

Karnataka High Court

S.R. Rangappa vs Girijakumar on 7 September, 1990

Equivalent citations: ILR 1990 KAR 3256, 1990 (3) KarLJ 234

Author: Shivaraj Patil

Bench: Mohan, S Patil

JUDGMENT Shivaraj Patil, J

1. The brief facts which are necessary to dispose of this Writ Appeal are set out as follows:-

1) The appellant was elected as a Member of Hatcholli Mandal Panchayat in Sirguppa Taluk, Bellary District. He was also the Chairman of the Sirguppa Agricultural Marketing Committee. Respondents-1 and 2 gave a representation to the 4th respondent (Deputy Commissioner, Bellary District, Bellary) to dismember the appellant under Section 12(2) of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 (for short the 'Act') on the ground that he is disqualified to be member as per Section 11(1)(j) of the Act inasmuch as he holds an office of profit being the Chairman of the Sirguppa Agricultural Market Committee. The 4th respondent issued a notice Annexure-C dated 2-6-1987 to the appellant asking him as to why he should not be dismembered from the said Mandal Panchayat stating that he was holding an office of profit and was disqualified to become Member of the Mandal Panchayat as per Section 11(1)(j) of the Act. The 4th respondent after hearing both the parties passed the impugned order Annexure-D dated 6-7-1987 holding that the appellant was disqualified under Section 11(1)(j) of the Act from the membership of Hatcholli Mandal Panchayat. The appellant filed Writ Petition No. 10505/1987 praying to issue a Writ of Certiorari and quash the impugned order Annexure-D dated 6-7-1987 passed by the 4th respondent. The learned Single Judge by his order dated 8-9-1987 dismissed the Writ Petition upholding the impugned order Annexure-D passed by the 4th respondent.

2. The appellant aggrieved by the said order of the learned Single Judge as well as the order Annexure-D passed by the 4th respondent has filed the present appeal,

3. On behalf of the respondent it was contended that the appellant is disqualified to be member of the Mandal Panchayat under Section 11(1)(j) of the Act as he was holding office of the Chairman, Agricultural Market Produce Committee and was receiving honorarium of Rs. 250/- per month which is in the nature of remuneration other than compensatory allowance for this purpose. They relied on Section 11(1)(j) of Act and the Karnataka Zilla Parishads and Mandal Panchayats (Prevention of Disqualification) Rules, 1986 (for short 'Rules 1986'). The learned Single Judge and the 4th respondent accepted the contention of the respondents and held that the appellant was holding an office of profit under local authority as Chairman of the Sirguppa Agricultural Market Committee and the honorarium he was receiving was not a compensatory allowance but a remuneration. As such the consequent conclusion was the appellant was disqualified to be a member of the said Mandal Panchayat.

4. The contention of the appellant throughout was that the office of the Chairman of the Agricultural Produce Market Committee cannot be construed as an office of profit because it is an elective post on the grounds that (1) A Chairman to a Market Committee is to be elected by the members of the

Committee. The Government can neither appoint nor remove a Chairman; 2) A Market Committee is a creature of a statute and not of the Government; 3) Chairman of a Market Committee does not receive any remuneration. He only receives honorarium under Section 94 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (Act, 1966) and does not receive any salary or remuneration.

5. Sri Ravi B. Naik, learned Counsel for the appellant while reiterating the contention of the appellant urged that he was elected as the Chairman of the Market Committee. Neither the Chairman of a Market Committee could be appointed nor removed by the Government, Honorarium was not a remuneration, wage or salary as per Section 94 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966. It is clearly stated that payment of Rs. 250/- per month is honorarium. The legislative intention is quite clear from the use of the word "honorarium" and "travelling allowances" to be paid to the Chairman under the said Section. In support of these submissions he relies on the decisions in RAVANNA SUBBANNA v. G.S. KAGEERAPPA ; KARBHARI BHIMAJI ROHAMARE v. SHANKER RAO GENUJI KOLHE AND ORS . and PAKANTI SUDARSHAN REDDY AND ORS. v. DISTRICT COLLECTOR AND ORS .

6. In opposition Sri Gangadhar R. Gurumath learned Counsel for respondent-5 and Sri N. Devadas, learned Government Advocate for respondents-3 and 4 while supporting and justifying the impugned order Annexure-and the order passed by the learned Single Judge, would submit that the word "honorarium" should be construed as remuneration when the term "compensatory allowance" defined in the Rules 1986 do not include honorarim.

7. The learned Single Judge took the view that the decisions in the case of Ravanna Subbanna v. G.S. Kageerappa and Pakanti Sudarshan Reddy and Ors. v. District Collector, Warrangal and Ors. rest on the facts of these cases and the statutory provisions of the respective acts which came up for consideration. Since the appellant was receiving honorarium of Rs. 250/-in addition to sitting fee and travelling allowance and that this honorarium is not included in the definition of compensatory allowance, he took the view that it is remuneration. Further, in view of Section 94(3) of the Act, 1966 the Chairman shall not be entitled to an honorarium for the period of his absence and during this period Vice Chairman or any other Member performing the functions of the Chairman would be entitled to draw the honorarium, the learned Judge held it as remuneration. In this view of the matter the learned Single Judge concluded thus:-

"The petitioner was drawing a sum of Rs. 250/-p.m. for his services as the Chairman of the APMC and therefore, the petitioner being a Member of a Committee which is constituted under the APMC Act and which is under the control of the State Government he was rightly disqualified by the Deputy Commissioner."

8. Now we have to consider:-

1) Whether the Appellant by virtue of his being the Chairman of the A.P.M.C., receiving honorarium of Rs. 250/- per month held an office of profit under Section 11(1)(j) of the Act and as such he was disqualified to be a Member of the Mandal Panchayat?

9. The intention of the Legislature for disqualifying holders of office of profit under Government, from seeking elective offices is to avoid conflict between duty and interest and a person elected to an office must be free to express his views unfettered by the control to be exercised by the Government.

10. In the case of BIHARILAL DOBRAY v. ROSHAN LAL DOBRAY , the Supreme Court in para-5 held thus:-

"5. The object of enacting Article 191(1) (a) is plain. A person who is elected to a Legislature should be free to carry on his duties fearlessly without being subjected to any kind of governmental pressure. If such a person is holding an office which brings him remuneration and the Government has a voice in his continuance in that office, there is every likelihood of such person succumbing to the wishes of Government. Article 191(1)(a) is intended to eliminate the possibility of a conflict between duty and interest and to maintain the purity of the Legislatures."

11. In the instant case it has to be seen -

(i) Whether the appellant was appointed by the Government;

(ii) Whether the Government has right to remove the appellant from the office;

(iii) Whether the Government pays the remuneration; and

(iv) Whether the functions performed by the appellant are carried on by him for the Government or the Government has control over the duties and functions of the appellant as Chairman.

The appellant was elected as a Chairman of the A.P.M.C. under Section 41 of the Act, 1966. He cannot be removed from the said office by the Government. The honorarium is also not paid by the Government, but it is paid by the Market Committee out of the funds of the Market Committee, The powers and duties of the Chairman are enumerated in Section 46 of the Act, 1966. A plain reading of the said Section does not show that the Chairman of the Market Committee either acts for the Government or under the directions or under the control of the Government.

12. In our opinion considering the scheme of the Act, 1966, it cannot be held that the appellant was holding an office of profit either under any of the Governments or under a local authority subject to the control of any of the Governments referred to in Section 11(1)(j) of the Act. The measure of control by the Government over a local authority should be judged in order to eliminate the possibility of a conflict between duty and interest and to maintain the purity of the elected bodies as laid down in the case of ASHOK KUMAR BHATTACHARYA v. AJOY BISWAS AND ORS .

13. In view of what is stated above the appellant having been elected under Section 41 of the Act, 1966, exercising powers and performing the duties under Section 46 of the Act, 1966 which reads thus:-

"46. Powers and duties of Chairman -Without prejudice to the powers conferred on the Chairman under any other provision of this Act, -

1) the Chairman of the Market Committee shall be the chief controlling and Supervising Officer of the Market Committee. All officers and servants of the Market Committee shall, subject to the provisions of this Act, the Rules, the Bye-laws and the directions, if any, given by the Committee, be subject to his control.

2) The Chairman shall -

a) preside over the meetings of the Market Committee and the sub-committees and conduct business at such meetings;

b) watch over the financial and executive administration of the Market Committee;

c) exercise supervision and control over the Officers and servants (whether such Officers or servants are Government servants or not) of the Market Committee in matters of executive administration, concerning accounts and records and disposal of all questions relating to the service of the employees; and

d) in cases of emergency, direct the execution of stoppage of any work or the doing of any act which requires the sanction of the Market Committee."

It cannot be said that he will not be in a position to express freely and act independently as a Member of the Mandal Panchayat.

14. Further, we have to see whether the amount of Rs. 250/- which the appellant was receiving as honorarium was a gain or profit for the purpose of Section 11(1)(j) of the Act. It is useful to refer to the decision in the case of Pakanti Sudarshan Reddy and Ors. v. District Collector, Warrangal and Ors. In the said case respondent No. 21 was a Member of the Market Committee appointed under the provisions of the Hyderabad Agriculture Market Act, he was the Chairman of the same Committee and he was getting some allowance. It was contended that he was holding an office of profit under local authority within the meaning of Section 27(1)(c) of the Act, and as such he was disqualified for being elected to the Municipal Committee, Warrangal. The Andhra Pradesh High Court after elaborate discussion held thus in para-7 of the said Judgment:

"It is futile to contend that the Chairman of the Market Committee holds an office of profit under the Market Committee. Market Committee again is a statutory body and performs various functions under the Act. The Chairman is elected by the Committee. The office which he holds is not remunerative in the sense in which it is generally understood. Not it is the intention of the Legislature or the Government to make that office an office of gain or remuneration. We do not, therefore, think that the Chairman of a Market Committee holds any office or place of profit under the Market Committee and as such he is disqualified for being elected to the Municipal Committee, Warrangal."

15. In the case of Ravanna Subbanna v. G.S. Kaggeerappa the Supreme Court has stated thus in para-13:-

"13. The High Court in deciding this point against the appellant laid great stress upon the provision of Section 2 of the Mysore Legislature (Prevention of Disqualifications) Act, 1951 which lays down that -

"a person shall not be disqualified for being chosen and for being a member of the Mysore Legislature by reason only of the fact that he holds any of the offices of profit specified in the schedule to the Act."

Item No. 2 of the schedule mentions "the Chairman, Director or Member of any Committee or Board appointed by the Government." All that the Section lays down is, that persons holding certain offices, as specified in the schedule, amongst which the Chairman or a Member of a Committee or Board appointed by the Government is included, shall not be disqualified for being chosen as a Member of the Legislature by reason only of the fact that he holds an office of profit.

We do not think that the implication of the provision is that the offices mentioned in the schedule must necessarily be regarded as offices of profit, irrespective of the fact whether any profit is at all attached to them or not and that but for these provisions the persons holding them could not have been eligible for being chosen as Members of the Legislature. The object of the Section may be to grant exemption to holders of offices of certain descriptions and the provision in substance is that they will enjoy this exemption even though otherwise they might be regarded as holders of offices of profit.

In any view it cannot be argued that even if a Chairman or a Member of a Government Committee works in a purely honorary capacity and there is no remuneration attached to the office, he will still be regarded as a person holding office of profit in view of the provisions of the Section. This provision might in our opinion have been made only out of abundant caution and nothing else. We think therefore that the view taken by the High Court is not right and as we hold that the appellant was not holding any office of profit under the Government at the material time he was certainly entitled to be chosen as a Councillor under the Mysore Town Municipalities Act."

16. Yet in another decision in the case of S. UMRAO SINGH v. DARBARA SINGH AND ORS . the Full Bench of the said High Court considering the question whether a person holding the office of the Chairman of the Panchayat Samiti under the Panchayat Samitis and Zilla Parishads Act, 1961 and who was being paid a consolidated allowance of Rs. 100/- per mensem in accordance with the Punjab Panchayat Samithis and Zilla Parishads Non-Official Members (Payment of Allowances) Rules, held he did not hold an office of profit, the payment being a compensation for out-of-pocket expenses. This Judgment was affirmed by the Supreme Court, [1969(1) S.C.R. 421: S. Umrao Singh's Case].

17. In view of these decisions and considering the relevant provisions of the Act and the Act, 1966 referred to above, we have no hesitation to hold that the appellant does not hold an office of profit

merely because he receives an honorarium of Rs. 250/- per month which is intended to compensate the appellant to meet the out of pocket expenses which may be incidental and necessary to carry out the functions of the office of Chairman apart from the sitting fees and travelling allowances to which he is entitled to. May be a Chairman may require the services of a personal clerk or may be he has to spend money on some items out of his pocket in consonance with the prestige and dignity of the office which he holds. Respondents-1 and 2 in the case on hand have not placed necessary material to establish that the honorarium of Rs. 250/-per month paid to the appellant, was as a matter of fact, a gain or profit attached to the office of the Chairman. Respondents-1 and 2 who want to visit the appellant with the serious consequences that may flow from disqualifying him under Section 11(1)(j) of the Act, should necessarily take burden upon them to establish that the honorarium of Rs. 250/- per month paid to the appellant was in fact a gain or profit. We do not find any such material on record except the statement that payment of honorarium of Rs. 250/-to the appellant attracts disqualification under Section 11(1)(j) of the Act.

18. The word 'honorarium' is indicative though not conclusive that it is not a salary or remuneration. Whether the payment of honorarium in the instant case amounts to remuneration is to be considered in substance and not in either form or by its nomenclature.

19. In the case of R. GANESA AYYAR v. LAKSHMI CO-OPERATIVE BUILDING SOCIETY AIR 1937 Madras 379 @ 381 it is observed thus:-

"No doubt 'honorarium' prima facie implies a gratuitous payment, but it also means a fee for services rendered. Wharton in his Law Lexicon defines 'honorarium' thus:

A recompense for services rendered; a voluntary fee to one exercising a liberal profession, eg., a barrister's fee.

In the Standard Dictionary 'honorarium' is defined thus:-

A fee or payment to a professional man for services on which the custom requires that no fixed remuneration be placed, as a physician's honorarium and honorarium for literary work.

In the Oxford Dictionary it is defined thus:

'Honorary reward, a fee for service rendered' thus it will be seen honorarium might according to the context connote a purely gratuitous payment or a fee for service rendered.'

20. If the appellant is not otherwise disqualified under Section 11(1)(j) of the Act, merely because Rule 3(b) of the Rules 1986 speaks of removal of certain disqualifications of the office of Chairman or a Member of Committee does not mean that Rule is attracted. May be Rule 3(b) is added by way of abundant caution as held in the case of Ravanna Subbanna. Merely because honorarium is not included in the definition of compensatory allowance, it is not possible to hold that it is remuneration. Payment of honorarium of Rs. 250/- per month appears to have been intended to meet the out-of-pocket expenses. At any rate this payment of honorarium cannot be said to be a gain

or profit attached to the office considering the scheme of the Act, 1966.

21. Thus having considered various aspects, we are unable to agree with the view taken by the learned Single Judge. We have arrived at the inevitable conclusion that the appellant by virtue of his being the Chairman of the A.P.M.C., receiving honorarium of Rs. 250/- per month did not hold the office of profit under Section 11(1)(J) of the Act, and as such he was not disqualified from being the member of the Mandal Panchayat.

22. In the result the following order is passed:-

- i) Writ Appeal is allowed;
- ii) The order of the learned Single Judge dated 8-9-1987 passed in W.P.No. 10505/1987 is set aside;
- iii) The impugned order dated 6-7-1987 passed by the Deputy Commissioner, Bellary, (Annexure-D) is quashed.