

(2015) 02 MAD CK 0281

In the Madras High Court

Case No : C.R.P. (NPD) No. 1972 of 2014 and M.P. Nos. 1 of 2014

P.N. Rethinakumar

APPELLANT

Vs

J. Manikandan

RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Companies Act, 1956 — Section 267(c)
Constitution of India, 1950 — Article 226
Representation of the People Act, 1951 — Section 8(3)

Citation : (2015) 2 LW 39 : (2015) 3 MLJ 307

Hon'ble Judges : P.R. Shivakumar, J.

Bench : Single Bench

Advocate : Sriram Panchu, Senior Counsel for M. Venkateswaran, for the Appellant; P.L. Narayanan for K. Raja, Advocates for the Respondent

Final Decision : Allowed

Judgement

P.R. Shivakumar, J.—Anbanathapuram Vahaira Charities is managed by a Trust Board consisting of six trustees. The trustees shall be selected from the families of the founders of the Trust, namely 1) Pallavarayanpet Family, 2) Enathimangalam Family, 3) Anbanathapuram Family, 4) Kanganamputhur Family and 5) Kargudi Family. All the five families shall be represented in the Trust Board in such a way that there shall be at least one trustee representing each of the five families. The 6th member of the Trust Board shall go to any one of the above said families. Accordingly, out of the above said five families, one family alone shall have two representatives. Anbanathapuram Vahaira Charities Trust, shortly called A.V.C. Trust, is running a number of educational institutions including an Arts and Science college, Polytechnic college and an Engineering college. The management of the Trust properties and the educational institutions run by the Trust is governed by a scheme framed by the court.

2. As per the amended scheme, the Education Committee for the management of the institutions shall consist of the following members:

- 1) 3 members will be from the Board of Trustees of A.V.C., who are graduates;
- 2) The other 3 shall be nominated by the Scheme Court from the male members of the above said families who are graduates;
- 3) Two more graduates shall be nominated by the Scheme Court from among the female members of the founder families, namely unmarried daughters of founder families or inducted female members, namely daughter-in-laws of the founder families.
- 4) The Principal of the concerned college shall be an Ex-Officio member. The members other than Ex-officio members shall be nominated for six years.

and

- 5) The Chairman, Secretary and Treasurer shall be from among the male members of the founder families.

3. Out of the six members to be nominated by the Scheme Court from the five families of AVC, three shall be from the Board of Trustees of AVC and are graduates and the other three shall be from the male members of the said families who are also graduates. The nomination of the above said six members shall be so made to ensure that each of the families should necessarily have a representative and any one of the families will have two members. The selection and nomination of candidates are subject to certain disqualifications mentioned in the Rules of management. As per Rule 5 any member of the Education Committee who becomes insolvent or unsound mind or is sentenced to an imprisonment for a period of more than six months for an offence involving moral turpitude or absents himself for three consecutive meetings shall cease to be a member of the Committee.

4. We are not concerned with the nomination/appointment of the female family members, either born in the founder families or inducted into the founder families. We are also not concerned with the nomination/appointment of male members from the families representing the Board of trustees. We are only concerned with the appointment of the other three members, namely Non-Trustee members (male). When vacancies in the Education Committee in respect of the Non-Trustee family members (male) arose, one of such vacancies was sought to be filled up from among the male members of Pallavarayanpet family, as the said family was not represented by any Trustee member in the Education Committee.

5. For being appointed towards the family vacancy of Pallavarayanpet family in the A.V.C. Education Committee, the following persons submitted their applications to the Scheme Court:

1. Thiru.M.Agoram, S/o.Muthukumaran
2. Thiru.K.Vikramacholan, S/o.Kandasamy

3. Thiru.J.Manikandan, S/o.R.Jayakumar
4. Thiru.S.Sriram, S/o.A.Srinivasan
5. Thiru.Alagesan, S/o.A.Srinivasan Pillai
6. Thiru.P.N. Rathinekumar, S/o.Nadesan Pillai
7. Thiru.R.Thilak Rathinekumar S/o.P.N. Rathinekumar
8. Thiru.G.Mahesh, S/o.R.Gurunathan
9. Thiru.R.Sajjal, S/o.Rammohan Shanmugam

6. The Scheme Judge, after considering the objections made in respect of the candidatures of the applicants, selected J.Manikandan and nominated him as member of the A.V.C. Education Committee to represent the family of Pallavarayanpet vide order dated 16.04.2014. The said order is challenged by one of the unsuccessful applicants, namely Thiru.P.N. Rathinakumar, by invoking the power of superintendence of this court under Article 226 of the Constitution of India in the present revision. The above said J.Manikandan, selected and nominated by the Scheme Judge as member of the A.V.C. Education Committee, figures as the respondent in the present civil revision petition.

7. The arguments advanced by Mr. Sriram Panchu, learned senior counsel appearing for Mr.M.Venkateswaran, learned counsel on record for the petitioner and by Mr.PL.Narayanan, learned counsel appearing for Mr.K.Raja, learned counsel on record for the respondent were heard. The copy of the impugned order and the other materials produced in the form of typed set of papers were also perused.

8. The facts regarding the procedure for constitution of the A.V.C. Education Committee and appointment of its members have been briefly narrated supra. Hence it is unnecessary to repeat the same. Suffice to point out that the matter in issue relates to the selection and nomination of a member for A.V.C. Education Committee representing Pallavarayanpet family and in short it can be stated that the dispute is regarding the selection of the respondent to represent Pallavarayanpet family in the A.V.C. Education Committee. As many as nine persons, including the petitioner and the respondent, competed and out of the nine, the respondent was selected and nominated by the Scheme Court. As the other non-selected applicants have not challenged the order, we need not go into the comparative merits and demerits of the respondent herein and the other non-selected applicants, except the revision petitioner. The scope of consideration is narrowed down to the comparative consideration of the candidatures of the revision petitioner and the respondent.

9. Mr. Sriram Panchu, learned senior counsel in his arguments contended that the Scheme Judge did not consider the comparative merits and demerits of the revision petitioner and the respondent; that on the other hand, the learned Scheme Judge, at the first instance rejected the candidature of the revision

petitioner on the premise that he was convicted in a criminal case; that though it was brought to the notice of the Scheme Judge that an appeal was filed and the Appellate Court not only suspended the sentence but also stayed the conviction itself, the effect of the same regarding disqualification on the ground of having been convicted by a criminal court was not considered by the learned Scheme Judge; that the rejection of the candidature of the revision petitioner was on legally unsustainable ground and that the subsequent consideration of the merits of the respondent was obviously a biased one.

10. Per contra, Mr.PL.Narayanan, learned counsel appearing for the respondent would contend that there was only an observation, without expressing a definite finding as to the disqualification, by the Scheme Judge that the revision petitioner herein seemed to have been disqualified and that the selection and nomination of the respondent as a member of the A.V.C. Education Committee was purely on meticulous consideration of the merits and demerits of all the contestants, including the revision petitioner herein.

11. This court paid its anxious consideration to the above said submissions made on both sides.

12. As rightly contended by the learned senior counsel for the petitioner, the Scheme Judge, while coming to the conclusion that the respondent was meritorious person to be selected among the contestants, was very much influenced by the conclusion of the Scheme Judge that the revision petitioner P.N. Rathinakumar was disqualified to be appointed a member of the A.V.C. Education Committee as per rule. In paragraph 9(VI) of the impugned order, while referring to the objections raised by the other applicants, the learned Scheme Judge referred to the objections raised against the petitioner P.N. Rathinakumar on the ground that he had been convicted by a criminal court in a criminal case, namely C.C. No.3/1990. For the said objection, the reply of the petitioner was that though he was convicted by the trial court in the said case, in a criminal appeal filed by him not only the sentence was suspended but also the conviction was stayed by the appellate court. The petitioner also produced a copy of the order dated 17.02.2010 made in CrI.M.P. No.589/2010 in CrI.A.No.17/2010 on the file of the Sessions Judge, Nagapattinam. Based on the said order, it was the contention of the revision petitioner before the Scheme Judge that the stay of conviction would lift the disqualification caused by the conviction and that so long as the stay was in force, it could not be said that he was disqualified to be selected and nominated as a member of the A.V.C. Education Committee.

13. In support of his contention, the revision petitioner had also relied on a judgment of the Apex Court pronounced in Civil Appeal No. 5034/2005. While referring to the said judgment in which it was held that since the conviction itself had been stayed it would not attract any disqualification, the learned Scheme Judge chose to make an observation that the said judgment was made by the Apex Court in an election case and hence it would not be applicable to the facts

of the case as it was concerned with the interpretation of Rule 2 of the Rules of the Management of Anbanathapuram Vahaira Charities Education Committee. Yet another judgment cited by the revision petitioner before the Scheme Judge reported in *Dobson Dominic Vs. State of Tamil Nadu and Others*, was also simply stated to be irrelevant for the purpose of the case, without even stating how the said judgment would be irrelevant. After narrating the other contentions of the revision petitioner regarding his achievements, the learned Scheme Judge concluded his observations regarding the scrutiny of the application of the revision petitioner as follows:

" His(sic) candidature in the opinion of this scheme court (sic) appears to be disqualified for the conviction in a criminal case as clearly set out in Rule 2 of the "Rules of the management". " 14. Even in the concluding paragraph, namely paragraph 10 of the order titled as "Conclusion", while referring to the revision petitioner, the learned Scheme Judge made the following observation:

"The sixth applicant, but for his conviction appears to have enough experience and achievements to his credit." The following is the further observation made by the learned Scheme Judge:

"So far as the sixth applicant is concerned, he would state that his candidature has to be considered as per the order of the Hon"ble High Court and he has to be appointed. But however, this Scheme Court is of the very considered view that the order of the Hon"ble High Court has to be read in consonance with the order of the Hon"ble Apex Court in the SLP. A harmonious reading would make it clear that the candidature needs to be considered afresh. On such a detached and impartial view it needs to be said that the sixth applicant is disqualified on account of his conviction." After making such a final decision regarding the candidature of the revision petitioner to the effect that he was disqualified on account of his conviction despite the fact that the conviction had been stayed, and after making up his mind to appoint the respondent, the learned Scheme Judge chose to make a passing reference, that he (respondent) had achieved nearly 2/3rds in 4 1/2 years of what the revision petitioner had achieved in his nearly long tenure of 25 years and that he had achieved more than what was achieved by R.Sajjal, the ninth application in his tenure of 10 years.

15. Apart from the fact that it is not known as to what kind of yardsticks were applied for the comparison made by the Scheme Judge, it is quite obvious from the order of the learned Scheme Judge that after eliminating seven applicants including the revision petitioner P.N. Rathinakumar, the learned Scheme Judge considered the merits between the respondent herein (J.Manikandan) and the 9th applicant R.Sajjal. This will be seen from the following excerpts from the impugned order of the learned Scheme Judge:

" On an assessment of the remaining two applicants, this Scheme Court is of the considered view that it is the third applicant Thiru.J.Manikandan who has got an edge over the other. He has achieved and done more than his rivals within a very

short span of time. The third applicant has achieved nearly 2/3rds in 4 1/2 years of what the sixth applicant has achieved in his nearly long tenure of 25 years and more than what the ninth applicant Thiru.R.Sajjal, has achieved in 10 years of his tenure." 16. When the above said observation is considered in the light of the concluding sentences in paragraph number 9(I) to (IX) dealing with the candidature of the applicants, it will make it clear that all other applicants, except the respondent Manikandan and R.Sajjal, were eliminated at the first instance and thereafter the Scheme Judge considered the comparative merits of J.Manikandan and R.Sajjal. The operative portions of the observations made against all the applicants are given in the following tabular column:

The above said extracts from the impugned order of the learned Scheme Judge will make it clear that what he did was to eliminate seven out of nine contestants and consider the inter se merits of the two contestants alone, namely J.Manikandan, the respondent herein and R.Sajjal, the ninth contestant. The elimination of others can be construed to be made on the grounds of assessment of their merits. The elimination of the revision petitioner (6th applicant) P.N. Rathinakumar was solely made on the ground that he was disqualified as he had been convicted by a criminal court.

17. In this regard, the following judgments of the Supreme Court relied on behalf of the revision petitioner are relevant:-

- 1) Lalsai Khunte Vs. Nirmal Sinha and Others, ;
- 2) Rama Narang Vs. Ramesh Narang and Others, .

(i) In Lalsai Khunte Vs. Nirmal Sinha and Others, a Two-Judge Bench of the Supreme Court, while dealing with the disqualification under Section 8(3) of the Representation of Peoples Act, 1951, which is similar to Rule 2 of "Rules of management", after referring to various judgments held that when the conviction itself is stayed, the disqualification shall not get attracted. While holding that suspension of sentence will not amount to stay of conviction, the Supreme Court held that a specific order of stay of conviction by the appellate court would amount to temporarily wiping out the conviction so as to remove the disqualification.

(ii) The second one, namely Rama Narang Vs. Ramesh Narang and Others, , is a case decided by a Three Judge Bench of the Supreme Court. While considering the analogous provision under the Companies Act, namely Section 267(c) of the Companies Act, 1956 dealing with prohibition of appointment or continuation of the appointment of a Managing Director of a company convicted of an offence involving moral turpitude, the Supreme Court held that while the order of conviction may incur disqualification, if the conviction is stayed, then the convicted person shall not suffer certain disqualification provided in any other statute. However, the Bench of the Supreme Court struck a note of caution that while granting an order of stay of conviction, the court must examine the pros and cons and if it feels satisfied that a case is made out for grant of such an

order, it may do so and while doing so, if it considers so, it may impose such conditions as are appropriate.

18. When the appellate court grants a stay of conviction as distinguished from suspension of sentence alone, then the order of stay will have the effect of temporarily wiping out of the conviction so as to remove the disqualification. Hence this court does have no hesitation in coming to the conclusion that the learned Scheme Judge committed a grave error in the exercise of jurisdiction by refusing to comply with the principle of law declared by the Apex Court and in holding that the revision petitioner herein, namely P.N. Rathinakumar, was disqualified from being a candidate for the selection/appointment as a member of the A.V.C. Education Committee.

19. It shall not be out of the context to mention here that the same is the reason why the learned counsel arguing for the respondent did not very much rely on the alleged disqualification of the revision petitioner and on the other hand, chose to contend that the selection of the respondent as member of the A.V.C. Education Committee was made based on the qualitative assessment of the merits and demerits of all the contestants, which would be reflected in the observation that the respondent had achieved in 4 1/2 years 2/3rds of the achievements done by the revision petitioner in his tenure of 25 years. It is the further contention raised in the argument advanced on behalf of the respondent that, if at all the revision petitioner was very much interested in rendering his service to the educational institutions run by the A.V.C. Trust, then he could have applied for being selected when a general vacancy arose subsequent to the passing of the impugned order, that too after this court passed an interim order staying the operation of the impugned order in respect of the finding that the petitioner was disqualified and that the very fact that the revision petitioner did not apply for the general vacancy, would show his lack of enthusiasm to render service in the A.V.C. Education Committee.

20. This court is not in a position to accept both the contentions of the learned counsel for the respondent. In the previous paragraphs of this order it has been pointed out how the learned Scheme Judge proceeded towards the ultimate conclusion to select and nominate the respondent as a member of the A.V.C. Education Committee. It has also been pointed out that the elimination method was adopted in respect of all other candidates, except the respondent and R.Sajjal. It has also been pointed out that a clear and categorical finding was rendered by the Scheme Judge to the effect that the revision petitioner was disqualified based on his conviction in a criminal case even though the conviction had been stayed by the appellate court and thereafter while making a choice between the respondent and Sajjal, a passing reference was made, that too without any particulars, to the effect that the respondent in 4 1/2 years of his tenure in the A.V.C. Education Committee, had done 2/3rds of what had been achieved by the revision petitioner during the tenure of 25 years. Even if it can be assumed that the learned Scheme Judge made an attempt to assess the

merits of the petitioner and the respondent, the decision rendered thereon was definitely influenced by his earlier finding that the revision petitioner was disqualified by his conviction in a criminal case.

21. The second point urged by the learned counsel for the respondent also deserves rejection. The petitioner chose to apply for nomination towards the family vacancy of Pallavarayanpet wherein he had only a limited competition confined to the members of Pallavarayanpet family. The petitioner chose to refrain from making an application when applications were called for filling up the general vacancy, where he had to face competition from more number of persons belonging to all the five families. Hence it cannot be contended that the choice of the petitioner not to apply towards the general vacancy would show lack of enthusiasm on his part. Hence the above said contention raised on behalf of the respondent is also rejected.

22. For all the reasons stated above, this court, without any hesitation, comes to the conclusion that the impugned order of the Scheme Judge dated 16.04.2014 selecting and nominating Mr.J.Manikandan as member for A.V.C. Education Committee representing Pallavarayanpet family is vitiated and the same deserves to be set aside. While holding that the impugned order is liable to be set aside, this court deems it appropriate not to go into the merits of the case and to leave the matter to be considered afresh by the Scheme Judge by remitting the matter back to the Scheme Judge to pass a fresh order in the light of the observations appearing above.

In the result, the Civil Revision Petition is allowed. The impugned order of the Scheme Judge (Sub Judge, Thiruvarur) dated 16.04.2014 is set aside and the matter is remitted back to the Scheme Judge to consider the matter on merits and pass fresh order. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.