

(2015) 06 KAR CK 0310

In the Karnataka High Court

Case No : Writ Petition No. 8194 of 2015 (LB-ELE)

Palakshamma

APPELLANT

Vs

Karnataka State Election Commission, Bangalore and Others

RESPONDENT

Date of Decision : 11-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 110, 117

Karnataka Panchayat Raj Act, 1993 — Section 128, 128(1), 128(1)(i), 129(2), 133

Citation : (2015) 4 AKR 418 : (2015) ILR Kar 3395 : (2015) 4 KarLJ 552

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Advocate : M. Aswathanarayana Reddy, for the Appellant; Aswathappa, Additional Government Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

R.S. Chauhan, J—The petitioner-Smt. Palakshamma, is aggrieved by the order dated 13-2-2015 passed by the Karnataka State Election Commission, whereby, the learned Commissioner has disqualified the petitioner as Panchayat Member of the Davanagere Taluk Panchayat. It is the case of petitioner that she was elected as Taluk Panchayat Member of Davanagere Taluk Panchayat. However, on 12-11-2013, one Sri Chinnasamudra Shekar Naik filed a complaint against her before the Election Commission wherein, he has alleged that ever since the petitioner has become a member of the said Grama Panchayat, her husband, G.N. Sangappa, and her brother, H.B. Shivamurthy are repeatedly being given contracts for carrying out works under the Panchayat. Therefore, she should be disqualified under Section 128(1) of the Karnataka Panchayat Raj Act, 1993 ("the Act", for short).

2. Subsequently, a notice was issued to the petitioner. The petitioner did appear before the Election Commissioner, and filed her reply to the application. In her reply, she has pleaded that her husband G.N. Sangappa has been a Class-I PWD Contractor since 1987. Neither he, nor she have misused their position in order

to unduly favour her husband in the work contracts granted by the Taluk Panchayat. Similarly, she pleaded that her brother, H.B. Shivamurthy has been a contractor since 2005. And no favour has been shown towards Mr. H.B. Shivamurthy while Taluk Panchayat granted him some contract. In fact, the complainant (respondent 2) happened to her husband's friend; they were partners in the contract work. But because differences had arisen between the two, the respondent 2 had filed a false complaint against her.

3. During the course of the proceedings, respondent 2 was examined as P.W. 1, and he was cross-examined by the petitioner. Eventually, after hearing both the parties, by order dated 13-2-2015, the respondent 1 has disqualified the petitioner in terms of Section 129(2) of the Act. Hence, this petition before this Court.

4. Mr. M. Aswathnarayana Reddy, the learned Counsel for petitioner, has vehemently contended that Section 128 of the Act deals with disqualification of members. If the member has directly any share or interest in any work done by order of the Taluk Panchayat or in any contract or employment with or under or by or on behalf of the Taluk Panchayat, or if he is either directly or indirectly by himself or by his agent or partner or employee involved in obtaining or execution of any such work or contract on behalf of the Taluk Panchayat or of any contract for the supply of any goods and services to the Taluk Panchayat.

According to the learned Counsel, the husband does not fall in any of the categories of "agent", "partner" or an "employee". Therefore, the petitioner could not have been disqualified under Section 128(1) of the Act.

Secondly, Section 129(2) of the Act stipulates that in case a report is made to the State Election Commission, after giving a reasonable opportunity of hearing to the member concerned, the State Election Commission shall declare whether the seat of the member concerned is or has become vacant. However, no such opportunity has been given to the petitioner.

Thirdly, the Election Commissioner has not applied his mind to the contentions raised by the petitioner. Therefore, the impugned order is a non-speaking one; it is liable to be set aside.

5. Heard the learned Counsel for petitioner.

6. Section 128 of the Act reads as hereunder:

"128. Disqualification for members.--(1) A person shall be disqualified for being chosen and for being member of a Taluk Panchayat.--

(a) if he is so disqualified by or under any law for the time being in force for the purposes of the elections to the State Legislature:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years, if he has attained the age of twenty-one years;

(b) if he is disqualified under the Karnataka Local Authorities (Prohibition of Defection) Act, 1987; or

(c) if he has been sentenced by a Criminal Court to imprisonment for a term exceeding three months in respect of an offence under the Karnataka Excise Act, 1965 (Karnataka Act 21 of 1966), such sentence not having been subsequently reversed or quashed or the offence pardoned; or

(d) if an order has been passed against him under Section 117 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), in proceedings instituted under Section 110 of the Code, such order not having been subsequently reversed or quashed; or

(e) if he has been dismissed from service under any local authority; or

(f) if, having been a legal or medical practitioner or a chartered accountant he has been disenrolled or suspended by order of a Competent Authority, the disqualification in the latter case being operative during the period of such suspension; or

(g) if he has been removed from membership of any local authority; or

(h) if he holds any office of profit under any local or other authority subject to the control of the Central Government, the Government of Karnataka or the Government of any other State, other than such offices as are declared by rules made under this Act not to disqualify the holder;

Explanation.--For the purpose of this clause a person shall not be deemed to hold an office of profit under the Zilla Panchayat, Taluk Panchayat or Grama Panchayat by reason only that he is an Adhyaksha or Upadhyaksha of Zilla Panchayat, Taluk Panchayat or Grama Panchayat;

(i) if save as hereinafter provided, he has directly, any share or interest in any work done by order of the Taluk Panchayat or in any contract or employment with or under or by or on behalf of the Taluk Panchayat; or if he is either directly or indirectly by himself or by his agent or partner or employee involved in obtaining or execution of any such work or contract on behalf of the Taluk Panchayat or of any contract for the supply of any goods and services to the Taluk Panchayat; or

(j) if he does not have a sanitary latrine for the use of the members of his family:

Provided that nothing in this clause shall apply to a person, if at the time of filing his nomination he gives an undertaking to construct within one year from the date of commencement of his term of office as a member, a sanitary latrine for the use of members of his family and also complies with such undertaking after becoming a member;

(j-1) if he is disqualified under Section 308-C; or

(k) if he is employed as paid legal practitioner on behalf of the Taluk Panchayat

or accepts an employment as legal practitioner against the Taluk Panchayat:

Provided that.--

(a) the disqualification in clause (d) will cease to operate after the expiry of the period during which a person is ordered to furnish security;

(b) the disqualification in clause (c), (e) or (f) will cease to operate after the expiry of five years from the date of such sentence, dismissal or disenrollment;

(c) the disqualification in clause (g) will cease after the expiry of five years from the date of such removal;

(cc) the disqualification under clause (j-1) will cease to operate after the expiry of three years from date of order by the State Election Commission under Section 308-C;

(d) a person shall not be deemed to have incurred disqualification under clause (i) by reason of his. --

(i) having a share in any joint stock company or a share or interest in any association registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act 17 of 1960), or in any co-operative society, which shall contract with or be employed by or on behalf of the Taluk Panchayat; or

(ii) having a share or interest in any newspaper in which any advertisement relating to the affairs of the Taluk Panchayat is inserted; or

(iii) holding a debenture or being otherwise concerned in any loan raised by or on behalf of the Taluk Panchayat.

(2) If a person who is chosen as a member of a Taluk Panchayat is or becomes a member of the House of the People, the Council of States, the State Legislative Assembly, the State Legislative Council, or is or becomes a Municipal Councillor or a Councillor of a Municipal Corporation or a Councillor of a Town Panchayat or a member of a Zilla Panchayat or Grama Panchayat then at the expiration of a period of fifteen days from the date of notification of the names of the members under Section 133, or as the case may be, within fifteen days from the date of commencement of term of office of a member of the House of the people, the Council of States, the State Legislative Assembly or the State Legislative Council or a Municipal Councillor or a Councillor of a Municipal Corporation or a Councillor of a Town Panchayat or a member of a Zilla Panchayat or Grama Panchayat his seat in the Taluk Panchayat shall become vacant unless he has previously resigned his seat in the House of the People, the Council of States, the State Legislative Assembly, the State Legislative Council, the Municipal Council, the Municipal Corporation, Town Panchayat, Zilla Panchayat or Grama Panchayat, as the case may be".

7. The purpose of Section 128(1) is to ensure that favouritism, nepotism and corruption are rooted out from the grassroot level of Panchayat. The provision

has, thus, been worded in wide terms, Section 128(1)(i) of the Act is not just restricted to directly having any interest in any work done by order of the Taluk Panchayat, but also extends to "indirectly involved on obtaining any such work or contract on behalf of the Taluk Panchayat". Whether a person was or is "indirectly involved" is a question of fact which can be inferred from circumstantial evidences. Chances are that there may not be any direct evidence of indirect involvement. Therefore, the contention raised by the learned Counsel for the petitioner that the petitioner is neither "the agent", nor "an employee", nor "a partner" of her husband and thus does not fall within the ambit of Section 128(1)(i) of the Act is unacceptable. Being the wife, she may be "indirectly involved" in obtaining any such work or contract on behalf of the Taluk Panchayat. Hence, she would be included within the ambit of Section 128(1)(i) of the Act.

8. A perusal of the impugned order clearly reveals that the petitioner's husband was granted sixteen different contracts for construction, drainage, road concrete, high-tech toilets. For each construction he had been paid hefty sums, ranging from Rs. 1,63,790/- to Rs. 6,30,761/-. Although the petitioner's husband may have been a contractor since 1987, but, according to Section 128(1)(i) of the Act, the petitioner should not have indulged in grant of contract to her husband through Taluk Panchayat as long as she held the public office of a panch. Therefore, obviously, the requirement of Section 128(1)(i) of the Act has been fulfilled in the present case.

9. As far as the second contention of the learned Counsel is concerned, that the petitioner was not granted ample opportunity, the said contention is belied by the order itself. According to the order, the petitioner had filed her objections to the complaint filed by respondent 2. On 6-1-2015, the petitioner had cross-examined the complainant. There is no evidence to show that petitioner had prayed for time for producing any witnesses or documents from her side. Thus, she had fully participated in the proceedings. Therefore, she cannot claim that opportunity of hearing has been denied to her. Hence, the plea raised by the learned Counsel for petitioner is unacceptable. Lastly, mere perusal of the impugned order clearly reveals that the learned Election Commissioner has dealt with the evidence adduced by both the sides. He has even delineated about the large number of contracts which were granted to the petitioner's husband on behalf of the Taluk Panchayat. Thus, he has concluded that the provisions of Section 128(1)(i) of the Act were violated. On the other hand with regard to the allegation that favours were shown to her brother, he has concluded that no evidence has been produced by the complainant that H.B. Shivamurthy happens to be the brother of the petitioner. Therefore, he did not believe this part of the complaint, and has given a finding in the negative. Thus, the impugned order has been passed after due application of mind and after discussing complete evidence adduced by both the parties. It is, indeed, a fair and a balanced order. It is legally void.

Thus, for the reasons stated above, this Court does not find any illegality or

perversity in the impugned order. This petition is devoid of merit. It is hereby dismissed.