

PETITIONER:
GULAM YASIN KHAN

Vs.

RESPONDENT:
SHRI SAHEBRAO YESHWANTRAO WALASKAR & ORS.

DATE OF JUDGMENT:
17/01/1966

BENCH:
GAJENDRAGADKAR, P.B. (CJ)
BENCH:
GAJENDRAGADKAR, P.B. (CJ)
SHAH, J.C.
SIKRI, S.M.
RAMASWAMI, V.
SATYANARAYANARAJU, P.

CITATION:
1966 AIR 1339 1966 SCR (3) 339

ACT:
Central Provinces & Berar Municipalities Act, 1922 (C.P. Berar Act 2 of 1922), s. 15(1)--candidate's son employed by Municipality-Whether disqualification.

HEADNOTE:

The appellant and respondent No. 1 were candidates for election as members to the Municipal Committee, Malkapur. Respondent No. 1 objected, at the time of scrutiny, to the candidature of the appellant on the ground that the appellant had an interest in the Municipal Committee because his son was employed by the Committee and so, he was disqualified from standing for election under s. 15(1) of the Central Provinces & Berar Municipalities Act, 1922. The appellant disputed the validity of the objection by saying that his son was not staying with him and had no connection with him whatsoever. The appellant and his sons were living in the same house, but each one lived in the portion allotted to him, and messed separately. Though the ration-card was in the name of the appellant for the whole family and the income shown therein as the income of the family was only that of the appellant, the earnings of the sons were not utilized for purposes of the family. The Supervising Officer overruled the objection. Thereupon, respondent No. 1 filed a writ petition in the High Court, in which the objection was upheld. In appeal to this Court,

HELD : The mere relationship of a person with an employee of the Municipal Committee does not justify the inference that such a person has interest direct or indirect in his employment under the Municipal Committee. The interest to which s. 15(1) of the Act refers cannot mean mere sentimental or friendly interest; it must mean interest which is pecuniary, or material, or of a similar nature. Hence the enquiry should be not whether the appellant is interested in his son but whether the appellant is interested in the employment of his son.

In the circumstances of this case, all that was proved was the mere relationship between the appellant and his son who was the employee of the Municipal Committee. Therefore, the

conclusion of the High Court, based on that relationship, was erroneous. [341 H; 342 E-F; 343 F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 936 of 1965. Appeal by special leave from the judgment and order dated April 17, 1964 of the Bombay High Court (Nagpur Bench) at Nagpur in Special Civil Application No. 173 of 1964.

M. C. Setalvad and A. G. Ratnaparkhi, for the appellant.

K. L. Gauba, D. D. Verma, S. S. Khanduja and Ganpat Rai, for the respondents.

The Judgment of the Court was delivered by Gajendragadkar, C. J. The appellant, Gulam Yasin Khan, and respondent No. 1, Sahebrao Yeshwantrao Walaskar, were candidi
340

dates for election as members to the Municipal Committee, Malkapur, District Buldana, from Ward No. 17. The date fixed for filing the nomination papers was 16th March, 1964, and the date for scrutiny was 18th March, 1964. Both the appellant and respondent No. 1 had filed their nomination papers as required by the relevant Rules. When the stage of scrutiny arrived, respondent No. 1 objected to the validity of the candidature of the appellant. He alleged that the appellant's son Khalildad Khan was a Moharir on Octroi Naka employed by the Municipal Committee; as such, he was a servant of the Committee. According to respondent No. 1, the employment of the appellant's son by the Municipal Committee showed that the appellant had an interest in the Municipal Committee; and so, he was disqualified from standing for election under section 15(1) of the Central Provinces and Berar Municipalities Act, 1922 (No. 11 of 1922) (hereinafter called 'the Act'). The appellant disputed the validity of this objection. He alleged that his son was not staying with him and had no connection with him whatsoever.

On the 18th March, 1964, the Supervising Officer over-ruled the objection raised by respondent No. 1. He held that on the facts brought to his notice, s. 15(1) of the Act was inapplicable.

Aggrieved by this order, respondent No. 1 filed a Special Civil Application No. 173 of 1964 under Articles 226 and 227 of the Constitution before the Bombay High Court (Nagpur Bench) on the 3rd April, 1964. By his petition, respondent No. 1 urged that the decision of the Supervising Officer over-ruling his objection to the candidature of the appellant was patently invalid in law; and so, he asked for a writ, order or direction of an appropriate nature setting aside the impugned order of the Supervising Officer and prohibiting him from holding the election from Ward No. 17 as scheduled on the 19th April, 1964.

This writ petition was resisted by the appellant on the same grounds which he had urged before the Supervising Officer. The High Court, however, upheld the objection raised by respondent No. 1, set aside the order passed by the Supervising Officer, and held that the appellant was disqualified from standing for election under s.15(1) of the Act. In consequence, it directed that the nomination paper filed by the appellant should be rejected. It appears that from Ward No. 17, only two nomination papers had been filed—one of the appellant and the other of respondent No. 1. In view of the fact that after the rejection of the nomination paper of the appellant, respondent No. 1 was the only candidate who had offered for election on behalf of Ward No.

17, the High Court declared that respondent No. 1 had been duly elected from the said Ward. It is against this decision that the appellant has come to this Court by special leave; and the short question which has

341

been argued before us by Mr. Setalvad on behalf of the appellant is that the High Court erred in law in holding that on the facts proved in this case, the appellant was disqualified for being nominated as member of the Municipal Committee under s. 15(1) of the Act.

Before dealing with this point, it is relevant to refer to the facts which have either been found or admitted in the present proceedings. It appears that the appellant has three adult sons, including Khalildad Khan who has been employed by the Municipal Committee. The three sons and the father live in the same house, but mess separately. They have no share in each other's income. The earnings of the sons and the father are not put into the common hotch-pot. There are separate living arrangements in the house, and each one lives in a portion of the house allotted to him. It is true that the ration card is in the name of the appellant for the whole family, but it is admitted that the income of Rs. 2,000 which is shown in the ration card as the income of the family is the income of the appellant himself; it does not include the income earned by his sons, and it is plain that the salary earned by Khalildad Khan is used by himself for the maintenance of his own family. There is no doubt that the appellant and his sons being Mohammedans, cannot be said to be members of an undivided family in the sense in which that expression is used in regard to Hindus. It is in the light of these facts that we have to decide the question as to whether the High Court was right in holding that the appellant was disqualified under s. 15(1) of the Act.

The Act was passed in 1923 to make better provision for the Organisation and administration of municipalities in Madhya Pradesh. It contains provisions which are true to the pattern of municipal legislation of this type. Naturally, one of its sections deals with the question of disqualification of candidates as in all municipal Acts; it is section 15. Section 15 by clause (1) provides that no person shall be eligible for election, selection or nomination as a member of a Committee, if such person had directly or indirectly any share or interest in any contract with, by or on behalf of the Committee, while owning such share or interest.

The question which we have to consider is whether by virtue of his relationship with Khalildad Khan, the appellant can be said to have any indirect share or interest in the employment of Khalildad Khan with the Municipal Committee. We are assuming for the purpose of dealing with this point that the contract to which clause (1) refers, includes employment, though unlike other similar statutes, the word "employment" is not specifically mentioned in the said clause. In order to incur disqualification, what the clause requires is "interest or share in any contract"; it may either be a share or an interest; and if it is an interest, the interest may be direct or

342

indirect. But it is plain that the interest to which the clause refers, cannot mean mere sentimental or friendly interests; it must mean interest which is pecuniary, or material or of a similar nature. If the interest is of this latter category, it would suffice to incur disqualification even if it is indirect. But it is noticeable that the

clause also requires that the person who incurs disqualification by such interest must "own such share or interest". It is not easy to determine the scope of the limitation introduced by this last sub-clause. Mr. Gauba for respondent No. 1 urged that the clause "owning such share or interest" is tautologous when it refers to direct interest or share, and is meaningless when it refers to indirect share or interest. Prima facie, there is some force in this contention; but whatever may be the exact denotation of this clause, it does serve the purpose of limiting the character of the share or interest which incurs disqualification prescribed by the clause, and it would not be easy to ignore the existence of the last portion of the clause altogether.

It is quite true that the purpose and the object of prescribing the several disqualifications enumerated in clauses (a) to (1) of s. 15 of the Act is to ensure the purity of the administration of municipal Committees, and in that sense, it may be permissible to hold that the different clauses enumerated in section 15 should not receive an unduly narrow or restricted construction. But even if we were to adopt a liberal construction of s. 15(1), we cannot escape the conclusion that the interest or share has to be in the contract itself when we are enquiring as to whether the appellant is interested directly or indirectly in the employment of his son we cannot overlook the fact that the enquiry is not as to whether the appellant is interested in the son, but the enquiry is whether the appellant is interested in the employment of the son. The distinction between the two enquiries may appear to be subtle, but, nevertheless, for the purpose of construing the clause, it is very relevant. Considered from this point of view, on the facts proved in this case, we find it difficult to hold that by mere relationship with his son, the appellant can be said to be either directly or indirectly interested in his employment.

Incidentally, we may point out that clause (k) of s. 15 refers to the disqualification resulting from the fact that the person concerned holds any office of profit under the Committee. In other words, it deals with a case where the person offering for election himself holds any office of profit under the Committee; and naturally, that constitutes a disqualification. Having referred to the case of a person holding an office of profit under the Committee, clause (1) does not refer to employment in terms, though, as we will presently point out, similar provisions in other municipal Acts refer to employment in this context. But quite apart from this consideration, it is not easy to hold that the appellant owns any

343

kind of interest in the employment of his son or even otherwise is directly or indirectly interested in the said employment.

This question has, in a sense, become academic, because the Act has been repealed by Maharashtra Act 40 of 1965. Section 16(1) (i) of this repealing Act deals with the question covered by s. 15(1) of the Act. Section 16(1) (i) provides that no person shall be qualified to become a Councillor whether by election, cooption or nomination, who, save as hereinafter provided, has directly or indirectly, by himself or his partner, any share or interest in any work done by order of a Council or in any contract with or under or by or on behalf of a Council. There are several other clauses of section 16(1), but it is unnecessary to refer to them.

As we have already indicated, corresponding provisions dealing with disqualifications contained in similar municipal Acts refer to 'employment' in terms. By way of illustration, we may refer to section 12(2) (b) of the Bombay Municipal Boroughs Act, 1925 (No. 18 of 1925); it provides that no person who, save as hereinafter provided, has directly or indirectly, by himself or his partner, any share or interest in any work done by order of a Municipality or in any contract or employment with or under or by or on behalf of a Municipality, may be a Councillor of such Municipality. Similarly, the Bombay Provincial Municipal Corporations Act, 1949 (No. 59 of 1949) provides by section 10(1) (f) that a person shall be disqualified for being elected and for being a Councillor if such person has directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by or on behalf of the Corporation.

It would, we think, be unreasonable to hold that mere relationship of a person with an employee of the Municipal Committee justifies the inference that such a person has interest, direct or indirect, in the employment under the Municipal Committee. In the circumstances of this case, what is proved is the mere relationship between the appellant and his son who is the employee of the Municipal Committee; and on that relationship the High Court has based its conclusion that the appellant is disqualified under s. 15(1) of the Act. We are satisfied that this conclusion is erroneous in law.

The result is, the appeal is allowed, the order passed by the High Court is set aside, and the declaration granted by the High Court that respondent No. 1 is duly elected from Ward No. 17 is reversed. Respondent No. 1 should pay the costs of the appellant throughout.

Appeal allowed.

M10Sup.CI/66-9

344