

(2016) 03 KAR CK 0272

In the Karnataka High Court

Case No : Writ Appeal No. 5868 of 2013 (LB-RES)

Smt. G.L. Vedhavathy

APPELLANT

Vs

Sri Purushothama A.D.

RESPONDENT

Date of Decision : 18-03-2016

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 12(h)

Citation : (2016) AIR(Karnataka) 164 : (2016) 3 AirKarR 723 : (2016) ILRKarnataka 3481 : (2016) 4 KantLJ 454 : (2016) 3 KCCR 1901

Hon'ble Judges : Mr. N. Kumar and Mr. B. Veerappa, JJ.

Bench : Division Bench

Advocate : Sri Ravishankar S., Advocate, for the Appellant; Sri. P.H. Virupakshaiah, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. B. Veerappa, J.—The above writ appeal is filed against the impugned order dated 29th of August, 2013 passed by the learned Single Judge in Writ Petition No. 41122/2012 setting aside the order dated 29.2.2012 passed in Complaint No. Sec 16. NYAPRAGP 2012 by 5th respondent and declaring that the 1st respondent in writ petition - appellant herein has suffered a disqualification in terms of the provisions of Section 12(h) of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993(for short hereinafter referred to as "the Act").

2. The 1st respondent herein, who is the petitioner in W.P. No. 41122/2012 filed the writ petition seeking to quash Annexure-L dated 29.9.2012 passed by the 5th respondent-Authority and to hold that the same is illegal, against the law and without application of mind and also for a writ in the nature of prohibition directing the appellant herein - Member and President of Seethakal Grama Panchayat not to continue and hold the office of Member and also as the President of the said Seethakal Grama Panchayat, Tumkur Taluk since she has suffered the disqualification under Section 12(h) of the Act, contending that the petitioner, who is a Member of the 2nd respondent-Grama Panchayat and he has

taken keen interest in alibis activities, meeting and other works that are being undertaken by the Panchayat and is also interested in setting right any illegality or irregularity that has been done either by any officers or members of the Grama Panchayat or any person connected with the administration of the Grama Panchayat.

3. The petitioner further contended that the 1st respondent therein-present appellant herein was elected as Member of the 2nd respondent-Grama Panchayath and consequently, she was elected as President of the 2nd respondent-Grama Panchayat from 24.6.2012. The 1st respondent/appellant herein is working against the interest of the Grama Panchayat-2nd respondent and she is in the habit of not giving importance for the procedure, rules, regulations, laws, etc., which are paramount in the administration of the Panchayat and because of her mal-administration, the people of the Grama Panchayat are suffering. It is also further contended that the 1st respondent-appellant herein, who is the member of the Grama Panchayat is directly involved in the contract work that has been sanctioned/undertaken and benefited by the execution of work within the Grama Panchayat area and therefore, she has suffered disqualification under the provisions of Section 12(2) of the Act.

4. The petitioner has further contended that the 2nd respondent-Grama Panchayat has written a letter to the 3rd respondent-authority on 16.2.2012 stating that the appellant-the President of 2nd respondent-Grama Panchayat who has undertaken and executed the contract work is forbidden under the provisions of the Act and therefore, has recommended to take action against appellant herein in accordance with law. The 4th respondent also furnished the documents under the provisions of Right to Information Act regarding the sanctioned order given in favour of the appellant herein - President of the Grama Panchayat. In pursuance of the said conduct of the appellant and recommendations made by the 2nd respondent, the petitioner filed a complaint before the 5th respondent, who is the competent authority to take action under the provisions of Section 12(1)(i) of the Act against the appellant seeking disqualification.

5. The 5th respondent after considering the entire material on record, passed the order dated 29.9.2012 and dismissed the complaint mainly on the ground that the petitioner before the learned Single Judge has failed to prove that the work orders or tenders or the amount paid and received through the Seethakal Grama Panchayat. All the works are carried out on the contract issued by Zilla Panchayat, Tumkur. Therefore the provisions of Section 12(h) of the Act is not attracted. Aggrieved by the said order passed by the 5th respondent, the petitioner filed W.P. No. 41122/2012 before this Court. The learned Single Judge of this Court, after hearing both parties, by the impugned order dated 29th August, 2013 set aside the order passed by the 5th respondent dated 29.9.2012 declaring that the 1st respondent-present appellant has suffered disqualification in terms of Section 12(h) of the Act. Hence, the appellant has filed the present appeal.

6. We have heard the learned Counsel for the appellant and the learned Counsel for respondent No. 1/Caveator.

7. Sri Ravishankar S., learned Counsel for the appellant has contended that the learned Single Judge has erred in holding that the work done by the appellant was on behalf of the Grama Panchayat which is the beneficiary of the work without considering the provisions of Section 12(h) of the Act. He also contended that Section 12 of the Act is exhaustive and it pertains to any act either directly or indirectly pertaining to Grama Panchayat. Therefore, the impugned order passed by the learned Single Judge is contrary to the intention of the Legislature. It is further contended that the learned Single Judge erred in holding that the work carried out by the appellant was for the benefit of the Gram Panchayat and as such though the work order was issued by the 4th respondent and the payments were made by the 4th respondent to the works carried out in the area of the 2nd respondent was for and on behalf of the 2nd respondent-Grama Panchayat and therefore, he sought to set aside the order passed by the learned Single Judge of this Court.

8. Per contra, Sri P.H. Virupakshaiah, learned Counsel for the 1st respondent/Caveator, sought, to justify the impugned order passed by the learned Single Judge.

9. We have given our thoughtful consideration to the arguments advanced by the learned Counsel for the parties to the lis and perused the entire material on record.

10. In view of the rival contentions urged by the learned Counsel for the parties, the points that arise for our consideration in the present appeal are:

(i) Whether the appellant is disqualified under the provisions of Section 12(h) of the Act?

and

(ii) Whether the impugned order passed by the learned Single Judge calls for any interference?

11. It is an admitted fact that both the appellant as well as respondent No. 1 are members of the Seethakal Grama Panchayat, Tumkur Taluk and District. It is also not in dispute that the appellant was elected as President/Adhyaksha of the 2nd respondent-Grama Panchayat from 24.6.2012. It is asserted by the 1st respondent that the present appellant being a member/President of the 2nd respondent-Grama Panchayat is directly involved in the contract work that has been sanctioned and undertaken within the 2nd respondent-Grama Panchayat area. She has executed Grama Panchayat works pertaining to the 2nd respondent-Grama Panchayat. The said assertion made by the petitioner-1st respondent herein was not at all denied by the present appellant before the learned Single Judge by filing any objections to the averments made in the writ petition.

12. The learned Single Judge after considering the entire material on record has recorded a specific findings as under:

- i) In the examination-in-chief, the 1st respondent (present appellant) has stated that the work order issued by the Zilla Panchayat to her is towards execution of the contract work within the Gram Panchayat area.
- ii) That the agreement between CEO and her (present appellant) is for having undertaken the contract work;
- iii) In the cross-examination, she (present appellant) admits that the amount for the works of Grama Panchayat is released by the Grama Panchayat but denied that she has not done any work for the Seethakal Gram Panchayat;
- iv) She (present appellant) agrees that in the contract certification is issued in her name and the amount she has received is regarding Heredoddawadi village over head tank work;
- v) She (present appellant) agrees that the development work from Dabaspeta Koratagere road to Betta Seethakal road which comes under the Seethakal Gram Panchayat area is executed by her;
- vi) She (present appellant) agrees that the work under the Rural Water Supply Scheme in Hiredoddawadi village is executed by her and she has received Rs. 18,08,983/-;
- vii) She (present appellant) agrees in the cross-examination that she also received the money for executing the other works in the villages of Seethakal Grama Panchayat.

In view of the admissions made by the appellant and the specific finding recorded by the learned Single Judge, it is clear that the appellant was elected as Member and President of the 2nd respondent-Grama Panchayat and she should not have any share or interest in any work done by the order of the Grama Panchayat either directly or indirectly or in any contract or employment with, or under, or by, or on behalf of the Grama Panchayat in view of the provisions of Section 12(h) of the said Act which reads as under:

(h) if, save as hereinafter provided he has directly or indirectly any share or interest in any work done by order of the Grama Panchayat, or in any contract or employment with, or under, or by, or on behalf of, the Grama Panchayat; (or if he is either directly or indirectly by himself or by his agent, partner or employee involved in obtaining or execution of any such work or contract on behalf of the Grama Panchayat or of any contract for the supply of goods and services to the Grama Panchayat); or

A plain reading of the said provision makes it clear, that a person shall be disqualified for being chosen or being a member of the Grama Panchayat, if he or she has either directly or indirectly any share or interest in any work done by order of the Grama Panchayat, or in any contract or employment with, or under,

or by, or on behalf of, the Grama Panchayat, or of any contract for the supply of goods and services of the Grama Panchayat shall be disqualified. It means that any member of the Grama Panchayat undertakes any construction work, any such transaction with the concerned Grama Panchayat, he/she shall not be disqualified for both being chosen and also being member of the Grama Panchayat.

13. In the present case, admittedly the appellant is a Member and President of the 2nd respondent-Grama Panchayat is directly involved in the contract work that has been sanctioned, undertaken and benefited by the execution of work within the Grama Panchayat area. The material on record clearly indicates that the appellant has admitted in her cross-examination before the 5th respondent that she was a Class-II contractor and had obtained the contract from the Executive Engineer, Zilla Panchayat Engineering Division, Tumkur with a bid price of Rs. 8,82,815/- as per Ex.P.8 and also there was an agreement between the Executive Engineer, Zilla Panchayat and the appellant to execute the work under 4215 Rural Water Supply Scheme in Hiredoddawadi village for tap water supply scheme 2011-12 with a bid price of Rs. 11,67,210/- as per Ex.P.10. She has also admitted in her examination-in-chief that the documents relied upon by the petitioner to show that she has done work pertaining to the work order issued by the Zilla Panchayat and the work order issued by the CEO, Zilla Panchayat to her towards execution of the contract within the Grama Panchayat area and she has received the amount for the contract work entrusted by the Zilla Panchayat and has not undertaken any work by the orders of the Seethakal Grama Panchayat. It is also not in dispute that the appellant was a Class-II contractor even before she became the member of the Grama Panchayat. She admits that the contract licence issued by the Zilla Panchayat, Tumkur and also admits the works of the Grama Panchayat, was released by the Zilla Panchayat and the inspection carried by the Zilla Panchayat, Engineering Division. She also admits that the development work from Dabaspete Koratagere road to Betta Seethakal road is coming under the Seethakal Gram Panchayat area. Therefore, the contention of the learned Counsel for the appellant that the Grama Panchayat has not executed any work in favour of the appellant cannot be accepted.

14. It is not in dispute that the object of the Legislature while enacting the provisions of Section 12(h) of the Act is to ensure purity of administration of Grama Panchayat. In that sense, it may be permissible to hold that the different clauses enumerated in Section 12 of the Act should not receive an unduly narrow or restricted construction. But even if we were to adopt a liberal construction of Section 12 of the Act, we cannot escape the conclusion that the interest or share has to be in the contract itself. When we are enquiring as to whether the appellant is interested directly or indirectly in the employment or contract, we cannot overlook the fact that the appellant is interested in the contract and the provisions of Section 12(h) of the Act disqualifies resulting from the very fact that the person concerned holds any office of profit in the membership/President of the Gram Panchayat.

15. Admittedly the material on record clearly indicates that the appellant being a member and holding responsible post of President should be model to the Grama Panchayat and other members of the concerned Grama Panchayat in order to fulfil the object of the provisions of Section 12(h) of the Act.

16. The object of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 is to constitute units of Gram Swaraj and Panchayat Raj to provide for:-

- i) establishment of three tier Panchayat Raj system with the elected bodies at grama, taluk and district levels to fulfil the spirit of 73rd Amendment of the Constitution of India and for greater participation of the people to function as units of Grama Swaraj, the local self-government;
- ii) effective implementation of rural development programmes for enhancement of living standards of rural people;
- iii) a litigation-free, exploitation-free, and fear-free egalitarian rural Karnataka;
- iv) Clean villages which are free from practise of open defecation;
- v) Panchayat Raj system empowering women to achieve gender equality";
- vi) Reservation for socially deprived classes of people to attain economic prosperity and social equality;
- vii) Alternative sources of income in the lives of rural people through economic activities and to enhance the standard of living by providing civil amenities;
- viii) Building a creative, proud, self-reliant, prosperous, contented and harmonious society;
- ix) Constitution of Habitation Sabha, Ward Sabha and Gram Sabha with commitment and to resonate the voice of the real sovereign through direct participation of rural India in policy making by using them as a platform for developmental activities and thereby resolving to establish true Gram Swaraj the cherished dream of Mahatma Gandhiji.

17. In view of the object of the Legislature while enacting the Karnataka Gram Swaraj and Panchayat Raj Act and the provisions of Section 12 of the Act clearly depicts that a person being a member or holding the post of President/Vice-President of the Grama Panchayat should work in transparency so as to maintain the faith in the office of the posts stated supra. In the present case, the material on record clearly discloses that the appellant is directly or indirectly involved or has got interest in the contract of work issued on behalf of the Grama Panchayat. On that ground alone, the above writ appeal is liable to be dismissed.

18. The words enumerated under Section 12(h) of the Act with regard to any share or interest in any work done by order of the Grama Panchayat or in any contract or employment with, or under, or by, or on behalf of, the Grama Panchayat either he/she directly by himself/herself or by his agent/her agent, partner or employee involved in obtaining or execution of any such work or

contract on behalf of the Grama Panchayat clearly indicates that if the appellant had got any share or interest in any contract either directly or indirectly or on behalf of, the Grama Panchayat shall be disqualified.

19. The word "interest" has been explained in P. Ramanatha Aiyar's The Law Lexicon, 2nd Edition (Reprint 1999) which reads as under:

"Interest. - Legal concern, right, pecuniary stake the legal concern of a person in the thing or property or in the right to some of the benefits or use from which the property is inseparable; such a right in or to a thing capable of being possessed or enjoyed as property which can be enforced by judicial proceedings. The word is capable of different meanings, according to the context in which it is used or the subject-matter to which it is applied. It may have even the same meaning as the phrase "right title and interest" but it has been said also to mean any right in the nature of property, but less than title. The word is sometimes employed synonymous with estate, or property.

"Interest means concern, advantage, good; share, portion, part or participation"

A person interested is one having an interest; i.e., a right of property, or in the nature of property, less than title."

20. There is no doubt that Section 12(h) of the Act contemplates that share or monetary interest (direct or indirect) has to be in the contract itself. The expression "in any" contract" means in regard to any contract. Could it be said that the appellant had no indirect share or monetary interest on behalf of the 2nd respondent-Grama Panchayat, by operation, she is entitled to the profits of that contract? The money acquired by the appellant from the contract on behalf of the 2nd respondent-Grama Panchayat is "community property" and, therefore, the conclusion is inescapable that the appellant has indirect share, or in any case, monetary interest in the contract awarded in her favour by the Zilla Pachayat on behalf of the 2nd respondent-Grama Panchayat as the profits from the contract.

21. While considering the provisions of Section 12(h) of the Act, which provided for the disqualification for the members of the Grama Panchayat, the Act prescribes several disqualifications in that provision is to ensure the purity of the administration of Grama Panchayat. Hence, we hold that the prohibition under Section 12(h) of the Act, should not receive unduly narrow or restricted construction. Accordingly, we answer point No. (i) in affirmative holding that the appellant has incurred disqualification under the provisions of Section 12(h) of the Act.

22. On re-appreciating the entire material on record, we find that no ground is made out by the appellant in the impugned order passed by the learned Single Judge. Accordingly, we answer the point No. (ii) in affirmative holding that the order passed by the learned Single Judge does not call for our interference in exercising the powers of the intra-Court appeal under the provisions of Section 4

of the Karnataka High Court Act.

23. Accordingly, Writ Appeal is dismissed.