

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
1.3.2018

Delivered on
24.4.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.1040 of 2013
and MP.1 of 2013

The Commissioner,
Avadi Municipality,
Avadi, Chennai 54

.... appellant

versus

1.U.Geetha

2.The Secretary to Government,
Municipal & Water Supply Department,
Fort St.George, Chennai 9

3.The Director of Municipal Administration,
Ezhilagam,
Chepauk, Chennai 5.

.... respondents

Appeal filed against the order passed by this Court dated
15.3.2013 in W.P.No.416 of 2013.

Writ Petition has been filed Under Article 226 of the
Constitution of India praying for a writ of certiorarified
mandamus to call for the records of the order passed by the 3rd
respondent in Notices dated 14.11.2012 and 26.12.2012 in Na.Ka.
No.7276/ 12/A1, and quash the same and consequently direct the
3rd respondent to permit the petitioner to perform as 19th Ward
Member.

For appellant

: Mr.P.Srinivas

For 1st Respondent

: No appearance for R-1

For respondents 2 and 3

: Mr.V.Anadhamoorthy,
Addl. Govt Pleader

J U D G M E N T

K.K.SASIDHARAN, J.

Whether Section 50 of the Tamil Nadu District Municipalities Act, 1920, providing that the councillor of the Panchayat would cease to hold his office on certain contingency like sentence by the criminal court, acquiring pecuniary interest in the local body by entering into contract and other disqualifications would come into play, only after a declaration by the District Court under Section 51 of the Act, is the substantial issue involved in this intra court appeal.

The facts:-

2. The first respondent, (hereinafter referred to as the Councillor), was elected as a Councillor of Avadi Municipality in October 2011. While the Councillor was holding office, her husband took a contract awarded by the Avadi Municipality for collection of fees from the traders holding daily market and similar activities. Since the councillor in her declaration stated that she had no independent source of income, and she is depending on the income of her husband, and as she was living with him under the same roof, notice dated 15 October 2012 was issued to her to show cause as to why she should not be declared as one suffering from the disqualification under Section 50 of the Act. The Commissioner, after considering her explanation, passed an order dated 26 December 2012 holding that on account of the subsisting contract, she ceased to be the Councillor under Section 50(d) of the Act.

3. The Writ Petition filed by the councillor challenging the disqualification was allowed by the learned Single Judge with a finding that the order of disqualification would come into operation only after an order to that effect is passed by the District Judge after adjudication under Section 51 of the Act.

Submissions :-

4. The learned counsel for the appellant contended that Section 50 contemplated an automatic disqualification and not after adjudication under Section 51 of the Act. According to the learned counsel, aggrieved councilor can approach the District Court under Section 51 of the Act and in such a case, till adjudication is over, she can continue to hold the office.

5. None appears on behalf of the first respondent.

Analysis :-

6. The Tamil Nadu District Municipalities Act contain provisions prescribing the qualifications and disqualifications for holding the position of Chairman, Vice Chairman and Councillor.

7. Section 50 of the Act deals with the circumstances under which a councillor would cease to hold his office. The provision reads thus :-

50. Disqualification of Councillors - (1) Subject to the provisions of Section 51, [a Councillor] (or a person referred to in clauses (b) and (c) of sub section (2) of [Section 3-C or clauses (a) and (b) of sub section (2) of Section 3-Q] or clauses (b) and (c) of section (3) of Section 7] shall cease to hold his office, if he -

(a) is sentenced by a [Criminal] Court to such punishment [and for such offence] as is described in sub-section (1) of Section 49 ;

(b) becomes of unsound mind, a deaf-mute, or a leper ;

(c) applies to be adjudicated or is adjudicated a bankrupt or insolvent;

(d) subject to the proviso to 1 [clause (c) of sub-section (2) of Section 49], acquires any interest in any subsisting contract made with, or work being done, for the Council except as a shareholder (other than a director), in [a company ***;]

(dd) is employed as paid legal practitioner on behalf of the Council or accepts employment as legal practitioner against the Council;

(e) is appointed as an officer or servant under this Act or as an honorary magistrate for the municipal town;

(f) accepts employment under [or becomes the official subordinate of] any other Councillor;

(g) [***]

(h) ceases to reside in the Municipality or within two miles thereof ; [***]

(hh) fails to pay arrears of any kind due by him (otherwise than in a fiduciary capacity) to the Municipality, within three months after a bill or notice has been served upon him under this Act, or where in the case of any arrear this Act does not require the service of any bill or notice, within three months after a notice requiring payment of the arrear (which notice it shall be the duty of the Executive Authority to serve at the earliest possible date) has

been duly served upon him by the Executive Authority; or

(i) absents himself from the meetings of the Council for a period of three consecutive months reckoned from the date of commencement of his office, or of the last meeting which he attended, or of his restoration to office as [councillor] under sub section (4), as the case may be, or of within the said period, less than three meetings have been held, absents himself from three consecutive meetings held after the said date :

Provided that no meeting from which [***] a Councillor absents himself shall be counted against him under this clause, if due notice of that meeting was not given to him.

8. The Legislature very carefully used the word "ceased to occupy". The intention of the Legislature is very clear that the disqualification would come into operation immediately and the councillor would no longer be entitled to hold office.

9. Section 51 deals with the machinery constituted for adjudicating the question with regard to the disqualification, in case there is a dispute.

Section 51 reads thus :-

51. Decision of questions of disqualification of [councillors] by District Judge -

(1) Whenever it is alleged that any person who has been elected as [a councillor] is disqualified under [....] section 50, [section 50-A] or section 60], and such person does not admit the allegation, or whenever [any councillor] is himself in doubt whether or not he has become disqualified for office, [under section 50, [section 50-A], or section 60], [such councillor] or any other councillor may, and the [executive authority], at the request of the council, shall, apply to the District Judge of the District in which the municipality is situated.

(2) The said Judge, after making such inquiry as he deems necessary, shall determine whether or not such person is disqualified under [(....)] section 49, section 50, [section 50-A] or section 60],

and his decision shall be final.

(3) Pending such decision, [the Chairman or] the councillor shall be entitled to act as if he were not disqualified].

10. The provision regarding adjudication under Section 51 is crystal clear that it is for the aggrieved to approach the District Judge. It is true that even the Executive Authority can approach the District Court for determination of the question. However, the intention of the Legislature is very clear that it is only the aggrieved councillor who has to initiate action under Section 51 of the Act. This is made more clear by sub Section (3) of Section 51 of the Act. Sub Section (3) of Section 51 makes it very clear that the Councillor on attaining the disqualification, ceased to hold office, but, however, if a petition is filed under Section 51, he is entitled to act as a councillor, as if he were not disqualified, meaning thereby, he has already been disqualified.

11. The Court must respect the Legislative mandate. In case the intention of the Legislature is clear, the Court must give a meaningful interpretation to the provision to further the intention and not to defeat it. The Court must give a workable interpretation to the statutory provision.

12. The Legislative mandate is clear that disqualification is automatic and it would hold good unless proceedings are initiated under Section 51 of the Act before the District Court. It is only when the aggrieved approaches the District Court, the order would be kept in abeyance.

13. There is no statutory obligation on the part of the Municipality to file a petition for deciding the question of disqualification of a Councillor. The Councillor would suffer the disqualification forthwith.

14. The explanation submitted by the Councilor clearly shows that she was aware of the disqualification which made her to request the Commissioner to cancel the contract given to her husband. The disqualification being one intended to happen on account of acquiring any interest in any subsisting contract, would not go, even if contract is terminated at the option of the municipality or contractor. The importance is given to the event relating to acquiring interest. Such interest would not extinguish by cancelling the contract.

15. The first respondent suffered a disqualification under Section 50 of the Act, the moment her husband took a contract awarded by the Municipality. Therefore, she ceased to hold

office. Since the consequence of disqualification is statutorily fixed, there is no need for an adjudication by the District Court, for operation of the provision. The learned Single Judge proceeded as if it is only after the adjudication, Section 50 would come into operation. Such an interpretation is not possible, given the wording of the provision.

16. The Hon'ble Supreme Court in Indore Development Authority vs. Shailendra (dead) through Lrs. And others., 2018 (3) Scale 469, indicated that when the Legislature has enacted a law, interpretation must be to further the object.

The Supreme Court said :-

"41(b). This Court in Nali Nalinakhya Bysack v. Shyamsunder Halder, AIR 1953 SC 148 at 152, State of Madhya Pradesh v. G.S. Dall and Flour Mills, AIR 1991 SC 772, State of Gujarat and Others v. Dilipbhai Nathjibhai Patel and Another (1998) 3 SCC 234, Competition Commission of India v. Steel Authority of India Ltd. (2010) 10 SCC 744, Assessing Authority cum-Excise and Taxation Officer v. East India Cotton Mfg. Co. Ltd. (1981) 3 SCC 531, Paul Enterprises & Ors. v. Rajib Chatterjee & Co. & Ors., AIR 2009 SC 187, Sakshi v. Union of India (2004) 5 SCC 518, Commissioner of Income Tax, Kerala v. Tata Agencies (2007) 6 SCC 429, Ram Narain Medhi v. State of Bombay AIR 1959 SC 459, S.P. Gupta v. President of India AIR 1982 SC 149, Dadi Jagannadham v. Jammulu Ramulu (2001) 7 SCC 71, P.K. Unni v. Nirmala Industries AIR 1990 SC 933, Crawford v. Spooner (1846) 6 Moore PC 1, Royal Trust Company v. Minister of Finance AIR 1921 PC 184, Padma Sundara Rao (dead) & Ors. v. State of T. N. & Ors. (2002) 3 SCC 533 has observed that what legislation wanted has been stated in the provision. The court cannot give extended meaning to the expression. It is not open to the Court to aid defective phrasing of the Act or to make up for the deficiencies. It is not open to the Court to recast, rewrite, or reframe the provision. The court cannot assume omission and add or amend words. Plain and unambiguous construction has to be given without addition and substitution of the words. The temptation of substituting words by explaining what it thought legislation is endeavoring is to be discouraged. Court has

to consider what has been said and what has not been said. It is wrong and dangerous to proceed by substituting some other words for the words of the statute. When literal reading produces an intelligible result it is not open to read words or add words to statute. Making any generous addition to the language of the Act would not be a construction of the statutory provision; rather, would be an amendment thereof. While interpreting the provision the Court only interprets the law. The intention of the legislation must be found by the words used by the legislature itself. The legislative casus omissus cannot be supplied by judicial interpretative process. When language of the provision is clear, there is no scope for reading something into it. The scenario that thus emerges in relation to an interpretation of a statute can be explained as follows. It is a salutary principle that it is not open to the Court to add or substitute some words in place of the words of the statute. The court cannot reframe the legislation. The court cannot add to, or amend, the provisions; neither can the expressions used in the statute be treated as fungible. We need not add any word when Section 24(2) uses the expression "compensation has not been paid". To complete the payment, we cannot read words into it to the effect that deposit of payment in the court is payment to the landowners. It is clear that unless it is absolutely necessary to do so, it is not open to read the word "deposited" in court as part of 'paid' when payment is contemplated to the landowners. The consequence of nondeposit is culled out in proviso to section 24(2). It is not that section 31(2) would become meaningless. Hence, deposit cannot and need not be added to expressions paid/ tender. In case the legislature wanted the 'deposit in Court' to be included in 'paid/ tender', it could have easily said so. But it has used expressions differently, with different consequences."

17. We make the legal position clear that disqualification under Section 50 of the Act would come into play on account of the commission of acts enumerated and the councillor would cease to hold her office even without an adjudication by the District Court under Section 51 of the Act. We also make it clear that the statutory disqualification would be suspended automatically under sub Section (3) of Section 51, in case the aggrieved invoked the jurisdiction of the District Court under Section 51 of the Act.

18. The order dated 26 December 2012 on the file the Commissioner, Avadi Municipality, is restored. The order dated 15 March 2013 in W.P.No.416 of 2013 is set aside. The Writ Petition in W.P.No.416 of 2013 is dismissed.

19. The intra court appeal filed by the Local Authority is allowed. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Municipal & Water Supply Department,
Fort St.George, Chennai 9

2.The Director of Municipal Administration,
Ezhilagam,
Chepauk, Chennai 5.

+1cc to Mr.P.SRINIVAS, Advocate, S.R.No. 31393

+1cc to the Government Pleader, S.R.No. 30742

Judgment in
W.A.No.1040 of 2013

PA(CO)
TR(08/05/2018)

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