

P 1000 (5)

COURT DIARY

Guarantor's liability

DEFAULTERS are disqualified from contesting elections to the managing committee of a co-operative society. A person, who stands surety to the debts of another, is equally liable for the debts. Does this mean that a surety can be disqualified from contesting elections on the grounds that the principal debtor was in default of payment?

No. According to Justice G.H.Guttal of the Kerala High Court, a surety is not a defaulter until the principal debtor failed to pay his debts and until the surety is informed of the default and is demanded to pay the debts. (OP 891/93F)

In this case Mr P.N.Ravi, member of Kottayam Co-operative Urban Bank Ltd., was held ineligible for contesting the elections to the managing committee of the bank on the grounds that he was a defaulter. He was the guarantor (surety) for the debts of another who later defaulted payment. So Mr Ravi, the surety, was held to be a defaulter and his nomination was rejected by the returning officer under Section 28(1) of the Act and Rule 44(1)(c) of the Kerala Land Reforms Rules. Hence the writ petition.

The judge, who held that Section 28 had no application in this case, pointed out that the question of default by the petitioner arose because he stood surety to another person. The contract between the petitioner, his principal debtor and the creditor-society is a contract of guarantee. A contract of guarantee is a contract to perform the promise or discharge the liability of a third person, in case he defaults.

Section 126 of the Contract Act, which defines the contract of guarantee, makes the surety liable only in case of default by the principal debtor. It is thus clear that a contract of guaran-

tee is a contract to keep up the promise only in case of default by the principal debtor. So the liability of the petitioner to pay the debts of his principal debtor arises only if the debtor fails to pay the debt.

This is in sharp contrast with the liability under the contract of indemnity, where the promisor makes himself primarily liable and undertakes to discharge the liability in any event.

It therefore follows that the petitioner incurs no liability to pay the debt until the principal debtor fails to clear the debt. It is nobody's case that in this case the principal debtor failed to pay his debts and therefore petitioner's liability arose. Therefore, even if the debt of the principal debtor remains, the petitioner cannot be held to be a defaulter.

The matter would have been different if the principal debtor had failed to pay his debt and the petitioner had been called upon by the creditor to discharge his obligation under the contract of guarantee. In this case there was no such demand. The petitioner had no notice to the effect that the principal debtor had defaulted. He was also not called upon to pay. So, he could not be disqualified under Rule 44 (1)(c).

Job qualifications

WHEN qualifications required for a post are prescribed according to special rules, can the Public Service Commission prescribe qualifications other than those specified in the special rules, is the question answered in the affirmative by Justice P.A.Mohammed of the Kerala High Court in O.P.8264 of 1988.

The PSC, in April 1987, invited applications for the post of Assistant Director of Fisheries from persons possessing qualifications prescribed under Rule 3 of Kerala Fisheries Service

Rules. In November, the PSC issued a supplementary notification in continuation of the earlier one, inviting applications from candidates possessing MSc marine biology and MSc industrial fisheries etc of the Cochin University.

Some of those who had applied for the post on the basis of the earlier notification, challenged this. The petitioners who feared that their chances of securing appointment would be reduced, contended that the PSC had no power to issue a supplementary notification.

According to Justice Mohammed, under Rule 13(b) of Kerala State and Subordinate Service Rules no person is eligible for appointment to any service unless he has such special qualifications or has passed such special tests as may be prescribed in that behalf in the special rules or possesses such other qualifications as may be considered equivalent to the said special qualifications or special tests, by the commission or the State Government, as the case may be.

In cases where the appointment has to be made in consultation with PSC, it has power to prescribe other qualifications which may be considered equal to the special qualifications or special tests. The power conferred on the PSC under Rule 13(b)(i) of the KS and SSR has been exercised in the present case.

Qualifications prescribed in the supplementary notification are those recognised by the commission as equivalent to the qualifications prescribed by the special rules and therefore those who possess such qualifications are also eligible to be appointed to the post of Assistant Director. Therefore, the issuance of supplementary notification is perfectly within the powers of the commission.

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