

(1957) 02 MP CK 0036

In the Madhya Pradesh High Court

Case No : C. Miscellaneous Petition No. 407 of 1956

Kishan Singh

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 11-02-1957

Acts Referred:

Central Provinces and Berar Municipalities Act, 1922 — Section 15

Citation : AIR 1957 MP 67

Hon'ble Judges : M. Hidayatullah, C.J;B.K. Choudhari, J;B.K. Chaturvedi, J

Bench : Full Bench

Advocate : R.S. Dabir, for the Appellant; M. Adhikari, General, for the Respondent

Final Decision : Dismissed

Judgement

1. This case comes before us on a reference by one of us (Choudhuri, J.). Though the learned Judge referred two questions of law which, according to him, arose in this petition, those two questions are precisely the only questions open for decision in this case. Fortunately, Choudhuri J. is a member of this Full Bench and he agrees that on a fair interpretation of those questions the entire case is before this Full Bench.

2. The facts of the case are as follows : One Rai Saheb Kisen Chand Sharma was the president of the Municipal Committee, Khurai. While he was the president, he was convicted of an offence u/s 399 of the Indian Penal Code read with Section 120B ibid and sentenced to three years" rigorous imprisonment and a fine of Rs. 1,000. Against his conviction he has filed an appeal, and the appeal is pending in this Court. Meanwhile the petitioners, who number five, moved the State Government for a declaration that the office of the president had become "vacant u/s 22 of the C. P. and Berar Municipalities Act, 1922. The State Government not having acceded to their representations and ordered a fresh election the present petition was filed for writs in the nature of mandamus and quo warranto against Rai Saheb Kisenchand Sharma, the State Government of Madhya Pradesh and

the Municipal Committee, Khurai.

3. The questions which were framed by Choudhuri, J. read as follows :

"(i) Whether on the conviction of Respondent No. 1 under Sections 120B and 399, I. P. C. by the Additional Sessions Judge, Sagar, he ceases to be president of the Khurai Municipal Committee forthwith under the provision of Section 22 (2) of the C. P. and Berar Municipalities Act.

(ii) Whether the disqualification enumerated in Section 15 (j) include the disqualification mentioned in Section 10 (m), Local Government Act, 1948."

These are the questions which as we have already indicated, are the sole questions arising in this case.

4. There are a number of statutes which create local authorities in the State. A list of them need not be given because they are well known. In each of these Acts there is a section which lays down qualifications for memberships and also discloses the disqualifications. In that section there is always one sub-section which is common and which says that a person shall be ineligible if under any law for the time being in force he is disqualified to be a member of any local authority. It is this section which is the bone of contention between the parties.

Shri R.S. Dabir on behalf of the petitioners contends that this provision indicates that the disqualifications contained in any Act connected with any other local authority must be read into the Municipalities Act. The contention of the learned Advocate-General and Shri M.L. Singhai, who appears for Rai Saheb Kisenchand Sharma, is that this provision refers only to a disqualification which is created in statutes for all local authorities taken together. The gist of the matter is, therefore, what meaning must be assigned to this provision of law, particularly the words "any law for the time being in force" and "any local authority".

5. In the original C.P. and Berar Municipalities Act, 1922, Section 15 contained several Clauses which created disabilities for membership. Some of these clauses were later deleted by the Legislature, including Clause (g) which reads as follows :

"No person shall be eligible for election, selection or nomination as a member of a committee, if such person

(g) has subsisting against him a conviction by a criminal Court, whether within or without British India, involving a sentence of transportation or imprisonment for a term exceeding six months, unless the offence of which he was convicted has been pardoned"

this clause was deleted by Act IV of 1927. It is clear enough that if the matter had rested there, the disqualification resulting from a criminal conviction would have ceased to exist. Shri Dabir refers, however, to Clause (j) of the same Act which lays down:

"or is, under the provisions of any law for the time being in force ineligible to be a member of any local authority."

He says that by virtue of this clause one can look into the statutes creating local authorities to see whether there is in them any disqualification which can be read as part of the present statute.

6. There is no doubt whatever that in Clause (j) of Section 15 of the C. P. and Berar Municipalities Act, 1922 there is an incorporation of ineligibility created by any law for the time being in force. The only condition precedent is that the ineligibility should be of being a member of "any local authority". The crux of the controversy, therefore, is not in the phrase "any law for the time being in force" but is in the phrase "any local authority".

The question which arises, therefore, is whether in interpreting this phrase we have to look for an Act which creates a disability in respect of all local authorities or take each individual Act setting up a local authority and find out what the disqualifications for membership are and apply them to the Municipalities Act. In other words, when we interpret the word "any" whether we must have in view a general law creating a disability in respect of local authorities in general, or must we look for a law in which the ineligibility is created in respect of any one local authority by a special statute.

7. Now, the local Government Act, 1948, is referred to by Shri Dabir as creating ineligibility, on which he relies, Section 10 of that Act provides the conditions and the disqualifications for being a councillor, Clause (a) thereof says :

"No person shall be eligible for election or selection or appointment as a councillor of a Sabha, if such person

(m) has been sentenced by any Court to imprisonment or whipping for an offence punishable with imprisonment for a term exceeding six months or to transportation;"

Shri Dabir says that here we have a provision in law for the time being in force which creates ineligibility for membership of a local authority, namely, the Janpada Sabha. He says this disability must be read by virtue of Clause (j) of Section 15 of the C. P. and Berar Municipalities Act into that Act. The trouble, however is that there are other Acts in which a similar disability has been created, but in entirely different terms.

In the C.P. and Berar Panchayat Act, 1946, the disability is created against a person who has been convicted by a Court in India of any offence and sentenced to transportation or imprisonment for not less than two years, unless a period of five years or such less period as the State Government may allow in any particular case, has elapsed since his release.

8. In the Nagpur Improvement Trust Act, 1936, the disability is that the person has been sentenced by a criminal Court to imprisonment for a term exceeding six

months or to transportation, of has been ordered to find security for good behaviour under the Code of Criminal Procedure, such sentence or order not having subsequently been reversed or remitted or the offender pardoned. If one goes to other statutes, like the Nyaya Panchayat Act and the Corporation Act, one finds conflicting provisions on the subject.

9. Shri Dabir says that the cardinal rule of interpretation is that one must go by the letter of the law and must not try to avoid the inconvenient consequences that the interpretation might lead to. He says if the letter of the law is quite clear, we must give effect to the meaning underlying those words and should not concern ourselves with the question whether any inconsistency or absurdity is created.

On the other hand the learned Advocate-General and Shri Singhal contend that in interpreting the words "any local authority" we must bear in mind the entire scheme of legislation under the various Acts and also Acts like the Provincial Insolvency Act in which disabilities are also created, and then decide what is the meaning which should be given to this phrase.

10. The rule of interpretation was stated by Lord Blackburn in *Mayor and C. of Portsmouth v. Smith* (1885) 10 AC 364 (A). In that case it was laid down that where a single section of an Act of Parliament is introduced into another Act by reference, the entire scheme of the Act must be seen to know in what sense that section must be understood.

It is obvious that the introduction of Clause (j) of Section 15 in the C. P. and Berar Municipalities Act may bring in its pale not only statutes like those creating local authorities but also general statutes like the Provincial Insolvency Act. It is also clear on a reading of Section 73 of the Provincial Insolvency Act that the phrase "any local authority" there cannot but mean all local authorities. The question is whether a similar meaning should not be assigned to the phrase in Clause (j) of Section 15 of the C. P. and Berar Municipalities Act.

11. Now, of these two different meanings, viz., that the word "any" means all local authorities viewed together, or all local authorities viewed separately, we think that the better view would be to give the phrase a meaning uniform with the phrase in the Provincial Insolvency Act. Our attention was also drawn during the course of argument to a decision of a Division Bench of the Nagpur High Court in *Shri Baburao Pandurangji v. State of Madhya Pradesh*, (M.P. No. 15 of 1954 dated 19th April 1954) (B). There the learned Judges laid down that in Clause (j) the intention is only to allow ineligibility created by a general statute in respect of all local authorities to be brought in by reference. Their Lordships on that occasion were not prepared to hold that disabilities created by other statutes setting up local authorities were meant.

12. A glance at the sections creating disqualifications in the various local authorities is very, illuminating. In one of the Acts the disqualification is against lepers. In another statute the disqualification is against lepers suffering from

leprosy of an infectious type. Both the statutes, however, have the same phrase that the disqualification for the time being existing in any statute in relation to any local authority is to be read as part of that statute.

It is obvious that the clause cannot be read as incorporating conflicting terms. Similarly, one notices that though there is the clause incorporating disqualification from other statutes, the disqualification arising from insolvency is also expressly mentioned. From this it appears that these clauses were not drawn up with meticulous care to be mutually exclusive but were designed to create disqualifications for different local authorities in different circumstances.

13. In the present case we have the C. P. and Berar Municipalities Act, and it includes within itself several clauses creating disqualifications for membership. Among them one clause which was previously existing has been deleted. If there had been nothing, as we have already said, the intention would clearly be to remove that disqualification from the list. If the disqualification was to be subsisting, there was no need for removing it.

The fact that general clause bringing in disqualifications from the other statutes was already there, does not show that the removal was merely to avoid an overlap. In our opinion, the intention was to remove this disqualification completely from the C.P. and Berar Municipalities Act and that no reliance can be placed upon the general Clause (j) for bringing in that disqualification from other statutes, particularly as these statutes among themselves are conflicting and make radically different provisions on the subject.

No doubt it is possible to find out highest common measure from all these statutes and to apply it to the C.P. and Berar Municipalities Act. But we do not think that the intention of the Legislature in incorporating that general clause was to make people embark upon an analysis of all the statutes existing on the subject of local authorities to find out what is the highest common measure or the lowest common multiple on any particular subject. We do not think that that clause was meant for this purpose.

14. We agree with the Division Bench that that clause was meant to bring in the disqualification from the general statutes like the Insolvency Acts creating disability for all local authorities, viewed as a whole. In our opinion, therefore, the phrase "any local authority" must be given the meaning "each and every local authority" and not any individual local authority with special rules of its own. In other words, we approve of the decision of the Division Bench and respectfully affirm it.

15. We cannot leave this case without saying that the Legislature would be well advised in using some phrase other than the one which is used in Clause (j) of Section 15 of the C.P. and Berar Municipalities Act. No doubt, this decision will set at rest this controversy; but the phrase itself is of dubious import, and one has to go very deep before the meaning can be gathered. We cannot do better than reiterate the caution which Lord Blackburn has voiced in the first cited case

(Mayor & C. of Port-mouth v. Smith (A));

"It is a dangerous mode of draftsmanship to incorporate a section from a former Act, for unless the draftman has a much clearer reflection of the whole of the former Act than can always be expected, there is great risk that something may be expressed which was not intended."

It is better, when there is a reference to other statutes, to state the limits within which that incorporation by reference is to apply. If this were done, all such controversies would be avoided in future.

16. The result of our decision, therefore, is that the petition must fail. It fails and is dismissed; but in the circumstances of the case we make no orders about costs.