

SULOCHANA PERERA

Vs.

**COMMISSIONER OF CO-OPERATIVE DEVELOPMENT (WESTERN PROVINCE)
AND ANOTHER**

SUPREME COURT
DE ABREW, J.
THURAIRAJA, J.
AMARASEKARA, J.
SC/APPEAL/146/2016
SP/LA/78/2016
CA (PHC) 56/2014
HCWA 07/2012 (WRIT)
JUNE 26, 2019

Co—operative Societies Statute, No. 3 of 1998 of the Western Provincial Council, section 60(2) — Co—operative Societies Rules, 1973, Rules 21(i) (d) and 21(i)(e) — Subordinate legislation—Disqualification—Interpretation Ordinance, section 17(1) — Interpretation of statutes

The petitioner had been selected as a member of the Periyamulla Pradeshikaya of the Negombo Multi-Purpose Co-operative Society Ltd. After an inquiry, the 1st respondent Commissioner of Co-operative

Development and Registrar of Co-operative Societies (Western Province) informed the petitioner that he was disqualified from contesting or being elected as a member of the co-operative society as he had defaulted in the payment of a loan obtained from the Rural Bank for more than three months. Although there had been a default for more than three months, after arbitration proceedings, the loan was settled long before he was selected as a member in that he was elected as a member in 2011 and the loan was settled in 2006. The petitioner sought a writ of prohibition from the High Court prohibiting the 1st respondent from declaring his election as a member invalid. The High Court held against the petitioner and, on appeal, the Court of Appeal upheld the judgment of the High Court and held that the petitioner was disqualified under Rule 21(i)(e) of the Co-operative Societies Rules, 1973 even though the petitioner had repaid the loan.

Held:

1. Subordinate legislation is considered to have the force of law as if it had been enacted as an Act of Parliament, as per section 17(1) (e) of the Interpretation Ordinance. The Co-operative Societies Rules, 1973 are properly gazetted.
2. Rule 21 (i)(e) of the said Rules states that a member of a registered society shall be disqualified from being elected as a member of the committee of management or of a regional or a branch committee if, in respect of any loan received by him, he is in default to the society or to any other registered society or to a liquidator, for a period not exceeding three months or is in default in any other respect to that society or to any other society or to any liquidator.
3. Considering the intention of the legislature, it is apparent that the purpose of this disqualification is to ensure that a person who is elected to a committee maintains the highest standard of the community.
4. When comparing Rule 21(i)(e) with Rule 21(i)(d), it can be seen that such disqualification cannot be applied forever. Where a person who commits an offence of moral turpitude is only barred for three years as per Rule 21 (i)(d), a person who has defaulted on a loan for more than three months but has subsequently repaid it should not be unfairly treated, since the reasons for defaulting could arise due to various reasons. The disqualification mentioned

in Rule 21(i)(e) should be applicable for a period of three months preceding the date on which the person's qualification for being elected is raised as an issue.

Cases referred to:

1. Eyston v. Studd (1574) 2 Plowd. 463
2. R v. Secretary of State for Justice [2017] UKSC 81
3. R v. City of London Court Judge (1892) 1 QB 273 at 310
4. R v. Wimbledon Justices, Ex p. Derwent (1953) 1 QB 380 at 384
5. Nasiruddin and Ors. v. Sita Ram Agarwal (2003) 2 sec 577
6. Arattana Gedera Susiripala v. Commissioner of Elections and others (SC/APPEAL/75/2010, SC Minutes of 12. 02. 2014)
7. State of Jharkhand v. Govind Singh (2005) 10 SCC 437

APPEAL from the Judgment of the High Court of Colombo.

Mahanama de Silva with K. N. M. Dilrukshi for the Petitioner-Appellant-Petitioner.

Viraj Dayarathne, P. C., A. S. G., with Chaya Sri Nammuni, S. S. C., for the 1st Respondent-Respondent-Respondent.

Rex Fernando for the 2nd Respondent-Respondent-Respondent.

cur. adv. vult.

July 26, 2019

THURAIRAJA, J.

Background

The Petitioner-Appellant-Petitioner (hereinafter referred to as “the Petitioner”) originally filed an application in the Provincial High Court within the jurisdiction of the Western Province praying for a Writ of Prohibition, prohibiting the 1st Respondent-Respondent-Respondent (hereinafter referred to as the “1st Respondent”) from declaring the election of the Petitioner to the committee of the Periyamulla Pradeshekaya of the 2nd Respondent-Respondent-Respondent (hereinafter referred to as the “2nd Respondent”) as invalid.

The Petitioner stated in the Petition filed in the High Court that he is a member of the 2nd Respondent Co-Operative Society and that he holds a savings account in the Rural Bank and had obtained a loan of Rs.

200, 000/- on 24/08/2002 for which he had mortgaged his property by Mortgage Bond No. 02/04 dated 24/08/2002. Later the Petitioner had been sent a Letter of Demand to pay a sum of Rs. 178, 290/-, which had been marked and annexed to the Petition in the High Court (marked as 'P2').

The Petitioner had failed to honour the Letter of Demand and the matter had been referred for Arbitration. At the conclusion of the Arbitration, the Arbitrator had ordered the Petitioner to pay the outstanding sum of Rs. 178, 290/-. The Petitioner had paid the said sum and had obtained the aforesaid Mortgage Bond released on 9/11/2006.

On 05/01/2008, the Petitioner had been elected as a member of the Periyamulla Pradeshikaya of the 2nd Respondent.

The Petitioner states that the Head Quarters Inspector, Minuwangoda Zone of the Co-Operative Department by letter dated 16/03/2008 had required that the Petitioner be present for an inquiry to be held on 02/04/2008. At the inquiry, the Petitioner had been informed that he is disqualified from contesting/being elected as a member of the Co-Operative Society since he had defaulted in payment of the loan for more than three months. The Petitioner produced documents in proof of the full settlement of the said loan and the release of the Mortgage Bond. Further, he also informed that under the circumstance, the Petitioner was not disqualified for election. The Petitioner states that the matter ended thereafter.

The Petitioner states that at the election held in October 2011, the Petitioner was elected as a member of the Negombo Municipal Council.

On the 19th of November 2011 the Petitioner was re-elected to the Periyamulla Pradeshikaya of the 2nd Respondent. The 1st Respondent by letter dated 23/05/2012 (marked as 'P5') required the Petitioner to show cause as to why a decision under Section 60(2) of the Co-Operative Societies Statute, No. 3 of 1998 of the Western Provincial Council should not be taken to disqualify him. By letter dated 05/06/2012 sent under register cover, the Petitioner informed the 1st Respondent that he had settled the said loan at the time of election and further informed him the relevant facts and circumstances.

The learned Judge of the High Court held against the Petitioner and did not issue Writ as prayed for. Being aggrieved by the decision of the

learned Judge of the High Court, the Petitioner appealed to the Court of Appeal seeking to set aside the judgment of the High Court.

After hearing both parties, the Court of Appeal held that the Rule 21 (i) (e) of the Co-Operative Societies Rules, 1973 is in fact a disqualification even though the money had been repaid and upheld the decision of the High Court. The Petitioner being aggrieved by the decision of the Court of Appeal dated 28/03/2016 sought Special Leave to Appeal from the Supreme Court.

The Petitioner had invoked the jurisdiction of this Court with respect to the following substantial questions of law which through a Special Leave to Appeal, [Supreme Court Application No. SP/LA/78/2016] was granted:

- a) Has the Court of Appeal erred in law in deciding the matter?
- b) Has the Court of Appeal misinterpreted Rule 21(i)(e) of the Co-Operative Societies Rules, 1973 and if so, should the order made by the Court of Appeal be set aside?

Interpretation of Rule 21 (i)(e) of the Co-Operative Societies Rules, 1973

In the case of *Eyston v. Studd*,¹ it was observed-

The law may be resembled to a nut, which has a shell and a kernel within; the letter of the law represents the shell, and the sense of it the kernel, and as you will be no better for the nut if you make use only of the shell, so you will receive no benefit by the law, if you rely only upon the letter, and as the fruit and profit of the nut lies in the kernel, and not in the shell, so the fruit and profit of the law consists in the sense more than in the letter.

As Lady Hale reveals in *R v. Secretary of State for Justice*,² it was observed that-

The goal of all statutory interpretation is to discover the intention of the legislation, gathered from the words used in the statute in the light of their context and purpose.

Hence, to interpret a statute and its subsequent regulations or rules, which are enacted for the purpose of carrying out or giving effect to the principles and provisions of the law, is to find the proper meaning so that it may be applied to a particular case.

Subordinate legislation is considered to have the force of law as if they had been enacted as an Act of Parliament as per Section 17(1)(e) of the Interpretation Ordinance. Section 17(1) of the Interpretation Ordinance states that,

where any enactment, whether passed before or after the commencement of this Ordinance, confers power on any authority to make rules, the following provisions shall, unless the contrary intention appears, have effect with reference to the making and operation of such rules:

(e) all rules shall be published in the Gazette and shall have the force of law as fully as if they had been enacted in the Ordinance or Act of Parliament.

In this instance, it can be seen that the Co-Operative Societies Rules, 1973 is properly gazetted under an Extraordinary Gazette No. 93/5 dated 10/01/1974.

The Attorney General, in this case, had provided two interpretations for Rule 21 (i)(e) of the Co-Operative Societies Rules, 1973 which are polar opposites to each other. These two interpretations need to be thoroughly considered in order to identify the correct interpretation of Rule 21 (i)(e).

Rule 21 (i)(e) of the Co-Operative Societies Rules, 1973 is reproduced as follows:

21. (i) A member of a registered society shall be disqualified from being elected, as a member of the committee of management or of a regional or a branch committee -

(e) If he is, in respect of any loan received by him, in default to the society or to any other registered society or to a liquidator, for a period not exceeding three months or is in default in any other respect to that society or to any other society or to any liquidator;

First Interpretation provided by the Attorney General

According to the first interpretation provided by the Attorney General, Rule 21 (i)(e) is not ambiguous and therefore not liable/and should not be open for interpretation.

*Lopes L. J. in R v. City of London Court Judge*³ stated-

I have always understood that if the words of an Act are unambiguous and clear, you must obey those words however absurd the result may appear.

In a subsequent case, *R v. Wimbledon Justices, ex parte Derwent*,⁴ Lord Goddard C. J. observed that-
A court cannot add words to a statute or read words into it which are not there.

In the case of *Nasiruddin and Ors. v. Sita Ram Agarwal*,⁵ the Indian Supreme Court held as follows:

In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising there from.

It can be seen that in line of authorities, when considering the view of Sathyaa Hettige J., in *Arattana Gedera Susiripala v. Commissioner of Elections and others*,⁶ it has been observed that-

the function of the court is to find out and declare the intention of the Legislature and not to add words to a statute. It is also not the function of the Court to drop the vital part of the statutory provisions in the section but to obey the statutory provisions. It has to be given the true meaning intended by the legislature.

The learned counsel for the 1st Respondent submits that the period of three months is clearly a reference to a delay of instalments or the period within which such money should be paid as stipulated. This is not a reference to a period of three months preceding election. If that were the case, the words “preceding” would clearly be included in the provision, as in the Local Authorities Elections Ordinance. Furthermore, the provisions clearly refer to a period exceeding three months. There can be no provision that would have an ambiguous period of time if such time was a reference to the preceding time to an election.

Both the Attorney General and the Court of Appeal was of the view that since the word ‘preceding’ had not been included in Rule 21 (i)(e), that it was not the intention to refer to the preceding three months and but a reference to three months after the money was due. This has led to the view that there was no obscurity or ambiguity in the wording of the Rule 21 (i)(e) of the Rules.

The learned counsel for the 1st Respondent argued that if a potential office bearer cannot or has not willfully repaid the loan taken by him, he cannot be held to be responsible with the hard-earned money of the people. Hence, this leads to the assumption that the disqualification bar should be applied permanently since it prevents the many occasions where a potential candidate repays a loan just prior to elections.

Second Interpretation of the Attorney General

The Attorney General in his succeeding second interpretation with respect to the disqualification bar of Rule 21 (i)(e) stated that- *“the clause in question is in present tense and read with clause 21(i) which states that he will be disqualified from being elected, would mean that the three-month period is counted backwards from the time of the election.”* As per this elucidation, it shows that the Rule in question is ambiguous in nature.

As pointed out in *Nasiruddin and Ors. (supra)* -

A Court’s jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is a well-known principle that in a given case the Court can iron out the fabric but it cannot change the texture of the fabric.

It is the duty of the Court to consider the whole document while interpreting a provision rather than considering the single clause on its own. This is because, it is similar to reading a book on fiction, where in order to understand the next chapter one must read the previous chapters. Hence in interpreting Rule 21 (i)(e), this Court accentuates the rule mentioned in Rule 21 (i)(d) of the same set of Rules. Rule 21 (i)(d) is reproduced as follows:

21. (i) A member of a registered society shall be disqualified from being elected, as a member of the committee of management or of a regional or a branch committee -

(d) if within the three years immediately preceding he has either been convicted of any offence involving moral turpitude or has been sentenced to a term of imprisonment of three months or more; (Emphasis added)

As stated in this rule, the words *“three years immediately preceding”* shows that the disqualification is not applied for a lifelong period but for a 3 year period prior to an election. In Rule 21 (i)(d), it mentions any

offence involving “*moral turpitude*”. The term “*moral turpitude*” has been defined in Merriam Webster as-

an act or behaviour that gravely violates the sentiment or accepted standard of the community.

In the written submission, the learned counsel for the 1st Respondent stated at paragraph 44 “*the rationale for disqualification is that the Co-Operative Societies is to handle the money and affairs of the impoverished and therefore, complete honesty and transparency of office bearers is essential.*”

Maxwell on the Interpretation of Statutes (12th Edition) 1969 at page 1 says that “*Statute law is the ‘will of the Legislature’.*” Further in *State of J harkhand v Govind Singh*,⁷ the Indian Supreme Court held that

a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature.

The object of all interpretation is to discover the intention of Parliament or the drafter of any legislation or regulation, but the intention must be deduced from the language used, for it is well-accepted that the beliefs and assumptions of those who frame such legislations cannot make the law. Taking into consideration the intention of the legislature, it could be seen that the purpose of the disqualification clause (Rule 21) was to ensure that a person who is elected to a committee maintains the highest standard of the community. Hence, such requires the show of honesty and transparency to ensure that there is no conflict of interest.

Rule 21(i)(e) was enacted to ensure that the elected person maintains the highest integrity and upholds the standards of the community while carrying out the duties of the office he or she is elected to. However, when comparing this rule with Rule 21(i)(d), it can be seen that such disqualification cannot be applied lifelong. Where a person who commits an offence of moral turpitude is only barred for 3 years as per Rule 21 (i)(d), a person who has defaulted for more than 3 months but has subsequently repaid such amount should not be unfairly scrutinized, since the reasons for defaulting could arise due to personal issues as well.

This Court is of the view that the disqualification mentioned in Rule 21 (i) (e) should be applicable for a period of three months preceding the date on which the person’s qualification for being elected is raised as an issue.

For the reasons set out earlier, I set aside those parts of the judgment of the Provincial High Court and Court of Appeal which refer to the questions of law raised in this case, and to which I answer affirmatively. We direct the 1st Respondent to consider the qualification of the Petitioner accordingly. We allow the Appeal and order no costs.

DE ABREW, J. - *I agree.*

AMARASEKARA, J. - *I agree.*

Appeal allowed.

Judgment by: S. Thurairaja, PC, J.

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