

Mangoo Singh vs The Election Tribunal, Bareillyand ... on 17 September, 1957

Equivalent citations: 1957 AIR 871, 1958 SCR 418, AIR 1957 SUPREME COURT 871, 1958 ALL. L. J. 155, 1958 SCJ 136

Author: S.K. Das

Bench: S.K. Das, Natwarlal H. Bhagwati, P.B. Gajendragadkar

PETITIONER:

MANGOO SINGH

Vs.

RESPONDENT:

THE ELECTION TRIBUNAL, BAREILLYAND OTHERS

DATE OF JUDGMENT:

17/09/1957

BENCH:

DAS, S.K.

BENCH:

DAS, S.K.

BHAGWATI, NATWARLAL H.

GAJENDRAGADKAR, P.B.

CITATION:

1957 AIR 871

1958 SCR 418

ACT:

Election dispute-Municipal election-Disqualification for membership-Arrears of tax-Payment after nomination but before poll-"For being chosen as", "Demand", meaning of-U. P. Municipalities Act, 1916 (U.P. 11 of 1916), ss. 13-D, cl. (g), 166, 168 U. P. Municipalities (Conduct of Election of Members) Order, 1953, para.22(2).

HEADNOTE:

The appellant was elected to the Municipal Board under the U. P. Municipalities Act, 1916. He was in arrears in the payment of Municipal tax in excess of one year's demand, to which s. 166 of the Act applied, at the time of the filing of nominations, but made the payment before the date of the poll. Under section 13D, cl. (g) of the Act "a

person shall be disqualified for being chosen as, and for being, a member of a board if he is in arrears in the payment of Municipal tax or other dues in excess of one year's demand to which s. 166 applies, provided that the disqualification shall cease as soon as the arrears are paid." On an election petition filed by a defeated candidate, the election was set aside by the Election Tribunal on the ground that the appellant was not entitled to the benefit of the proviso to s. 13-D, cl. (g) of the Act. It was contended for the appellant that the relevant date for the operation of the disqualification was the date of the poll and that, in any case, he did not come within the mischief of the disqualification clause in that section, as a bill for payment of the tax was not presented to him, nor a notice of demand served on him under s. 168.

Held: (1) that if a person is disqualified on the date of nomination, he cannot be chosen as a candidate within the meaning of s. 13-D of the U. P. Municipalities Act, 1916, because the disqualification attaches to him on that date and the process of choosing consists of a series of steps starting with nomination and ending with the announcement of the election. The wiping off of the

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disqualification has no retrospective effect, and the disqualification which subsisted on the date of the nomination cannot cease to subsist on that day by reason of a subsequent payment of the arrears of Municipal tax.

Chatturbhuj Withaldas jasani v. Moreshey Parashram and Others, (1954) S.C.R. 817, N. P. Ponnuswami v. The Returning Officer, Namakkal Constituency and Others, (1952) S.C.R. 218 and Harford v. Linskey, (1899) 1 Q.B. 852, relied on.

Ahmed Hossain v. Aswini Kumar, A.I.R. 1953 Cal. 542, approved. -

(2) that the expression "to which s. 166 applies" in s. 13-D, cl. (g) of the Act merely describes the nature or type of dues mentioned in that section and that the effect is that the demand referred to in s. 13-D, cl. (g) must be of that nature or type.

(3) that the word "demand" in s. 13-D, cl. (g) of the Act means "claim" or "due" and only refers to the amount of arrears or dues on which the disqualification depends and does not attract the operation of s. 168.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8 of 1957. Appeal from the judgment and order dated the 30th August, 1955, of the Allahabad High Court in Special Appeal No. 8 of 1955 arising out of the judgment and order dated the 10th December, 1954, of the Single Judge of the Allahabad High Court in Civil Misc. Writ No. 1245 of 1954.

R. S. Narula, for the appellant.

B. B. Tawakley and K. P. Gupta, for the respondent. 1957. September 17. The following Judgment of the Court was delivered by S. K. DAS, J.-This appeal has been preferred to this Court on the strength of a certificate granted by the High Court of Allahabad on February 3, 1956, to the effect that the case is a fit one for appeal to the Supreme Court under Art. 133(1)(c) of the Constitution. The question that falls for decision is the true scope, meaning and effect of cl. (g) of s. 13-D of the U. P. Municipalities Act, 1916 (U. P. II of 1916), hereinafter referred to as the Act.

The relevant facts, which are not now in dispute, are these. There was a general election to the Municipal 54 Board of Bareilly in October, 1953. The appellant, Mangoo Singh, and respondent No. 3, Imdad Husain, along with several others, were candidates at the said election from Ward No. 15. The date fixed for filing nominations was October 5, 1953, and the date for scrutiny of the nominations filed was October 7, 1953. The appellant and respondent No. 3 both filed their nominations on the due date, and at the time of scrutiny Imdad Husain raised an objection to the nomination of the appellant on the ground that the latter was disqualified under cl. (g) of s. 13-D of the Act for being chosen as a member of the said Municipal Board because he was in arrears in the payment of municipal tax in excess of one year's demand. This objection was dismissed, and the nomination of the appellant was accepted by the Assistant Returning Officer. The poll took place on October 26, 1953, and the counting of votes was done on October 29, 1953. Four persons were to be elected from the said Ward, and the appellant was the third in the list by reason of the number of votes which he had obtained. Imdad Husain was fifth in the list. Accordingly, the appellant was declared as one of the returned candidates, and Imdad Husain was at the top of the unsuccessful candidates. Imdad Husain then filed an election petition to set aside the election of the present appellant on various grounds. The only ground with which we are now concerned is the disqualification under cl. (g) of s. 13-D of the Act. This election petition was heard by the Election Tribunal and by its judgment dated October 20, 1954, the Election Tribunal held that the appellant was in arrears in the payment of municipal tax in excess of one year's demand to which s. 166 of the Act applied and, therefore, came under the disqualification in cl. (g) of s. 13-D of the Act. It further held that the payment of a sum of Rs. 115-3-0 on October 10, 1953, five days after the date fixed for the filing of nominations, did not wipe off that disqualification, and the appellant was not entitled to the benefit of the second proviso to s. 13-D of the Act. It may be here stated that the Election Tribunal also held that no bill for payment of the tax was presented to the appellant as required by s. 166, nor was any demand notice served on him as required by s. 168 of the Act. On the above findings, the Tribunal allowed the election petition, set aside the election of the appellant and declared a casual vacancy under cl. (a) of sub-s. (2) of s. 25 of the Act, which vacancy was subsequently filled up by the election of the third respondent on April 5, 1955. The next general election in the Municipality is due in October, 1957. Against the decision of the Election Tribunal, the appellant moved the High Court of Allahabad for the issue of a writ under Art. 226 of the Constitution. The main point urged by the appellant was that the Election Tribunal was in error in its interpretation of cl. (g) of s. 13-D of the Act. Chaturvedi J. who dealt with the application of the appellant, agreed with the view of the law as expressed by the Election Tribunal and dismissed the application. The appellant then preferred an appeal to a Division Bench of the said High Court. This appeal was also dismissed by Agarwala and Sahai JJ. by their judgment dated August 30, 1955. The appellant then

moved and obtained a certificate of fitness under Art. 133(1)(c) of the Constitution from the said High Court. Learned counsel for the appellant has not contested any of the findings of fact arrived at by the Election Tribunal and has confined his submissions to the question of the true construction of cl. (g) of s. 13-D of the Act. Therefore, it is necessary to read that section, in so far as it is relevant for our purpose:

" 13 -D. Disqualifications for membership.-A person, notwithstanding that he is otherwise qualified, shall be disqualified for being chosen as, and for being, a member of a board if he-

(a)

(b).....

(c).....

(d).....

(e)

(f).....

(g) is in arrears in the payment of municipal tax or other dues in excess of one year's demand to which section 166 applies:

Provided further that in the case of (g) the disqualification shall cease as soon as the arrears are paid."

The first contention of learned counsel for the appellant relates to and arises out of the expression " for being chosen as " occurring in the section. The argument is this. It is submitted that a person is "chosen as a member of a board " when the poll takes place and a majority of voters vote for him as their chosen candidate ; therefore, the relevant date for the operation of the disqualification is the date of the poll, and inasmuch as on October 10, 1953, which was several days before the date of the poll, the appellant was no longer in arrears of municipal tax in excess of one year's demand by reason of the payment made on that date, the disqualification did not attach to him on the date of the poll. We are unable to accept this argument. It is worthy of note that an identical expression "shall be disqualified for being chosen as " occurs in Art. 102 of the Constitution and s. 7 of the Representation of the People Act, 1951. This expression occurring in s. 7 of the Representation of the People Act, 1951, was considered by this Court in *Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram and Others* (1). In that case the question was when the disqualification mentioned in cl. (d) of s. 7 of the Representation of the People Act, 1951, arose and it was held that the date for putting in the nominations was one of the crucial dates. On this point, the following observations made in that case are apposite :

"Now the words of the section are "shall be disqualified for being chosen". The choice is made by a series of steps starting with the nomination and ending with the announcement of the election. It follows that if a disqualification attaches to a candidate at any one of these stages, he cannot be chosen."

(1) [1954] S.C.R. 817, 821.

It was pointed out in *N. P. Ponnuswami v. The Returning Officer, Namakkal Constituency and Others* (1) that 'election' is a continuous process consisting of several stages and embracing many steps of which nomination is one; nomination is the foundation of a candidate's right to go to the polls and must be treated as an integral part of the election. If a person is disqualified on the date of nomination, he cannot be chosen as a candidate because the disqualification mentioned in s. 13-D attaches to him on that date.

This is also clear from para. 22(2) of the U. P. Municipalities (Conduct of Election of Members) Order, 1953. That sub-para. states-

" 22 (2)-The Returning Officer shall then examine the nomination papers and shall decide all objections, which may be made to any nomination, and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, refuse any nomination on any of the following grounds:

(a) that the candidate is not qualified to be chosen to fill the seat under the Act; or

(b) that the candidate is disqualified for being chosen to fill the seat under the Act; or

(c) that there has been any failure to comply with any of the provisions of paras. 16 and 17; or

(d) that the signature of the candidate or any proposer or seconder is not genuine or has been obtained by fraud."

If the disqualification of cl. (g) of s. 13-D of the Act is to come into operation only on the day of the poll, then it is quite unnecessary for the Returning Officer to consider that disqualification at the time of scrutiny; and indeed it will be improper for him to refuse nomination on the ground of such disqualification. Clause (b) of para. 22 (2) uses the same expression "disqualified for being chosen"-showing clearly enough that the starting point of the act of choosing is not on the date of the poll only. The process of choosing commences on the date of filing nominations. (1) [1952] S.C. R. 218.

We now turn to the second proviso to s. 13-D. The submission of learned counsel for the appellant is that, as stated in the proviso, the disqualification is transient and ceases to operate as soon as the arrears are paid; On October 10, 1953, the appellant was no longer disqualified and, therefore, he could be chosen on the date of the poll, that is, on October 26, 1953. The argument is that in the case of such a transient disqualification, the second proviso must be so read as to mean that a

disqualification subsisting on the day of nomination can be wiped off completely by subsequent payment of arrears of tax; otherwise a disqualification at the time of nomination will disentitle a person to stand for election ; even though it ceases to operate before the day of the poll. This argument also we cannot accept as correct; it is really the first argument in a different form. 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 did not cease to subsist on that day by reason of a subsequent payment of the arrears of municipal tax. On this point we accept as correct the view expressed in *Ahmed Hossain v. Aswini Kumar*(1), where a similar question under the Bengal Municipal Act (Ben. XV of 1932), fell for consideration. The question was if a person disqualified on the date of nomination could shake off his pre-existing disqualification by acquiring a new right between the date of nomination and the date of scrutiny. What happened in that case was this : on the material date, that is, the last date for submission of nominations, a person was in arrears for more than three months in payment of the tax which he was liable to pay, and he came within the mischief of el.

(g) of amended a. 22(1) of the Bengal Municipal Act. The contention was that the name of the Press of which the candidate was the proprietor and not his name was recorded in the books of the Municipality as the assessee and that the name of the candidate was in the electoral -roll by reason of his educational qualifications. This contention was repelled and it was (1) A.L.R. 1953 Cal. 542.

observed that if a person was disqualified on the date of the nomination, he could not shake off his preexisting disqualification by acquiring a new right between the date of nomination and the date of scrutiny. There is also other judicial authority which', supports the same view. In *Harford v. Linskey* (1), a similar question arose for decision under the Municipal Corporations Act, 1882, s. 12 whereof enacted that " a person shall be disqualified for being elected and for being a councillor " if and while he is interested in contracts with the Corporation. The petitioner in that case admitted that at the time of his nomination he was interested in contracts with the Corporation, but contended that he could and would have got rid of his disqualification before the day fixed for the poll, and was therefore not disqualified for nomination. The question was whether he was so disqualified. Wright J. delivering the judgment of the Court observed-

" In the absence of any guide, we think it safest to hold that in cases of elections under the Municipal Corporations Acts a - person, who at the time of nomination is disqualified for election in the manner in which this petitioner was disqualified, is disqualified also for nomination. The nomination is for this purpose an essential part of the election, and if there are no competitors it of itself constitutes the election by virtue of the express words of s. 56. A different construction might produce much confusion. On the nomination day no one could know whether the persons nominated will at the poll be effective candidates or not. It is true that in the case put the disqualification may be removed before the election is completed ; but what is to be the effect if the disqualification continues until the poll begins, or until the middle of the polling day, or until the close of the poll ? Will votes given before the removal of the disqualification be valid? If not how is the number of them to be ascertained ? it seems to us unreasonable to hold that the Act means to leave the matter in such a

state of uncertainty, and for these reasons (1) (1999) 1 Q.B. 852, 858.

we think that this petitioner was disqualified for nomination or election."

The same state of uncertainty and confusion, to which a reference has been made in the aforesaid observations, will arise if the construction which learned counsel for the appellant has pressed for our acceptance is adopted in the case before us.

Lastly, it has been argued on behalf of the appellant that the expression 'to which s. 166 applies' in cl. (g) of s. 13-D means that a bill of the sum due must be presented to the person liable for it, as required by that section, before he can come within the mischief of the clause; furthermore, the use of the expression 'demand' makes it essential that a demand notice must also be served as required by s. 168 of the Act. As on the finding of the Election Tribunal neither a bill was presented to the appellant, nor was he served with a demand notice, learned counsel contends that the appellant does not come within the mischief of the clause.

Sections 166 and 168 are in these terms-

S. 166. Presentation of bill.-(1) As soon as a person becomes liable for the payment of-

(a) any sum on account of a tax, other than an octroi or toll or any similar tax payable upon immediate demand, or

(b) any sum payable under clause (c) of section 196 or section 229 or section 230 in respect of the supply of water, or payable in respect of any other municipal service or undertaking, or

(c) any other sum declared by this Act or by rule (or bye-law) to be recoverable in the manner provided by this chapter, the board shall, with all convenient speed, cause a bill to be presented to the persons so liable. (2) Unless otherwise provided by rule, a person shall be deemed to become liable for the payment of every tax and licence fee upon the commencement of the period in respect of which such tax or fee is payable,"

" S. 168. Notice of demand.-If the sum for which a bill has been presented as aforesaid is not paid in municipal office, or to a person empowered by a regulation to receive such payments, within fifteen days from the presentation thereof, the board may cause to be served upon the person liable for the payment of the said sum a notice of demand in the form set forth in schedule IV, or to the like effect."

We are clearly of the view that the expression 'to which s. 166 applies' cannot bear the meaning sought to be given to it on behalf of the appellant. That expression merely describes the nature of the demand referred to in cl. (g). Section 166 refers to three types of dues; el. (a) of sub

-s. (1) refers to any sum on account of a tax other than an octroi or toll or any similar tax payable upon immediate demand; cl. (b) refers to sums payable under el. (c) of s. 196 or s. 229 or s. 230 in

respect of the supply of water, etc., and cl. (c) refers to any other sum declared by the Act or by rule or bye-law to be recoverable in the manner provided by Chapter VI. The demand to which s. 166 applies must be a demand of the nature or type mentioned in one or other of the aforesaid three clauses, and the demand referred to in cl. (g) of s. 13-D must be of that nature or type; this, in our view, is the true meaning and effect of the expression 'to which s. 166 applies'.

Nor do we think that the word 'demand' attracts the operation of s. 168. It may be readily conceded that the word 'demand' ordinarily means something more than what is due; it means something which has been demanded, called for or asked for. But the meaning of a word must take colour from the context in which it is used. In cl. (g) the context in which the word 'demand' is used has a very obvious and clear reference to the amount of arrears or dues on which the disqualification depends; therefore, the expression used is- 'arrears in the payment of municipal tax or other dues in excess of one year's demand'. The word 'demand' in that context and in the collocation of words in which it has been used can only mean 'in excess of one year's municipal tax or other dues'. We have been referred to several meanings of the word 'demand' in standard English dictionaries and law lexicons. When the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers. It is sufficient for our purpose to state that even in standard dictionaries and law lexicons, it is well recognised that the word 'demand' may mean simply a 'claim or 'due', without importing any further meaning of calling upon the person liable to pay the claim or due.

For the reasons given above, we hold that not one of the contentions urged on behalf of the appellant is worthy of acceptance. The election petition was rightly decided, as the appellant was disqualified for being chosen as a member of the Municipal Board in question on the day he filed his nomination, under cl. (g) of s. 13-D of the Act. Accordingly, the appeal is dismissed with costs in favour of respondent 3 who alone contested the appeal before us. Appeal dismissed.