

(1987) 11 KAR CK 0030
In the Karnataka High Court
Case No : W.P. No. 5833/1987

Ramappa

APPELLANT

Vs

Hanumanthappa and Another

RESPONDENT

Date of Decision : 24-11-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 — Section 14

Citation : (1988) 1 KarLJ 132

Hon'ble Judges : P. P. Bopanna, J

Judgement

Bopanna, J.-Issue rule.

This petition is treated as having been posted for hearing and I have heard the learned Counsel for the parties.

2. A preliminary objection is taken by the learned Counsel for respondent-1 on the ground that the petitioner having not exhausted the alternative remedy available to him by filing an election petition under the provisions of Section 14 of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1985 (in short "the Act"), this petition is not maintainable. Ordinarily if a question of fact is disputed before this Court, this Court does not exercise its jurisdiction under Article 226 of the Constitution when the matter can be properly adjudicated in an election petition under the provisions of the Act. But a Division Bench of this Court in a similar matter in Siddappa Yellappa v. Election Officer [1980(1) Kar. L.J. 149] (to which I was a party) has taken the view after considering the ruling of the Supreme Court in Nanhoo Mal v. Tira Mal (A.I.R. 1975 SC 2140) that there is no absolute bar for the High Court to exercise its jurisdiction under Article 226 in certain extraordinary circumstances after the election process is completed. This Court has further held that if the illegality or otherwise does not require any investigation, driving the appellant to an election tribunal under Section 13 of the Karnataka Village Panchayats and Local Boards Act would be an empty formality

and it would be the most appropriate case for this Court to exercise its jurisdiction under Article 226 to correct such obvious error and to present failure of justice. On the same analogy when the facts relating to the disqualification of respondent-1 are not in dispute as are evident in the judgment of this Court in Criminal Appeal No. 67 of 1981 disposed of on 9-8-1982, there is no bar for this Court to exercise its extraordinary jurisdiction. This Court had convicted respondent-1 for an offence punishable under Section 448 IPC and sentenced him to pay a fine of Rs. 100/- and in default of payment of fine to suffer simple imprisonment for a period of 15 days; for an offence under Section 354 IPC, it sentenced him to pay a fine of Rs. 100/- and in default of payment of fine to suffer S.I. for a period of 15 days; and for an offence under Section 324 IPC he was sentenced to pay a fine of Rs. 250/- and in default of payment of fine to suffer S.I. for a period of one month.

3. The only point for consideration is whether the sentence imposed on respondent-1 by this Court under the aforesaid offences under the Indian Penal Code would attract the disqualification as prescribed under Section 11(1)(c) of the Act. On these admitted facts it is a matter for interpretation of Section 11(1)(c) of the Act and the meaning to be given to the words "sentenced by a criminal court to imprisonment for an offence which involves moral turpitude". Under Section 11(1)(c) of the Act-a person shall be disqualified for being chosen or nominated and for being a member of a Mandal Panchayat:

(a) xx xx (b) xx xx (c) if he has been sentenced by a Criminal Court to imprisonment for an offence which involves moral turpitude and which is punishable with imprisonment for a term exceeding six months, such sentence not having been subsequently reversed or quashed or the offence pardoned.

4. Mr. Ravi Varma Kumar, learned Counsel for respondent-1 fairly submitted that what is required to attract the disqualification under Section 11(1)(c) is that, the offence should be punishable with imprisonment for a term exceeding six months. In this case all the offences under Sections 448, 354 and 324 of IPC are punishable with imprisonment for a term exceeding six months. So, the second part of sec. 11(1)(c) is attracted to the proved facts of the case. But is contended by Mr. Ravi Varma Kumar that respondent-1 was sentenced to pay a fine of Rs. 100/- for an offence under Section 448 IPC, Rs. 100/- for an offence under Section 354 and Rs. 250/- for an offence under Section 324 IPC and he was not sentenced by a criminal court to suffer imprisonment. Therefore, the disqualification under Section 11(1)(c) of the Act is not attracted to the facts of this case. He relied on the definition of the word "imprisonment" as defined under the General Clauses Act and maintained that under that Act, the word "imprisonment" where the context otherwise provides has to be understood in the manner defined under the Indian Penal Code. Under Section 53 of the IPC-the punishments to which offenders are liable to be sentenced under the provisions of this Code are-

(i) Death;

(ii) Imprisonment for life;

(iii) -- (iv) Imprisonment, which is of two descriptions, namely-(1) Rigorous, that is, with hard labour; (2) Simple.

(v) Forfeiture of property.

(vi) Fine

5. According to Mr. Ravi Varma Kumar, the Penal Code defines imprisonment as consisting of two types namely. Rigorous and Simple and therefore, the word "imprisonment" under Section 11(1)(c) should be understood in the manner defined under Section 53 of the IPC. Assuming this is the correct interpretation of the word "imprisonment", what is necessary to keep in view to determine the disqualification under Section 11(1)(c) of the Act is that he should be sentenced by a criminal Court for imprisonment for an offence involving moral turpitude. It cannot be disputed that on the proved facts in criminal Appeal No. 67/1981, respondent-1 was sentenced to imprisonment for an offence which involved moral turpitude, in that, he had violated the modesty of a woman and caused serious burn injuries on her buttocks. That offence certainly would be an offence involving moral turpitude. Therefore, the next point would be whether it is necessary that he should undergo simple or rigorous imprisonment to attract the disqualification or he should merely be sentenced by a criminal court for imprisonment for an offence involving moral turpitude. On the plain language of Section 11(1)(c) of the Act, it is enough if he is sentenced by a criminal court for imprisonment and it is not necessary that he should undergo imprisonment for the offences in question. Otherwise, the option given to the accused by the criminal court to pay a fine in lieu of imprisonment would reduce the gravity of the offence for which the accused was punished. The plea that if he pays the fine, the offence would not amount to an offence involving moral turpitude, cannot be accepted for a moment. The Legislature could not have made this invidious distinction in regard to the nature of the offence by prescribing two modes of punishment all because the court is conferred with the power under Section 30 of the Cr.P.C. to award either fine or imprisonment in lieu of fine for the offences in question. The scheme of Section 11 of the Act also supports this conclusion. Under Section 11(1)(d) of the Act-if an order is passed against a person under Section 117 of the Code of Criminal Procedure 1973 (Central Act 2 of 1974) in the proceedings instituted under Section 110 of the Code, such order not having been subsequently reversed or quashed would disqualify the person. Under that order the accused is not punished either by the imposition of fine or by imprisonment simple or rigorous. Under Section 11(1)(e)-a Government employee dismissed from government service suffers the same disqualification. So also an employee of local authority if he is dismissed by the local authority. Under Section 11(1)(f)-a legal or medical practitioner or a chartered accountant who had been disenrolled or suspended by an order of a competent authority, incurs the same disqualification. Likewise, the other illustrations mentioned in Section 11(1)(g), (h), (i), (j) and (k) also disclose that the ambit of

disqualification under Section 11(1) is very comprehensive and all embracing and therefore, it is not proper for this Court to restrict the interpretation of Section 11(1)(c) only to cases where a person involved has actually suffered imprisonment. On the plain language of Section 11(1)(c) he must only be sentenced by a criminal court to imprisonment for an offence which involves moral turpitude. There is no doubt respondent-1 was sentenced to imprisonment by this Court in Cr.A. No. 67/1981 for the offences mentioned above.

6. However, it is contended by Mr. Ravi Varma Kumar that a period of 5 years had elapsed now after the sentence on respondent 1 was imposed by this Court and therefore, it is not a fit case for interference. But the point for consideration is whether on the date he contested the election, that is, on 20-1-1987 the disqualification operated against him. This Court must always be vigilant to ensure the purity of elections to any representative body and therefore, there is no scope for any liberal interpretation of the section for giving the benefit of that interpretation to respondent-1 to enable him to continue as a member of the Mandal Panchayat. The provision of Section 11(1) should be strictly construed against the persons sought to be disqualified for maintaining the purity of the election process.

7. Therefore, this petition is allowed and it is declared that respondent-1 is disqualified to be the member of the Mandal Panchayat w.e.f. the date of his being chosen as a member of the Mandal Panchayat notwithstanding his success in the elections held on 20-1-1987.

8. Let a copy of this order be sent to the Deputy Commissioner, Dharwad forthwith for taking necessary action.