

## SUPREME COURT OF INDIA

Ravanna Subanna

Vs.

G. S. Kaggeerappa

C.A.No.149 of 1953

(B. K. Mukherjea, Vivian Bose and T. L. Venkatarama Ayyar, JJ.)

21.05.1954

### JUDGEMENT

#### **B. K. MUKHERJEA, J.:**

1. This appeal, which has come before us on special leave, is directed against a judgment of a Division Bench of the Mysore High Court dated the 2nd February 1953, by which the learned Judges reversed, on appeal, an order dated the 10th October 1952 made by the Sub-Judge, Tumkur, sitting as Election Commissioner, in Election Mis. Case No. 1 of 1952-53.

2. The material facts lie within a brief compass and are for the most part uncontroverted. There was an election held for the Town Municipal Councillorship of the Gubbi town, in the State of Mysore, in March 1952, and the appellant and the respondent before us were the two rival candidates for the seat. As the time of the scrutiny of the nomination papers, objection was taken by the respondent to the nomination of the appellant as a candidate, on the ground, that he was holding an office of profit under the Government at that time, as the Chairman of Gubbi Taluk Development Committee, and was hence disqualified for being chosen as a Councillor under section 14 of the Mysore Town Municipalities Act, 1951 (hereinafter called 'The Act').

The objection was overruled and both the candidates went to the poll. As a result of the volting, the appellant was declared elected and there-upon the respondent filed an election petition before the Sub-Judge, Tumjur, who was the Election Commr. constituted under the Act, praying that the election of the appellant might be set aside on the ground of his being a disqualified candidate within the meaning of section 14(1)(A)(a)(iii) of the Act. There was a further prayer that the respondent being the only other rival candidate should be declared duly elected at the election held in March 1952.

3. The Sub-Judge, by his order dated the 10th October 1952, dismissed the petition, holding 'inter alia', that the appellant, who as non-official Chairman of the Taluk Development Committee was entitled to draw only a small fee of Rs. 6 per sitting, could not be said to hold an office of profit under the Government as contemplated by section 14 of the Act.

4. Against this decision, the respondent took an appeal to the High Court of Mysore which came up for hearing before a Division Bench consisting of Medapa, C. J. and Vasudevamurthy, J. The learned Judges by their judgment dated the 2nd February 1953 allowed the appeal and reversed the judgment of the Election Commissioner. The election of the appellant was set aside and the

respondent was declared to be duly elected. It is the propriety of this judgment that has been challenged before us in this appeal.

5. The contentions raised on behalf of the appellant are of a three-fold character. It has been contended in the first place that the election petition filed by the respondent was misconceived and not tenable in law, and his remedy, if any, lay in and appeal to the Government which was the only authority competent to decide and pass final orders on questions relating to disqualification of candidates under section 14 of the Act.

The second point taken is that on the admitted facts of this case the appellant could not be said to be holding an office of profit under the Government and was consequently not subject to any disqualification for being elected a Councillor. The third and the last contention is that even if the election of the appellant could be set aside, it was imperative under the provisions of the Act that a fresh election should be held; the High Court consequently could not have declared the respondent to be the duly elected candidate.

6. So far as the first ground is concerned, the learned counsel for the appellant has placed considerable reliance upon section 14 of the Act and his contention is that the provisions of section 14 and those of section 20 of the Act are mutually exclusive. It is said, that the ground upon which the respondent assailed the validity of the election of the appellant is one which comes directly under section 14 of the Act and can be dealt with only in accordance with the provisions of that section and that it cannot be made the subject-matter of an election petition under section 20 of the Act.

7. Section 14 of the Act purports to deal with the general disqualifications for becoming a Councillor. The various clauses of sub-section (1) of the section enumerate the grounds, which would disqualify a person from being chosen as or for being a Councillor, and one of such grounds is that the person holds an office of profit under the Government of India or the Government of any State specified in the first Schedule to the Constitution. After enumerating the different grounds of disqualification the sub-section provides that

"If any person is elected as a Councillor in contravention of these provisions, this seat shall be deemed to be vacant".

To this, a proviso is added that

"Nothing in this section shall invalidate the election, if the disqualification is such as could have been brought to the notice of the Returning Officer at the time of or before the scrutiny of the nomination papers and has not been so brought to his notice".

Sub-section (2) deals with cases where the disqualification occurs subsequent to a person being elected a Councillor. Sub-section (3) then lays down:

"If any question or dispute arises whether a vacancy has occurred under this section, the orders of the Government shall be final for the purpose of deciding such question or dispute".

8. Turning now to section 20 of the Act, it would be seen that it purports to lay down the procedure relating to enquiry into the validity of an election, by the Election Commissioner. Sub-Section (1) lays down within what time and by whom the election petition could be presented. Sub-section (2) indicate the nature of the order which the Election Commissioner may pass, and it is stated that he

may make an order confirming or amending the declared result of the election, or setting the election aside.

Clause (a) of sub-section (3) provides that if the Election Commissioner is satisfied that a candidate has committed any of the corrupt practices, he shall declare the candidate disqualified both for the purpose of that election and of such fresh election as may be held under sub-section (2) and shall set aside the election of such candidate if he has been elected. Clause (b) says that if in any case to which clause (a) does not apply, the validity of an election is in dispute between two or more candidates, the Election Commissioner shall, after scrutiny and computation of the votes recorded in favour of each such candidate, declare the candidate who is found to have the greatest number of valid votes in his favour to have been duly elected. Sub-section (4) describes what a corrupt practice is. Sub-section (5), which is also material for our present purpose, provides as follows:

"5. If the validity of the election is brought in question only on the ground of an error by the officer or officers charged with carrying out the rules made under clause (b) of sub-s. (2) of section 208 or of an irregularity or informality not corruptly caused, the Election Commissioner shall not set aside the election.

Explanation. - The expression 'error' in this sub-section does not include any breach of or any omission to carry out or any non-compliance with the provisions of this Act or rules made thereunder whereby the result of the election has been materially affected".

It is pointed out by the learned counsel for the appellant, and we think rightly, that the disqualification, which is alleged against his client, comes specifically within the purview of Section 14 of the Act. According to the respondent, the appellant was elected a Councillor in contravention of the provisions relating to disqualifications as laid down in section 14 and consequently under the terms of that section his seat should be deemed to be vacant.

As this objection was taken before the Returning Officer, the rival candidate may not be precluded from raising this point, but it is contended by the learned counsel, that the only authority competent to decide such dispute is the Government whose decision on such matters is final under sub-section (3) of section 14. Section 20, it is further pointed out, does not specify the grounds on which an election petition should be filed to set aside an election.

Clauses (a) and (b) of sub-section (3) would seem to indicate that such petition could be made only on allegations of commission of corrupt practice or irregularities in the computation of votes. It is urged therefore that the only remedy open to a person aggrieved by election when he alleges lack of qualification in the returned candidate, is to approach the government under section 14(3) of the Act and an election petition under Section 20 is not at all maintainable in such cases.

9. 'Prima facie' there appears to be force in this argument. It is to be noted that under section 14 of the Act, if a person is elected as a Councillor in contravention of the provisions relating to disqualification as contained in that section, the seat of the returned candidate shall be deemed to be vacant. The language suggests that in such cases the election automatically becomes void without requiring it to be set aside by an election petition under S. 20 of the Act. At any rate, if the seat becomes vacant and if under sub-section (3) the Government is made the final authority to determine such disputes it would be unreasonable to hold that the same matter could be also agitated before the Election Commissioner under section 20 of the Act, with the attendant risk of a conflict of decision between the two authorities.

10. Mr. Pattabhiraman appearing for the respondent before us argues that sub-section (3) of section 14 of the Act contemplates cases where the disqualification came into existence subsequent to the holding of the election and not before that. It is only in these cases that the Government is empowered to make orders under the sub-section. It is also argued by the learned counsel that the words "any non-compliance with the provisions of this Act" occurring in the Explanation attached to sub-section (5) of section 20 of the Act are wide enough to include a case of initial disability in the candidate who was not qualified to be chosen as a Councillor at all.

11. The first contention of the learned counsel does not find much support from the language of sub-section (3) of section 14, for the words used there, viz. "whether a vacancy has occurred under this section" would apparently cover both cases of an antecedent or a subsequent disqualification. The explanation appended to sub-section (5) of section 20 of the Act undoubtedly introduces a difficulty and it seems that the different parts of this section have not been drafted with proper care.

To reconcile the provisions of this section with those of section 14 of the Act we would have either to put a restricted interpretation upon sub-section (3) of section 14 or on sub-section (5) of section 20 or else we would have to assume that the remedies provided under the two sections are cumulative, which would hardly be a reasonable assumption. We think however that it would not be necessary for us, in the present case, to express any final opinion on this question inasmuch as we have come to the conclusion that the appeal is entitled to succeed on the second point raised by the appellant, namely, that he was not subject to any disqualification, rendering him ineligible to be elected as a councillor, under section 14 of the Act.

12. The whole point that requires consideration under this head is whether at the material time the appellant held any office of profit under the Government. It is not disputed that he was at the time of filing the nomination paper and also when the election took place holding the office of Chairman of Gubbi Taluk Development Committee; and the question therefore narrows down to this, whether that is an office of profit which section 14(1)(A)(a) (iii) of the Act contemplates.

The plain meaning of the expression seems to be that an office must be held under Government to which any pay, salary, emoluments or allowance is attached. The word "profit" connotes the idea of pecuniary gain, if there is really a gain. Its quantum or amount would not be material, but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carries any profit. It appears from the rules that the Taluk Re-Development Committee is constituted as a part of the scheme for re-organization of rural development.

It is a sort of advisory body consisting of 10 members and is presided over by a nonofficial Chairman. The Chairman has no executive duties to perform which are left entirely to the Amildar of the Taluk who is the 'ex officio' Secretary to the Committee, while a Special Revenue Inspector is to act as Assistant Secretary. The Chairman is to preside over meetings which are to be convened by the Secretary in consultation with him and the rules provide that the Chairman will be entitled to a fee of Rs. 6 for each sitting he attends.

From the facts stated above, we think it can reasonably be inferred that the fee of Rs. 6 which the non-official Chairman is entitled to draw for each sitting of the committee, he attends, is not meant to be a payment by way of remuneration or profit, but it is given to him as a consolidated fee for the out-of-pocket expenses which he has to incur for attending the meetings of the committee. We do not think that it was the intention of the Government which created these Taluk Development

Committees which were to be manned exclusively by non-officials, that the office of the Chairman or of the members should carry any profit or remuneration.

13. The High Court in deciding this point against the appellant laid great stress upon the provision of section 2 of the Mysore Legislature (Prevention of Disqualifications ) Act 1951 which lays down that

"a person shall not be disqualified for being chosen and for being a member of the Mysore Legislature by reason only of the fact that he holds any of the offices of profit specified in the schedule to the Act".

Item No. 2 of the schedule mentions "the Chairman, Director or member of any committee or board appointed by the Government". All that the section lays down is, that persons holding certain offices, as specified in the schedule, amongst which the Chairman or a member of a committee or board appointed by the Government is included, shall not be disqualified for being chosen as a member of the Legislature by reason only of the fact that he holds an office of profit.

We do not think that the implication of the provision is that the offices mentioned in the schedule must necessarily be regarded as offices of profit, irrespective of the fact whether any profit is at all attached to them or not and that but for these provisions the persons holding them could not have been eligible for being chosen as members of the Legislature. The object of the section may be to grant exemption to holders of offices of certain descriptions and the provisions in substance is that they will enjoy this exemption even though otherwise they might be regarded as holders of offices of profit.

In any view it cannot be argued that even if a Chairman or a member of a Government committee works in a purely honorary capacity and there is no remuneration attached to the office, he will still be regarded as a person holding office of profit in view of the provisions of the section. This provision might in our opinion have been made only out of abundant caution and nothing else. We think therefore that the view taken by the High Court is not right and as we hold that the appellant was not holding any office of profit under the Government at the material time he was certainly entitled to be chosen as a Councillor under the Mysore Town Municipalities Act. The result is that we allow the appeal, set aside the judgment of the High Court and restored that of the Sub-Judge, Tumkur. The appellant will have the costs of this appeal.

14. In view of our decision that the election of the appellant was valid, the third point raised by him does not require consideration.

Appeal allowed.

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