

RAJASTHAN HIGH COURT

Kailash Chandra

Vs.

State of Rajasthan

Civil Writ Petn. No. 2132 of 2000

(Rajesh Balia, J.)

04.08.2000

ORDER

Rajesh Balia, J.

1. This writ petition is directed against the order dated 1-7-2000 passed by the Deputy Secretary to the Govt., Local Self-Govt. Department, Jaipur whereby the petitioner, who is the Chairman of Municipal Board, Begun, has been placed under suspension under Section 63(4) of the Rajasthan Municipalities Act.

2. The brief facts leading to this case are that : in the last Municipal elections which were held in 1995, the petitioner was elected as Member, Municipal Board, Begun from Ward No. 5. Thereafter, he also came to be elected as Chairman of the said Municipal Board on 3-3-1997. It is alleged that on 14-2-1996 one Rameshwar Sharma made a complaint (Annexure-1) against the petitioner that since the petitioner has filed his Vakalatnama in an appeal (*Smt. Kamla Bai v. Municipal Board, Begun*)¹ filed by one Smt. Kamla Devi against the Municipal Board, Begun in the Court of learned Additional Sessions Judge No. 2, Chittorgarh, he has incurred disqualification under Section 26(xiii) of the Rajasthan Municipalities Act, 1959 (for short 'the Act').

3. The complaint (Annexure/1) itself discloses that the petitioner was employed as a legal practitioner on behalf of Smt. Kamla Bai against respondent-Municipal Board in Cr. Case No. 361 of 1990, which was decided on 11-1-1996 and even after his election as a Ward Member of the respondent- Municipal Board, he continued to engage himself in that case and did not withdraw his power. Moreover, even after the decision in that case on 11-1- 1996, he filed an appeal in the Court of learned Sessions Judge No. 2, Chittorgarh. Thus, he has incurred disqualification under Section 26(xiii) of the

Act and is, therefore, liable to be prosecuted under Section 63(xiii) of the Act.

4. On hearing about this complaint, the petitioner made an application on 12-3-1996 before the learned Sessions Judge No. 2, Chittorgarh in Cr. Appeal No. 9 of 1996 that he was engaged in the aforesaid criminal case in the year 1992 and since a complaint has been made that despite his election as Ward Member from Ward No. 5 of Municipal Board, Begun, he employed himself as a legal practitioner against the respondent-Municipal Board, he may be permitted to withdraw his Vakalatnama. The said application was allowed on 18-3-1996 and the petitioner was permitted to withdraw his Vakalatnama. Thereafter, the petitioner filed his explanation on 18-6-1996 and requested for dropping of the complaint. Thereafter, nothing happened. However, after the expiry of about four years on completion of almost full term, he has been served with the suspension order Annexure-5 dated 1-7-2000.

5. According to the petitioner, in fact the State Govt. dropped the complaint and, therefore, it cannot be reviewed after the expiry of about 3-4 years. An additional affidavit was also filed by the petitioner on 10-7-2000 that in fact, Vakalatnama was filed by him in the aforesaid case on 14-9-1992 and while filing the appeal, no Vakalatnama was filed as in the appellate Court, there was no necessity of filing fresh Vakalatnama along with the appeal. Along with this additional affidavit, he has also filed certified copy of the Vakalatnama which was filed by him in the trial Court on 14-9-1992. This fact is also not disputed by the learned Additional Advocate General appearing for the respondents.

6. I have heard Mr. M. S. Singhvi, the learned counsel for the petitioner and Mr. R. P. Vyas, the learned Additional Advocate General for the State.

7. It has been contended by Mr. M. S. Singhvi, the learned counsel for the petitioner that Section 26(xiii) of the Act does not apply to a case where existence of employment as a legal practitioner against the Municipal Board is prior to the commencement of the term of the Board of which he has been elected. There is no prohibition against continuance of such employment/engagement. In support of his contention, he has placed reliance on a decision of this Court in *Abdul Aziz v. Manmath Kumar*,²

8. Learned counsel for the respondents has urged that Section 26(xiii) envisages disqualification even in the case of continuance of employment or engagement as a

Legal Practitioner against the Municipality after the election of a member notwithstanding the fact that such employment or engagement was taken prior to the date of election. He has also placed reliance on the aforesaid decision of this Court in Abdul Aziz's case (supra).

9. I have given my anxious consideration to the rival contentions raised by the learned counsel for the parties.

10. For the purpose of appreciating the contentions raised by the learned counsel for the parties, here it would be appropriate to notice the relevant provisions of Section 26(xiii) of the Act in extenso:

"Section 26. General disqualifications for members.- A person, notwithstanding that he is otherwise qualified, shall be disqualified for being chosen as a member of a Board :

(xiii) who is employed as a paid legal practitioner on behalf of such Board or accepts employment as legal practitioner against such board during the term for which he has been elected, or

11. The provision of Section 26 governing the disqualification clearly operates in two fields. In some cases, it operates at a point of time antecedent to election, rendering a candidate ineligible to contest. In others, it provides for incurring disqualification during continuance of membership. The provisions of Section 26(xiii) of the Act operates in the cases of accepting employment by a member as legal practitioner either on behalf of the Board or against the Board not at the time of his election but after his election as a Member of the Board. This is clear from the expression 'during the term for which he has been elected.' It is further to be noticed that so far as engagement of the legal practitioner against the Municipal Board is concerned, the expression clearly reads 'who accepts employment as legal practitioner against Board during the term for which he has been elected.' The twin expression viz., 'accepts' and 'during the term for which he has been elected' rule out the possibility of disqualification as a result of acceptance of such engagement prior to becoming member of the Board. The disqualification in such case is incurred in future when after election as a member of Board such a person accepts employment as a legal practitioner against the Board during the period he is a member, which affects continuance of such person as a member. This is clear from the use of the expression

'accepts employment during the term for which he has been elected.' Obviously, it cannot refer to an existing employment which emanates from the expression 'is employed.' On a plain reading of the language used in Section 26(xiii) of the Act, no other view is possible.

12. It is made clear that no opinion is expressed in respect of disqualification arising out of employment as a legal practitioner for the Board. The expression used in such case is 'is employed' in contrast of 'accepts engagement.' In such case, it may also require consideration of question whether such an employment can be termed as holding an office of profit under the Board.

13. It is well settled that if the language used by the Legislature is clear and unambiguous, there is no room for invoking the doctrine of intendment. The contention raised by the learned counsel for the respondents that if the argument raised by him is not accepted, the provision of Section 26(xiii) of the Act would be rendered meaningless or otiose, cannot be accepted. There is a clear indication that the legislature in its wisdom thought it fit not to affect the engagement of a member as a legal practitioner either against the Board or for the Board prior to his election. However, after his election, a Member of the Board is prohibited from taking any fresh engagement either against the Municipality or for the Municipality.

14. It may be pointed out here that under the Rajasthan Town Municipalities Act, 1951, corresponding provision of Section 12(1)(a) which laid down disqualification for the membership of the Board was couched in the following language :

"No person may be member of the Municipality who is employed as paid legal practitioner on behalf of such Municipal Board or accepts employment as legal practitioner against such Municipal Board."

14A . The expression 'during the term for which he has been elected' was not to find place in the aforesaid Act of 1951. The term 'during the term for which he has been elected' makes the legislative intent abundantly clear that disqualification intended under the later part of Clause (xiii) of Section 26 of the Act was only to operate where either employment comes during the term for which he has been elected but does not apply to the acceptance of such employment before the term for which he has been elected.

15. I am fortified in this view by the decision of this Court in *Abdul Aziz v. Manmath Kumar*³ This was a case in which the respondent before the Court was contesting the elections for Municipal Board, Sikar, for which he filed his nomination paper, which was scrutinized on 7-5-1966. At that time, an objection had been raised that he was employed as legal practitioner against the Board. Obviously that was prior to the date of his election. That objection was accepted by the Returning Officer and the respondent in that case declared disqualified and his nomination paper was rejected. Thereafter, the respondent in that case filed an election petition challenging the election of the petitioner in that case *inter alia* on the ground that his nomination paper has been illegally rejected by the Returning Officer. The Tribunal accepted the plea of the respondent and held that he was not disqualified for being chosen as a member of the Board and the election of the petitioner in that case set aside. The same contention as has been raised before us was raised before the Court that since the respondent was engaged as a legal practitioner against the Board when he filed nomination paper, he was disqualified at the time of submission of his nomination paper. The Court held that this clause requires that in order to incur disqualification a person firstly must have accepted employment as legal practitioner and secondly such employment should have been accepted during the term for which he has been elected. The term of a Board definitely commences after the members are elected to it and, therefore, the disqualification as envisaged by this clause does not refer to the employment of a person as a legal practitioner before his election to the Board or in other words for being chosen as a member of the Board. The Court further observed as under :

"To my mind, the words of the clause are susceptible to one meaning only and they cannot be interpreted to mean that a person who is employed as a legal practitioner against a Board shall be disqualified for being chosen as its member. If the legislature intended that a person employed as a legal practitioner against a Board shall be disqualified for being chosen as its member nothing was more easier for the legislature than to say in Clause (xiii) "who is employed as a paid legal practitioner on behalf of or against such Board." But the first part of the clause as it stands refers to disqualification for being chosen as a member of the Board and the latter part refers to disqualification for continuing as member of the Board."

16. After noticing the provision of Section 26 of the Act, the Court further observed that the above amendment did not alter the position in any way and all the

disqualifications without any distinction whether they could be applicable for being chosen as a member or for his removal remained clubbed as before and from this however, it cannot be inferred that all the disqualifications mentioned under Section 26 were meant to apply for both purposes i.e., for being chosen as a member and for his removal under Section 63.

17. In that case, the contention was also raised as has been raised in the instant case by the learned Additional Advocate General, that the above interpretation of the second part of the Clause (xiii) of Section 26 of the Act would create obvious anomaly inasmuch as a person after his election to the Board would be liable to be removed under Section 63, if he accepts employment as a legal practitioner during the term for which he has been elected but at the same time, a person employed as a legal practitioner against the Board before his election would not be disqualified from being chosen as a member. While dealing with this contention, the Court held as under :

"As already stated, if the legislature intended to debar a person as a member it could have given expression the said intention in clear language. But whatever the anomaly when the language of the clause is clear and unambiguous it has to receive the only construction to which it is capable. Though it is not open to the Court to speculate as to what the intention of the legislature was, it however, seems that the legislature did not treat the act of accepting the employment by a legal practitioner against the Board before his election to the Board and a similar act after the election alike, because in the former case, the act does not conflict with his duties as a member of the Board while in the latter case, such conflict is obvious. It might also be that the legislature might not have considered proper to disrupt the existing contracts between legal practitioners and their employers entered into in the normal course long before the elections. Whatever might have been the reasons if the meaning of the language used by the Legislature is plain and clear the Court has nothing to do but to give effect to it."

18. I am in respectful agreement with the view expressed by this Court in Abdul Aziz's case (*supra*).

19. Coming to the next contention raised by the learned counsel for the respondent that since the petitioner had filed his Vakalatnama in an appeal (*Smt. Kamla Bai v.*

Municipal Board, Begun)⁴ filed by one Smt. Kamla Devi arising out of Criminal Case No. 361 of 1990 against the Municipal Board, Begun in the Court of learned Sessions Judge No. 2, Chittorgarh after he was elected as a member of the respondent-Municipal Board, he has incurred disqualification under Section 26(xiii) of the Rajasthan Municipalities Act, 1959 (for short 'the Act'). He further submitted that merely withdrawal of the Vakalatnama soon after the receipt of complaint would not absolve the petitioner from this disqualification. In my opinion, this contention cannot be sustained.

20. The expression 'accepts employment' clearly refers to the contract of engagement as a lawyer of the person who is elected as a member of the Board. Obviously acceptance of such engagement means in accordance with the terms under which such acceptance has been made. Therefore, merely because the lawyer who has been engaged prior to his election as a Member of the Municipal Board continues such engagement under the terms of his engagement until the end of proceedings, which includes the appeal/application arising out of the subject-matter of the litigation. Thus, it cannot be said that there is any new acceptance of employment by the said person against the Municipal Board. In the present case, the facts are not disputed that the petitioner was engaged as a lawyer in case No. 361 of 1990 pending in the trial Court before the elections were held in 1995, by Smt. Kamla on 14-9-1992. He had not filed any fresh Vakalatnama after his election as a member of the Municipal Board and his engagement continued, under acceptance of brief prior to election. Thus, it is clear that the petitioner was already engaged by Smt. Kamla to represent her matter in the trial Court as well as the appellate Court prior to his election as a member of the Municipal Board. As stated above, a person employed as a legal practitioner against the Board before his election as a member of the Board would not be disqualified. If the legislature intended to debar a person already engaged as legal practitioner against the Board since before his election, it could have given expression the said intention in clear language. However, the legislature has not considered it proper to disrupt the existing contracts between legal practitioners and their engagers entered into the normal course of profession long before the elections. Be that as it may, when the meaning of the language used by the legislature is plain and clear the Court cannot but give effect to it.

21. It may be noticed here that in the Criminal Procedure Code, 1973, no special form of engagement of lawyer is prescribed nor it is necessary to submit a written

authorization of the lawyer in the Criminal Courts as is necessary in the suits under the Civil Procedure Code, 1908. However, appointment of pleader is governed by the provisions of Rule 4 of Order 3 of the Civil Procedure Code, 1908, which reads as under:

"Rule 4. Appointment of pleader - (1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power of attorney to make such appointment.

(2) Every such appointment shall be filed in Court and shall for the purpose 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.

Explanation - For the purpose 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 under Section 144 or under Section 152 of this Court 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 for obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of monies paid into the Court in connection with the suit.

(3). Nothing in sub-rule (2) shall be construed -

(a) As extending as between the pleader and his client, the duration for which the pleader is engaged, or

(b) As authorizing service on the pleader of any notice or document issued by any Court or other than Court for which the pleader is engaged, except where such service was expressly agreed to by the client in the document referred to in sub-rule (1).

(4) The High Court may, by general order, direct that, where the person by whom a pleader is appointed is unable to write his name, his mark upon the document appointing the pleader shall be attested by such person and in such manner as may be specified by the order.

(5) No pleader who has been engaged for the purpose of pleading only shall

plead on behalf of any party, unless he has filed in Court a memorandum of appearance signed by himself and stating-

- (a) the names of the parties to the suit,
- (b) the name of the party for whom he appears, and
- (c) the name of the person by whom he is authorized to appear :

Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party.

22. A perusal of the aforesaid rule shows that appointment of a pleader continues until all proceedings in the suit are ended so far as it concerns the client who engaged him. Clause (c) of Explanation appended to sub-rule (2) of Order 3 Rule 4, Civil Procedure Code makes it more than clear that appointment of a pleader continues even in the appeal from any decree or order in the suit. Explanation appended to Order 3 Rule 4, Civil Procedure Code was inserted by Act No. 104 of 1976 with effect from 1-2-1977 but even prior to this amendment, this Court has occasion to consider the scope of 'until all proceedings in the suit are ended' in *Lakhmi Chand v. Harak Chand* ⁵ In that case, the learned counsel for the plaintiff-respondent who filed the execution petition did not present the execution along with fresh Vakalatnama. In that case, a contention was raised that filing of the execution proceeding without fresh Vakalatnama was incompetent. The Court repelled that contention and held as under :

"In this connection, I may also draw attention to the provisions of Order 3 Rule 4(2), Civil Procedure Code according to which the appointment of a pleader must be deemed to be in force, until determined with the leave of the Court by a writing signed by the client or the pleader, 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. Reading the above rule, along with sub-rule (3), it is clear that a fresh Vakalatnama is not necessary for the purpose of appearing in execution proceedings or in appeal or in review or for setting aside the *ex parte* decree or for an application to restore a suit dismissed for default. It seems to me also that no new Vakalatnama by a lawyer already briefed in the suit was or would be necessary for the purpose of appearing in the case after remand by the appellate Court."

23. In the present case, the contract between the person who engaged the petitioner

and the petitioner to represent against the Municipal Board was made in the year 1992 in unequivocal terms authorized him to continue his engagement in the appeal as well as in any application arising out of such proceedings. Therefore, no fresh employment took place or accepted by the petitioner for continued representation in the aforesaid proceedings by the petitioner for Smt. Kamla. It was specifically asserted and not disputed by the learned Addl. Advocate General that the petitioner has in fact not filed any fresh Vakalatnama in the appeal. Therefore, there was no material before the State Govt. to hold any belief that the petitioner accepted the employment against the respondent-Municipal Board during the term for which he has been elected, to lay foundation for exercising power under Section 63(4) of the Act to suspend a duly elected member of the Board. In this connection, law is well settled that even in cases where exercise of a power by the competent authority under any statute is exercise able on subjective satisfaction, still when it is questioned, such authority has to satisfy the Court that such subjective satisfaction is founded on existence of objective material. Reference in this connection may be made to *Barium Chemicals Ltd. v. Company Law Board* ⁶ In the words of Hidayatullah, J. (at page 309) :

"No doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as the *sine qua non* for action must be demonstrable. If the action is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the section exists, the action might be exposed to interference unless the existence of the circumstances is made out. As my brother Shelat has put it trenchantly :

"It is not reasonable to say that the clause permitted the Government to say that it has formed the opinion on circumstances which it thinks exist.

Since the existence of 'circumstances' is a condition fundamental to the making of an opinion, the existence of the circumstances, if questioned, has to be proved at least *prima facie*. It is not sufficient to assert that the circumstances exist and give no clue to what they are because the circumstances must be such as to lead to conclusions of certain definiteness."

24. It further appears that the complaint about disqualification was received by the respondents in the year 1996 and explanation thereof was called and furnished in the year 1996 itself but no action has been taken until July, 2000 just before intending elections. Taking action against the petitioner in the year 2000 not founded on any germane consideration in the circumstances also smacks of malice at least in law.

25. In view of the aforesaid discussion, this writ petition is allowed and the impugned order Annexure/5 dated 1-7-2000 is set aside and quashed.

26. There will be no order as to costs.

Petition allowed.

Cases Referred.

1. Criminal Appeal No. 9 of 1996
2. 1969 RLW 424
3. 1969 RLW 424
4. Criminal Appeal No. 9 of 1996
5. (ILR (1956) 6 Raj 475)
6. AIR 1967 SC 295