
(1959) 12 KL CK 0025
In the High Court Of Kerala
Case No : O.P. No. 547 of 1959

Parameswaran Pillai and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 22-12-1959

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1960) KLJ 266

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : S. Narayanan Potti and G. Viswanatha Iyer, for the Appellant; C.M. Kuruvilla Government Pleader for Respondents 1 and 2 and T.K. Narayana Pillai (N) for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

Velu Pillai, J.—The two petitioners were elected in the year 1952, as members of Kadakkal Panchayat represented by its Executive Authority, respondent 2 herein. Six out of the nine members of the Panchayat, including the petitioners, had tabled a no-confidence motion against the third respondent, the President of the Panchayat. Thereupon, the third respondent issued two memos, Exts. P. I and P. 2 to the petitioners, alleging, that they were disqualified from holding office as members of the Panchayat u/s 16 (1) (h) of the Travancore Cochin Panchayats Act, 1950, hereinafter referred to as the Act, by reason of the default of each of them in the payment of the house tax due from him before the due date. The petitioners, who did not admit default, moved, the Director of Panchayats and the first respondent, the Government of Kerala, for action; accordingly, the matter was referred to the first respondent for decision, u/s 17 of the Act. The first respondent held, by order, Ext. P. 3, dated the 3rd April, 1959, that the petitioners were disqualified. This petition is therefore filed under Article 226 to cancel Ext. P. 3. A preliminary objection was taken by the learned Government Pleader on behalf of the first respondent, and by counsel for the third

respondent, that Ext. P. 3 being but an administrative order, cannot be quashed on certiorari. I am disposed to think, that this objection is well-founded and must prevail. Section 16 (1) (h) and Section 17 of the Act may be reproduced below:

16(1). Subject to the provisions of Section 17, a member shall cease to hold office if he--

(h). fails to pay arrears of any kind due by him (otherwise than in a fiduciary capacity) to the Panchayat within three months after a bill or notice has been served upon him in pursuance of rules made under this Act, or where in the case of any arrear, such rules do not require the service of any bill or notice, within three months after a notice requiring payment of the arrear (which notice it shall be the duty of the executive authority to serve at the earliest possible date) has been duly served upon him;

17(1). Whenever it is alleged that any person who has been elected as member of a Panchayat is not qualified u/s 12, or has become disqualified u/s 14, 15 or 16 and such person does not admit the allegation, or whenever any member is himself in doubt whether or not he has become disqualified for office u/s 14 or 16 such member or any other member may, and the executive authority shall, on the direction of the Panchayat or of the Director, apply to Government whose decision shall be final.

(2). Pending such decision, the member shall be entitled to act as if he were not disqualified.

The qualifications for election prescribed by Section 12 referred to in section 17, are that the candidate's name must appear on the electoral roll, that he must have completed twenty five years of age, and that he must be able to read and write Malayalam, Tamil, or English; Section 14 provides, that a Government servant shall be disqualified for election, and by Section 15 a person convicted of certain election offences is disqualified from voting or from being elected at any election or from holding office as a member of Panchayat for a period. Section 16(1) prescribes in clauses (a) to (g) and (i), other disqualifications, being conviction by a criminal court, supervening unsoundness of mind, insolvency, acquisition of an interest in a contract with the Panchayat, employment as paid legal practitioner on behalf of the Panchayat, appointment as an officer or servant under the Act, ceasing to reside in the Panchayat area and absenting from meetings for three consecutive months. By the proviso to Section 14, when any question arises whether any person is disqualified for election, as being an officer or servant of Government, the question shall be referred to Government whose decision shall be final, as u/s 17 (1). It has also to be noted, that u/s 17 (1) a reference to Government may be made by a member, when he is himself in doubt as to his own disqualification u/s 14 or Section 16. The above, generally, is the scheme of the relevant provisions of the Act, and the question for decision on the preliminary objection is, whether in giving a decision u/s 17, Government acted in a quasi-judicial or administrative capacity.

2. This distinction is now founded upon the rule evolved by Atkin L.J. in *Rex v Electricity Commissioners*, (1924) 1 K. B. 171, which is so well-established and oft-quoted, as to need no restatement in this judgment. It is sufficient to note, that the rule lays down four conditions for certiorari to issue, three of which, are perhaps common, as observed by S.R. Das C.J. in *Radeshyam Khare and Another Vs. The State of Madhya Pradesh and Others*, , to both quasi-judicial and administrative orders; the fourth, which really distinguishes the exercise of a quasi-judicial function, is the duty of the authority concerned to act judicially. But this condition does not admit of precise definition, as the duty to act judicially may arise in widely different circumstances. In *Radeshyam Khare v State of Madhya Pradesh*, the learned Chief Justice felt, that the imposition of a duty to decide judicially in a given case, has to be determined on the circumstances of the case, and on the construction of the provisions of the concerned statute in the light of the general principles laid down by decided cases. The duty to act need not be expressly conferred by the statute, but may be left to be inferred from its provisions. In the above case before the Supreme Court, Subba Rao J. observed, that it may be inferred from "the cumulative effect of the nature of the rights affected, the manner of the disposal provided, the objective criterion to be adopted, the phraseology used, the nature of the power conferred, or the duty imposed on the authority, and other indicia afforded by the statute". A *lis inter partes* or a proposition and an opposition, a duty to enquire and to decide on taking evidence and on hearing parties, may also be taken to be some of the indicia of judicial power.

3. The three elements, which, according to the petitioners' learned counsel, made up the judicial power in Government, while acting in the discharge of their duty u/s 17 of the Act, are, that there was a "lis" before Government, that a duty was cast upon them to ascertain facts and to apply the law, and that a valuable right of the petitioners to act as members of the Panchayat was affected by their decision. As I understand the decision of the Supreme Court in *Province of Bombay Vs. Kusaldas S. Advani and Others*, the concept of a *lis inter partes* has two aspects, (1) an authority which is empowered to decide, and (2) a dispute before it, arising out of a claim or proposition made by one party, and an opposition by the other. In this case, the third respondent raised a point of disqualification for the petitioners to act as members of the Panchayat, and the petitioners denied that they were so disqualified. All that Section 17 has prescribed is, that the member or the Executive Authority may thereupon apply to Government. The allegation of disqualification by one party and the denial by the other, certainly gave rise to the need for a decision by Government, but it does not seem reasonable to hold, that there were two opposing or contending parties before Government. The need for a decision by Government u/s 17, may also arise on account of a doubt which a member may entertain as to his own qualification u/s 14 or section 16, and surely, no "lis" in any sense of the term, could in that case be posited. Likewise, a reference to Government u/s 14 of the Act need not necessarily and always, be the result of a pre-existing dispute inter

partes. How then can it be said that one part of Section 17 alone, confers judicial power on Government? The mere ascertainment of facts is no new thing to administrative action, nor is it the exclusive feature of judicial or quasi-judicial power. Any authority must have the basic facts before it or has to ascertain them, on which it may be called upon to form an opinion or to pronounce its decision. It is now too late in the day to contend, that the duty, if any, to ascertain facts necessarily gives a judicial or quasi-judicial complexion to its decision. Kania C.J. in *Province of Bombay v Khusal Das S. Advani* observed, that the contention that "whenever there is a determination of a fact which affects the right of parties, the decision is quasi-judicial, does not appear to be sound". In the same case, Fazl Ali J. remarked, that "a person entrusted to do an administrative act has often to determine questions of facts to enable him to exercise his power. He has to consider facts and circumstances, and to weigh the pros and cons in his mind, before he makes up his mind to exercise his power, just as a person exercising a judicial or quasi-judicial function has to do". After all, the ascertainment of facts here, pertains to the qualifications u/s 12, and to the disqualifications under Sections 14, 15 and 16, of the Act, to which reference is made in Section 17, not excluding the disqualifications u/s 6 (1) (h), and lies within a very narrow compass, and if, as contended, the law has to be applied to such facts as are ascertained, it can only be those elementary principles of law, the application of which, the legislature has thought fit, might be left safely to an administrative body, not necessarily trained in the subtleties and intricacies of the law. Lastly, it was contended, that the decision of Government affects the right of the petitioners; this is so. Administrative orders are not passed in vacuo, and innocuity is not their virtue; in most cases, they affect and are intended to affect, the rights of persons. Fazl Ali J. remarked in *Province of Bombay v Khusal Das S. Advani* that "a good and administrative or executive act binds the subject, and affects his right or imposes liability on him, just as effectively as a quasi-judicial act". The word "decision", occurring both in Section 17 and in the proviso to Section 14 of the Act, is not significant, and means according to the Law Dictionary, little more than a concluded opinion, and not, by itself or necessarily, a judgment or order.

4. There is, in the Act, no provision expressly imposing a duty to act judicially; nor can I discern any provision in it, from which this may be necessarily implied. The provisions of Section 54 of the Travancore District Municipalities Act, 1116 may be referred to as an instance of the latter kind. That the "reference" u/s 54 (1) of that Act is not to the Government, but to a District Judge, who functions almost invariably as a judicial officer, and when he does not function as such, has still all the "trappings of a court" about him, such as, the power to compel the attendance of witnesses, to impose sanctions, to enforce obedience to its commands, to award costs, is in itself an indication, of the judicial or quasi-judicial nature of his power. Section 54 (2) of that Act has further provided that:

The said Judge, after making inquiry as he deems necessary, shall determine..... and his decision shall be final.

This puts the matter beyond doubt; for reasons best known to it, the legislature has not thought it necessary to prescribe a remedy of this kind, in the case of Panchayat members, in which, perhaps, as suggested by the learned Government Pleader, the need was felt to be greater, for speed and expedition in the settlement of such questions. The petitioners' learned counsel maintained, that Government had acted wholly without jurisdiction, and in plain violation of the conditions of Section 16 (1) (h) of the Act and that even viewed as an administrative order, Ext. P. 3 is liable to be cancelled. No such ground has been taken in this original petition, and the necessary facts are contained only in the affidavit filed by the petitioners in reply, to which the respondents had not been called upon to plead. In this view, this contention has to be repelled. In the result, this petition is dismissed, but without costs.