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Court : Rajasthan

Decided On : Jan-31-1969

Reported in : 1969WLN52

Judge : C.B. Bhargave, J.

Appeal No. : S.B. Civil Misc. Elec. Appeal No. 26 of 1967

Appellant : Abdul Aziz

Respondent : Manmath Kumar

Disposition : Appeal dismissed

Judgement :

C.B. Bhargava, J.

1. The short question for determination in this appeal against the judgment of the Senior Civil Judge, Sikar (Election Tribunal) dated 28-2-1967, is whether the nomination paper of the respondent for election to the Municipal Board Sikar was rightly rejected by the Returning Officer on the ground that he was employed as a legal practitioner against the Board at that time. The decision of the above question depends upon the interpretation of the second part of Clause 13 of Section 26 of the Rajaslhan Municipalities Act, 1959 (hereinafter called the Act).

2. The respondent had filed his nomination paper for election to Ward No. 10 of the Minicipal Board, Sikar. At the time of scrutiny of the nomination paper on 7th May, 1966, objection was raised that the respondent was disqualified from being chosen as a member of the Board because he was employed as legal practitioner I against the Board. The returning Officer accepted the objection and rejected the nomination paper of the respondent. Thereupon the respondent filed an election petition challenging the election of the appellant on several grounds including that of the illegal rejection of his nomination paper by the Returning Officer. The Election Tribunal tried the election petition on several issues, but for the purpose of this appeal the decision of the Tribunal on issue No. 1 is only relevant. Issue No. 1 is as follows:

Whether the nomination of the applicant was illegally rejected by the Returning Officer and if so, what is its effect?

Section 24 of the Act lays down that:

Subject to the provisions contained in Sections 9 and 26, a person shall not be qualified to be chosen to fill a seat on a Board unless-

(a) ...

(b) in the case of any other seat, he is an elector from any ward in the Municipality.

Section 26 deals with the general disqualifications for members and says that ;

A person, notwithstanding that he is otherwise qualified shall be disqualified for being chosen as 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.

3. The Tribunal on the interpolation of Clause (xiii) to Section 26 has come to the conclusion that the respondent was not disqualified for being chosen as a member of the Board. Being of that view the Tribunal accepted the election petition and set aside the election of the appellant to the Sikar Municipal Board from Ward No. 10.

Being aggrieved by that decision the appellant has come in appeal before this Court and it has been contended on his behalf that Clause (xiii) is renged under Section 26 which speaks of disqualifications for being chosen as a member of the Board and that being so the second part of Clause (xiii) should also be regarded as a disqualification for being chosen as a member of the Board. He means to say that even a person who is employed as a legal practitioner against the Board on the date of the filing of nomination paper, would be disqualified for being chosen as a member. Learned Counsel wants the Court to read the second part of Clause (xiii) as 'or accepts employment as a legal practitioner against such Board for the period to which he is to be elected,' so as to avoid inconsistency or repugnancy within the section. No doubt it is the duty of the court to try and harmonise the various provisions in an enactment, but it is not permissible to read words in a statute which are not there as it would be obviously trespassing into the legislative field. As stated by the Privy Council in Robert Wigram Crawford v. Richard Spooner 4. Moors's Indian Appeal 179 : 'we cannot fish out what possibly have been the intention of the Legislature; we cannot aid the Legislature's defective phrasing of the Statute; we cannot add, and mend, and by construction, make up deficiencies which are left there.' On the other hand the primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. The courts are bound to give effect to that meaning irrespective of the consequences when the words of the statute are clear and unambigous and reasonably susceptible to only one meaning. Keeping these primary rules of construction in view we have to interpret the meaning of part two of Clause (xiii) quoted above. This Clause requires that in order to incur disqualification a person urstly 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. Therefore the disqualification envisaged by this Clause does not refer to the employment of a person as legal practitioner before his election to the Board or in other words for being chosen as a member of the Board. 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 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 letter part refers to disqualification for continuing as member of the Board.

4. It has to be remembered that Section 26 as it stood before the amendment of 1961 by Act No. 26 of 1961, was as under:

A person, notwithstanding that he is otherwise qualified shall be disqualified for being chosen as, and for being, a member of a Board.

So the disqualifications mentioned in Section 26 were at that time applicable both for being chosen and also for continuing as a member of the Board and if Clause (xiii) is read in the context of the original Section then it would be clear that there was no inconsistency or repugnancy within the Section because the first part of Clause (xiii) related to the disqualification for being chosen as a member and the latter part as a disqualification for continuance of a member of the Board. By Act No. 26 of 1961, Section 26 was amended and the words 'and for being' were omitted and along with it Clause (c) was added in Section 63 which deals with removal of members. Clause (c) of Section 63 is as follows:

That after his election he has incurred any of the disqualifications mentioned in Section 18 or Section 26 or has ceased to fulfil the requirements of Section 24.

But 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 clubed as before. From this however it cannot be inferred that ail 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. As for instance due to disqualification mentioned in Clause (iii) a person who is dismissed from service of the Central or State Government or any local authority for misconduct, cannot be chosen as a

member. But this disqualification cannot be incurred by a member after his election in view of Clause (viii) because when a person who holds a salaried or part time appointment under the Central or State Government or local authority is debarred from being chosen as a member, then he cannot incur the disqualification mentioned in Clause (iii) after his election although Section 68(c) generally mentions that if any member after his election has incurred any of the disqualifications mentioned in Section 18 or 26, he will be liable to be removed : Similarly, in Clause (xiii) the first part of the disqualification pertains to his being chosen as a member while the latter comes in to play only after his election and does not debar him from being chosen as a member. I have, therefore, no doubt that on the plain language of the second part of Clause (xiii) it cannot be held that a person employed as a legal practitioner against the Board before his election is disqualified from being chosen as its member.

5. It is next contended that the above interpretation of the second part of Clause (xiii) would create obvious anomaly in as much as a person after his election to the Board would be liable to remove under Section 63 if he accepts employment as a legal practitioner during the term for which he has 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. As already stated if the legislature intended to debar a person holding employment as legal practitioners against the Board for being chosen as a member it could have given expression to the said intention in clear language. But what ever the a namely when the language of the Clause is clear and unambigious it has to receive the only construction of 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 legislative 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 his 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 clegislature 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. Learned Counsel for the appellant referred to Mangoo Singh v. Election Tribunal, Bareilly and Ors. : [1958]1SCR418 . But that case has no relevance to the present controversy and is, therefore, of no help to him. In that case it was held that:

If a person is disqualified on the date of nomination, he cannot be chosen as a candidate because the disqualification mentioned in Section 13-D of the U. P. Municipalities Act (2 of 1916) attaches to him on that date.

and further that:

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 does not cease to subsist on that day by reason of a subsequent payment of the arrears of Municipal tax.

7. This however is not the case here. Here the point is whether the disqualification mentioned in latter part of Clause (xiii) of Section 26 is a disqualification for being chosen as a member or it is only a disqualification for the continuance of a member.

8. The effect to payment of deficit court fee by the appellant after the period of limitation for the appeal had expired and the question of condonation of delay has not been considered by me as the learned Counsel for the respondent gave up the objection at the time of hearing although he had raised it at the previous hearing.

9. There is thus no force in the appeal and it is hereby dismissed with costs.

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