

Vijaya Vs. Kabeer

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Court : Kerala

Decided On : Dec-20-2004

Reported in : 2005(1)KLT358

Judge : K. Padmanabhan Nair, J.

Acts : Kerala Municipality Act, 1994 - Sections 85 and 90(1); ;Kerala Municipal (Removal of Disqualification of Candidates and Councillors) Rules, 1995 - Rule 3

Appeal No. : C.R.P. No. 1997 of 2003

Appellant : Vijaya

Respondent : Kabeer

Advocate for Def. : Sheejo Chacko and; M.N. Manoj, Advs.

Advocate for Pet/Ap. : Renjith Thampan and; P.A. Anitha, Advs.

Judgement :

ORDER

K. Padmanabhan Nair, J.

1. The respondent in Election O.P. No. 47 of 2000 on the file of the Munsiff Court, Irinjalakuda is the petitioner in this Civil Revision Petition. This Civil Revision Petition is filed against an order passed by the Munsiff Court, Irinjalakuda

declaring the election held to Ward No. 8 of Irinjalakuda Municipality as void and confirmed in Civil Miscellaneous Appeal No. 116 of 2003 by the District Judge.

2. The respondent as well the petitioner filed nominations to contest from Ward No. 8 of Irinjalakuda Municipality in the election held to the local authorities during September, 2000. The nomination filed by the respondent was rejected on the ground that he had entered into a contract with the Irinjalakuda Municipality and that contract was subsisting. The revision petitioner was declared elected in the revision. The respondent filed Election Petition No. 47 of 2000 before the Munsiff Court, Irinjalakuda for a declaration that the election held to Ward No. 8 of Irinjalakuda Municipality was void due to the improper rejection of his nomination. In the Original Petition it was averred that the nomination of the respondent was rejected on the ground that he was disqualified for being chosen as and for being a Councillor as he had entered into a contract with the Municipality for the construction and repair of the road as the Chairman of the Beneficiary Committee under the People's Planning Programme. According to the respondent, the Returning Officer improperly rejected his nomination. It was averred that he had entered into an averment with the Local Authority in his capacity as the Chairman of the Beneficiary Committee cannot be taken as a ground to reject his nomination and he was fully qualified to contest the election. It was also averred that the Municipality convened a meeting of the persons who are using the roads in the Municipality for the purpose of effecting repairs and maintenance. A number of beneficiaries attended the meeting. A beneficiary committee was formed and the respondent was elected as the Chairman of the Committee. It was also averred that the Committee was constituted as part of the Peoples Planning Programme. It was averred that the respondent had entered into the agreement in his capacity as the Chairman of the Beneficiary Committee under the Peoples Planning Programme and as such he is not disqualified from contesting the election and hence the rejection of his nomination was improper.

3. The petitioner contended that the Election Petition was not maintainable. It was contended that the decision taken by the Returning Officer to reject the nomination of the respondent was valid and he was not entitled to challenge that decision. It was also contended that the respondent had entered into an agreement with the

Municipality and was doing the work in relation to that contract. It was also contended that the respondent and members of the Beneficiary Committee were interested in the contract entered into with the Municipality and as such he was disqualified to contest the election.

4. The Trial Court allowed the Original Petition and declared that the election of the revision petitioner as the returned candidate from Ward No. 8 of Irinjalakuda Municipality was void. The petitioner filed C.M.A. No. 1 16 of 2003 before the District Court, Thrissur challenging the decision of the learned Munsiff. The learned District Judge confirmed the findings of the Trial Court and dismissed the appeal. Challenging those concurrent findings, this Civil Revision Petition is filed.

5. The learned counsel appearing for the revision petitioner has argued that even assuming that the ground stated by the Returning Officer for rejecting the nomination was not legal and proper still the respondent was not qualified to contest the election as the oath of affirmation subscribed by the respondent along with the nomination was not in the prescribed form. The learned counsel appearing for the respondent has argued that the petitioner also stands in the very same footing as the oath of affirmation made by the revision petitioner was also defective. It is argued that the candidates who contested the election were not at all responsible for the defect because that happened only because of the mistake committed by the Election Commission.

6. The elections to the Municipalities and Panchayats in the State were held during September, 2000. The petitioner as well as the respondent were the candidates who contested to the post of Municipal Councillor of Ward No. 8 of Irinjalakuda Municipality. The nomination paper is to be accompanied by an oath of affirmation subscribed by the candidate. The form used by the respondent to subscribe the oath of affirmation was not in conformity with the forms prescribed by the Kerala Municipality Act, 1994. Hence it is argued that the notification submitted by the respondent was invalid. The learned counsel appearing for the revision petitioner has relied on a decision reported in *Shaju v. State Election Commission*, 2003 (1) KLT 658, in which it was held that a person who does not make and subscribe to the oath in the prescribed form in strict conformity with the provisions of the statute

is not entitled to contest the election. It is pointed out that Shaju's case also arose from the Irinjalakuda Municipality. The learned counsel appearing for the petitioner argued that if a person who files a nomination with a defective oath of affirmation happened to be elected, he will again take an oath and the subsequent taking of oath will obliterate the initial defect if any, and hence there was no disqualification for the revision petitioner.

7. The only contention raised by the revision petitioner in her objection was that the respondent was disqualified to contest because of the substance of the agreement entered into between himself and the Municipality. The revision petitioner had not raised a contention that the nomination filed by the respondent was defective on account of the defective oath of affirmation attached to the same; It is well settled position of law that no evidence can be looked into upon a plea never put forward. See *Elizabeth v. Saramma*, 1984 KLT 606. In *Haji Adam Sait Dharmasthapanam v. Hameed*, 1985 KLT 169, it was held as follows:-

'The object of pleadings is to put the opposite party on the vigil regarding the case based on the said pleadings and therefore if the pleadings, though not specific, do disclose the case the opposite party is to meet then it would not be improper for the Courts to give relief notwithstanding the position in law that the Court cannot grant relief to parties on a case for which there was no foundation in the pleadings'.

8. In *Laxmi Narayan Nayak v. Ramratan Chaturvedi*, (1990) 2 SCC 173, it was held that the pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law. It was also held that the allegations in the Election Petition should not be vague, general in nature or lack in materials. It was further held that the proceedings in the Election Petition is of a quasi criminal nature wherein strict proof is necessary.

9. In this case, there was no averment in the objection filed by the revision petitioner regarding the defective oath of affirmation. The revision petitioner came forward with such a case only at the time of argument. So. the Courts below were justified in not considering that contention. It is also to be noted that the forms

supplied to all candidates who contested the election to the Local Authority held during September, 2000 were defective as held in Shaju's case (supra). The respondent was not responsible for that mistake. The form to be used to subscribe the oath of affirmation was supplied to them by the authorities concerned. When the Government realised the mistake, Municipality Act was amended by Act 10 of 2003 and a proviso was added to the relevant section to that effect. The proviso reads as follows:-

'Amendment to Section 85 -- In Section 85 of the Kerala Municipalities Act, 1994 (20 of 1994), (hereinafter referred to as the Principal Act), after clause (f) the following proviso shall be added, namely:--'Provided that even if a candidate has omitted any word or words inadvertently when he makes and subscribes signature in such oath or affirmation and he has subsequently been elected as Councillor and assumed office on oath or affirmation made in the Third Schedule, he shall not be considered as disqualified for the mistake happened earlier'.

The mere fact that the oath of affirmation subscribed by the respondent along with the nomination was not strictly in accordance with the Act is not a ground to hold that there was no valid nomination especially in view of the fact that no such objection was raised.

10. The contention raised by the respondent was that his nomination was improperly rejected and hence the election held to Ward No. 8 is liable to be declared as void. The only objection raised at the time of scrutiny of the nominations was that the respondent was disqualified to contest the election because of the existence of the contract entered into between himself and the Municipality. Ext.X1(a) order passed by the Election Commissioner rejecting the nomination filed by the respondent shows that the nomination was rejected solely on the ground that he was the Convener of the Beneficiary Committee which executed a work contract with the Municipality. So the nomination was rejected because of the existence of the contract alone.

11. Section 90(1)(g) of the Municipality Act deals with the disqualification of candidates. It reads as follows:-

'Disqualification of candidates.- (1) A person shall be disqualified in the following circumstances for being chosen as and for being a Councillor of a Municipality if he-

(a)

(b)

(c)

(d)

(e)

(f)

(g) is interested in subsisting contract made with, or any work being done for, the Government or the Municipality concerned except as a shareholder (other than a Director) in a company or except as permitted by rules made under this Act;'

12. The specific case put forward by the respondent was that he had no personal interest in the contract and he happened to sign the same only because he was the Chairman of the Beneficiary Committee Constituted by the Municipality for carrying out the maintenance and repairs of all the roads in the Municipality. Though the revision petitioner had raised a contention that the Committee was not properly constituted, the evidence on record shows that the respondent was not responsible for any such procedural irregularity. The Committee was constituted by the Municipality. The respondent as PW1 deposed that a meeting was convened by the Municipality which was attended to by more than 100 persons. In that meeting a Committee was formed and the respondent was elected as the Chairman of the Committee. Sri. Thomas was elected as the Secretary. So as rightly observed by the learned District Judge that even if the Municipality committed any irregularity, the petitioner cannot be penalised for such an irregularity. The respondent had no personal interest in the matter but he signed the contract in his capacity as the Chairman of the Committee. When the office bearer or a member of a beneficiary committee enters into a contract with the

Local Authority or the Government such agreements are exempted and saved by Rule 3(iii) of the Kerala Municipal (Removal of Disqualification of Candidates and Councillors) Rule, 1995. It reads as follows:--

'3. A person shall not be deemed to have any interest, for the purpose of clause (g) of Sub-section(1) of Section 90 or Clause (f) of Section 91, in a subsisting contract made with or a work being done for the concerned Municipality by reason of only having share or interest in the following cases:--

(i)

(ii)

(iii) undertaking any contribution work in the Municipality for the benefit of the community, not as a contractor, but as a representatives of the community or as sponsor; or

So it is clear that the respondent had no personal interest in the matter. He signed the agreement in his capacity as the Convener of the Chairman of the Beneficiary Committee. The fact that he signed a contract as the Chairman of the Beneficiary Committee cannot be taken as a ground to reject his nomination.

13. The learned counsel appearing for the revision petitioner raised another contention that it was admitted by the respondent as PW1 that he was a defaulter. There is no admission by PW1 that he was a defaulter as defined under Section 90 of the Act who is disqualified to contest the election. He had stated that the Local Authority had issued a notice to the Beneficiary Committee to remit back certain amounts. There is nothing on record to show that notice of demand was issued and the time fixed under that demand had expired. So the respondent was not a defaulter also.

14. Section 178 of the Municipality Act, 1994 deals with the ground for declaring the election to be void. Section 178(1)(c) reads as follows:--

'178. Grounds for declaring election to be void.-(1) Subject to the provisions of Sub-section(2) if the Court is of opinion-

(a)

(b)

(c) that any nomination has been improperly rejected; or.....'

Section 178(1)(d) deals with improper acceptance of nomination. The section itself makes it clear that the election cannot be declared void merely because of improper acceptance of a nomination whereas the improper rejection of nomination alone is a ground to declare the election as void. So, in the case of improper rejection of the nomination, the person who challenges the election need only establish that rejection of his nomination was improper. In this case, the petitioner was not at all disqualified to contest the election but his nomination was rejected on that ground. So the rejection of the nomination was improper. Hence the findings of the Courts below that the election to Ward No. 8 of Irinjalakuda Municipality is to be declared as void is perfectly correct and does not call for any interference. There is no merit in this Civil Revision Petition and it is only to be dismissed.

In the result, the Civil Revision Petition is dismissed with costs of the respondent.

I. A. No. 2326 of 2003 shall stand dismissed.

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