

(2005) 04 KAR CK 0044
In the Karnataka High Court
Case No : Writ Petition No. 8127 of 2005

Khurshid Azam Choudhary

APPELLANT

Vs

Deputy Commissioner and Others

RESPONDENT

Date of Decision : 07-04-2005

Acts Referred:

Constitution of India, 1950 — Article 14
Karnataka Municipalities Act, 1964 — Section 16 (1) (k)

Citation : (2005) 4 KarLJ 15 : (2005) 3 KCCR 1816

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : K. Giridhar, for the Appellant; H.B. Narayana, High Court Government Pleader for Respondents-1 and 3 and S.N. Bhat, for Impleading Respondent-4, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—The petitioner was a Councillor in Yadgir Town Municipal Council. That his membership came to a premature end because of disqualification he suffered under the provisions of Section 16(1)(k) of the Karnataka Municipalities Act, 1964 ("Act" for short) as it was found that the petitioner had a contract with the very Municipality namely for certain repairs to be effected to a tractor owned by the Municipality the value of which contract was more than Rs. 500/-.

2. The matter was brought to the notice of the Deputy Commissioner-the Competent Authority by another Councillor the 4th respondent and the Deputy Commissioner passed the order of disqualification in terms of his order dated 18-10-2004 holding that as a matter of fact the petitioner had suffered such disqualification in terms of Section 16(1)(k) of the Act and accordingly, his membership suffered. The petitioner being aggrieved preferred an appeal to the Appellate Authority. Since the Appellate Authority found no occasion to interfere with the order of the Deputy Commissioner, dismissed the appeal in terms of the

order dated 15th January, 2005 at Annexure-A.

3. It is aggrieved by this order the petitioner while challenging the same has also called in question the constitutional validity of provisions of Section 16(1)(k) of the Act read with Sub-clauses (v) and (vi) of proviso given to Clause (d) of Section 16(1)(k) of the Act.

4. Submission of Sri K. Giridhar, learned Counsel for the petitioner is that, while persons who have contracts of the value of less than Rs. 500/- are spared from such disqualification, persons like the petitioner who had contract with the Municipality of value more than Rs. 500/- though such contract was entered into following tender process, suffered from disqualification and that it amounts to discrimination vis-a-vis persons with contract for less than Rs. 500/- value as against persons with contracts over and above Rs. 500/- and therefore, provisions of Section 16(1)(k) of the Act being discriminatory and in the teeth of Article 14 should be declared as unconstitutional.

5. Learned Counsel pointed out that Clause (k) of Sub-section (1) of Section 16 of the Act does not make classification by itself, certain situations are saved and savings figure in Sub-clauses (v) and (vi) of Clause (d) of proviso given to Section 16(1) of the Act. That while Sub-clause (v) further allocates amount for sparing the disqualification to be mentioned by the delegated authority, Sub-clause (vi) mentions that the value to be upto Rs. 500/- within which value, contracts do not come in the way of the members retaining the membership without disqualification.

6. For the present case, it is Sub-clause (vi) which is attracted by the petitioner. That the petitioner had a contract of value which, is admittedly more than Rs. 500/-. The question is as to whether such disqualification based on the classification of the value of the contract being more than Rs. 500/-, can be construed as discriminatory.

7. Having regard to the object of prescribing disqualification in such situation, particularly to ensure that the persons who are elected as members of the Municipality do not misuse or abuse their position for making pecuniary gains and to prevent the same the provisions of Section 16(1)(k) of the Act has been enacted. However, petty transactions are sought to be excluded from operation of the provision of disqualification. Contract of value of Rs. 500/- and for lesser amount is not considered to be one which can enable a member to cause influence for making pecuniary gain. On the face of it, the provision is quite, reasonable and acceptable. The exempting clause in no way detracts from the object of disqualification provision. Making classification on the basis of persons having transaction of small amount i.e., less than Rs. 500/- with others having transaction of bigger amount cannot be said to be discriminatory or unreasonable. I do not find anything unreasonable or discriminatory which calls for invalidation of this provisions on the principles of equality contained in Article 14 of the Constitution of India.

8. However, Sri Giridhar, learned Counsel for the petitioner seeks to urge that while the rest of the disqualification that are mentioned in Section 16(1) which figures in Clauses (a) to (o) are in the nature of personal qualification which is attached to the member himself, it is only u/s 16(1)(k) a transaction which is pecuniary in nature with the Municipality is sought to be made a criteria for disqualification, and therefore the provision is bad.

9. It does not make any difference. It is for the Legislature to indicate the norms for disqualification. A transaction which, is not necessarily involving a personal qualification of a member who has transaction which in fact can cause financial irregularities and can lead to malpractice, is sought to be avoided, the provision cannot be found fault with. I do not find anything obnoxious in the provision to hold it as constitutionally invalid as sought for in this writ petition.

No other contention is urged. No merit. Petition is dismissed.