

(2015) 10 KL CK 0116

In the High Court Of Kerala

Case No : W.A. No. 2113 of 2015 in W.P.(C). 14893/2012

N.K. Pavithran and Others

APPELLANT

Vs

M. Nandakumar and Others

RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Kerala Local Authorities (Prohibition of Defection) Act, 1999 — Section 3, 3(1)(a), 4, 4(1), 4(2)
Representation of the People Act, 1951 — Section 10A, 123, 28A, 8A, 8A(1)

Citation : (2015) 4 KLT 900

Hon'ble Judges : Ashok Bhushan, C.J. and A.M. Shaffique, J.

Bench : Division Bench

Advocate : S. Sreekumar, Senior Advocate, P. Martin Jose, P. Prijith and Thomas P. Kuruvilla, Advocates, for the Appellant; Philip T. Varghese, Thomas T. Varghese and Achu Subha Abraham, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, C.J.

1. The short question involved in this writ appeal is as to whether after defection of an elected member of Municipality, the disqualification for a period of six years shall commence from the date of the order passed by the State Election Commission or the said period shall commence from the date of expiry of tenure of the local body. The short facts of the case are:

The petitioners and 1st respondent were Councilors of Kalamassery Municipality for the years 2000-05. They contested election in 2000 as official candidates of Indian National Congress, which is a constituent unit of United Democratic Front (UDF). The 1st respondent filed petitions before the State Election Commission under Sections 3 and 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 alleging that the petitioners violated the whip and ceased to be member of Indian National Congress.

2. The respondents filed their objection in the above petitions. The State Election Commission, by its judgment dated 12.06.2012, decided both the petitions, O.P. Nos. 174 and 175 of 2004, holding that the respondents, (petitioners in the writ petition) by their conduct of having contested and voted against the official candidate of the Congress Party and having violated the decision of the Congress party in the election to the post of Chairperson held on 06.12.2004 to Kalamassery Municipality, have committed defection as provided by the first limb of Section 3(1)(a) of the Act, so they are liable to be disqualified as prayed for. The operative portion of the order dated 12.06.2012 reads as follows:

"In the result these petitions are allowed and the respondents are declared as disqualified for being the Councilors of Kalamassery Municipality and they are further disqualified from contesting as candidates in any election to any local authority for a period of 6 years from this date as provided by Section 4(3) of the Act. The parties shall bear their respective costs."

3. Challenging the above order of State Election Commission, W.P.(C) No. 14893 of 2012 was filed by the disqualified candidates. The learned Single Judge, vide its judgment dated 08.09.2015, has dismissed the writ petition upholding the order of State Election Commission. This Writ Appeal has been filed by both the writ petitioners challenging the order of learned Single Judge as well as the order of State Election Commission.

4. Sri. S. Sreekumar learned Senior counsel appearing for the appellants raised only one submission, i.e. the disqualification of the appellants shall not continue beyond six years of the expiry of tenure of Municipality. He submits that the tenure of Municipality having come to an end in 2005, the disqualification ordered by the State Election Commission for a period of six years shall come to an end in 2011 and as on date the appellants are not disqualified to be the member of the local authority. It is submitted that Section 4(3) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 provides for consequences of a decision taken by the State Election Commission to disqualify a member as per sub-section (2). It is submitted that the consequence is that he shall be ceased to be a member from the date of such decision and shall be disqualified for contesting as a candidate to any local authority for six years from that date. It is submitted that since the emphasis in Section 4(3) is that the member shall be ceased to be a member "from the date of such decision", in the present case on the date of judgment by the State Election Commission, the tenure of Municipality having already come to an end, including the six years of disqualification, the disqualification cannot operate as on date. It is submitted that the object of Section 4(3) of the Act is to disqualify a member from the membership in question as well as for next six years. He submits that the period of "next six years" cannot go beyond six years after the completion of tenure of the Municipality.

5. The submission made by learned counsel appearing for the appellants has been refuted by Sri. Murali Purushothaman, learned Standing Counsel appearing

for the State Election Commission. He submits that the disqualification of six years shall commence from the date of order of the State Election Commission, which is the intent and purpose of Section 4(3) and the mere fact that the tenure of the Municipality has come to an end, has no consequence. Learned counsel appearing for 1st respondent Sri. Philip T. Varghese also supported the submission of learned Standing Counsel for the State Election Commission.

6. We have considered the submissions of learned counsel for the parties and perused the records.

7. The only question which has been raised in the appeal is regarding the date on which the disqualification of 6 years as contemplated under Section 4(3) shall begin. The Kerala Local Authorities (Prohibition of Defection) Act, 1999 has been enacted to prohibit defection among members of local authorities in the State of Kerala and to provide for disqualification of the defecting members for being members of the local authorities. Section 3 provides disqualification on the ground of defection. Section 4 provides for decision on question as to the disqualification on ground of defection. Section 4 which is relevant for the present case is quoted below:

"4. Decision on question as to disqualification on ground of defection:- (1) If any question arises as to whether a member of a local authority has become subject to disqualification under the provisions of this Act a member of that local authority or the political party concerned or a person authorised by it in this behalf may file a petition before the State Election Commission for decision.

(2) The State Election Commission shall, after making such enquiry as it deems necessary, decide whether such member has become subject to such disqualification or not and its decision thereon shall be final.

(3) Where the State Election Commission decides that a member has become subject to disqualification under sub-section (2), he shall cease to be a member from the date of such decision and shall be disqualified for contesting as a candidate in an election to any local authority for 6 years from that date."

8. Section 4(1) provides that if any question arises as to whether a member of a local authority has become subject to disqualification under the provisions of the Act, a person in this behalf may file a petition before the State Election Commission for decision. Section 4(2) provides that the State Election Commission after making such enquiry as it deems necessary, shall decide whether such member has to be subjected to such disqualification or not. Section 4(3) provides that where the State Election Commission decides that a member has become subject to disqualification under sub-section (2), following consequences shall follow: a) he shall cease to be a member from the date of such decision and b) he shall be disqualified from contesting as a candidate in an election to any local authority for 6 years from that date.

9. The above two consequences have been mandated by using the word "shall"

and joined by conjunction "and". Thus both consequences shall take place consequent to the decision of State Election Commission that a member has become subject to disqualification. As noted above, in the first consequence as provided, consequent to the disqualification the legislature used the words "from the date of such decision" and at the end of the sentence while providing the second consequence, have used the words "from that date". Thus disqualification for contesting as a candidate in an election to any local authority for six years is contemplated from the date of such decision. The words "the date of such decision" obviously refer to the decision by the State Election Commission. The submission of learned counsel for the appellants is that since on the date of decision the appellants have already ceased to be a member of local authority, its term having come to an end, there shall be no further disqualification for six years, since the tenure of the local authority expired in 2005 and six year period had also come to an end in the year 2011. Thus the order of State Election Commission cannot further disqualify the petitioners for a further period of six years.

10. The above submission cannot be accepted in view of the plain and grammatical meaning of words used in Section 4(3) by the legislation. Accepting the above submission shall mean that the words "from that date" used at the end of the Section should be treated as superfluous. The well settled rule of statutory interpretation is that legislature does not use a superfluous word nor does it waste a word. The words used in the legislation themselves reflect the object and intention of the legislature and object and intention of the legislature has to be found out from the words used therein. When Section 4(3) clearly contemplates two consequences mandatorily, the mere fact that the first consequence, that he shall cease to be a member from the date of such decision is not applicable on account of tenure having come to an end in no way militates against the applicability of the second consequence that he shall be disqualified for contesting as a candidate for any local authority for six years from that date. Both the above consequences are independent consequences and have been provided with different object and purpose.

11. In this context reference is made to a Constitution Bench judgment of the Apex Court in Union of India (UOI) and Another Vs. Hansoli Devi and Others, . The Apex Court held that it is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the Court must give effect to the words used in the statute and it would not be open to the Courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. It is useful to quote the observation of the Constitution Bench made in paragraph 9 of the judgment:

"9. Before we embark upon an inquiry as to what would be the correct interpretation of S.28A , we think it appropriate to bear in mind certain basic principles of interpretation of statute. The rule stated by Tindal, C.J in Sussex

Peerage case, (1844) 11 Cl & F.85, still holds the field. The aforesaid rule is to the effect:

"If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver."

It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In *Kirknes v. John Hudson & Co. Ltd.*, 1955 (2) ALL ER 345, Lord Reid pointed out as to what is the meaning of "ambiguous" and held that-

"A provision is not ambiguous merely because it contains a word which in different context is capable of different meanings and it would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is, in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning."

It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute. Patanjali Sastri, C.J. in the case of *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, had held that it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In *Quebec Railway, Light Heat & Power Co. v. Vandray*, AIR 1920 PC 181, it had been observed that the Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons."

12. The date of decision as contemplated under Section 4(3) has its own purpose and object. Till a decision is taken by the State Election Commission the member whose disqualification is under question, is under no disability to continue as member or to function as a member. The disability arises only when a declaration is made by the State Election Commission. When a declaration is made that a member has defected and he has committed a prohibited act of defection, consequence has to follow therefrom. Further disqualification for a period of six years from the date of decision has been consciously provided which is to take effect from the date of the decision of State Election Commission. When the State Election Commission takes a decision that a member is disqualified, the sting of the decision cannot be obviated by a member on the ground that the tenure of the Municipality has come to an end as well as six years of

disqualification thereafter. The purpose and object provided for two disqualifications shall be defeated in the event it is accepted that if after expiry of the tenure of local body, six years have been elapsed, disqualification shall no more be in operation.

13. To accept the interpretation put by learned counsel for the appellant we have to do violence to the words of sub-section (3) of Section 4 . Learned counsel for the petitioner further contended that permitting disqualification for six years from the date of decision is nothing but double jeopardy since the six years period of disqualification as well as the period of tenure of the local body has already been over. There is no question of any double jeopardy in the facts of the present case. When two consequences/punishments have been provided for the prohibited act and both are contemplated to operate, it cannot be said that any principle of double jeopardy is involved in providing two consequences. The submission on the ground of double jeopardy is wholly misconceived and cannot be accepted.

14. There are other provisions in different Statutes providing for disqualification from the date of decision. In this context the provisions of the Representation of the People Act, 1951 are to be referred. Chapter II of the Representation of the People Act, 1951 (hereinafter referred to as "1951 Act") provides for trial of election petitions. Election petitions against a Member of Legislative Assembly or Member of Parliament are to be tried by High Court. Section 98 provides for decision of the High Court. Section 99 further provides that High Court while making an order under Section 98 shall also make following order. Section 99(1) (a) is quoted below:

"99. Other Orders to be made by the High Court. - (1) At the time of making an order under Section 98 the High court shall also make an order-

a) Where any charge is made in the petition of any corrupt practice having been committed at the election, recording-

(i) finding whether any corrupt practice has or has not been proved to have been committed at election, and the nature of that corrupt practice; and

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice;"

15. Section 123 of 1951 Act provides for corrupt practices. Section 123 enumerates circumstances when the said act shall be deemed to be corrupt practices. Section 8A provides for disqualification on the ground of corrupt practices. Section 8A also contemplates disqualification when a candidate is found guilty of corrupt practices by an order passed by the High Court under Section 99 . Section 8A contemplates disqualification not exceeding six years from the date on which the order made in relation to him under Section 99 takes effect. Section 8A(1) is as follows:

"8A. Disqualification on ground of corrupt practices. - (1) The case of every

person found guilty of a corrupt practice by an order under Section 99 shall be submitted, as soon as may be within a period of three months from the date such order takes effect, by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period:

Provided that the period for which any person may be disqualified under this subsection shall in no case exceed six years from the date on which the order made in relation to him under Section 99 takes effect."

16. Section 10A is another circumstance when Election Commission can declare a candidate as disqualified for a period of three years from the date of the order. Section 10A is quoted as below:

"10A. Disqualification for failure to lodge account of election expenses. - If the Election Commission is satisfied that a person-

(a) has failed to lodge on account of election expenses, within the time and in the manner required by or under this Act, and

(b) has no good reason or justification for the failure, the Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of three years from the date of the order."

17. Thus the disqualification under the 1951 Act is also contemplated from the date of the order of the High Court under Section 99 as well as the order of the State Election Commission under Section 10A . Thus disqualification barring the candidate for a period of 6 years/3 years takes place from the date of the order. The scheme delineated by Section 4(3) is similar with the law regarding disqualification as contained in the 1951 Act. Provisions of 1951 Act as referred above reinforces our opinion that disqualification for a period of six years shall commence from the date of the order passed by the State Election Commission. Thus we hold that writ petitioners/appellants were disqualified to be a member of any local authority for a period of six years with effect from 12.06.2012, i.e. the date of order of State Election Commission.

In view of the forgoing discussions we dismiss the Writ Appeal.