

(2005) 01 KAR CK 0048

In the Karnataka High Court

Case No : Writ Petition No's. 44134 and 44384-87 of 2004

Abdul Nazeer and Others

APPELLANT

Vs

Deputy Commissioner and Others

RESPONDENT

Date of Decision : 03-01-2005

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 43, 8

Citation : (2005) ILR (Kar) 1110 : (2005) 2 KarLJ 191

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : K.M. Nataraj, for the Appellant; H.B. Narayan, HCGP for R1 and 2 and A. Keshava Bhat, for R3-7, for the Respondent

Final Decision : Allowed

Judgement

V. Gopala Gowda, J.—I.A.I/2004 filed by the elected members of Uppinangady Gram Panchayat and who have tendered resignations, is allowed as they are necessary and proper parties as their resignations are not considered and accepted in accordance with law.

2. The petitioners are the duly elected members of 2nd respondent Gram Panchayat. They have filed these Writ Petitions seeking to quash the impugned order at Annexure-A dated 26-10-2004 passed by the first respondent dissolving the Gram Panchayat and appointing Administrator on the ground that out of 16 members, 11 members have tendered resignation.

3. In paragraph 4 of the Writ Petitions it is stated that the resignation letters were dated 4-9-2004 and the President of Gram Panchayat accepted the same on 18-9-2004. It is further stated that the President tendered her resignation on 10-9-2004 itself and the same has been accepted by the Asst. Commissioner under Annexure-D dated 20-9-2004.

4. The impugned order cannot be sustained and liable to be quashed for the following reasons:-

i) Section 43 of the Karnataka Panchayat Raj Act, 1993 (the "Act" for short) stipulates as under:-

"43. RESIGNATION OF MEMBER- A member of a Grama Panchayat may resign his membership in writing under his hand addressed to the Adhyaksha and his seat shall become vacant on the expiry of fifteen days from the date of the receipt of such resignations, unless within the said period of fifteen days he withdraws such resignation by writing under his hand addressed to the Adhyaksha. The Adhyaksha shall cause the letter of resignation to be placed in the next meeting of the Grama Panchayat".

(emphasis supplied)

In this case, the resignation letters had been tendered on 4-9-2004 and the same have been accepted by the President on 18-9-2004, before the expiry of 15 days prescribed in Section 43 of the Act. Such acceptance before the stipulated period is contrary to the said provision and bad in law.

ii) The President himself tendered his resignation even prior to accepting the resignation letters of the members. That being so, he should not have accepted their resignation letters.

iii) The President has not placed the resignation letters in the next meeting of Gram Panchayat as provided in Section 43 of the Act. On the other hand, he himself accepted the resignation letters. He has no power or authority to do so. Hence, the acceptance of resignation letters is not valid and in the eye of law there is no acceptance of resignations.

iv) When there is no valid acceptance of resignations of the members, the seats have not become vacant. As such, there was no occasion either for dissolving of Grama Panchayat or to appoint Administrator. Therefore, there was no need or necessity for the Deputy Commissioner to exercise the power u/s 8 of the Act. Consequently, the impugned order is wholly unsustainable and liable to be quashed.

5. For the reasons stated above, the Writ Petitions are allowed and the impugned order is quashed. The members who have tendered resignations are entitled to continue in office until their term is over.