A SUNIL KUMAR RANA

v.

STATE OF HARYANA AND ORS.

DECEMBER 19, 2002

B [DORAISWAMY RAJU AND SHIVARAJ V. PATJL, JJ.]

Municipalities:

Haryana Municipal Act, 1973 and amended Acts; Haryana Act 3 and
C *15 of 1994; Section 13A:*

Disqualification for membership—Effective date—Held, Legislature introduced disqualification for having more than two children would be effective after one year from first amendment Act 3/94—By the 2nd Amendment
D *15/94, certain word substituted to avoid repugnancy with the main provision -Thus the date of publication of first amendment Act 3/94 is the relevant date for the purpose of disqualification.*

Respondent-State introduced disqualification for members of Municipal Council having more than two children vide Haryana Act No.3/94 in the
E **Haryana Municipal (Amendment) Act notified in the Government Gazette on 5.4.94. The disqualification was made operative one year after commencement of the amended Act. Legislature further amended the Act vide Haryana Act No.15/94 which substituted certain word to remove anomalies and absurdities in the main provision of the amended Act.**

F **Appellant, a candidate for the Municipal Council, whose nomination paper was rejected on the ground of disqualification as per provision of law contained in Haryana Municipal (Amendment) Act filed writ petition. In the meanwhile, elections were held. High Court dismissed the Writ Petition. Hence this appeal.**

G **It was contended for the appellant that the relevant date for the purpose of determining disqualification was the date of publication of Haryana Act No.15/94 and not Act No.3/94 in the original gazette.**

Dismissing the appeal, the Court

H **HELD: 1.1. The main part of clause (c) of sub-section (1) of Section 13A**

of the Haryana Municipal Act in unmistakable terms introduced a disqualification for being chosen as and for being a member of the Municipality of a person who has more than two living children. The mandate of the legislature is clear and specific and purports to be in public interest. At the same time, in order to protect, apparently cases where child could have by then conceived a reasonable period to relax from the rigour of the disqualification seem to have been thought of keeping in view perhaps the normal gestation period, a proviso in the form of a deeming clause also appear to have been enacted enjoining at the same time that a person having more than two children on or after the expiry of one year of the commencement of this Act, shall not be deemed to be disqualified. [571-G, H; 572-A]

1.2. The legislative intent thus to compute the period of one year from the "commencement of this Act" meaning thereby Haryana Act No.3 of 1994 is explicit and clear. There is no rhyme or reason or justification in the claim of the appellant that the one year period has to be calculated from the date of coming into force of the Haryana Act No. 15 of 1994, which merely substituted the word "after" by the word "upto". The result of substitution was to read the provision as amended by the word, ordered to be substituted. The modification of the provision, as carried out by the substitution ordered, when found to be needed and necessitated to implement effectively the legislative intention and to prevent a social mischief against which the provision is directed, a purposive construction is a must and the only inevitable solution. [572-B, C, D]

2. The right to contest to an office of member of a municipal body is the creature of statute and not a constitutional or fundamental right. Viewed thus also the interpretation placed by the High Court on the provisions concerned is neither arbitrary, nor unreasonable or unjust to call for interference. [572-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8599 of 2002.

From the Judgment and Order dated 31.10.2001 of the Punjab and Haryana High Court in C.W.P. No. 3141 of 2000.

Panna Lal Syngal and R.C. Kohli for the Appellant.

Adityha Kumar Choudhary, Neeraj Jain, Bharat Singh, Sanjay Singh, Ugra Shankar Pd., Praveen K. Rai and Ranbir Singh Yadav for the Respondents.

The Judgment of the Court was delivered by

A 'D. RAJU J. Special leave granted.

The appellant filed his nomination on 7.3.2000 for contesting the election to the Municipal Council, Karnal as a member from Ward No. 31. After overruling the objections of another candidate (5th respondent) the Returning Officer accepted the same. The 5th respondent filed a revision challenging the B acceptance of the nomination before the Deputy Commissioner, Karnal, and by an order dated 11.3.2000, the revision was allowed and the nomination paper of the appellant was ordered to be rejected. The appellant filed C.W.P No. 3141 of 2000 before the High Court of Punjab and Haryana on 14.3.2000. While the said Writ Petition was pending, the elections were held on 2.4.2000 C and the 5th respondent was elected as the member of the Municipal Council from Ward No. 31. As a result of the same, on 7.4.2000 the Haryana State Election Commission notified the results. In view of the said subsequent development, the relief prayed for in the Writ Petition was also sought to be modified. Finally by an order dated 31.10.2001, the Division Bench of the High Court dismissed the Writ Petition holding that the nomination paper of the D appellant was rightly ordered to be rejected.

The factual basis, which provided the ground for his disqualification and consequent rejection of the nomination, is that at the time of filing his nomination, the respondent had four children and that of the said four children, two were born after the coming into force of the Haryana Municipal E (Amendment) Act, 1994 (Haryana Act No.15 of 1994) the actual date of birth of them, twins being 11.5.1995, as per the municipal records. The stand of the appellant was and even now before us is that the relevant date for determining the disqualification is the coming into force of the Haryana Municipal (Amendment) Act, 1994—(Haryana Act No. 15 of 1994) viz., 4.10.1994, the F date of publication of the Amendment Act in the Government Gazette and not 5.4.1994, the date of coming into force of the Haryana Municipal (Amendment) Act, 1994 (Haryana Act No.3 of 1994. The High Court was of the view that the disqualification will operate after 5.4.1995—on the expiry of the period of one year from 5.4.94 the date of coming into force of the Amendment Act No.3 of 1994. Per contra, the claim of the appellant was that the disqualification will G be attracted only after 4.10.95 the expiry of one year from the date of coming into force of the Amendment Act No.15 of 1994.

Heard the learned counsel appearing on either side. To have a proper appreciation of the respective contentions of the parties on either side. It becomes necessary to refer to the relevant provisions of the Act. The Haryana H

Municipal Act 1973 (Haryana Act 24 of 1973) as it originally stood prior to the amendments in question did not provide for any such disqualification. It is only for the first time by the Haryana Act 3 of 1994, Section 13A came to be inserted, which so far as is relevant for this case reads as follows:

> "13A. Disqualifications for membership. (1) A person shall be disqualified for being chosen as and for being a member of a municipality—
>
> (a) .....
>
> (b) .....
>
> (c) If he has more than two living children:
>
> Provided that a person having more than two children on or after the expiry of one year of the commencement of this Act shall not be deemed to be disqualified"
>
> .....

Thereafter, by Haryana Act No. 15 of 1994 clause (c) of sub section (1) of Section 13A was amended as mentioned below :

> "2. Amendment of Section 13A of Haryana Act 24 of 1973—In the Proviso to Clause (c) of sub section (1) of Section 13A of the Haryana Municipal Act, 1973, (hereinafter called the Principal Act), for the word "after", the word "upto" shall be substituted.

It is the effect of this amendment that really calls for consideration, in this appeal.

On a careful consideration of the relevant statutory provisions and the submissions of the learned counsel on either side, we are of the view that the High Court could not be said to have erred in the construction adopted, which not only accord with the intention of the legislature but avoid uncertainty and friction as well repugnance, which otherwise would result in accepting the stand of the appellant. The main part of clause (c) of sub-section (1) of Section 13A in unmistakable terms introduced a disqualification for being chosen as and for being a member of the Municipality of a person who has more than two living children. The mandate of the legislature is clear and specific and purports to be in public interest. At the same time, in order to protect, apparently cases where child could have by then conceived a

A reasonable period to relax from the rigour of the disqualification seem to have been though of and keeping in view perhaps the normal gestation period, a proviso in the form of a deeming clause also appear to have been enacted enjoining at the same time that "a person having more than two children on or after the expiry of one year of the commencement of *this Act*, shall not been deemed to be disqualified". (Emphasis applied)

B

The legislative intent thus to compute the period of one year from the "commencement of this Act" meaning thereby Haryana Act No.3 of 1994 is equally explicit and clear. There is therefore, no rhyme or reason or justification in the claim on behalf of the appellant that the one year period has to be C calculated from the date of coming into force of the Haryana Act No. 15 of 1994, which merely substituted the word "after" by the word "upto". The result of substitution, as we could see, was to read the provision as amended by the word, ordered to be substituted. The legislature seem to have realized the need for substitution on becoming aware of the anomalies and absurdities to which the provision without such substitution may lead to, even resulting, D at times, in repugnancy with the main provision and virtually defeating the intention of the legislature. The modification of the provision, as carried out by the substitution ordered when found to be needed and necessitated to implement effectively the legislative intention and to prevent a social mischief against which the provision is directed, a purposive construction is a must E and the only inevitable solution. The right to contest to an office of member of a municipal body is the creature of statute and not a constitutional or fundamental right. Viewed, thus also, we are convinced that the interpretation placed by the High Court on the provisions concerned is neither arbitrary, nor unreasonable or unjust to call for our interference.

F The appeal consequently fails and shall stand dismissed. No costs.

S.K.S. Appeal dismissed