

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1544 OF 2012
 (Arising out of SLP (Civil) No. 26568 of 2009)

Zelia M. Xavier Fernandes E. Gonsalves Appellant

Versus

Joana Rodrigues & Ors. Respondents

JUDGMENT

R.M. Lodha, J.

Leave granted.

2. The question which we have to consider is whether the appellant can be said to have any indirect share or monetary interest in the contract of her husband with the Village Panchayat of Raia and if the answer is in the affirmative whether she has incurred disqualification as a Panch member from Raia Village Panchayat of Salcete Taluka in South Goa District, State of Goa under Section 10(f) of the Goa Panchayat Raj Act, 1994 (for short, '1994 Act').

3. The appellant was declared as a returned candidate from Ward No. 9 of Raia Village Panchayat of Salcete Taluka, State of Goa at the election held in May 2007 for a period 2007-2012.

2

4. On or about March 18, 2008, the respondent no. 2--Village Panchayat of Raia -- invited bids for the collection of market fee within its jurisdiction for 2008-09. Mrs. Joana Rodrigues (respondent no. 1), Xavier Fernandes (appellant's husband) and one Bernard Mario Fernandes submitted their bids. On March 28, 2008, the tender forms were opened in the office of the respondent no. 2 and the bid of the appellant's husband was accepted as

his bid was the highest. Her husband, on acceptance of his bid, paid the first installment of 1/4th part of the bidding amount collection.

5. On March 31, 2008, the respondent no. 1 made a representation to the Deputy Director of Panchayat, Madgaon, Goa bringing to his notice that the appellant was liable for disqualification under Section 10(f) of the 1994 Act. It appears that the respondent no. 1 also made an application to the State Election Commission (for short, 'Commission), State of Goa, on which the Commission directed the respondent no. 1 to file a formal election petition seeking disqualification of the appellant. Accordingly, the respondent no. 1 filed an election petition under Section 11 before the Commission for disqualification of the appellant on the ground that she has directly or indirectly a share or monetary interest in the above contract given by the respondent no. 2 to her husband.

3

6. The Commission, on hearing the parties, vide its order dated July 3, 2009 held that the present appellant had indirectly a share or monetary interest in the contract executed by the Village Panchayat of Raia with her husband and ordered that the appellant was disqualified as a Panch Member of Village Panchayat of Raia in Salcete Taluka in terms of clause (f) of Section 10.

7. The appellant, aggrieved by the above order of the Commission, filed a writ petition before the High Court of Bombay at Goa. The Single Judge of that Court on July 22, 2009 dismissed the writ petition. It is from this order of the High Court that this appeal, by special leave, has arisen.

8. We have heard Mr. R. Sundaravardhan, learned senior counsel for the appellant and Mr. Arun Francis, learned counsel for the respondent no. 1. The contention of Mr. Sundaravardhan, learned senior counsel for the appellant

is that mere relationship of husband and wife will not create that type of interest which is contemplated by Section 10(f). He heavily relied upon the decision of this Court in the case of Gulam Yasin Khan vs. Sahebrao Yeshwantrao Walaskar and another¹. Mr. Arun Francis stoutly supported the view of the High Court.

9. Gram Sabha -- Constitution of Panchayats - is dealt with in Chapter II of the 1994 Act. Section 7, inter

1 AIR 1966 SC 1339

4

alia, provides that all the members of panchayat shall be elected. Section 9 provides for qualification for membership while Section 10 makes a provision for disqualification for membership. We are concerned with Section 10(f) and the said provision reads as follows:

"S. 10. Disqualification for membership.--
A person shall be disqualified for being chosen as, and for being, a member of the Panchayat if,--

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(f) he has directly or indirectly any share or monetary interest in any work done by or to the Panchayat or any contract or employment with, under or by or on behalf of, the Panchayat;

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10. Section 11 provides that if any question arises as to whether a member of a Panchayat has become subject to any disqualification referred to in Section 10, it shall be referred to the State Election Commission for decision and its decision thereon shall be final.

11. The purpose and object of providing for disqualification for membership of the Panchayat in clause (f) of Section 10 is to ensure that there is no conflict between the private interest of the member and his duty as a member of the Panchayat. It is based on general principle of conflict between duty and interest.

12. Insofar as the present matter is concerned, we have to consider the applicability of clause (f) of

Section 10 to the extent, "he has.....indirectly any share or monetary interest inany contractby or on behalf of the Panchayat" in the fact situation noticed above. A similar provision came up for consideration before a 5-Judge Bench of this Court in the case of Gulam Yasin Khan¹. That was a case where the appellant and the respondent No. 1 therein, namely, Gulam Yasin Khan and Sahebrao Yeshwantrao Walaskar respectively were candidates for election as members to the Municipal Committee, Malkapur. They had filed their nomination papers. At the stage of scrutiny, Sahebrao Yeshwantrao Walaskar objected to the validity of the candidature of Gulam Yasin Khan on the ground that Gulam Yasin Khan's son Khalildad Khan was a Moharir on Octroi Naka employed by the Committee and on account of the employment of Gulam Yasin Khan's son by the Municipal Committee, Gulam Yasin Khan had an interest in the Municipal Committee and so he was disqualified from standing for election under clause (1) of Section 15 of the Central Provinces and Berar Municipalities Act, 1922 (for short, 'CP Municipalities Act'). Gulam Yasin Khan disputed the validity of the objection and he stated that his son was not staying with him and had no connection whatsoever. The Supervising Officer overruled the objection raised by Sahebrao Yeshwantrao Walaskar. The order of Supervising Officer was challenged by Sahebrao Yeshwantrao Walaskar in the writ

¹ AIR 1966 SC 1339

petition before the High Court. The High Court allowed his writ petition and set aside the order of the Supervising Officer and declared Sahebrao Yeshwantrao Walaskar elected to the Municipal Committee. It is from this controversy that the matter reached this Court. This Court in the backdrop of the above facts considered the question whether by virtue of his relationship with Khalildad Khan, Gulam Yasin Khan could

be said to have any indirect share or interest in the employment of Khalildad Khan with the Municipal Committee.

The provision under consideration read, "no person shall be eligible for election, selection or nomination as a member of a committee, if such person has directly or indirectly any share or interest in any contract with, by or on behalf of the committee, while owning such share or interest".

13. In light of the above factual and legal position, this Court in Gulam Yasin Khan¹ (Pgs. 1341-1342) held as under :

"7.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 indirect. But it is plain that the interest to which the clause refers, cannot mean mere sentimental or friendly interest; it must mean interest which is pecuniary, or material, or of a

1 AIR 1966 SC 1339

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.

8. 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 S.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

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be said to be either directly or indirectly interested in his employment.

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12. 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."

14. In Gulam Yasin Khan¹ while construing Section 15 (1) of the CP Municipalities Act, this Court held that the interest or share has to be in the contract itself; mere relationship of a person with an employee of the Municipal Committee shall not justify the inference that such a person has interest, direct or indirect. Ordinarily, there would not have been any difficulty in applying Section 10(f) in the same manner but we think Gulam Yasin Khan¹ is clearly distinguishable and cannot be applied to the present fact situation which concerns money affairs of husband and wife governed by the provisions contained in Articles 1098 and 1108 of Portuguese Civil Code, 1860 ('1860 Code') and Section 5A of the Indian Income Tax Act, 1961 ('Income Tax Act').

1 AIR 1966 SC 1339
1 AIR 1966 SC 1339

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15. Articles 1098 and 1108 of the 1860 Code

which is applicable in the State of Goa read as under :

1098. - In the absence of any contract, it is deemed that the marriage is done as per the custom of the country, except when it is solemnized in contravention of the provisions of Article 1058 clause 1 and 2; because in such a case it is deemed that the spouses are married under the simple communion of acquired properties.

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x x x

x x x

1108. - The marriage as per the custom of the country consists in the communion between the spouses of all their properties, present and future, not excluded by law.

16. Section 5A of the Income Tax Act is as

follows :

5A. Apportionment of income between spouses governed by Portuguese Civil Code. - (1) Where the husband and wife are governed by the system of community of property (known under the Portuguese Civil Code of 1860 as "COMMUNIAO DOS BENS") in force in the State of Goa and in the Union territories of Dadra and Nagar Haveli and Daman and Diu, the income of the husband and of the wife under any head of income shall not be assessed as that of such community of property (whether treated as an association of persons or a body of individuals), but such income of the husband and of the wife under each head of income (other than under the head "Salaries") shall be apportioned equally between the husband and the wife and the income so apportioned shall be included separately in the total income of the husband and of the wife respectively, and the remaining provisions of this Act shall apply accordingly.

10

(2) Where the husband or, as the case may be, the wife governed by the aforesaid system of community of property has any income under the head "Salaries", such income shall be included in the total income of the spouse who has actually earned it.

17. There is no dispute that the respondent no. 4

and the appellant are husband and wife and are governed by

the provisions of the 1860 Code. By virtue of Article 1098 and Article 1108 thereof, in the absence of any contract, the marriage between the appellant and the respondent no. 4 is governed by the system 'Communiao Dos Bens' i.e. community of property. Accordingly, on marriage, the property of the spouses gets merged. Each spouse, by operation of law, unless contracted otherwise, becomes 50% shareholder in all their properties, present and future and each spouse is entitled to a one-half income of the other spouse.

18. Section 5A(1) of the Income Tax Act provides that where the husband and wife are governed by the system of "Communiao Dos Bens" in force in the State of Goa the income of the husband and the wife under any head of income shall not be assessed as that of such community of property but such income of the husband and the wife from all sources, except from salary, shall be apportioned equally between the husband and the wife and the income so apportioned shall be included separately in the total income of the husband and of the wife respectively and the remaining provisions of the Income Tax Act shall apply accordingly. Sub-section (2) of Section 5A provides that where the husband or the wife governed by system of community of property has any income under the head 'salaries', such income shall be included in the total income of the spouse who has actually earned it.

19. In P. Ramanatha Aiyar's The Law Lexicon, 2nd Edition (reprint 1999) the term 'interest' is explained thus:

"Interest. Legal concern, right, pecuniary stake the legal concern of a person in the thing or property or in the right to some of the benefits or use from which the property is inseparable ; such a right in or to a thing capable of being possessed or enjoyed as property which can be enforced by judicial proceedings. The word

is capable of different meanings, according to the context in which it is used or the subject-matter to which it is applied. It may have even the same meaning as the phrase "right title and interest" but it has been said also to mean any right in the nature of property, but less than title. The word is sometimes employed synonymous with estate, or property.

Interest means concern, advantage, good ; share, portion, part, or participation.

A person interested is one having an interest ; i.e. a right of property or in the nature of property, less than title.

The word 'interest' is the broadest term applicable to claims in or upon real estate in its ordinary signification among men of all classes. It is broad enough to include

12

any right, title, or estate in or lien upon real estate. One who holds a mortgage upon a piece of land for half its value is commonly and truly said to be interested in it.

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20. The word 'interest' has a basic meaning of participation in advantage, profit and responsibility. 'Interest' is a right, title or share in a thing.

21. Section 10(f) speaks of monetary interest.

The general rule that the wife's interest is not necessarily the husband's interest has no application where the husband and the wife are governed by the system 'community of property' because under that system, on marriage, each spouse is entitled to a one-half income of the other spouse unless contracted otherwise. During the subsistence of marriage, the husband and the wife each have a share in the corpus as well as the income of communion property.

22. There is no doubt that Section 10(f) contemplates that share or monetary interest (direct or indirect) has to be in the contract itself. The expression 'in any contract' means in regard to any contract. Could it be said that the appellant had no indirect share or monetary interest in regard to her husband's contract with the

Village Panchayat Raia when, by operation of law, she is entitled to the profits of that contract? The answer has to

13

be in the negative.

Money acquired by the appellant's

husband from the contract with the Village Panchayat Raia

is 'community property' and, therefore, the conclusion is

inescapable that the appellant has indirect share, or, in

any case, monetary interest in the contract awarded to her

husband by the Village Panchayat Raia as the profits from

the contract shall be apportioned equally between her and

her husband. There is no evidence of exclusion of the

appellant from her husband's assets and income. The

provisions contained in Articles 1098 and 1108 of the 1860

Code and Section 5A of the Income Tax Act give the appellant

a participation in the profits of the contract and

advantages like the apportionment of income from that

contract. The appellant, by operation of law, becomes

entitled to share in the profits of the contract awarded to

her husband by the Village Panchayat. From whatever way it

is seen, the appellant's participation in the profits of the

contract does constitute an "indirect monetary interest" in

the contract for collection of market fee awarded to her

husband within Section 10(f) prohibiting the member of the

Village Panchayat from having such an interest.

23. While considering Section 15(1) of the CP

Municipalities Act which provided for the disqualifications

to the elections of the Municipal Committees, this Court in

Gulam Yasin Khan¹ held that the purpose and the object of

¹ AIR 1966 SC 1339

14

prescribing several disqualifications in that provision is

to ensure the purity of the administration of the Municipal

Committees and in that sense the different clauses of

disqualifications should not receive unduly narrow or

restricted construction. We also hold the view that the

prohibition in Section 10(f) should not receive unduly

narrow or restricted construction. In what we have considered above, the answer to the first question must be in the affirmative and it must consequently be held that the appellant has incurred disqualification under Section 10(f) of the 1994 Act. We hold accordingly.

24. Civil Appeal is dismissed with no order as to costs.

.....J.
(R.M. Lodha)

.....J.
(H. L. Gokhale)

NEW DELHI
FEBRUARY 3, 2012.

15

ITEM NO.1A

COURT NO.8

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).26568/2009

(From the judgement and order dated 22/07/2009 in WP No.437/2009 of The HIGH COURT OF BOMBAY AT GOA)

ZELIA M.XAVIER FERNANDES E.GONSALVES

Petitioner(s)

VERSUS

JOANA RODRIGUES & ORS.

Respondent(s)

Date: 03/02/2012 This Petition was called on for Judgment today.

For Petitioner(s)

M/S. Temple Law Firm

For Respondent(s)

M/S. Dua Associates

Hon'ble Mr. Justice R.M. Lodha pronounced
Judgment for the Bench comprising His Lordship
Hon'ble Mr. Justice H.L. Gokhale.

the
and

Leave granted.

Civil Appeal is dismissed with no order as to costs
in terms of the reportable judgment.

(Rajesh Dham)
Court Master

(Renu Diwan)
Court Master

(signed reportable judgment is placed on the file)