
(1987) 06 MAD CK 0017
In the Madras High Court

S.T. Diraviam

APPELLANT

Vs

V.P. Chelliah and Others

RESPONDENT

Date of Decision : 19-06-1987

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1988) 1 LW 471 : (1988) 1 MLJ 289

Hon'ble Judges : V. Ratnam, J

Bench : Single Bench

Judgement

V. Ratnam, J.—This is a petition under Article 227 of the Constitution of India, to revise the order of the learned District Munsif, Tenkasi,

dated 28.11.1986 in Election O.P. 2 of 1986, holding that the election of the petitioner as a member of the Aalankulam Panchayat Union is

opposed to the provisions of the Tamil Nadu Panchayats Act (hereinafter referred to as the Act) and therefore his election is invalid.

2. The facts giving rise to this civil revision petition may be briefly set out. The election to the Aaiankulam Panchayat Union took place on

23.2.1986. The petitioner and the first respondent herein contested that election from the 8th ward of Aaiankulam Panchayat Union. The petitioner

was declared elected on 25.2.1986. In election O.P. No. 2 of 1986, the first respondent challenged the election of the petitioner as being opposed

to the provisions of the Tamil Nadu Panchayat Act, and the rules framed thereunder, on the ground that the petitioner was a lessee in respect of

certain shops belonging to the said Panchayat Union during the relevant period and that he had also taken on lease the right to collect fees in

respect of a toilet located in the bus-stand belonging to Aalankulam Panchayat Union and as such interested in a subsisting contract. It was also

further claimed by the first respondent that the petitioner was in arrears in a sum of Rs. 3,216 in respect of the rents payable for the lease of the shops and also a sum of Rs. 803 towards the collection of fees in respect of the toilet in the bus-stand. This, according to the first respondent, disqualified the petitioner u/s 25(2)(c) and (g) of the Act, but this was suppressed by the petitioner resulting in the improper acceptance of his nomination, as a result of which he was allowed to contest the election wherein he was also declared successful. The first respondent, therefore, claimed that the election of the petitioner was vitiated owing to the contravention of the provisions of the Act and the commission of corrupt practices, which deserved the setting aside of the election of the petitioner.

3. In the counter statement filed by him, the petitioner herein admitted having taken on lease in S. No. 424 Aalankulam but claimed that the shops could not be run owing to certain delays, which necessitated the lodging of a petition for the reduction of the lease amount and that after the expiry of the period, the plots were given to other persons and that there was no amount due by the petitioner to the Aalankulam township. The arrears attributed to the petitioner in respect of the right to collect fees for using the toilet in the bus-stand, were disputed by the petitioner. An objection was also raised that the petitioner was only a licensee and not a contractor and that therefore there was no question of any disqualification. The petitioner also put forth the plea that the election petition was bad for nonjoinder of necessary parties.

4. Before the learned District Munsif, Tenkasi, on behalf of the first respondent, Exs. A1 to A5 were marked in evidence and the first respondent herein examined himself as P.W. 1, while, on behalf of the petitioner, Ex.B1 was filed and the petitioner gave evidence as R.W.1. On a consideration of the evidence so let in, the learned District Munsif found that the petitioner had taken on lease certain plots belonging to the Panchayat Union as lessee and that he was in arrears of rent to the Panchayat Union in respect of the plots so taken on lease by him. It was also further found that with reference to the toilet in the bus-stand the petitioner had taken on lease the same and was also in arrears. On these conclusions, the learned District Munsif held that the petitioner was disqualified u/s 25(2)(c) and (g) of the Act and invalidated his election. It is the

correctness of this, that is challenged in this civil revision petition.

5. Thus, the main question that arises for consideration is whether the petitioner had suffered any disqualification u/s 25(2)(c) and (g) of the Act.

Though a faint attempt was made by the learned Counsel for the petitioner to contend that on a reading of the contents of the election petition, the

disqualification u/s 25(2)(c) and (g) of the Act cannot be sustained against the petitioner, it is not possible to countenance that, for, clearly in

paragraph 3 of the election petition the subsisting interest of the petitioner in the said shops as well as the right to collect the fee in the toilet, has

been referred to as a disqualification attracting Section 25(2)(c) of the Act and in paragraph 4, the arrears payable by the petitioner under those

heads have been clearly set out as attracting Section 25(2)(g) of the Act. It is now therefore necessary to consider whether the petitioner was

interested in a subsisting contract made with the Panchayat Union, except as a shareholder (other than a Director) in a company, u/s 25(2)(c) of

the Act. The principle behind the disqualification enacted under this section is to avoid conflicts between public duty and private interest and to

secure and maintain freedom and independence of action of the local bodies, as well as to prevent the sapping of freedom and independence as a

result of members being admitted to the benefits of profitable contracts with the local bodies. It is also intended to maintain the purity of public life

and avoidance of situations where the private interest of a member either actually conflicts or may conflict with, or, run counter to, his duty as a

member of the public body. That is why the disqualification is incurred, where a member is interested in a contract with the local body. When the

object of the disqualification is to prevent a conflict between the public duty and private interest, and also to maintain the purity of public life, it is at

once apparent that any pecuniary advantage or even a reasonable expectation of such advantage, or, the possibility or probability of an actual

resulting benefit, would be sufficient to attract the disqualification. That being the object of Section 25(2)(c) of the Act, if the petitioner had any

subsisting interest in a contract with the local body, that, ordinarily would be sufficient to disqualify the petitioner. In so far as the lease of shops

taken by the petitioner is concerned, the documentary evidence clinchingly establishes that he was so interested. Apart from it, in paragraph 5 of

the counter-affidavit the petitioner had clearly admitted having taken on lease plots in S. No. 424. Under Ex. A1, the petitioner had been declared the highest bidder in respect of the auction held for the lease of the property belonging to Aalankulam Panchayat Union, for the purpose of locating shops in the daily shandy. Ex. A1 refers to plot No.39 and the highest bid of the petitioner was Rs. 3,701. The petitioner examined as R.W.1, has admitted that he was the successful bidder in respect of plots 17, 20 and 39. Exs. A3 and A4 also show that the petitioner was the highest bidder in respect of the lease of plots 17 and 20 for Rs. 380 and Rs. 335 respectively. This is also admitted by R.W.1, who has stated that the Executive Officer of the Panchayat Union has signed in confirmation of the lease auction in his favour. Thus, apart from the admission of the petitioner referred to earlier, Exs. A1, A3 and A4 clearly make out that the petitioner was the highest bidder in respect of 3 plots, aforesaid. Though petitioner attempted to state in the course of his evidence that the bids had not been confirmed and therefore, the leases had not come into effect, he was unable to substantiate the same, for, he frankly admitted that there was no material to show that the leases in his favour were not confirmed. It is also significant that it is not the case of the petitioner that he had no subsisting interest at the relevant point of time. Apart from that, there is no material in this case, to show that the parties contemplated the execution of a further contract setting out the terms and conditions of the auction. It is also not established by the petitioner that the execution of a further contract is one of the vital terms of the bargain. Even otherwise, the contemplation, if any, could at best be equated only to the manner in which the transaction already agreed upon, will have to be put through and in such a case, the contract already concluded will be binding and the reference to a formal document may even be ignored. This is well settled and does not require citation of decisions. On the evidence adduced in this case, it is clearly made out that the petitioner was interested in a subsisting contract with reference to plots 17, 20 and 39 in Aalankulam Panchayat Union not only on the basis of the admission referred to earlier, but also the strength of Exs. A1, A3 and A4.

6. Whether with reference to the lease taken by the petitioner, he was in arrears of any kind to the Panchayat or to the Panchayat Union Council

upto and inclusive of the previous year, so as to attract the disqualification u/s 25(2)(g) of the Act, may now be adverted to. Ex. A2, which is an extract from the Registrar of Miscellaneous demand for the year 1986-87, shows under column 5 that an amount of Rs. 4,426 was due from the petitioner in respect of plot Nos. 17, 20 and 39. Though the petitioner claimed that he was not in arrears, the documentary evidence establishes contra. Ex. A2 clearly shows that the petitioner was in arrears in a sum of Rs. 4,416. Even assuming for the sake of argument that the lease of Plots 17, 20 and 39 enured, as claimed by the petitioner in his evidence, only upto 31.12.1984, to support which of course there is no documentary evidence, it is seen from Ex. A2 that the petitioner was in arrears in a sum of Rs. 4,416 payable by him towards the lease of those plots. It is further seen from Ex. A2 that it is an extract from the demand register for the year 1986-87. That would mean that as per Section 2(37) of the Act, upto and inclusive of the previous financial year, i.e., 1.4.1984 upto 31.3.1985 also, these amounts had remained unpaid by the petitioner. The expression "arrears of any kind" occurring in Section 25(2)(g) of the Act is wide enough to cover and include all, kinds of arrears, inclusive of the lease arrears payable. Thus, even assuming that the petitioner did not have any subsisting interest at the relevant point of time in the lease of the plots, referred to earlier, by reason of the non-payment of the lease amount, he was in arrears upto and inclusive of 31.3.1985 and subsequently as well as shown by Ex. A2 and that would be sufficient to disqualify the petitioner u/s 25(2) of the Act.

7. Whether the petitioner is also disqualified u/s 25(2)(c) and (g) of the Act with reference to his right to collect the fees in respect of the toilet in the bus-stand owned by the Panchayat Union may now be considered. Though it appears to have been debated before the Court below that the right secured by the petitioner was only in the nature of a licence and therefore that would not attract Section 25(2)(c) of the Act, it is unnecessary to embark upon an enquiry into the character of the transaction as such, for, it is at once evident that whether the transaction is a lease or a licence, it held out a possibility-nay, even a high degree of probability of actual resulting benefit to the petitioner by the exploitation of the toilet belonging to Panchayat Union. That would be sufficient to create an interest in favour of the petitioner in respect of the work being done for the Panchayat

Union Council as to attract the disqualification enacted in Section 25(2)(c) of the Act. However, a careful perusal of the entries in Ex. A5 do not

establish that the petitioner was also in arrears to attract the disqualification provided for u/s 25(2)(g) of the Act as well, for, it is seen that though

the petitioner had secured the right to collect the fees in respect of the use of the toilet in the bus-stand for the year 1984-85 to 1986-87, he was

not in arrears except for the year 1986-87, and that period would admittedly fall after the year relevant for the purpose of Section 25(2)(g) of the

Act.

8. An argument was also addressed by the learned Counsel for the first respondent regarding the very limited scope of interference under Article

227 of the Constitution; but since the matter had earlier been considered on merits it is not necessary to consider this point at length.

9. Thus, on a careful consideration of all the available evidence, it is seen that the Court below was right in its conclusion that the petitioner had

suffered the disqualification u/s 25(2)(c) and (g) of the Act, though not entirely on the basis of the reasons given by the Court below. Consequently,

the civil revision petition fails and is dismissed with costs of the first respondent. Counsel's fee Rs. 500.

10. In view of the disposal of the main petition, interim stay granted already is vacated and C.M.P. No. 176 of 1987 will stand dismissed.