

Mangoo Singh

Vs

The Election Tribunal, Bareilly and Others

Civil Appeal No. 8 of 1957

(P. B. Gajendragadkar, S. K. Das, N. H. Bhagwati JJ)

17.09.1957

JUDGMENT

S.K. DAS, J. -

This appeal has been preferred to this Court on the strength of a certificate granted by the High Court of Allahabad on February 3, 1956, to the effect that the case is a fit one for appeal to the Supreme Court under Art. 133(1)(c) of the Constitution. The question that falls for decision is the true scope, meaning and effect of cl. (g) of s. 13-D of the U.P. Municipalities Act, 1916 (U.P. II of 1916), hereinafter referred to as the Act.

The relevant facts, which are not now in dispute, are these. There was a general election to the Municipal Board of Bareilly in October, 1953. The appellant, Mangoo Singh, and respondent No. 3, Imdad Husain, along with several others, were candidates at the said election from Ward No. 15. The date fixed for filing nominations was October 5, 1953, and the date for scrutiny of the nominations filed was October 7, 1953. The appellant and respondent No. 3 both filed their nominations on the due date, and at the time of scrutiny Imdad Husain raised an objection to the nomination of the appellant on the ground that the latter was disqualified under cl. (g) of s. 13-D of the Act for being chosen as a member of the said Municipal Board because he was in arrears in the payment of municipal tax in excess of one year's demand. This objection was dismissed, and the nomination of the appellant was accepted by the Assistant Returning Officer. The poll took place on October 26, 1953, and the counting of votes was done on October 29, 1953. Four persons were to be elected from the said Ward, and the appellant was the third in list by reason of the number of votes which he had obtained. Imdad Husain was fifth in the list. Accordingly, the appellants was declared as one of the returned candidates, and Imdad Husain was at the top of the unsuccessful candidates. Imdad Husain then filed an election petition to set aside the election of the present appellant on various grounds. The only ground with which we are now concerned is the disqualification under cl. (g) of s. 13-D of the Act. This election petition was heard by the Election Tribunal and by its judgment dated October 20, 1954, the Election Tribunal held that the appellant was in arrears in the payment of municipal tax in excess of one year's demand to which s. 166 of the Act applied and, therefore, came under the disqualification in cl. (g) of s. 13-D of the Act. It further held that the payment of a sum of Rs. 115-3-0 on October 10, 1953, five days after that date fixed for the filing of nominations, did not wipe off that disqualification, and the appellant was not entitled to the benefit of the second proviso to s. 13-D of the Act. It may be here stated that the Election Tribunal also held that no bill for payment of the tax was presented to the appellant as required by s. 166, nor was any demand notice served on him as required by s. 168 of the Act. On the above findings, the Tribunal allowed the election petition, set aside the election of the appellant and declared a casual vacancy under cl. (a) of sub-s. (2) of s. 25 of the Act, which vacancy was subsequently filled up by

the election of the third respondent on April 5, 1955. The next general election in the Municipality is due in October, 1957.

Against the decision of the Election Tribunal, the appellant moved the High Court of Allahabad for the issue of a writ under Art. 226 of the Constitution. The main point urged by the appellant was that the Election Tribunal was in error in its interpretation of cl. (g) of s. 13-D of the Act. Chaturvedi J. who dealt with the application of the appellant, agreed with the view of the law as expressed by the Election Tribunal and dismissed the application. The appellant then preferred an appeal to a Division Bench of the said High Court. This appeal was also dismissed by Agarwala and Sahai JJ. by their judgment dated August 30, 1955. The appellant then moved and obtained a certificate of fitness under Art. 133(1)(c) of the Constitution from the said High Court.

Learned counsel for the appellant has not contested any of the findings of fact arrived at by the Election Tribunal and has confined his submissions to the question of the true construction of cl. (g) of s. 13-D of the Act. Therefore, it is necessary to read that section, in so far as it is relevant or our purpose :

"13-D. Disqualifications for membership. - A person, notwithstanding that he is otherwise qualified, shall be disqualified for being chosen as, and for being, a member of a board if he -

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(a).....

(b).....

(c).....

(d).....

(e).....

(f).....

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(g) is in arrears in the payment of municipal tax or other dues in excess of one year's demand to which section 166 applies :

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Provided further that in the case of (g) the disqualification shall cease as soon as the arrears are paid."

The first contention of learned counsel for the appellant relates to and arises out of the expression "for being chosen as" occurring in the section. The argument is this. It is submitted that a person is "chosen as a member of a board" when the poll takes place and majority of voters vote for him as their chosen candidate; therefore, the relevant date for the operation of the disqualification is the date of the poll, and inasmuch as on October 10, 1953, which was several days before the date of

the poll, the appellant was no longer in arrears of municipal tax in excess of one year's demand by reason of the payment made on that date, the disqualification did not attach to him on the date of the poll. We are unable to accept this argument. It is worthy of note that an identical expression "shall be disqualified for being chosen as" occurs in Art. 102 of the Constitution and s. 7 of the Representation of the People Act, 1951. This expression occurring in s. 7 of the Representation of the People Act, 1951, was considered by this Court in *Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram and Others* [[1954] S.C.R. 817, 821.]. In that case the question was when the disqualification mentioned in cl. (d) of s. 7 of the Representation of the People Act, 1951, arose and it was held that the date for putting in the nominations was one of the crucial dates. On this point, the following observations made in that case are apposite :

"Now the words of the section are "shall be disqualified for being chosen". The choice is made by a series of steps starting with the nomination and ending with the announcement of the election. It follows that if a disqualification attaches to a candidate at any one of these stages, he cannot be chosen."

It was pointed out in *N.P. Ponnuswami v. The Returning Officer, Namakkal Constituency and Others* [[1952] S.C.R. 218.] that 'election' is a continuous process consisting of several stages and embracing many steps of which nomination is one; nomination is the foundation of a candidate's right to go to the polls and must be treated as an integral part of the nomination, he cannot be chosen as a candidate because the disqualification mentioned in s. 13-D attaches to him on that date.

This is also clear from para. 22(2) of the U.P. Municipalities (Conduct of Election of Members) Orders, 1953. That sub-para. states -

"22 (2) - The Returning Officer shall then examine the nomination papers and shall decide all objections, which may be made to any nomination, and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, refuse any nomination on any of the following grounds :

- (a) that the candidate is not qualified to be chosen to fill the seat under the Act; or
- (b) that the candidate is disqualified for being chosen to fill the seat under the Act; or
- (c) that there has been any failure to comply with any of the provisions of paras. 16 and 17; or
- (d) that the signature of the candidate or any proposer or seconder is not genuine or has been obtained by fraud."

If the disqualification of cl. (g) of s. 13-D of the Act is to come into operation only on the day of the poll, then it is quite unnecessary for the Returning Officer to consider that disqualification at the time of scrutiny; and indeed it will be improper for him to refuse nomination on the ground of such disqualification. Clause (b) of para. 22(2) uses the same expression "disqualified for being chosen" - showing clearly enough that the starting point of the act of choosing is not on the date of the poll only. The process of choosing commences on the date of filing nominations.

We now turn to the second proviso to s. 13-D. The submission of learned counsel for the appellant is that, as stated in the proviso, the disqualification is transient and ceases to operate as soon as the arrears are paid; on October 10, 1953, the appellant was no longer disqualified and, therefore, he

could be chosen on the date of the poll, that is, on October 26, 1953. The argument is that in the case of such a transient disqualification, the second proviso must be so read as to mean that a disqualification subsisting on the day of nomination can be wiped of completely by subsequent payment of arrears of tax; otherwise a disqualification at the time of nomination will disentitle a person to stand for election; even though it ceases to operate before the day of the poll. This argument also we cannot accept as correct; it is really the first argument in a different form. The wiping off of the disqualification under the second proviso has no retrospective effect, and the disqualification which subsisted on the day of filing nominations did not cease to subsist on that day by reason of a subsequent payment of the arrears of municipal tax. On this point we accept as correct the view expressed in *Ahmed Hossain v. Aswini Kumar* [A.I.R. 1953 Cal. 542.], where a similar question under the Bengal Municipal Act (Ben. XV of 1932), fell for consideration. The question was if a person disqualified on the date of nomination could shake off his pre-existing disqualification by acquiring a new right between the date of nomination and the date of scrutiny. What happened in that case was this : on the material date, that is, the last date for submission of nominations, a person was in arrears for more than three months in payment of the tax which he was liable to pay, and he came within the mischief of cl. (g) of amended s. 22(1) of the Bengal Municipal Act. The contention was that the name of the Press of which the candidate was the proprietor and not his name was recorded in the books of the Municipality as the assessee and that the name of the candidate was in the electoral roll by reason of his educational qualifications. This contention was repelled and it was observed that if a person was disqualified on the date of the nomination, he could not shake off his pre-existing disqualification by acquiring a new right between the date of nomination and the date of scrutiny. There is also other judicial authority which supports the same view. In *Harford v. Linskey* [(1899) 1 Q.B. 852, 858.], a similar question arose for decision under the Municipal Corporations Act, 1882, s. 12 whereof enacted that "a person shall be disqualified for being ejected and for being a councillor" if and while he is interested in contracts with the Corporation. The petitioner in that case admitted that at the time of his nomination he was interested in contracts with the Corporation, but contended that he could and would have got rid of his disqualification before the day fixed for the poll, and was therefore not disqualified for nomination. The question was whether he was so disqualified, Wright J. delivering the judgment of the Court observed -

"In the absence of any guide, we think it safest to hold that in cases of elections under the Municipal Corporations Acts a person, who at the time of nomination is disqualified for election in the manner in which this petitioner was disqualified, is disqualified also for nomination. The nomination is for this purpose an essential part of the election, and if there are no competitors it of itself constitutes the election by virtue of the express words of s. 56. A different construction might produce much confusion. On the nomination day no one could know whether the persons nominated will at the poll be effective candidates or not. It is true that in the case put the disqualification may be removed before the election is completed; but what is to be the effect if the disqualification continues until the poll begins, or until the middle of the polling day, or until the close of the poll ? Will votes given before the removal of the disqualification be valid ? If not, how is the number of them to be ascertained ? It seems to us unreasonable to hold that the Act means to leave the matter in such a state of uncertainty, and for these reasons we think that this petitioner was disqualified for nomination or election."

The same state of uncertainty and confusion, to which a reference has been made in the aforesaid observations, will arise if the construction which learned counsel for the appellant has pressed for

our acceptance is adopted in the case before us.

Lastly, it has been argued on behalf of the appellant that the expression "to which s. 166 applies' in cl. (g) of s. 13-D means that a bill of the sum due must be presented to the person liable for it, as required by that section, before he can come within the mischief of the clause; furthermore, the use of the expression 'demand' makes it essential that a demand notice must also be served as required by s. 168 of the Act. As on the finding of the Election Tribunal neither a bill was presented to the appellant, nor was he served with a demand notice, learned counsel contends that the appellant does not come within the mischief of the clause.

Section 166 and 168 are in these terms -

"S. 166 Presentation of bill. - (1) As soon as a person becomes liable for the payment of -

(a) any sum on account of a tax, other than an octroi or toll or any similar tax payable upon immediate demand, or

(b) any sum payable under clause (c) of section 196 or section 229 or section 230 in respect of the supply of water, or payable in respect of any other municipal service or undertaking, or

(c) any other sum declared by this Act or by rule (or bye-law) to be recoverable in the manner provided by this chapter, the board shall, with all convenient speed, cause a bill to be presented to the persons so liable.

(2) Unless otherwise provided by rule, a person shall be deemed to become liable for the payment of every tax and licence fee upon the commencement of the period in respect of which such tax or fee is payable."

"S. 168. Notice of demand. - If the sum for which a bill has been presented as aforesaid is not paid in municipal office, or to a person empowered by a regulation to receive such payments, within fifteen days from the presentation thereof, the board may cause to be served upon the person liable for the payment of the said sum a notice of demand in the form set forth in schedule IV, or to the like effect."

We are clearly of the view that the expression 'to which s. 166 applies' cannot bear the meaning sought to be given to it on behalf of the appellant. That expression merely describes the nature of the demand referred to in cl. (g). Section 166 refers to three types of dues; cl. (a) of sub-s. (1) refers to any sum on account of a tax other than an octroi or toll or any similar tax payable upon immediate demand; cl. (b) refers to sums payable under cl. (c) of s. 196 or s. 229 or s. 230 in respect of the supply of water, etc., and cl. (c) refers to any other sum declared by the Act or by rule or bye-law to be recoverable in the manner provided by Chapter VI. The demand to which s. 166 applies must be a demand of the nature or type mentioned in one or other of the aforesaid three clauses, and the demand referred to in cl. (g) of s. 13-D must be of that nature or type; this, in our view, is the true meaning and effect of the expression 'to which s. 166 applies'.

Nor do we think that the word 'demand' attracts the operation of s. 168. It may be readily conceded that the word 'demand' ordinarily means something more than what is due; It means something which has been demanded, called for or asked for. But the meaning of a word must take colour from

the context in which it is used. In cl. (g) the context in which the word 'demand' is used has a very obvious and clear reference to the amount of arrears or dues on which the disqualification depends; therefore, the expression used is - 'arrears in the payment of municipal tax or other dues in excess of one year's demand'. The Word 'demand' in that context and in the collocation of words in which it has been used can only mean 'in excess of one year's municipal tax or other dues'. We have been referred to several meanings of the word 'demand' in standard English dictionaries and law lexicons. When the context makes the meaning of a word quite clear, It becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers. It is sufficient for our purpose to state that even in standard dictionaries and law lexicons, it is well recognised that the word 'demand' may mean simply a 'claim' or 'due', without importing any further meaning of calling upon the person liable to pay the claim or due.

For the reasons given above, we hold that not one of the contentions urged on behalf of the appellant is worthy of acceptance. The election petition was rightly decided, as the appellant was disqualified for being chosen as a member of the Municipal Board in question on the day he filed his nomination, under cl. (g) of s. 13-D of the Act. Accordingly, the appeal is dismissed with costs in favour of respondent 3 who alone contested the appeal before us.

Appeal dismissed.

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