(1964) 08 KL CK 0035

In the High Court Of Kerala

Case No : O. P. No. 470 of 1963

Rajan APPELLANT

Vs

Thomas RESPONDENT

Date of Decision : 17-08-1964

Acts Referred:
Kerala Municipalities Act, 1960 — Section 63(1)

Citation : (1964) KLJ 1218

Hon'ble Judges : M. S. Menon, C.J;M. Madhavan Nair, J

Bench : Division Bench

Advocate : K. Velayudhan Nair, K. J. Joseph and T.K. M. Unnithan, for the Appellant; S. Easwara Iyer and L. Gopalakrishnan Potti, for the Respondent

Final Decision : Dismissed

Judgement

M. S. Menon, C.J.—This petition questions the right of the respondent to fund ion as the Chairman of the Alleppey Municipality. He was elected as a Councillor of the Alleppey Municipal Council in October 1962. Subsequently the council elected him as the Chairman of the Municipality. He was arrested on 20th November 1962 and was under detention in the Central Jail till his release on 2nd March 1963. Section 63(1) of the Kerala Municipalities Act, 1960, provides that a councillor shall cease to hold office as such if he:

absents himself without the permission of the council from the meetings of the council for a period of three consecutive months reckoned from the date of the commencement of his term of office, or of the last meeting which he attended.

The question for determination is whether the respondent who was under detention in the Central Jail during the relevant period can be considered as having absented himself from the meetings of the Alleppey Municipal Council The meaning of the expression "absents himself" came up for consideration in Re London and Northern Bank Mack''s Claim ((1900) Weekly Notes 114). Art. 97 (e) of the Articles of Association in that case provided that the office of a director shall ipso facto be vacated:

If he absents himself from the meetings of the directors during a period of three calendar months without special leave of absence from the directors.

The report sums up the facts of the case as follows:

Hugh Mack, who lived at Belfast, was appointed a director on the 3rd of August 1898 and attended meetings of the board of directors in August, September, October, November and December, 1898. In the latter part of December, 1898, he became seriously ill and unable to travel, and during February, March and April, 1899, he was unable by reason of his illness to attend to business or to attend any meetings of directors.

Shortly after the 8th of May, 1899, Mack received a letter from the general manager of the company stating that the writer was directed by the directors to inform him that he had ceased to be a director pursuant to article 97(e), and that they had ordered the fact of his non-attendance at any of the directors'' meetings during the last three months to be entered on the minutes.

No leave of absence was ever granted or applied for.

The directors declined to reinstate Mack as a director, and the Bank went into liquidation on the 29th of December 1899.

Mack claimed to prove for his remuneration as a director, and the liquidator having rejected the proof, appealed from the rejection.

and says:

Wright J. said that absence might be sufficient to vacate the office of director if no other circumstances were shown, but that if it was shown that the absence was involuntary it could not be said that the director had absented himself. The more reasonable construction was that the article meant that the office of a director was vacated if he voluntarily or deliberately absented himself without special leave for the period mentioned. The proof must be admitted for one year''s remuneration.

2. To the same effect is Re London and Northern Bank, Mc Connel''s Claim (1991) 1 Ch. 728 wherein Wright J. again pointed out that the expression "absents himself" means something more than the expression "is absent" and that there is a difference between the act of absenting oneself which is purely voluntary, and the fact of being absent which can be either voluntary or involuntary. In Damodar Lal Acharya v. State of Rajsthan (I.L.R. (1960) 10 Rajsthan 1427) the use of the word "absented himself" in Section 63 (1) (a) of the Rajsthan Municipalities Act, 1959, came up for consideration. The Court said:

The very use of the words ''absented himself shows that the member''s absence should be of his own volition e.g. carelessness, negligence or lack of interest in the work of the Board etc. If, on the other hand, the absence is forced upon him by some law, then it cannot be said that he had absented himself.

3. We take the view that in order to entail the disqualification u/s 63(1) of the Kerala Municipalities Act, 1960, the absence of the respondent should have been voluntary and not involuntary as in this case, and that as a result of the involuntary absence he did not cease to hold the office of councillor and consequently the office of Chairman of the Alleppey Municipality. The approach made by the respondent in the affidavit filed by him is not the one that we have adopted. His contention was that even if he had ceased to hold the office of councillor u/s 63 (1) of the Act he has been restored to that office u/s 64 (2) of the Act and that the restoration spelt a restoration to the office of Chairman as well. In the view we have taken, it is not necessary to evaluate this contention and it is not considered in this judgment. The petition fails and is hereby dismissed; but in the circumstances of the case without any order as to costs.