

(2005) 06 KAR CK 0068
In the Karnataka High Court
Case No : Writ Petition No. 2271 of 2005

R. Chikkarudrappa

APPELLANT

Vs

The Deputy Commissioner and Another

RESPONDENT

Date of Decision : 23-06-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Municipalities Act, 1964 — Section 16 (1)
Penal Code, 1860 (IPC) — Section 120 B, 489 A, 489 D

Citation : (2005) ILR (Kar) 3288 : (2006) 3 KarLJ 384 : (2005) 3 KCCR 198 SN

Hon'ble Judges : S.R. Nayak, J; Jagannathan, J

Bench : Division Bench

Advocate : Goutham and Rajeshwar, for the Appellant; Deshraj, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—The petitioner was elected as the Councillor of the Town Municipal Council, Vijayapura Town, in the election held on 4-5-2001. The Deputy Commissioner, Bangalore Rural District, the first respondent herein, by his order bearing No. MUN(1) CR/108/ 2001-02 dated 30-9-2004, marked as Annexure-K, disqualified the petitioner from being the Councillor of the Town Municipal Council, Vijayapura, on the ground that the petitioner was convicted in C.C.No. 29 of 1977 as Accused No. 7 for the offences punishable under Sections 120-B, 489-A and 489-D of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a term of three years, as per the judgment dated 24-7-1978 of the Sessions Court, Bangalore. The petitioner, being aggrieved by the above order of the first respondent, preferred an appeal to the Directorate of Municipal Administration, Government of Karnataka, the second respondent. The second respondent, by his order dated 3-1-2005, marked as Annexure-M, dismissed the appeal. The petitioner, being aggrieved by the orders at Annexure-K and M, has preferred this writ petition under Article 226 of the Constitution of India.

2. It was contended by the Learned Counsel for the petitioner that though the Sessions Court, Bangalore, sentenced the petitioner to undergo rigorous imprisonment for a term of three years as per its judgment dated 24-7-1978, ultimately, in Civil Appeal No. 85 of 1980 preferred to the Hon''ble Supreme Court of India, the Supreme Court, by its judgment and order dated 30-8-1995, has reduced the sentence to 11/2 years and, therefore, as on the date of election of the petitioner as Councillor of the Council on 4-5-2001, the petitioner did not suffer disqualification prescribed in Clause (a) of Sub-section (1) of Section 16 of the Karnataka Municipalities Act, 1964 (for short "the Act"), if the same is read with proviso (c) to Sub-section (1) of Section 16 of the Act.

3. Sri Deshraj, Learned Government Advocate, per contra, would point out that though the Apex Court, by its judgment and order dated 30-8-1995, reduced the sentence to IV years, the sentence could be executed only on 20-8-2001 and if that date is taken as the relevant date, as on the date of the election of the petitioner as Councillor on 4-5-2001, the four years period did not expire and, therefore, the action of the first respondent Deputy Commissioner, Bangalore Rural District, as affirmed by the Director of the Directorate of Municipal Administration, is justified and legal.

4. Having heard the Learned Counsel for the parties, what arises for decision is whether the disqualification prescribed in Clause (a) of Sub-section (1) of Section 16 of the Act is attracted to the facts of the case and, whether the petitioner, as on 4-5-2001, did suffer disqualification so as to disentitle him to contest the election for the office of the Councillor. In order to answer this question, it becomes imperative for us to interpret the provisions of Clause (a) of Sub-section (1) as well as proviso (c) to Sub-section (1) of Section 16 of the Act. The relevant Clause (a) of Sub-section (1) and proviso (c) to Sub-section (1) of Section 16 of the Act read as follows:

"16. General disqualification for becoming a councillor.- (1) A person shall be disqualified for being chosen as, and for being, a councillor.-

(a) if he has been sentenced by a Criminal Court to imprisonment-

(i) for an offence which involves moral turpitude and which is punishable with imprisonment for a term exceeding six months; or

xxx xxx xxx Provided that,-

(a) ...

(b) ...

(c) the disqualification in Clauses (a), (d) and (f) shall cease to operate after the expiry of four years from the date of such sentence, dismissal or removal or earlier by an order of the Government;

xxx xxx xxx"

5. Admittedly, the petitioner is sentenced to undergo rigorous imprisonment for a period of 18 months as finally awarded by the Apex Court. Therefore, the provisions of Clause (a) of Sub-section (1) of Section 16 of the Act apply to the facts of the case unless it is shown that the exclusionary clause in proviso (c) is also applicable to the facts of the case. If we were to accept the argument of the Learned Government Advocate, we have necessarily to interpret the words "such sentence" occurring in proviso (c) to mean "as the date on which the convicted completes the sentence by undergoing imprisonment". Such an interpretation, having regard to the norms and principles, governing statutory interpretation is totally impermissible. This is not a case where we could possibly apply "purposive interpretation" of "mischief rule". We say this, because, the provision enacted in proviso (c) is quite clear, plain, precise and unambiguous and it does not admit more than one meaning. The only meaning is that, in order to take out from the prohibition enacted in Clause (c) of Sub-section (1) of Section 16 of the Act, what the court has to see is whether a period of four years expired from the date of sentence awarded by the Court. Although, initially, the Sessions Court awarded sentence but that sentence was altered by this Court and the Supreme Court in the appeals and, therefore, the sentence awarded by the Apex Court should be taken as the sentence for the purpose of interpreting the provision enacted in proviso (c). If it is so taken, as on 4-5-2001, the four years period from the date of sentence awarded by the Apex Court had expired and consequently, it should be held that the petitioner, as on 4-5-2001, did not suffer from disqualification prescribed in Clause (a) of Sub-section (1) of Section 16 of the Act. The Deputy Commissioner as well as the Director of the Directorate of Municipal Administration, without considering the statutory provisions relevant to the decision-making, merely on the ground that he was sentenced to undergo rigorous imprisonment for more than six months, disqualified the petitioner, completely losing sight of the provision enacted in proviso (c) to Sub-section (1) of Section 16 of the Act.

6. In the result and for the foregoing reasons, we cannot sustain the impugned orders of the respondents. The Writ Petition is allowed. The impugned orders as per Annexure-K and M dated 30-9-2004 and 3-1-2005, passed by the Deputy Commissioner, Bangalore Rural District, and the Director, Directorate of Municipal Administration, Government of Karnataka, Bangalore, respectively are quashed.

In the facts and circumstances, the parties shall bear their respective costs.