



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF MAY, 2024

BEFORE

THE HON'BLE MR JUSTICE S SUNIL DUTT YADAV

WRIT PETITION NO. 21526 OF 2022 (LB-ELE)

BETWEEN:

1. SRI B T KUMAR

... PETITIONER

(BY SRI. R.S. RAVI, SENIOR COUNSEL FOR
SRI AKARSH KUMAR GOWDA., ADVOCATE)

AND:

1. SRI B N KUMAR
S/O NARAYANA GOWDA

Digitally signed
by VIDYA G R
Location:
HIGH COURT
OF
KARNATAKA

2. THE RETURNING OFFICER
BIRUVALLI GRAMA PANCHAYATH ELECTION
K.R. PET TALUK,
MANDYA DIST.



3. THE ELECTION OFFICER
BIRUVALLI GRAMA PANCHAYATH ELECTION
K.R. PET TALUK,
MANDYA DIST.

4. THE TALUK ELECTION OFFICER AND TAHASILDAR
BIRUVALLI GRAMA PANCHAYATH ELECTION
K.R. PET TALUK
MANDYA DIST.

5. THE CHIEF ELECTION OFFICER AND
THE DEPUTY COMMISSIONER
MANDYA DIST.

... RESPONDENTS

(BY SRI. DHYAN CHINNAPPA, SENIOR COUNSEL FOR
SRI. S B MATHAPATHI., ADVOCATE FOR R1;
SRI. M.S. DEVARAJU, ADVOCATE FOR R2 TO R4;
SMT. SARITHA KULKARNI, HCGP FOR R5)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO I) QUASH THE ORDER DTD 06.08.2022 MADE IN ELECTION PETITION NO.2 OF 2021 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC AT K.R. PET VIDE ANNEXURE-F; II) CONSEQUENTLY TO ALLOW THE ELECTION PETITION OF THE PETITIONER FILED IN ELECTION PETITION NO.2 OF 2021 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC AT K.R. PET, VIDE ANNEXURE-A AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 22.02.2024 AND COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:



ORDER

The present petition is filed by the petitioner in the Election Petition aggrieved by the order passed in E.P.No.2/2021 dated 06.08.2022, whereby the Election Petition has been rejected.

2. The parties are referred to by their ranks before the Election Tribunal.

3. Apart from other grounds urged, the primary ground that was urged in the Election Petition was that the respondent No.1 was not qualified to be chosen as a member in terms of Section 12(h) of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993, (for brevity 'the Act') which provides for disqualification in the event the member has directly or indirectly any share or interest in any work done by the Gram Panchayat.

4. The brief facts made out was that the petitioner and the respondent No.1 had contested for the post of member of Beeruhalli Gram Panchayat and in such



election, the respondent No.1 was declared elected. The Election Petition under Section 15 read with Sections 19 and 20 of the Act came to be filed seeking a declaration that the election of respondent No.1 to be declared as null and void. Consequential prayer was sought to declare the petitioner as the successful candidate as regards the Second Block, Beeruhalli Constituency of Beeruhalli Gram Panchayat.

5. The petitioner had let in evidence and marked documents as Exhibits P1 to P12, while the respondent No.1 had also adduced evidence and got marked documents as Exhibits R1 to R4.

6. The Tribunal after a detailed analysis had framed the following points for consideration:-

"i. Does the petitioner proves (sic) that the respondent No.1 was disqualified for being chosen and for being a Member of Gram Panchayat as he had directly or indirectly any share or interest in any work done by order of the Gram Panchayat?"



ii. Does the petitioner proves (sic) that the process of counting of ballot papers of the General Category was improper?

iii. Whether the petitioner is entitled for the relief of declaration as prayed for?"

7. The findings on all the points for consideration were in the negative.

8. Insofar as point for consideration No.(i) as regards disqualification under Section 12(h) of the Act, the Tribunal has held as follows:-

(i) In terms of the clarification issued by the Karnataka State Election Commission on 10th December 2020, it was held that as long as there was no existing contract between the contestant and the Gram Panchayat, the disqualification would not be attracted.

(ii) It was held that the contract works undertaken by respondent No.1 was completed



as on 11.12.2019, 17.12.2018 and 03.06.2020, while the last payment received by the respondent was on 03.07.2020 (Exhibit-P9), however, election itself came to be notified on 07.07.2020 and as on such date, the respondent No.1 had no interest in any work done by the Gram Panchayat nor had any subsisting contract with the Gram Panchayat and accordingly, it was held that no disqualification was attracted.

9. As regards point for consideration (ii), relating to the process of counting of ballot papers, it was held that no sufficient evidence was led by the petitioner and further, no objections having been raised at the relevant point of time before the Returning Officer, such contention could not be raised at a belated stage. Accordingly, the Election Petition came to be rejected.

10. The present petition has been filed calling in question the correctness of said order.



11. The only ground raised in the present writ petition is as regards the finding on point for consideration (i), i.e. relating to the disqualification under Section 12(h) of the Act.

12. Sri R.S. Ravi, learned Senior Counsel appearing on behalf of the petitioner has submitted that the disqualification in terms of Section 12(h) would kick in where the member has done any work for the Gram Panchayat. It is contended that plain language under Section 12(h) ought to be given effect to in the absence of any ambiguity and there is nothing in the language that limits the disqualification to a subsisting contract with the Gram Panchayat.

13. Sri Dhyan Chinnappa, learned Senior Counsel appearing on behalf of respondent No.1 has however contended that the objective of the provision is to take care of the mischief of conflict of interest and if that were to be so, it is only a subsisting contract that could operate



as a disqualification. Further, it is contended that, if the literal interpretation is adopted as contended by the petitioners, a member who has done any work at any point of time, would stand disqualified resulting in an absurd consequence, which ought to be avoided. Accordingly, it is submitted that the literal interpretation as sought for ought to be discarded and a purposive interpretation be adopted to take care of the mischief of conflict of interest and construe the disqualification as being applicable only where contract for work subsists.

14. Heard both sides.

15. It must be noticed at the outset that election was notified on 07.07.2020, date of polling was 27.12.2020, counting was on 30.12.2020 and the results were announced on 30.12.2020, while payment for the work done previously, was on 03.07.2020.

16. Admittedly, the payment by Gram Panchayat was made to the petitioner even prior to the notification of



the election. However, it is the contention that disqualification would apply when any work has been done even before the commencement of the election process, which is a matter that requires consideration.

17. Section 12(h) of the Act reads as hereunder:-

12. Disqualification for members.- A person shall be disqualified for being chosen and for being a member of a Grama Panchayat or while holding any office of Panchayat-

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(h) if, save as hereinafter provided he has directly or indirectly any share or interest in any work done by order of the Grama Panchayat, or in any contract or employment with, or under, or by, or on behalf of, the Grama Panchayat or if he is either directly or indirectly by himself or by his agent, partner or employee involved in obtaining or execution of any such work or contract on behalf of the Grama Panchayat or of any contract for the supply of goods and services to the Grama Panchayat;

(emphasis supplied)



18. The literal interpretation, if adopted, would lead to disqualification of any member who has share or interest in any work done by order of the Gram Panchayat. If that were to be so, if any member has done any work for the Gram Panchayat at any point of time, he would incur a disqualification. The question is as to whether such a consequence was contemplated.

19. It must be noticed that the mischief sought to be avoided is to prevent the members having conflict of interest with the affairs of Gram Panchayat from being elected.

20. The provision for disqualification found in Section 7(d) of the Representation of People Act, 1951 ('R.P. Act' for brevity) prior to amendment reads as hereunder:-

"7. Disqualification for membership of Parliament or of a State Legislature.—A person shall be disqualified for being chosen as, and for being, a member [etc.]



(d) if ... by himself ... he has any share or interest in a contract for the supply of goods to ... the appropriate Government;"

21. Section 9A of R.P. Act as it is now found which deals with disqualification, reads as follows:-

"9A. Disqualification for Government contracts, etc.—*A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by that Government.*

Explanation.—For the purposes of this section, where a contract has been fully performed by the person by whom it has been entered into with the appropriate Government, the contract shall be deemed not to subsist by reason only of the fact that the Government has not performed its part of the contract either wholly or in part."

22. Though the wordings of the said provision makes a subsisting contract, a pre-condition for invoking disqualification which is contradistinction to the plain



words of Section 12(h) of the Act, however, the objective of disqualification both under Section 9A of the R.P. Act and Section 12(h) of the Act can be stated to be similar.

23. The objective of such a provision is explained in **Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram¹** and the relevant extract is as hereunder:-

"35. The purpose of the Act is to maintain the purity of the legislatures and to avoid a conflict between duty and interest. It is obvious that the temptation to place interest before duty is just as great when there is likely to be some difficulty in recovering the money from the Government (for example, if the Government were to choose not to ratify the contracts) as when there is none".

24. Though amendments have been made to the R.P. Act to introduce Section 9A with an amendment to the Section by introduction of an Explanation with the clear intent that it would apply only as regards subsisting contracts, however, the objective even under the previous

¹ (1954) 1 SCC 214



provision of Section 7(d) of the R.P. Act which did not clearly limit the disqualification to subsisting contracts makes it clear that it is the mischief of 'conflict of interest' that is sought to be avoided.

25. The observations of Apex Court in **X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and Another**² the relevant paragraphs are extracted hereinbelow:-

"30. The question that arises is whether Rule 3-B includes unmarried women, single women, or women without a partner under its ambit. The answer may be discerned by imparting a purposive interpretation to Rule 3-B.

31. The cardinal principle of the construction of statutes is to identify the intention of the legislature and the true legal meaning of the enactment. The intention of the legislature is derived by considering the meaning of the words used in the statute, with a view to understanding the purpose or object of the enactment, the mischief, and its corresponding

² (2023) 9 SCC 433



remedy that the enactment is designed to actualise. [Justice G.P. Singh, Principles of Statutory Interpretation, (Lexis Nexis, 2016), at p. 12; State of H.P. v. Kailash Chand Mahajan, 1992 Supp (2) SCC 351 : 1992 SCC (L&S) 874; Union of India v. Elphinstone Spg. & Wvg. Co. Ltd., (2001) 4 SCC 139] Ordinarily, the language used by the legislature is indicative of legislative intent. In Kanai Lal Sur v. Paramnidhi Sadhukhan [Kanai Lal Sur v. Paramnidhi Sadhukhan, 1957 SCC OnLine SC 8 : AIR 1957 SC 907] , Gajendragadkar, J. (as the learned Chief Justice then was) opined that "the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself". But when the words are capable of bearing two or more constructions, they should be construed in light of the object and purpose of the enactment. The purposive construction of the provision must be "illuminated by the goal, though guided by the word". [Kanta Goel v. B.P. Pathak, (1977) 2 SCC 814] Aharon Barak opines that in certain circumstances this may indicate giving "an unusual and exceptional meaning" to the language and words used. [Aharon Barak, Purposive Interpretation in Law, (Princeton University Press, 2007), at p. 306.]



33. The interpretation of a subordinate legislation should be consistent with the enabling Act. [Kedarnath Jute Mfg. Co. Ltd. v. CTO, 1965 SCC OnLine SC 32 : AIR 1966 SC 12; Union of India v. Tulsiram Patel, (1985) 3 SCC 398 : 1985 SCC (L&S) 672; M.L. Kamra v. New India Assurance Co. Ltd., (1992) 2 SCC 36 : 1992 SCC (L&S) 403; St. Johns Teachers Training Institute v. NCTE, (2003) 3 SCC 321 : 5 SCEC 391] A subordinate legislation must be reasonable and in consonance with the legislative policy. It should be interpreted in a meaningful manner, so as to give effect to the purpose and object of the enabling Act. The interpretation which is in consonance with the statutory scheme and gives effect to the statute must be adopted.

34. In Principles of Statutory Interpretation by Justice G.P. Singh, it is stated that a statute must be read in its context when attempting to interpret its purpose. [Justice G.P. Singh, Principles of Statutory Interpretation, (Lexis Nexis, 2016), at p. 35.] Context includes reading the statute as a whole, referring to the previous state of law, the general scope of the statute, surrounding circumstances and the mischief that it was intended to remedy. [Union of India v. Sankalchand Himatlal Sheth, (1977) 4 SCC 193 : 1977 SCC (L&S) 435; RBI v. Peerless



General Finance & Investment Co. Ltd., (1987) 1 SCC 424] The treatise explains that:

"For ascertaining the purpose of a statute one is not restricted to the internal aid furnished by the statute itself, although the text of the statute taken as a whole is the most important material for ascertaining both the aspects of "intention". Without intending to lay down a precise and exhaustive list of external aids, Lord Somervell has stated: "The mischief against which the statute is directed and, perhaps though to an undefined extent the surrounding circumstances can be considered. Other statutes in pari materia and the state of the law at the time are admissible." These external aids are also brought in by widening the concept of "context" "as including not only other enacting provisions of the same statute, but its Preamble, the existing state of the law, other statutes in pari materia, and the mischief which the statute was intended to remedy". In the words of Chinnappa Reddy, J.: "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted."



35. *The rule of purposive interpretation was first articulated in Heydon case [Heydon case, (1584) 3 Co Rep 7a : 76 ER 637] in the following terms : (ER p. 638)*

"... for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law), four things are to be discerned and considered:

1st. What was the common law before the making of the Act.

2nd. What was the mischief and defect for which the common law did not provide.

3rd. What remedy Parliament hath resolved and appointed to cure the disease of the commonwealth.

And, 4th. The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico."

36. *In Bengal Immunity Co. Ltd. v. State of Bihar [Bengal Immunity Co. Ltd. v. State of Bihar, 1955 SCC OnLine SC 2 : (1955) 2 SCR 603 : AIR 1955 SC 661] , the Constitution Bench applied the mischief rule in Heydon case [Heydon case, (1584) 3*



Co Rep 7a : 76 ER 637] in the construction of Article 286 of the Constitution. In Kehar Singh v. State (UT of Delhi) [Kehar Singh v. State (UT of Delhi), (1988) 3 SCC 609 : 1988 SCC (Cri) 711] , a three-Judge Bench of this Court held : (Kehar Singh case [Kehar Singh v. State (UT of Delhi), (1988) 3 SCC 609 : 1988 SCC (Cri) 711] , SCC pp. 717-18, paras 231 & 233)

"231. During the last several years, the "golden rule" has been given a go-by. We now look for the "intention" of the legislature or the "purpose" of the statute. First, we examine the words of the statute. If the words are precise and cover the situation in hand, we do not go further. We expound those words in the natural and ordinary sense of the words. But, if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which gave rise to the Act. We look at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one-to-one relation. We will not consider any provision



out of the framework of the statute. We will not view the provisions as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe their origin. We will consider the provisions to ensure coherence and consistency within the law as a whole and to avoid undesirable consequences.

233. For this purpose, we call in external and internal aids:

External aids are : the Statement of Objects and Reasons when the Bill was presented to Parliament, the reports of the Committee, if any, preceding the Bill, legislative history, other statutes in pari materia and legislation in other States which pertain to the same subject-matter, persons, things or relations.

Internal aids are : Preamble, scheme, enacting parts of the statutes, rules of languages and other provisions in the statutes."

37. A catena of decisions emanating from this Court, including Kerala Fishermen's Welfare Fund Board v. Fancy Food [Kerala Fishermen's Welfare Fund Board v. Fancy Food, (1995) 4 SCC 341], Bharat Singh v. New Delhi Tuberculosis



Centre [Bharat Singh v. New Delhi Tuberculosis Centre, (1986) 2 SCC 614 : 1986 SCC (L&S) 335] , Bombay Anand Bhavan Restaurant v. ESI Corpn. [Bombay Anand Bhavan Restaurant v. ESI Corpn., (2009) 9 SCC 61 : (2009) 2 SCC (L&S) 573] , Union of India v. Prabhakaran Vijaya Kumar [Union of India v. Prabhakaran Vijaya Kumar, (2008) 9 SCC 527 : (2008) 3 SCC (Cri) 813] , settle the proposition that progressive and beneficial legislation must be interpreted in favour of the beneficiaries when it is possible to take two views of a legal provision".

26. It must be seen that prior to the statutory provision, the consequences of conflict of interest between the private right of a member who had an interest in a contract with the local body was an aspect which was not addressed. The statutory provision under Section 12(h) of the Act seeks to address such conflict of interest.

27. Where the mischief is sought to be addressed by introduction of a statutory provision, such statutory provision must be interpreted in the context of mischief



sought to be addressed. For this purpose reference could be made to the principle of '*Heydon's/Mischief Rule*'.

28. The Apex Court in **State of Himachal Pradesh v. Nirmal Kaur alias Nimmo and Others**³ while reiterating the observations made with respect to Mischief Rule in ***The Bengal Immunity Company Limited (supra)*** has further observed as follows:-

54. The law laid down in the case of The Bengal Immunity Company Limited (supra) has been consistently followed by this Court. We will therefore have to examine the following four factors:

- (i) What was the position before the enactment of the 1985 Act?*
- (ii) What was the mischief and defect for which the earlier enactments did not provide?*
- (iii) What remedy had the Parliament resolved to cure the mischief and defect?*
- (iv) The true reason for the remedy."*

29. Applying the above tests, an analysis could be made of the mischief sought to be avoided. The question of conflict of interest would arise only in the event of an

³ (2022) SCCOnline SC 1462



existing power to further private interest of the member flowing under the contract at the cost of and interest of the authority in whose favour work is being rendered under a contract.

30. If 'conflict of interest' is the mischief sought to be avoided and the language of the statutory provision which seeks to prevent such mischief is ambiguous, the Court can take recourse to the 'Mischief Rule'.

31. The other Rule that could be invoked is the 'purposive rule of interpretation'. It is the settled position that an enactment has to be interpreted so as to advance the purpose rather than defeat the purpose of the Act.

32. The 'Mischief Rule' and 'Purposive Rule of Interpretation' would go hand in hand insofar as the Court is required to further the object and 'purpose of the



legislation that would suppress the mischief and advance the remedy⁴.

33. In the present case, the interpretation as put forward by the learned counsel for the petitioner that any work done for the Gram Panchayat at any point of time would operate as a disqualification is definitely not the intent of the Act. The conflict of interest that is sought to be taken care of would come into play only when the private interest of the member flowing under the contract could be furthered by sacrificing the public interest of the Panchayat. Such a conflict would arise only in case of a subsisting contract.

34. Accordingly, the interpretation placed by the petitioner is liable to be rejected, as the consequence of debarring of all Members who at a previous point of time had rendered work to the Gram Panchayat is not the

⁴observations of Apex Court in Baldev Krishna Sai v. Shipping Corporation of India Ltd. - (1987) 4 SCC 361



intention of provision for disqualification under Section 12(h) of the Act.

35. It must be noticed that where plain language when sought to be applied gives rise to an unreasonable result or an absurd consequence, the Court can interpret the words appropriately by having recourse to the Golden Rule. The observations made by the Apex Court in **Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers and Others**⁵ are as hereunder:-

"23. Two principles of construction — one relating to casus omissus and the other in regard to reading the statute as a whole — appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular

⁵ (2003) 6 SCC 659



provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J. in Artemiou v. Procopiou [(1966) 1 QB 878 : (1965) 3 All ER 539 : (1965) 3 WLR 1011 (CA)] (All ER p. 544 I), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result", we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. Per Lord Reid in Luke v. IRC [1963 AC 557 : (1963) 1 All ER 655 : (1963) 2 WLR 559 (HL)] where at AC p. 577 (All ER p. 664 I) he also observed: "This is not a new problem, though our standard of drafting is such that it rarely emerges."

36. Accordingly, in the present case, if the plain language is sought to be applied, then the consequence would be of debarring any member who has performed any work under a contract to the Gram Panchayat, which would have the effect of debarring persons who have no



present conflict of interest with the Gram Panchayat to which they have been elected as a member.

37. Accordingly, the plain language cannot be given effect to and recourse to the 'Golden Rule' can be had so as to ensure that the unintended and absurd consequences of applying the plain language could be avoided.

38. All the above three principles of 'Heyden/Mischief Rule', 'Purposive Interpretation' and the 'Golden Rule' are required to be applied together where it is found that the plain language does not suppress the mischief sought to be avoided, leads to an unintended and absurd consequence and does not further the intention and suppress the mischief.

39. Accordingly, this Court finds that the impugned order dated 06.08.2022 passed in E.P.No.2/2021, the Election Tribunal has placed a correct interpretation as regards the disqualification under Section 12(h) of the Act



by holding that it is only a subsisting contract that could lead to a disqualification by reliance on the clarification of the Karnataka State Election Commission. Such interpretation does not call for any interference. The Tribunal has held that the tense used in Section 12(h) is 'present continuous' and accordingly, has held that there must be an existing contract to act as a disqualification and such interpretation does not call for interference.

Accordingly, the petition is ***dismissed.***

Sd/-
JUDGE

VGR