properties recorded in the name of Motilal and others still continued to be recorded in that name. The rates and taxes were also being paid by Kumud Lall on behalf of all the four brothers The firm Radha Motor Works supplrd petrol to the Baranagore Municipality and also spare parts for the motor vehicles during the relevant period in the year 1956 The petitioner Promode Lal and rspondent no 3, Amer Mazumdar filed their respective nomination papers with the respondent No. 3 the Chairman of the municipality, for the general election of Baranagore municipality to be held on 11-3-56 The scrutiny of the nomination papers took place on 10-2-56 and the name of the petitioner Promodelal was registered in the list of nominations. On 14-2-56 respondent respondent No. 3 Azam Mazumdar preferred an appeal before the Additional Dist. Magistrate againts the inclusion of the petitioner?s name in the list on the ground that he was disqualified u/s 22(1)(f) of the said Act. The Additional District Magistrate by his decision dated 23-02-56 held that the issue of coupons for supply of petrol by the secretary of the municipality & the acceptance of the coupons by Messrs. Radha Motor Works constituted a contract between the municipality and Messrs. Radha Motor Works & this contract was subsisting at the material date With regard to he interest of Promodelal, the learned Additional District Magistrate observed as follows:

It has got to be seen whether business by the other members of a Hindu Undivided Family is carried on separately and whether any other member has got any share or interest in the concern. Bros living jointly in joint mess with ancestral properties standing jointly without mutation, where the municipal taxes are paid up by any one of the brothers have no interest in the well being of the other, As the partnership deed filed by the opposite party shows only that Promodelal Moitra has got no share in Radha Motor Works, the learned lawyer for the opposite party could not rebut the proposition that Promodlal Moitra is without any interest in this concern The learned advocate for the petitioner rightly pointed out to me that several thousands of rupees are still cut standing to Radha Motor Works. If any question arises about the maintainability of any bill submitted by the said concern and if the municipal commissioners are called upon to decide such questions it is evident to which side the sympathy of Promodelal Moitra will lie. He cannot claim to have no interest in this petrol pump said to belong to his three brothers where all these brothers live in the same house in joint mess and where they own some ancestral property without (sic) Clearly case of any objection to the claims of Radhe Motor works before the municipality, this gentleman if returned as a commissioner will have to face a conflict between interest and duty. It may not be a direct interest but it is certainly an indirect interest.

On the above findings, the learned Additional District Magistrate held that Promodelal was disqualified u/s 22(1)(f) of the said Act. The petitioner Promodelal then filed a writ petition in the Calcutta High Court and prayed inter-

alia to quash the impugned order of the Additional District Magistrate. Dealing with the merits of the impugned order, Sinha J. observed as follows:

Section 22(f) speaks of a person's "interest in any contract. The way that the learned magistrate has dealt with this point is wholly unsatisfactory. Apart from his involved reasoning and inept language, it seems that he finally came to the conclusion that although the petitioner had no share or interest in the Concern, it. was clear where his sympathies lay, and thus he must be deemed to have at least an indirect interest. It must not be taken to have approved of such an amazing proposition of law. It is certainly a very difficult task to enunciate what exactly is meant by the word "interest" as used in Section 22(i) of the Act, but it is certainly not sentimental or sympathetic interest, "(page 169, para 11).

17. I would now like to refer to the decision of their lordships of the SC in *Gulam Yasin Khan v. Sahebrao Yeshwant rao Walaskar* and Anr. AIR 196 SC 1339 which was (sic) upon by the learned Civil Judge. In that case, the question arose whether the appellant Gulam Yasin was disqualified to contest election u/s 15 of the Central Provinces and Berar Municipalities Act, 1922 on account of his son Khalidad being a servant of the municipal committee. According to the respondent No 1 the employment of the appellant's son by the municipal committee showed that appellant had an interest in the municipal committee & so he was (sic) u/s 15(1) of the said Act. Clause (1) of Section 15 provided that no person shall be (sic) for election, selection or nomination as a member of a committee, if such person had directly or indirectly any share or interest in any contract with, by or on behalf of (sic), while owning such share or interest. Interpreting the above clauses with reference to the similar clause in the other Acts and the facts found proved in the case their lordships observed:

It is quite true that purpose and the object of prescribing the several disqualifications enumerated in Clause (a) to (1) of Section 15 of the Act is to ensure the purity of the administration of Municipal Committees, and in that sense, it may be permissible to hold that the different clauses enumerated in Section 15 should not receive an unduly narrow or restricted construction (sic) if we were to adopt a liberal construction of Section 15(1), we cannot escape the conclusion that the interest or share has to be in the contract itself. When we are enquiring? as to whether the appellant is interested directly or (sic) in the employment of his son, we cannot overlook the fact that the (sic) is not as to whether the appellant is interested in the son but the enquiry whether the appellant is interested in the employment of the son. The distinction between the two enquiries may (sic) to (sic) but, nevertheless, for the purpose of (sic) the clause, it is very relevant. Considered from this point of view, on the facts proved in this case, we find it difficult to hold that by mere relationship with his son the appellant can be said to be either directly or indirectly interested in his employment.

18. It follows from the review of the above authorities that the correct interpretation of Section 26(12) of the Act is that a person shall be disqualified

for being chosen as a member of the Board if he had directly or indirectly any share or interest in the contract either by himself or by his partner or by his employer or employee. In other words in order to incur disqualification under this clause the enquiry must be whether the candidate is interested in the contract directly or indirectly. The learned Civil Judge came to the conclusion that although the appellant had no interest or share in the contract, but he is highly interested in the affairs of the Company and therefore he cannot be said to be a person not interested in the contract. This reasoning of the learned Civil Judge is clearly untenable. The language of Section 26(12) of the Act clearly goes to show that the interest or share has to be in the contract itself and not in the employer who has entered into the contract. I would further like to emphasise that the word "interest" used in Section 26(12) of the Act in no way means a sentimental or sympathetic interest. In this view of the fact that the term of the municipality for which the appellant was elected had expired during the pendency of the appeal, it is wholly academic for me to consider on merit whether or not the appellant was disqualified u/s 26(12) of the Act. I therefore express no opinion on the question as to whether the appellant was disqualified for being chosen u/s 26(12) of the Act. In my opinion, the election petition itself became infructuous by the time it was decided by the lower court. The learned Civil Judge, in the circumstances, should have declined to decide the question whether the appellant was disqualified u/s 26(12) of the Act. Since the election petition on the point of disqualification of the appellant became infructuous in the lower court, I allow the appeal and set aside the order of the learned Civil Judge. The parties will bear their own costs throughout.