
(1984) 03 KL CK 0034
In the High Court Of Kerala
Case No : W.A. No. 553 of 1982

Thomas Rajan

APPELLANT

Vs

Philip John and Others

RESPONDENT

Date of Decision : 05-03-1984

Acts Referred:

Kerala Municipalities Act, 1960 — Section 62(f)

Citation : (1984) KLJ 332

Hon'ble Judges : V. Bhaskaran Nambiar, J;G. Bai Agangadharan Nair, J

Bench : Division Bench

Advocate : C.K. Sivasankara Panicker, K.S. Radhakrishnan and K.V. Gopinathan Nair, for the Appellant; K. Chandrasekharan and K. Vijayan, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskaran Namhiar, J.—Does a legal Practitioner filling a suit against a Municipality incur any disqualification for standing for election to the Council of the Municipality? This is the only point that arises for determination in this appeal. Election to the Kottayam Municipal Council was held in September 1979. The appellant, the writ petitioner, a member of the Kottayam Bar, contested the election from Ward No. 4 and secured the maximum number of votes. He was declared elected. His election was challenged before the District Judge u/s 64(2) of the Kerala Municipalities Act, 1960 (Act 14 of 1961), for short the Act. Though several grounds were argued before the District Judge, the Judge held that the petitioner was disqualified to stand for election as he was employed as a legal Practitioner against the Council, thus attracting the disqualification u/s 62(f) of the Act. The election was set aside. This order was challenged before this Court. Mr. Justice Bhaskaran, as His Lordship then was, upheld the decision of the District Judge and dismissed the writ petition.

2. It is not disputed before us that on the date of election the Petitioner was employed as a legal Practitioner in a suit O.S. No.729 of 1978 on the file of the Munsiff's Court, Kottayam and in an appeal, C.M.A. 56 of 1979 before the

District Court, Kottayam. In both these proceedings the defendant was the Kottayam Municipality represented by the Commissioner. The only contention that is advanced is that the disqualification arises only when a legal Practitioner is employed against the Council and not when he is employed against the Municipality. It is, therefore, common case that if he was so disqualified, the appellant cannot succeed.

3. u/s 62(f) of the Act, a person shall be disqualified for election as a Councillor if, at the date of election, he "is employed as a paid legal Practitioner on behalf of the Council or a legal Practitioner against the Council,"

4. The learned counsel for the appellant, Sri C. K. Sivasankara Panicker contends that the Municipality and the Municipal Council are two different entities, the Council being only one of the authorities under the Act and engagement against the Council or on behalf of the Council can alone attract the disqualification u/s 62(f). The provision has to be interpreted literally and a liberal interpretation cannot enlarge the scope of the "penalty".

5. This plea is met by Sri K. Chandrasekharan, the learned counsel appearing for the first respondent by contending that it is through the Council that the Municipality functions and a suit filed against the Municipality is in essence a suit against the Council and the appellant did incur the statutory disqualification.

6. Under the Act, the Government constitutes a Municipality by a notification for any specified area with defined limits and the Municipal authorities charged with carrying out the provisions of the Act are (1) the Council (2) the Standing Committee of the Council (3) the chairman and (4) the Commissioner. Section 6(2) of the Act provides "the Council shall by the name of the Municipality be a body corporate", "shall have perpetual succession and common seal" and "shall in its corporate name sue or be sued." The Municipal office is "the principal office of the Municipal Council." u/s 28, the Municipal administration shall vest in the Council and it is the Municipal Council which has to submit a report on the administration of the Municipality to the Government. The Council may call for records, constitute committees, make regulations, levy tax and duties, control municipal undertakings, decide whether works shall be executed by contract or not, and grant licences. All monies received by the Municipal Council shall constitute the Municipal fund. The Council shall pass the budget before the beginning of the financial year and submit copies of the same to the Government and to the Auditors. All public reservoirs, tanks, cistern, public streets bridges etc. and all adjoining lands which are not private and which do not belong to the Government vest in the Council. The council prescribes the building line and street alignment. The Commissioner is appointed u/s 15. by the Government in consultation with the Council. When the Municipality is abolished u/s 5, the Act and the notifications etc. cease to apply to the area comprised within the Municipality, the balance of Municipal fund vest in the Government and the liabilities of the Council stand transferred to the Government.

7. Municipality is a legally incorporated and a statutorily authorised association of individuals created by or under the authority of the State, designated to function in a defined area, in the prescribed sphere, and discharging mainly governmental functions according to the law of its creation. Municipality is an Instrumentality of the State intended to meet local Government needs. The Municipal Council is a synonym of the Municipality in its entirety. The Municipality can act, be recognised and identified only by means of its human agencies. The Municipal Council has a corporate capacity, a common seal to express its will and an identity with limitless life span and continuous succession. The Municipal Council manages the affairs of the Municipality, is in charge of its administration, holds property "without the perplexing intricacies of perpetual conveyance." A supersession of the Municipal Council does not dissolve the Council but keeps it in suspended animation and allows the function of the Council to be carried through "custos" appointed for the purpose. The supersession of the council does not dissolve the Municipality either. As stated in *Mahamahopadyaya Rangachariar v. The Municipal Council of Kumhakonam* (I.L.R. 29 Mad 539):

To put it otherwise, supersession is nothing more than the dismissal of incompetent Councillors, followed only by the appointment of, to borrow the language of the English law, a custom for the discharge of the functions of the Council pending the nomination or election of other persons who would resume work in the normal way. In a word, supersession is but a suspension of the Council.

8. The disqualifications enumerated in Section 62 of the Act are meant to maintain purity in the administration, to sustain utmost faith and loyalty of the Councillors and to confirm that there is no conflict between private interest and public duty. A protective description as a Municipality in a civil proceeding cannot escape the statutory vigil u/s 62(f). Thus on a consideration of the scheme and object of the whole Act and on a construction of the specific provision, it seems to us to be clear that when a suit is filed with a claim against the Municipality, it is in reality a suit against the Municipal Council, and the appellant, having been employed at the date of the election as a legal Practitioner against the Municipal Council, was disqualified to stand for election.

9. In the present case, we have been taken through the plaint in O.S. No. 729 of 1978 (Ext. A5 marked before the District Court). We are convinced that the plaintiffs' main grievance was against the Municipal Council and the appellant appeared as Counsel for the plaintiffs at the relevant time. Bhaskaran, J. (as he then was) observed thus:-

Therefore, it would mean that the suit O.S.No. 729 of 1978, in substance and effect, was against the Municipal Council, Kottayam, which represents and controls the affairs of the Municipality. The object behind the prohibition in Section 62(2)(f) 3 of the Act is to ensure purity of public life. If a legal practitioner who is engaged against a Municipality gets himself elected to be a councillor of the Municipal Council, it is quite possible that a situation might arise

where there might be a conflict between the interest of the client for whom he appears in the suit on the one hand, and his duty to the Municipal Council as a councillor on the other. The possibility of a councillor, who is also a legal practitioner engaged against a Municipality, having access to the Municipal records, abusing his position as the councillor to advance the cause of his client, sacrificing the interest of the Municipality, could not be completely ruled out, though, having regard to the tradition of the noble profession, very few legal practitioners would stoop to such tactics, as observed by the Supreme Court in *Sakhawat Ali Vs. The State of Orissa*, .

The decision of the District Judge that the appellant was disqualified is therefore correct. There is no error calling for interference and we confirm the decision of the learned single Judge and dismiss the appeal with costs.