MOHD. AKRAM ANSARI

v.

CHIEF ELECTION OFFICER & ORS.

DECEMBER 4, 2007

[A.K. MATHUR AND MARKANDEY KATJU, JJ.]

Election Law:

Delhi Wakf Act, 1995—s.31-A (as amended in 2006)—Prevention of disqualification for membership of Assembly of NCT, Delhi—Retrospection operation of—HELD: The use of words "and shall be deemed never to have been disqualified" in the provision makes it clear that it is retrospective—Therefore, even if the elected candidate was disqualified in 2003 for holding office of Chairman of Delhi Wakf Board, he has to be deemed not to have been disqualified in view of s.31-A which was inserted in 2006.

Bhavnagar University **v.** *Palitana Sugar Mill (P) Ltd.,* **[2003] 2 SCC 111 and** *Raja Shatrunjit (dead) by Lrs.* **v.** *Mohammad Azma Azim Khan and Ors.,* **AIR (1971) SC 1474, relied on.**

East End Dwelling Co. Ltd. **v.** *Finsbury Borough Council,* **[1951] 2 All ER 587, referred to.**

Judgment—HELD: There is a presumption in law that a judge deals with all points which have been pressed before him—If a point is not mentioned in judgment, presumption is that it was never pressed before the judge and was given up—However, presumption is rebuttable—It is open to party concerned to file an application before the same judge or Bench which delivered the judgment, and, on being satisfied, it is open to the court concerned to pass appropriate orders including an order of review and ordinarily it is not open to the party concerned to file an appeal and seek to argue a point which even if having been taken in petition or memorandum was not dealt with in the judgment—On facts, in view of presumption, points not allowed

A *to be raised before Supreme Court—Presumption.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4981 of 2006.

From the Judgment/Order dated 22.8.2006 of the High Court of
B Delhi at New Delhi in E.P. No.2/2004.

WITH

C.A. No. 5828 of 2006.

L.C. Goyal for the Appellant. Mohd. Akram Ansari, Appellant-In-
C Person in C.A. No. 5828 of 2006.

Meenakshi Arora, Balraj Dewan, Zafar Sadique, Mohd. Shahid, Mohd. Shajid and Goodwill Indeevar for the Respondents and Naved Yar Khan Respondent No. 6-In-Person.

D The following Order of the Court was delivered :

ORDER

1. Heard learned counsel for the parties including the appellant appearing in person in C.A. No. 5828/2006. The appellant in C.A. No.
E 5828/2006 is also respondent No. 6 in C.A. No. 4981/2006.

2. C.A. No. 4981/2006 is directed against the judgment and order dated 22.8.2006 passed by a learned Single Judge of the Delhi High Court in Election Petition No. 2/2004. C.A. No. 5828/2006 is directed
F against the judgment and order dated 22.8.2006 passed by the same learned Single Judge of the High Court in Election Petition No. 3/2004. The appellant in C.A. No. 5828/2006 (who was petitioner in Election Petition No. 3/2004) has stated before the High Court that Election Petitions No. 2 and 3 of 2004 were almost identical and hence no evidence
G was recorded in Election Petition No. 3/2004.

3. The facts of the case are that the appellant contested the election to the Delhi Legislative Assembly in 2003 but lost. The respondent Haroon Yusuf was declared elected. At the time of the election Haroon Yusuf was also the Chairman of the Delhi Waqf Board.

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4. The question involved in both these appeals is whether the office of Chairperson or Members of the Walf Board is an office of profit so as to disqualify a person from being elected as a member of the Legislative Assembly of NCT of Delhi. It may be noted here that an amendment has been brought about in the Wakf Act, 1995 by way of The Wakf (Delhi Amendment) Act, 2006 (Delhi Act 3 of 2006) by inserting Section 31A in the 1995 Act. Section 31A of the Wakf Act, 1995 as amended by The Wakf (Delhi Amendment) Act, 2006 reads as under :-

> "31A. *Prevention of disqualification for membership of Legislative Assembly of National Capital Territory of Delhi.* It is hereby declared that the offices of the Chairperson or Members of the Board constituted for Union Territory of Delhi shall not be disqualified and shall be deemed never to have been disqualified for being chosen as, or for being, a member of the Legislative Assembly of National Capital Territory of Delhi."

5. The appellant, appearing in person, submitted that the aforesaid Section 31A came into force only in 2006, whereas the election was held in 2003, and the election petition was filed on 13.1.2004. He submitted that Section 31A is not retrospective and hence will have no application to elections held before 2006. We do not agree.

6. It is true that the Amendment Act 2006 does not specifically state that it is retrospective. However, the use of the words *"and shall be deemed never to have been disqualified"* in the above provision makes it clear that it is retrospective.

7. The words *"and shall be deemed never to have been disqualified"* in Section 31A creates a legal fiction. Legal fictions are well-known in law. In the oft-quoted passage of *Lord Asquith* in *East End Dwelling Co. Ltd.* v. *Finsbury Borough Council,* [1951] 2 All ER 587 it was observed:

> "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it-- The statute says that you must imagine a certain

A state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs".

8. The aforesaid observation has been approved and followed by our own Supreme Court in a series of decisions e.g. *Bhavnagar* B *University* v. *Palitana Sugar Mill (P) Ltd.*, [2003] 2 SCC 111 (para 33), *Raja Shatrunjit (dead) by Lrs.* v. *Mohammad Azmat Azim Khan and Ors.*, AIR (1971) SC 1474 etc.

9. Hence, even if the elected candidate was disqualified in the year C 2003, he has to be deemed not to have been disqualified in view of Section 31-A which was inserted in the year 2006.

10. In view of the above it is not necessary for us to go into the question as to whether *de hors* Section 31A the office of Chairperson of the Wakf Board can be said to be an office of profit. The aforesaid D question has become academic now after the insertion of Section 31A.

11. The appellant then submitted that apart from the point that the elected candidate Haroon Yusuf was holding an office of profit, the appellant had also raised a large number of other points in the election E petition, including the allegation of corrupt practice by Haroon Yusuf, but these have not been dealt with by the High Court. He submitted that the High Court should have dealt with all the points mentioned in the election petition.

12. We have carefully gone through the impugned judgment of the F High Court and we find that the only point discussed therein is the point whether Haroof Yusuf was disqualified because he was holding an office of profit. No other point has been discussed in the aforesaid judgment.

13. The appellant submitted that he had taken a large number of G points in his election petition, but they have wrongly not been discussed in the impugned judgment.

14. In this connection we would like to say that there is a presumption in law that a Judge deals with all the points which have been pressed before him. It often happens that in a petition or appeal several points are taken

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in the memorandum of the petition or appeal, but at the time of arguments only some of these points are pressed. Naturally a Judge will deal only with the points which are pressed before him in the arguments and it will be presumed that the appellant gave up the other points, otherwise he would have dealt with them also. If a point is not mentioned in the judgment of a Court, the presumption is that that point was never pressed before the learned Judge and it was given up. However, that is a rebuttable presumption. In case the petitioner contends that he had pressed that point also (which has not been dealt with in the impugned judgment), it is open to him to file an application before *the same learned Judge* (or Bench) which delivered the impugned judgment, and if he satisfies the Judge (or Bench) that the other points were in fact pressed, but were not dealt with in the impugned judgment, it is open to the concerned Court to pass appropriate orders, including an order of review. However, it is not ordinarily open to the party to file an appeal and seek to argue a point which even if taken in the petition or memorandum filed before the Court below, has not been dealt with in the judgment of the Court below. The party who has this grievance must approach the same Court which passed the judgment, and urge that the other points were pressed but not dealt with.

15. Since no other point except the point of office of profit has been dealt with in the impugned judgment of the High Court, the presumption is that no other point was pressed before the High Court, even though the point may have been contained in the election petition. Hence we do not allow these points to be raised here.

16. With the observations made above, the appeals are dismissed. No costs.

R.P. Appeals dismissed.