

(1961) 08 MAD CK 0043
In the Madras High Court

S.M. Gengadaran

APPELLANT

Vs

The Panachayat Board of Shenbakkam and Others

RESPONDENT

Date of Decision : 24-08-1961

Acts Referred:

Madras Village Panchayats Act, 1950 — Section 19(1)

Citation : (1962) 1 MLJ 327

Hon'ble Judges : Veeraswami, J

Bench : Division Bench

Judgement

Veeraswami, J.—The petitioner was elected as a member of the Panchayat Board of Shenbakkam on 5th May, 1958. It is not in dispute that prior to his election he had been convicted for offence under Sections 348 and 330 of the Indian Penal Code and sentenced to rigorous imprisonment for three years and that five years had not elapsed from the date of the expiration of the period of the sentence. This would, therefore, have been a disqualification u/s 16(1) of the Madras Village Panchayats Act, 1950, for his election as a member. Apparently nobody took the objection before his election. On a petition by the President of the Panchayat Board filed in February, 1960, u/s 19(1) of the Act, which was O.P. No. 37 of 1960 on the file of the Court of the learned Principal District Munsif, Vellore, it was held that the present petitioner was not qualified to hold office as a member of the Panchayat u/s 17(a) of the Act and that he should, therefore, cease to hold the office. This petition is to quash that Order.

2. It is urged that the order of the learned District Munsif was passed without jurisdiction as the disqualification arising out of the conviction was one which existed even prior to the election and that Section 19(1) of the Act has application only to a case of supervening disqualification sustained after an election. This contention raises a question of construction of that section. Section 19(1) reads:

Whenever it is alleged that any person who has been elected as a member of a panchayat is not qualified or has become disqualified u/s 13, 15, 16 or 17 and

such person does not admit the allegation, or whenever any member is himself in doubt whether or not he is not qualified or has become disqualified u/s 15, 16 or 17 such member or any other member may, and the Executive Authority shall, on the direction of the Panchayat or of the Inspector, apply to the prescribed judicial authority whose decision shall be final.

It is manifest that application of this provision can only arise after a person has, as a matter of fact, been elected as a member of a Panchayat, and that it cannot be invoked at any point prior to that stage. Even then it is only the Executive Authority on the direction of the Panchayat or of the Inspector of Municipal Councils and Local Boards or any member of the Panchayat that can apply under that section. The grounds on which an application will lie u/s 19(1) are : (1) that a member of a Panchayat is not qualified or has become disqualified u/s 13, 15, 16 or 17 and the member concerned does not admit the allegation or (2) that a member is himself in doubt whether or not he is not qualified or has become disqualified u/s 15, 16 or 17. It is the first ground, which has relevance to this petition, and the question is whether it includes a pre-existing disqualification or is confined to a supervening disqualification after the election of the member. In other words, what is the scope and connotation of the words "is not qualified" or "has become disqualified" in the sections mentioned?

3. To answer the question, it is first necessary to examine the scope of Section 13, 15, 16 or 17. The first of the sections states that

no person shall be qualified for election as a member of a Panchayat unless his name appears on its electoral roll.

This section deals with a qualification to stand for election and the qualification undoubtedly refers to a stage prior to nomination. By its very nature, therefore, Section 13 cannot come within the purview of "has become disqualified" in Section 19(1). The question of qualification at or prior to nomination may, of course, arise after an election and in such a case even the words "is not qualified" appear to be inappropriate, if they are intended to cover the case. Sections 15 to 17 deal with disqualifications and it is clear from a close scrutiny that they include disqualification existing before or supervening an election of a member. The words "has become disqualified" seem to comprehend only supervening disqualification u/s 15, 16 or 17 because the existing disqualification cannot aptly be described "has become disqualified". If, bearing these considerations in mind, and also the dichotomy between the qualification prescribed by Section 13 and the disqualifications enjoined by Section 15, 16 or 17, we read Section 19(1), its intention seems obvious. The words "is not qualified" have reference to Section 13 which pertains to a qualification. It would have been more appropriate, if the word "was" has been used instead of the word "is". Anyhow, since Sections 15, 16 and 17 do not deal with qualifications but only disqualifications, the words "is not qualified" do not qualify or have reference to those sections. If the words "has become disqualified" suggest as I think they do, something which has come into being since the election, it will

then be clear that Section 19(1) will only apply to those disqualifications under these sections which supervene an election, and not which existed before an election.

4. The interpretation I have placed upon Section 19(1), in my opinion, is supported by the view of the Full Bench in *J. Selvaranga Raju Vs. T. Doraiaswami Mudaliar*, . That was a case under the Madras District Municipalities Act, 1920 and the disqualification there was one u/s 49(2)(iv) which existed even at the date of nomination. The election was challenged by means of an election petition grounded on that disqualification. The question before the Full Bench was whether the remedy was u/s 51 of the District Municipalities Act, 1920, and, therefore, an election petition did not lie. Section 51, as it stood then, ran:

Whenever it is alleged that any person who has been elected or appointed as a Councillor is disqualified u/s 49 or Section 50 and such person does not admit the allegations, or whenever any Councillor is himself in doubt whether or not he has become disqualified for office, etc., etc.

In the view of Coutts Trotter, C.J., Section 51 could only apply where there had been an election of the candidate as a Councillor which was apparently valid on the face of it. The learned Chief Justice observed:

In my view, it cannot apply to the inchoate stage of nomination which has not resulted in at least something which purports to be an election.

Wallace, J., dealing with the words "is disqualified" and "has become disqualified" said:

Again the present tense "is disqualified" in Sub-section (1) cannot be aptly used of Section 49 since it refers to the present state of the Councillor who has been elected, whereas Section 49 refers to his prior state on the date of the nomination, election or appointment. The same remark applies to the use of the same term in Sub-section (2). It is also not clear what differentiation, if any, is intended between "is disqualified" in reference to an allegation by outsiders and "has become disqualified" in reference to the doubts of the Councillor. Are the doubts of a Councillor remediable in law only when they relate to a period after his election and not when they relate to the period of nomination or actual election? However, the general sense of the section seems to be that when any question arises whether a person elected as Councillor was disqualified u/s 49 at the time of nomination or election or has since the election become disqualified u/s 50, the matter should be moved before the District Judge by a Councillor or the Chairman.... I think it applies to cases where the election has gone through without challenge and something has occurred thereafter which raises doubts about the qualification of some sitting Councillor.

Ananthakrishna Ayyar, J., also expressed a similar view:

Reading Section 51, it seems to me that it applies only to a stage after a candidate has been duly elected or appointed. The use of the words "is

disqualified" in the section seems to me to support this view.... The expression "is disqualified" and "has become disqualified" occurring in the section seems to me to postulate a case where a person has validly become a Councillor either by means of a proper and regular election, or by a proper appointment; and they seem to provide only for cases where a person has been validly and properly elected or appointed as a Councillor, but where a question is raised that owing to the present existence in him of particular disqualifications, he should cease to be a Councillor.

If the above view be correct, then Section 51 could not apply to a stage prior to such person having become a Councillor; it cannot apply to the stage of "Nomination" of candidates, and dispute about, the disqualification of a candidate who has been "nominated".

The Full Bench was accordingly of the opinion that the election petition lay. Since the Full Bench decision, Section 51(1) was amended by Madras Act X of 1930 by substituting "Sub-section (1) of Section 48, Section 49, Section 50 or Section 60" for the words and figures "Section 49 or Section 50". In Election Commission, India Vs. Saka Venkata Subba Rao and, , the scope of Article 192(1) in the context of Articles 191(1) and 190(3) of the Constitution came up for decision. Though the decision eventually went upon jurisdiction, their Lordships of the Supreme Court expressed:

In our opinion these two Articles 190(3) and 192(1) go together and provide a remedy when a member incurs a disqualification after he is elected as a member. Not only do the words "become subject" in Article 190(3) and "has become subject" in Article 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, that is to say, the seat which the member was filling theretofore becomes vacant on his becoming disqualified, further reinforces the view that the article contemplates only a sitting member incurring the disability while so sitting.... For the reasons indicated we agree with the learned Judge below in holding that Articles 190(3) and 192(1) are applicable only to disqualifications to which a member becomes subject after he is elected as such, and that neither the Governor nor the the Commission, has jurisdiction to enquire into the respondent's disqualification which arose long before his election.

If I may say so with respect, this approach of the Supreme Court in interpreting the said Articles further strengthens the view I have expressed as to the true scope of Section 19(1) of the Madras Village Panchayats Act, 1950.

5. I hold, therefore, that the learned District Munsif had no jurisdiction u/s 19(1) to set aside the petitioner's election on the basis of the disqualification which undoubtedly existed prior to his election. The Petition is allowed and the order of the Court below is quashed. The petitioner will have his costs throughout from the 1st respondent. Counsel's fee Rs. 100.