

Nisar Ahmad Ibrahim Khan

Vs

Deolali Cantonment Board and Others

Civil Appeal No. 3691 of 1987

(Ranganath Misra, G. L. Oza, M. N. Vankatachaliah JJ)

04.12.1987

JUDGMENT

VENKATACHALIAH J. –

1. This appeal is by the returned candidate, who was elected as a Member of the Deolali Cantonment Board ("Board") from Ward No. III at the election held on December 22, 1985 and whose election has been set aside by the Extra Joint District Judge, Nasik, in Election Petition No. 12 of 1985 at the instance of respondent 3 who was another contesting candidate.
2. The appellant's Writ Petition No. 1418 of 1987 before the High Court of Judicature at Bombay assailing the said order of the District Judge having been dismissed in limine on March 17, 1987 appellant seeks special leave to appeal against the order of the High Court.
3. Special leave is granted. The appeal is taken up for final hearing, heard and disposed of by this judgment. We have heard Shri Ram Jethmalani, Senior Advocate for the appellant and Shri Bhasme, Senior Advocate for respondent 3. Shri G. Ramaswamy, learned Solicitor General appeared for the Cantonment Board, respondent 1.
4. The material facts necessary for determination of the controversy in this appeal may briefly be stated :
5. Appellant and respondent 3 were candidates at and contested the election for Membership from Ward No. III of the Deolali Cantonment Board constituted under the Cantonments Act, 1924 ('Act'). Polling took place on December 22, 1985. The results of the election were declared on December 23, 1985. The appellant having secured 771 votes as against 749 votes secured by respondent 3, the appellant was declared elected.
6. By an election petition filed before the District Judge Nasik under the Rule 43 of the Cantonment Board Election Rules, framed under the 'Act', respondent 3 called in question the appellant's election on the ground that appellant suffered from, and was under, a disqualification for being chosen as and for being a member of the Board under Section 28(2)(h) of the Act, inasmuch as appellant had failed to pay arrears of the rent due and owing by him to the "Board" in respect of a certain land, taken on lease by the appellant from the Board under deed dated June 28, 1982. It was further alleged that the appellant was also, likewise, in default in the matter of payment of arrears of electricity charges in respect of a pump installed in the leased land.
7. The learned District Judge on an appreciation of the evidence held that appellant did suffer from

the disqualification under Section 28(2)(h) in respect of the lease amount and set aside the election. Appellant's writ petition challenging the order of the District Judge has been dismissed in limine by the High Court.

8. In support of the appeal, Shri Ram Jethmalani contended that the view taken by the learned District Judge suffers from a basic fallacy in that the learned District Judge had, quite erroneously, assumed that the existence of appellant's pecuniary obligation to the Board - which learned counsel conceded for purposes of the argument - ipso facto, satisfied the requirements of and attracted Section 28(2)(h). Learned counsel urged that the mere existence of indebtedness, without more, did not attract or incur the disqualification; the disqualificatory element being not merely the existence of any arrears but the existence of arrears coupled with non-payment "within 30 days after the notice in this behalf has been served upon him". Learned counsel submitted that though, as admitted by the Board, no notice envisaged by Section 28(2)(h) was ever served on the appellant, the learned District Judge felt persuaded to the view that the very knowledge and awareness on the part of the appellant as to the existence of the liability satisfied the requirement of 'notice' under, and for purposes of, the said Section 28(2)(h). This, the learned counsel submitted, was an extra-ordinary way of looking at a provision in an election law attaching disqualification to a citizen.

9. Shri Bhasme, learned counsel for respondent 3, seeking to support the order of the learned District Judge, submitted that the view taken accords with the need to maintain purity of the electoral process and the moral imperatives of keeping persons, who admittedly are in arrears to a local body, from being entrusted with the powers of administration of the affairs of that body.

10. On a consideration of the matter, we are afraid, the learned District Judge, perhaps in his anxiety to uphold the purity of the electoral process, did not critically examine as to how far the facts, either admitted or proved, approximated to what was required to be established to invoke the disqualification under Section 28(2)(h).

11. Section 28(2)(h) provides :

(2) person shall be qualified for being chosen (whether by election or nomination) as, and for being as a member of a Board, if he -

(h) fails to pay any arrears of any kind due by him otherwise than as an agent, receiver, trustee or an executor to the Board within thirty days after the notice in this behalf has been served upon him; or

A person who assails the election of a returned candidate on the ground that the latter suffered from a disqualification by the statutory standards incurs the evidential burden of establishing the facts that invoke the disqualification. Section 253(1) of the Act which refers to the authentication and verification of notices, says that every notice, order or requisition issued by a Board under the Act or any rule or bye-law made thereunder, shall be signed either by the President of the Board or by the Executive Officer or by the members of any committee especially authorised by the Board in this behalf. Section 254 refers to the mode of service of notices.

12. In the present case, the Cantonment Board itself had issued a certificate (Ex. 51) to the following effect :

Certified that the notice of demand in Schedule 1 from Cantonment Board, Deolali for payment of arrears of lease land has not been issued to Mr. Nisarkhan Ibrahim

Khan.

The learned District Judge appeared to have thought that the requirement of service of the statutory notice contemplated by the provisions of the Act must be held to have been satisfied by the circumstance that the appellant was himself aware of the arrears. Learned District Judge reasoned :

The notice to be considered in Section 28(2)(h) is a notice contemplated by a common man and for that we have to see what is meant by notice.

After referring to lexicographic meaning of the word 'notice', learned District Judge observed :

If the definition of notice given in all these dictionaries, as well as in Mukherjee's Law Lexicon, are seen, then it would be quite clear that notice means a knowledge on the part of the person regarding a fact.

He, thereafter, concluded :

Therefore, the notice contemplated by Section 28(2)(h) could not be said to be a notice in writing under Section 91 of the Cantonments Act, 1924, but it is only meaning a knowledge on the part of the person about his liability to pay the dues to the Cantonment Board.

13. It hardly requires any argument to demonstrate the fallacy implicit in and underlying this process of ratiocination which runs in the teeth of the specific statutory mandate. It is no doubt true that the rule of disqualification is based on a statutory principle that a person who has financial obligations to the 'Board' may not be able to discharge his public office objectively and in public interest. But the disqualification itself must be determined in strict compliance with the statute.

14. There is no common law of elections. The proceedings calling in question the validity of an election are purely statutory proceedings. An election contest is not an action at law or a suit in equity, but is purely a statutory proceeding unknown to the common law and the court possesses no common law power. It is trite proposition that in such proceedings statutory requirements must strictly be established. It is also well settled that the success of a candidate who has won at an election should not be lightly interfered with.

15. We are afraid, the very approach to the matter made by the learned District Judge is unsustainable in the light of the statutory language of Section 28(2)(h). There was no notice within the meaning of and as contemplated by that provision.

16. Consequently, both the learned District Judge and the High Court - one in reaching this impermissible conclusion as to the manner in which the requirement of Section 28(2)(h) was held to have been satisfied and the other in affirming that conclusion - were in error in law in the view they took of the matter.

17. In the result, for the foregoing reasons, this appeal is allowed; the orders of the learned District Judge dated February 9, 1987 in Election Petition No. 12 of 1985 and of the High Court dated March 17, 1987 in Writ petition No. 1418 of 1987 are set aside; and the Election Petition No. 12 of 1985 is dismissed. In the circumstances of the case, we make no order as to costs.

</html