
(1956) 06 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No. 87/5 of 1956

Mahenderjee

APPELLANT

Vs

L. Ram Naidu and Others

RESPONDENT

Date of Decision : 19-06-1956

Acts Referred:

Constitution of India, 1950 — Article 226
Hyderabad Municipal Corporation Act, 1956 — Section 124, 126, 127, 22, 22(1)
Hyderabad Municipal Corporation Rules — Rule 6
Transfer of Property Act, 1882 — Section 107, 107(2), 108

Citation : (1956) 06 AP CK 0003

Hon'ble Judges : Palnitkar, C.J; Bilgrami, J

Bench : Division Bench

Advocate : V. Venkateshwarlu, for the Appellant; N.S. Raghavan, General, D.M. Deshmukh Sivaram Sastri and Ahmad Ali Khan, for the Respondent

Final Decision : Allowed

Judgement

Bilgrami, J.—This is an application for issue of an appropriate Writ against the order of the Returning Officer, Respondent No. 5, dated 29-5-1956 rejecting the nomination paper of the Writ-Petitioner and against an appellate order of the Chief Judge of the Small Cause Court, Respondent No. 6, dated 12-6-1956 affirming in appeal the decision of the Returning Officer. The Applicant Mahenderji wanted to stand as a candidate for election to the councillorship of the Municipal Corporation from the Gulbagh Constituency. His nomination paper was rejected by Respondent No. 5 the Returning Officer on the ground that he had taken on lease 2 malgies belonging to the Municipal Corporation Nos. B-6-193 and 198 situate in Sultan Bazaar on Rs. 30 and Rs. 20 rent per mensem and was in occupation thereof since the last 8 years and is thus disqualified u/s 22(l)(h) of the Hyderabad Municipal Corporation Act II of 1956 from being elected as a councilor.

The fact that he is a lessee of these malgies is not denied by the writ-Petitioner. The grounds on which he seeks to impeach the orders impugned are:

1. that he is exempted from the disqualification by the provisions of Section 22(2) (b) of the above Act;
2. that he cannot be said to have any interest in the contract as required by Section 22(1)(h) because "interest" means "financial interest" where there is profit or hope of profit; and
- (3) that the contract contemplated u/s 22 (1)(h) is an executory contract and a lease by its very nature cannot be included in that category.

None of the Respondents have filed an answer accompanied by an affidavit as required under Rule 6 of the Notification of this High Court No. Con/LR/279/54 dated 28-8-1954. The learned Advocate who appeared on behalf of the Municipal Corporation has only filed a letter of the Municipality dated 29-5-1956 saying that it has certified that the Writ Petitioner Mahenderji has been given Malgies Nos. B-6-193 and 198 on a rent of Rs. 20 and Rs. 30 per month. The learned Advocate appearing on its behalf has stated that the Corporation has no interest in the issue of the case. Considering the importance of the question of law involved, the Advocate General was given notice and he appeared.

2. An objection has been raised by the learned Advocate of Respondent No. 4 that the statute itself provides Anr. remedy as complete and efficacious as a Writ u/s 79 of the Act under which the aggrieved party whose nomination paper has been rejected can get the matter referred to the Election Tribunal and that therefore a Writ cannot be issued in this case. Reliance is placed on Sub-section (2), Clause (c) of the Section which inter alia provides that the Tribunal shall declare the election to be void for non-compliance with the provisions of the Act. It is argued that a decision of the Returning Officer improperly rejecting a nomination paper affects the election and that a rejection based on a wrong interpretation of any provision of Section 22 will fall under this section find the matter is (sic) at the instance of the aggrieved party to the Election Tribunal.

We are unable to accept this contention in view of the provisions of Sub-section (10) of Section 42 which provides that subject to the decision of the Judge on appeal, the decision of the Returning Officer accepting or rejecting the nomination of a candidate shall be final and conclusive and shall not be called in question in any Court or Tribunal including the Election Tribunal. This leaves no room for interpreting Section 79(2)(c) in a manner as to confer right to get the matter referred to a Tribunal of a person whose nomination paper has been accepted or rejected.

Section 42(10) in express words bars such a remedy. The learned Advocate-General has candidly conceded that this objection raised by the Advocate of Respondent 4 cannot be supported in view of the express provisions above referred to in Section 42(10). We therefore overrule this objection and do not think that it can operate as a bar to the issue of a writ. Section 42 (10) though it ousts the jurisdiction of the Court cannot protect the decision of the Returning Officer or the Court of Appeal from exercise of the extraordinary powers with

which the High Court is invested under Article 226 of the Constitution for issue of a Writ.

3. We shall now deal with the merits of the case. The learned advocate of the writ-Petitioner Sri Venkateshwarlu's first contention is that Clause (h) of Section 22(1) cannot have any application to this case because it refers to persons having interest in any contract and lease is not a contract. This contention rests on two points: (1) that by the contract is evidently meant an executory contract under which the candidate can derive profits. The lease is an executory contract under which a tenant pays rent, and there is no question of profit; (2) that a contract is subject to the provisions of Sections 124, 126 and 127 whereas a lease is not. The procedure and conditions laid down under these sections have not been complied with in the case of the lease in question in the present case. Whatever the logical merits of this contention may be, it is not necessary in this case to decide the point that it raises in view of the wording of Clause (2) of Section 22 which runs as follows:

A person shall not be deemed to have incurred disqualification under Clause (h) of Sub-section (1) by reason only of his....

(a) receiving pension from the Corporation;

(b) having any share or interest in....

This Sub-section enumerates the exceptions from the application of Clause (h) of Sub-section (1). Among these, a mention of lease is made in Clause (b)(i) and Clause (c). This plainly meant that the lease was included in the contract, for otherwise there would be no sense in mentioning the lease among the exceptions to the application of Clause (h). In this view of the matter this contention of the writ Petitioner's learned advocate cannot be accepted.

4. We shall now proceed to consider whether a lease of the nature which the writ Petitioner has taken from the Corporation can fall under the exceptions given in Sub-section (2) of Section 22. Sri Deshmukh for Respondents Nos. 1 to 4 contends in this behalf that a lessee has only an interest in the property and cannot be said to have any interest in the lease. It is the lessor alone who has an interest in the lease. Therefore, he contends, that the exception mentioned in Clause (b)(i) & (c) can only apply if the Corporation is a lessee of the candidate and not to a case where the candidate himself is a lessee. This is the view on which the judgment of the appellate Court is based.

We fail to appreciate the reasoning on which this proposition is based. A lease is a bilateral transaction which gives rise to certain liabilities and duties both on the part of the lessor and the lessee as specified in Section 108 of the Transfer of Property Act. u/s 107 of the same Act it is made necessary when an instrument is executed in cases of lease for a period of a year or more that they should be executed both by the lessor and the lessee.

In view of this, it cannot be said that a lessee] has no interest in the lease. The

distinction which Sri Deshmukh wants us to draw between "interest in the property" and "interest in the lease" in our opinion is not valid for the purpose of deciding this case. The Advocate General also does not support this contention advanced on behalf of Respondents 1 to 4 and we find no force in it. The Advocate General however argues that the words "any share" or "interest" which occur in Clause (b) of Sub-section (2) only cover such cases in which the lessee has some share or interest and according to him if a lessee holds the entire lease and not merely a share or interest therein, he cannot fall under the exceptions.

He points out that if every lease fell under the exceptions by virtue of Sub-section (2)(b)(i) then Clause (c) of Sub-section (2) will become redundant because if every lease was excepted then there was no point in expressly exempting a tenant who takes a premises from the Corporation for the purposes of residence as is done in Clause (c). It is true that an interpretation which renders any provision of the Act nugatory or redundant should be avoided, but if avoiding this necessitates giving the words a sense different from the ordinary and doing violence to the language of the enactment, great caution is necessary.

This should only be done when it is absolutely unavoidable and necessary. If a course is open by which this can be avoided that course should be adopted. In our judgment, to say that an interest in a lease does not include having lease of the property will be highly illogical and unreasonable. It can hardly be said that a person having a lease has no interest in it. We think that in the present case it is possible to avoid such an interpretation.

It appears also possible that the legislature out of abundant caution in order to dispel any doubt that a tenant in actual occupation of the premises for the purposes of personal residence is also included in the exception has enacted it in Clause (c). The above discussed provisions of Section 22 unfortunately are couched in such terms that we are faced with the necessity of either interpreting interest in the property not to include the lease thus to avoid redundancy of Clause (c) or attributing the reasons stated above for the existence of Clause (c).

We think that it will be more in accordance with the well-established canons of interpretation to choose the latter alternative as there exists some reason by which this apparent redundancy of Clause (c) can be explained. As was laid down in *Re: Hall* (1888) 21 QBD 137 (A), a very strong case of injustice arising from giving the language of an Act its natural meaning must be made out before the Court will consider a section in a way contrary to the natural meaning of the language used.

Thus taking the words "Interest in the lease" in their ordinary sense and attaching to them the natural meaning, we think that they include "lease" of the kind which the writ Petitioner holds and in our opinion his case clearly falls within the exceptions given in Section 22(b)(i) and he cannot be disqualified from standing as a candidate for election as a councillor under Clause (h) of Sub-section (1) of Section 22.

We are therefore of opinion that the rejection of his nomination paper on the ground on which the orders impugned proceed is clearly wrong. The error on which they are based is so patent and manifest that issue of a Writ is justified.

5. We therefore allow this Writ application and quash the orders of the Returning Officer dated 29-5-1956 and the appellate Court dated 12-6-1956 rejecting his nomination paper. We declare that the Petitioner is competent to contest the election and his nomination is valid provided there be no other disqualification. Considering the circumstances of the case, we do not award him any costs.