
(1958) 11 BOM CK 0023

In the Bombay High Court

Case No : Special Civil Appln. No. 2438 of 1958

Ramayya Venkat Narsu Bura

APPELLANT

Vs

State of Bombay and Another

RESPONDENT

Date of Decision : 27-11-1958

Acts Referred:

Citation : (1958) 11 BOM CK 0023

Hon'ble Judges : Chainani, Acting C.J.;Shelat, J.

Bench : Division Bench

Judgement

(1) In the general election held in 1957, one Shrinivas 2nd respondent was elected a Councillor of the Municipality of Ahmednagar. Thereafter he was elected a member of the standing Committee and the Chairman of the Sanitary Committee. In a general meeting of the Councillors held after the election, certain members of the Municipality were also elected to represent the Municipality on the School Board constituted under the Bombay Primary Education Act of 1947. It was said that the 2nd respondent by reason of his being an influential member of the Municipality, was in a position to wield considerable influence in the selection of the members of the School Board.

(2) It is an undisputed fact that the wife of the 2nd respondent has been working as a teacher for the last several years in School No. 14 conducted among other schools by the Municipality. The petitioner, who is a voter, alleged that the 2nd respondent has a direct interest in her employment with the Municipality and therefore if the 2nd respondent has a direct interest in her employment with the Municipality and therefore if the 2nd respondent continues to be a Councillor there would be a conflict between his duty as a Councillor and his interest in a furtherance of his wife's interests as an employee of the Municipality.

(3) The petitioner presented an application to the Collector, Ahmednagar District, stating therein the aforesaid facts and praying that it should be declared that respondent No. 2 became disqualified to remain as a Councillor. It was contended on behalf of the 2nd respondent that the words "becomes subject to any

disqualification incurred after the election and therefore since the wife of the 2nd respondent was employed as a teacher several years before the election, S. 28 did not apply and the 2nd respondent could not be declared as having been disqualified. It seems to have also been contended that the petitioner ought to have raised an objection to the nomination of the 2nd respondent as a candidate in the election under S. 12(2)(b), that it would be that section that would apply to the facts of the case and that not having done so, the petitioner was not entitled to ask for a declaratio under S. 28 of the Act.

(4) The Collector by his order dated 5-7-1958 negated these contentions and observed:

"It clearly means that even if the disqualification earned by an intending councillor has been overlooked during the scrutiny of Nominations a subsequent remedy is provided for such disqualification in S. 28. If this is not true it will be possible for Councillor to temporarily abstain from acquiring disqualifications and then remain as Councillors for the period for which the Municipality is constituted. This interpretation is therefore too far fetched besides being illogical." (5) The Collector held that the 2nd respondent was disqualified as a Councillor, and declared that a vacancy had occurred in the Municipality within the meaning of S. 28(2) of the Act. In the appeal filed by the 2nd respondent against the order of the collector the Government of Bombay, by their order dated 22-7-1958, set aside the Collector's order and held that the 2nd respondent was entitled to continue to be a Councillor observing that S. 28(2) could apply only to cases where a disqualification occurs after the election and not to a pre-existing disqualification.

Shelat, J.

(After stating the facts, the judgment proceeded).

(6) Two questions have been raised by Mr. Patel on behalf of the petitioner: (1) that the 2nd respondent has an interest in the employment of his wife as a teacher and (2) that S. 28(1) would apply even though the disqualification has commenced before the election. Mr. Rane, on the other hand, relied on the decision of the Supreme Court in Election Commission, India Vs. Saka Venkata Subba Rao and, and contended on the strength of that decision that S. 28(1) cannot apply to a pre-existing disqualification.

(7) To appreciate these contentions, it is necessary to examine certain provisions of the Bombay Municipal Boroughs Act of 1925. Section 12(1) provides that "No person may become a Councillor" who has been convicted of certain offences or who has been removed from office under S. 27 of the Act, or who is an uncertified bankrupt or an undischarged insolvent or who is of unsound mind or who has acquired the citizenship of a foreign State etc. or who is a Judge. Section 12(2)(b), so far as is material, provides that "No person who save as hereinafter provided, has directly or indirectlyany share or interest in any workcontract or "employment with or under a Municipalitymay

be a councillor of such Municipality". It is needless to pause on the proviso contained in sub-s. (3) of S. 12 as it is not material for the purposes of this case. Thus the Legislature has used two different phraseologies. In sub-s. (1) the words are "may become a Councillor". Whereas in sub-s. (2) the words used are "may be a councillor of such Municipality". It is not clear why this different phraseology has been adopted by the Legislature. But it was not seriously disputed before us that the disqualification set out in sub-s. (2) will also disqualify a person from standing as a candidate.

(8) The first question that falls for determination is whether the 2nd respondent can be said to have directly or indirectly interest in the employment of his wife or under the Municipality within the meaning of S.12(2)(b). In *Dattatraya Shinde v. S. V. Bhawe*, 60 Bom. LR 210, a similar question arose though it was under S. 10(1)(f) of the Bombay Provisional Municipal Corporation Act of 1949. But since the language in S. 10(1)(f) of that Act is similar to the one in S. 12(2)(b) of the Act under our consideration, the decision is relevant. In that case that petitioner offered himself as a candidate for election in the Municipal Corporation of Poona. He was living with his wife and children in a house owned by him. At the time he stood for election, his wife was employed as a Municipal School Teacher. His nomination on that ground was rejected. In the position filed by him, it was held that he had interest in the employment of his wife with the Municipal Corporation and therefore he suffered from disqualification within the meaning of S. 10(1)(f) of that Act. It was also held that the interest contemplated in that section need not be pecuniary but should be such as is likely to come in conflict with one's duty as a Councillor. A similar question under the Bombay Municipal Boroughs Act, 1925, arose in *Champaklal Parikh v. Mahendra Govindlal Cholsi*, Special Civil Appln. No. 1807 of 1955 decided on 7-12-1955 by Chagla, C. J. and Dixit J., where a son was wanting to be a Councillor of the Petlad Municipality and his father was a pleader representing that Municipality in various cases of assessment. It was here observed:

"In our opinion, the interest here is not the interest which a man may have in the prosperity of his friend. There the interest is clearly sentimental or emotional. When you have a person living jointly with his father, it seems to be inarguable that the son's interest in the prosperity of his father is purely sentimental or emotional. If the father earns more, he has more to spend on the family. His prosperity must affect the position of the son and the interest that the son has in the prosperity of his father is clearly a material or a substantial interest." It is therefore clear looking to the close relationship between a husband and a wife that where a wife is in the employment with or under a Municipality, the husband, who desires to become or is a Councillor of that Municipality, has a substantial interest in that employment which is or is likely to be in conflict with his duty as a Councillor.

(9) Mr. Rane, however, contended that the position of a Municipal Corporation such as the Poona Municipal Corporation is different from that of a Borough

Municipality like the Ahmednagar Municipality inasmuch as the control over Municipal Schools in the former case vests in the Municipal Corporation whereas in the latter case it vests with the State Government. To examine the validity of this contention, it is necessary to turn to the Bombay Primary Education Act, 1947. Section 2(2) of that Act defines an "approved school" which means inter alia a primary school maintained by a School Board or by an authorised Municipality. It is not in dispute that the school in question is maintained by the Ahmednagar Municipality is an authorised Municipality. Section 2(6) defines an authorised Municipality as one authorised by the State Government under S. 16(1) of the Act. Therefore the school in which the wife of the 2nd respondent is serving is a school maintained by the Ahmednagar Municipality. Section 2(19) defines a "School Board" meaning a District School Board or a Municipal School Board. Section 3 provides that there shall be a District School Board for each District and a Municipal School Board for each District and a Municipality. Section 4 provides for the constitution of a School Board. A School Board is to consist of not less than 12 members and not more than 16 of whom not less than 2 and not more than 3 are to be appointed by the State Government. Except for those to be appointed by the Government, the members of the School Board are to be elected by the District Local Board or the authorised Municipality as the case may be. Under S. 18(1) the Municipal School Board is to be responsible for the management and control of all primary schools which vest in the authorised Municipality and for the control of all other approved schools within the area of the authorised Municipality. Lastly, S. 20 provides that every authorised Municipality shall maintain "an adequate staff of assistant administrative officers primary schoolk teachers and other staff as may in the opinion of the State Government be necessary for the administration, management and control of approved schools within its area." Sub-s. (2) of S. 20 provides that this staff shall be the servants of the authorised Municipality and shall receive their pay, allowances, gratuities, and pensions from its primary education fund. Under S. 44 this fund, in the case of an authorised Municipality, means the grant payable by the Municipality on account of primary education together with the grant payable by the State Government, the fees of pupils etc. These sections made it clear that the primary school teachers are the servants of an authorised Municipality, such as the Ahmednagar Municipality, and their salaries, allowances, pensions etc., are paid from the primary education fund raised by such Municipality.

(10) Mr. Rane, however, contended that in spite of these provisions, the real control over the teachers and the staff of the primary schools in the case of Ahmednagar Municipality does not rest with the Municipality and therefore there would be no question of any conflict between the duties of the petitioner as a councillor and his interest in his wife's employment. In other words, his contention was that though the Ahmednagar Municipality pays for the expenditure of the schools, the control over the schools and the staff still remains with the State Government. For that purpose he relied on certain other

provisions of the primary Education Act. Section 20(3) provides that the rates of the pay and allowances and terms of employment of the primary school teachers maintained by an authorised Municipality shall be fixed from time to time by the state Government. section 21 then provides that for each School Board there shall be an Administrative Officer, who shall be the Chief Executive Officer is to be appointed by and is the servant of the State Government; his salary and allowances are also payable from the State revenues. Under S. 22 the State Government may delegate the power to appoint an Administrative Officer an authorised Municipality but as pointed out by Mr. Rane no such power has been delegated to the Ahmednagar Municipality with the result that the Administrative Officer, so far as this Municipality is concerned, is the servant of the State and not of the Municipality. Therefore all executive functions of the school Board are under his control and not the Municipality. Likewise under S. 23, a Staff Selection Committee is constituted consisting of the educational Inspector, the Chairman of the School Board and the Administrative Officer and it is this Committee which selects the teachers and the other staff. Under S. 24 the Administrative Officer has also the power to promote, transfer and take all disciplinary action including that of removal and dismissal against the staff. But sub-s. (2) of S. 24 provides for an appeal against his orders to a Tribunal consisting of the Chairman of the School Board and the Education Inspector of the District. Thus against Mr. Rane, the entire control over the teachers and the staff including their selection, pay and allowances rests not with the Municipality but virtually with the Government.

(11) What Mr. Rane however does not take into account are two other sections of the Bombay Primary Education Act. Section 16 enacts that the Government may authorize a Municipality constituted under the Bombay Municipal Boroughs Act 1925 to control all approved schools within its area. Since the Ahmednagar Municipality is an authorised Municipality, it has under S. 16(1) the power to control all approved schools within its area. Furthermore S. 16(2) provides :

"Subject to the provisions of this Act and the rules and regulations made thereunder, all existing and future rights, liabilities, powers and duties of any Municipality, which was a local authority under the Bombay Primary education Act, 1923, immediately before the date of the coming into force of this Act, in respect of primary school teachers and other persons employed by it for the purposes of primary education shall on such date vest in and be performed or exercised by the said municipality as an authorized municipality under this Act; and all properties, moveable and immovable, vesting in or held by or under the control of such municipality for the purposes of primary education, shall from such date continue to vest in, be filed by or be under the control of the said municipality as such authorised municipality." Section 17 provides that "Subject to the provisions of this Act and the rules made thereunder an authorized Municipality shall perform the following duties and functions". Among these duties and functions are "(c) to maintain an adequate staff of Assistant Administrative Officers clerks, teachers"; "(e) to sanction with or without variation the budget of the municipal school board". Sub-section (3)

provides for the power to make regulations, subject, no doubt, to the sanction of the State Government, among other things for determining the qualifications pay and terms of employment of the Assistant Administrative Officers, Supervisors, Attendance Officers, clerks and other staff, for regulating the administration, management and control of primary schools. sections 16 and 17 thus vest considerable control over the primary schools in the Municipality in their management, budgetary provisions and what is important in determining the terms and conditions, including the pay of the staff. It is true that the Administrative Officer has been conferred considerable powers under Ss. 23 and 24 in the matter of appointment of teachers, their promotions, transfers and disciplinary action that may be taken against them, but under S. 23 of the Selection Committee which has the power of selection is composed of three persons, one of them being the Chairman of the School Board, who would be the nominee of the Municipality. A member of the Municipality having a voice in the election of the members of the Board acquires thus a voice in the selection of teachers though indirectly. In regard to the powers of disciplinary action, also, an appeal against an order of the Administrative Officer is provided and such appeal is to be heard by the Educational Inspector and the Chairman of the School Board. These provisions show that though there is a dual control over the primary schools of the State Government and an authorized municipality, it cannot be gainsaid that the teachers of the primary schools of an authorized Municipality are the servants of such Municipality and they are under a considerable control of the Municipality in several important matters. The petitioner in his capacity as a Councillor has a voice in the election of at least 10 out of 12 members of the School Board and its Chairman, besides himself exercising a general control through the Municipality over all the primary schools within its area. That being so, it must be formed that his duty as a Councillor is or at any rate is likely to be in conflict with his interest in his wife's employment with the Municipality.

(12) The next contention urged by Mr. Rane was that even if the employment of the petitioner's wife were held to be a disqualification, she has been employed since a number of years before the election. Therefore the disqualification is a preexisting one and would not attract S. 28(1) of the Bombay Municipal Boroughs Act. It was argued that the words "becomes subject to" any disqualifications set out in S. 12 must be construed as meaning disqualifications accruing after and not before the election. reliance was placed on the Supreme court decision in Election Commission, India Vs. Saka Venkata Subba Rao and, where on construction of Arts. 190(3) and 191(1) of the Constitution it was held that these Articles applied to disqualifications to which a member of a state Legislature becomes subject to after being elected as such and not to a disqualification which arose before his election. Article 190(3) runs as follows:

"If a member of a House of the Legislature of a State

(a) becomes subject to any of the disqualifications mentioned in clause (1) of Art. 191;

* * * * * his seat shall thereupon become vacant."

Article 191(1) provides:

"A person shall be disqualified for being chosen as, and for being , a member of the Legislative Assembly or Legislative Council of a State" etc. Then follow several kinds of disqualifications. Since the same words viz. "becomes subject to any of the disqualifications" occur also in S. 28(1) of the Act before us, the interpretation put upon them by the Supreme Court must be applied to that section also. The facts which led to that case were that the respondent there was convicted and sentenced to rigorous imprisonment for seven years in 1942. He was therefore disqualified for being chosen as and for being a member of the Legislative Assembly under Art. 191(1)(e) read with S. 7 of the Representation of the People Act, 1951, for a period of five years since his release on 15-8-1947. He was elected a member of the Madras Legislative Assembly before that period had elapsed. The question arose whether he was disqualified and could be allowed to sit and vote in the assembly. As aforesaid, it was held that articles 190(3) and 192(1) provides a remedy when a member incurred a disqualification after he was elected. His Lordship Patanjali Shastri C. J., at p. 1158 observes:

"Not only do the words "becomes subject" in Art. 190(3) and "has become subject" in Art. 192(1) indicate a change in the position of the member after he was elected, but the provision that his seat is to become thereupon vacant further reinforces the view that the article contemplates only a sitting member including the disability while so sitting." (13) But the disqualification which their Lordships of the Supreme Court had to deal with was of a different nature than the one before us. The disqualification there was that the member was convicted and sentenced in 1942 and by reason of that conviction, he was prohibited under S. 7 of the Representation of People's Act from becoming a member for a period of five years. In other words the statutory disability had already occurred once for all in 1942 and was therefore a pre-existing one. In the case before us, however the disqualification is not a personal one as in the case before the Supreme court, but on the ground of a likely conflict of interest and duty of the 2nd respondent. That ground would continue to remain till the employment of the 2nd respondent's wife continued. Every day she continues in service, there arises a conflict between interest and duty of the 2nd respondent. Every day, therefore, he becomes subject to the disqualification referred to above. Therefore the disqualification not only existed at the time of the nomination of the 2nd respondent as a candidate but continued thereafter even after he was elected. In this view, the bar of S. 28(1) of the Bombay Municipal Boroughs Act must apply to the case of the 2nd respondent as the disqualification was not only a pre-existing one but one which continued after the election and still continues. The construction, which we are placing on the section also appears to us to be in consonance with the intention of the legislature. Indeed the legislature could not have intended that a person who is disqualified for standing as a candidate should serve and continues to be subject to the same

disqualification.

(14) In the result the petitioner's contention must be upheld in the interest of purity of Municipal administration which is the primary object of Ss. 12 and 28 of the Act. We therefore set aside the order passed by the Government of Bombay and restore the order of the Collector. There will be no order as to costs.

(15) Application allowed.