

(1981) 11 KL CK 0022
In the High Court Of Kerala
Case No : O.P. No. 4432 of 1981-L

Thomas Rajan

APPELLANT

Vs

Philip John and Others

RESPONDENT

Date of Decision : 28-11-1981

Acts Referred:

Advocates Act, 1961 — Section 30
Bar Councils Act, 1926 — Section 14
Civil Procedure Code, 1908 (CPC) — Order 3 Rule 4(2)
Constitution of India, 1950 — Article 14, 19, 226, 227
Kerala Municipalities Act, 1961 — Section 6(2), 62(2), 65(1)

Citation : AIR 1982 Ker 118

Hon'ble Judges : K. Bhaskaran, J

Bench : Single Bench

Advocate : C.K. Sivasankara Panicker and K.S. Radhakrishnan, for the Appellant; Govt. Pleader and P.N.K. Achan and K. Vijayan, for the Respondent

Final Decision : Dismissed

Judgement

K. Bhaskaran, J.—On 19-9-1979 the petitioner, who, by profession, is an Advocate, was declared to have been elected to be a Councillor of the Municipal Council, Kottayam from Ward No. IV in the election held in Sept. 1979, Ms election, however, was declared invalid u/s 65 (1) (a) read with Section 62 (2) (f) of the Kerala Municipalities Act, 1960, (Act 14 of 1961) for short "the Act", in and by the order dated 25-7-1981, a true copy of which is Ext. P-1, of the 5th respondent, the District Judge, Kottayam made in O. P. (Election petition) No. 6 of 1979, hereinafter referred to as the Election Petition. The challenge in this writ petition filed under Articles 226 and 227 of the Constitution is directed against Ext. P-1 order. The petitioner herein was counter petitioner No. 1 in the Election Petition; and respondents 1 to 4 herein were the petitioner and respondents 2 to 4 therein.

2. Mainly two grounds were urged in the Election Petition to challenge the validity of petitioner's election; (1) corrupt practices falling u/s 65 (1) (b) of the Act had

been committed by the petitioner herein: and (2) he was employed as a legal practitioner against the Council which is a disqualification for candidature u/s 62 (2) (f) read with Section 65 (1) (a) of the Act. Under Issue No. 2, the District Judge held that the corrupt practices alleged had not been established; but, under Issue No. 3 the District Judge held that the petitioner herein was employed as a legal practitioner against the Council. In the result, as already noticed, the District Judge declared that the election of the petitioner herein to be a Councillor from Ward No. IV was invalid.

3. Sri C. K. Sivasankara Panicker, the counsel for the petitioner, contended that the declaration that the election of the petitioner was invalid is the result of the misconception of the provision of law governing disqualification of candidates contained in Section 62 of the Act, with particular reference to Sub-section (2), Clause (f). That clause reads as follows:--

"(2) A person shall be disqualified for election as a Councillor if at the date of election, he-

(f) is employed as a paid legal practitioner on behalf of the council or as a legal practitioner against the council;"

From the statement of facts contained in para 2 of Ext. P-1 order it would appear that the contention put forward by the 1st respondent herein was that on the date of the election, the petitioner herein was disqualified to be chosen to fill a seat, for he was employed as a legal practitioner against the Kottayam Municipal Council, he was engaged and continued to be so, as the Advocate for the plaintiffs in O. S. No. 729 of 1978 on the file of the Munsiff's Court, Kottayam; the said suit was one filed against the Municipal Council, Kottayam, and was pending even at the time of the filing of the Election Petition; the petitioner herein had appeared against the Council also in C. M. A. No. 56 of 1979, it being the appeal against the order in I. A. No. 1768 of 1978 in O. S. No. 729 of 1978, pending before the District Court, Kottayam, on the date of the election; and on this ground the election of the petitioner herein was liable to be declared invalid as per Section 65 (1) (a) read with Section 62 (2) (f) of the Act. These allegations were sought to be met by the petitioner herein in his objections, as narrated in paragraph 3 of Ext. P. 1 order, stating inter alia that the statement in the Election Petition that he was disqualified on the ground that he was employed as a legal practitioner against the Municipal Council was not true; there was no such disqualification; on the date of the election he was not employed as a legal practitioner against the Kottayam Municipal Council; the further statement that he continued to be employed as an Advocate for the plaintiffs in O. S. No. 120 of 1978 on the file of the Munsiffs Court, Kottayam, was not correct; the said suit was not against the Municipal Council, it was against the Municipality represented by the Municipal Commissioner; the council was only one of the Municipal authorities charged with the duty of carrying out the provisions of the Act; the mere fact that the Municipal Council by name of the Municipality was a body corporate, which could sue and be sued, did not necessarily mean that the

Council was the Municipality; the Municipality was a local self Government: and the Council, though by the name of the Municipality, a body corporate, was only one of the several authorities thereunder; in C. M. A. No. 56 of 1979 also it was the Kottayam Municipality which was the appellant, not the Municipal Council; so it was wrong to say that he was appearing against the Kottayam Municipal Council in C. M. A. No. 56 of 1979 on the date of the election; he gave up his engagements on 5-8-1979 in both the original suit and the C. M. A. he had informed the plaintiffs in the said suit who were also the respondents in the C. M. A. in writing that the engagement was given up; thereafter he had nothing to do with the above cases; and he was not employed as a legal practitioner in those cases.

4. To meet the attack mounted against the petitioner herein based on the plea u/s 65 (1) (a) read with Section 82 (2) (f) of the Act, a three-fold defence is seen to have been put forward by him; (1) factually it was not correct to say that the petitioner herein was employed as a legal practitioner against the Municipal Council on the date of the election; (2) if at all he was only engaged as a legal practitioner, not employed as such against the Municipal Council; and (3) his appearance for plaintiffs/respondents was against the Kottayam Municipality represented by its Commissioner, not against the Kottayam Municipal Council. All these contentions considered and rejected by the District Judge have been vigorously reiterated by Sri Panicker before me.

5. From the facts referred to in para 17 of Ext. P-1 order it is found that O. S. No. 729 of 1978 on the file of the Munsiff of Kottayam was a suit filed by 22 persons against the Kottayam Municipality represented by the Municipal Commissioner, seeking permanent injunction restraining the defendant Municipality from evicting them (plaintiffs) from the building situated in the property belonging to the defendant Municipality. It would also appear that in C. M. A. No. 56 of 1979 filed by the Municipality against an order of temporary injunction granted by the Munsiff's Court in I. A. No. 1768 of 1978 in favour of the plaintiffs, the petitioner herein had filed a memo of appearance for the respondents on 4-8-1979. The attested copies of the vakalath for the plaintiffs and the memo of appearance for the respondents filed in the suit and the appeal were produced and marked in the Election Petition as Exts. A-2 and A-3. The argument of the petitioner herein was that, though the petitioner had filed a vakalath On 18-12-1978 and the memo on 4-8-1979, he had given up the engagement prior to his filing the nomination and therefore, he was not disqualified. Reliance was placed on the attested copy of a letter stated to have been written by the petitioner herein on 5-8-1979 (marked Ext. B-2 in the election petition). The District Judge rejected the plea based on Ext. B-2 alleged to have been written on 5-8-1979, holding that at best it would only show that he had given up the engagement in the C. M. Appeal, which fact could not ipso facto mean that he had given up the engagement in the suit also. Moreover, the petitioner herein did not succeed in establishing that a memo for permission to withdraw from the engagement had been filed in Court, much less in proving that

he had obtained the leave of the court in that behalf.

6. Order III. Rule 4, Clause (2) of the Civil P. C. prior to its amendment in 1976, reads as follows:--

"Every such appointment shall be filed in the court and shall be deemed to be in force until determined with the leave of the court by a writing signed by the client or the pleader, as the case may be, and filed in court or until the client Or the pleader dies, or until all proceedings in the suit are ended so far as regards the client."

After amendment the corresponding provision reads as follows :--

"Every such appointment shall be filed in Court and shall for the purposes of Sub-rule (1), be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be and filed in Court or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client."

The Explanation to Rule 4 provides:--

"For the purposes of this sub-rule, the following shall be deemed to be proceedings in the suit.-

- (a) an application for the review of decree or order in the suit.
- (b) an application u/s 144 Or u/s 152 of this Code, in relation to any decree or order made in the suit,
- (c) an appeal from any decree or order In the suit and
- (d) any application or act for the purpose of obtaining copies of documents Or return of documents produced or filed in the suit or of obtaining refund of moneys paid into the Court in connection with the suit"

The contention of the petitioner herein that he had on 5-8-1979 written a letter giving up the engagement of the respondents in C. M. A. No. 56 of 1979 is not proof of the fact alleged, namely, his appointment in the suit and the appeal against the Municipality had been determined according to the procedure prescribed in that behalf. The appointment of the counsel in a suit or appeal would hold good till determined according to the procedure prescribed in the Civil P. C. I have, therefore, no hesitation in rejecting the contention put forward by the petitioner herein that as on the date of the filing of the nomination he was not appearing in the suit or the appeal against the Municipality.

7. The next point to be considered is whether the petitioner was employed or not as a legal practitioner against the Municipality. The argument is that to say the worst, he was only engaged by the plaintiffs, not employed. The term "employed" has various shades of meaning it may be a contract for service, or a contract of service or an engagement for a particular work. The meaning of the expression has to be gathered from the context in which and the purpose for

which it is used. Sri Panicker has cited the decision of the Supreme Court in *Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra*,) to press the point that the expression "employed" would imply the existence of master and servant relationship. He also cited the decision of a Division Bench of the Allahabad High Court in *State Vs. Mohammad Sattar (Bidi Factory)*,) to highlight the same point. I am afraid, these decisions are not relevant for our present purpose inasmuch as what is contemplated in Section 62 (2) (f) of the Act certainly is not Advocates appointed as servants of the party for whom they appear. I have no doubt in any mind that the intention of the legislature was to place a disqualification on the Advocate engaged against the Municipal Council, not merely on the Advocate employed as a servant. The argument of Sri Panicker could have been of some weight if he could have positively contended for the position that the expression "employed" would not take in "engagement" also within its meaning; that not being the position, the second contention of the petitioner, that, if at all, he was only engaged as a legal practitioner, not employed as such, against the Municipality and, therefore the disqualification u/s 62 (2) (f) of the Act was not attracted to him, could not be accepted.

8. We now come to the last of the points, namely, that the appearance of the petitioner as an Advocate was against the Kottayam Municipality represented by the Commissioner, not against the Municipal Council, Kottayam; and therefore the bar u/s 62 (2) ff) of the Act is not attracted to the present case Sri Panicker cited the decision of the Madhya Pradesh High Court in *Municipal Committee Vs. Ramkaran Ganeshilal*, wherein the Court had taken the view that the supersession of the Municipality and the appointment of the Administrator by the Government might not by itself mean that the Municipality had ceased to be in existence, Municipality and Municipal Council being two separate entities, in the sense that the Municipal Council was only one of the authorities within the Municipality. Section 6 (1) of the Act deals with the municipal authorities and their incorporations. Section 6 lays down as follows:--

"6. The municipal authorities and the incorporations:-- (i) The municipal authorities charged with carrying out the provisions of this Act are-

- (a) a council;
- (b) a standing committee of the council:
- (c) a chairman:
- (d) a commissioner

(2) The council shall by the name of the municipality be a body corporate, shall have perpetual succession and a common seal and subject to any restriction or qualification imposed by this or any other Act, shall in its corporate name sue or sued, shall be entitled to acquire, hold and transfer property, movable, or immovable, enter into contracts and do all things necessary for the purpose of its constitution."

Section 5 of the Act deals with the creation and the abolition of Municipalities; and the scheme of the Act is such that it is quite possible that the Municipality and the Municipal Council exist simultaneously.

9. The Council, no doubt, is one of the municipal authorities charged with carrying out the provisions of the Act as stated in Sub-section (1) of Section 6 of the Act. It is to be noticed that under Sub-section (2) of Section 6 the Council shall by the name of the Municipality be a body corporate which could in its corporate name sue or be sued. No provision in the Act enabling the Municipality as such to sue or be sued has been brought to my notice. Even Section 392 (1) of the Act does not appear to embrace within its fold Municipality as such, as it provides:--

"(1) No suit shall be instituted against the municipal council or against any municipal authority or against any municipal officer or other municipal employee or against any person acting under the order or direction of any municipal authority or any municipal officer or other municipal employee....."

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) 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 traditions 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*, .

10. Sri Panicker drew my attention to the decision of the Full Bench of the Punjab & Haryana High Court in *Jas-want Kaur v. State* (AIR 1977 Punj & Har 221) to canvass the position that the disqualification prescribed in Section 62 (2) (f) of the Act would be tantamount to a restriction imposed on the right of the legal practitioner to appear for the party that engaged him, if it is construed that the provisions are attracted in every instance where the candidate was an Advocate engaged against the Municipality on the date of the elections and that the legislature might not have intended to place any such restriction on the professional rights of a legal practitioner. Section 30 of the Advocates Act. 1961 (Act 25 of 1961) provides as follows :--

"Subject to the provisions of this Act, every advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the territories to

which this Act extends-

- (i) in all courts including the Supreme Court;
- (ii) before any tribunal or person legally authorised to take evidence; and
- (iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise."

This is similar to the provision contained in Section 14 of the Bar Councils Act, 1926. The challenge before the Punjab & Haryana High Court was against the provisions contained in Section 20A of the Haryana Ceiling on Land Holdings Act (Act 26 of 1972) which barred the appearance of any legal practitioner before any officer or authority other than the financial Commissioner. The Full Bench declared that Section 20A of the said Act would not be enforced so as to prevent Advocates from appearing before any authority or officer functioning under the Act. In my opinion, this decision has no relevance to the facts of the case on hand. The disqualification prescribed in Section 62 (2) (f) of the Act is not against an Advocate's right to practise, on the other hand, it is against a person's right to contest the election to the Municipal Council based on salutary principles of public policy. I do not, therefore, think that this provision, when construed as one placing a disqualification on the candidature of a person who was engaged as a legal practitioner against the Municipality at the time of election would violate the provisions of Section 30 of the Advocates Act, 1961, or Section 14 of the Bar Councils Act, 1926 or the fundamental rights guaranteed under Articles 14 and 19 of the Constitution.

11. The writ petition being against an order passed by the District Judge over whom the High Court has supervisory jurisdiction. I think, the more appropriate article under which the challenge should fall is Article 227 of the Constitution. The petitioner has not made out a case for interference in exercise of the limited jurisdiction of this Court under Article 226 or Art, 227 of the Constitution.

For the foregoing reasons the writ petition fails, and is dismissed; however, in the circumstances of the case, I direct the parties to bear their respective costs.