

(1996) 01 KAR CK 0059
In the Karnataka High Court
Case No : Writ Petition No. 20736 of 1995

B. Venkateshallu

APPELLANT

Vs

Deputy Commissioner and Others

RESPONDENT

Date of Decision : 23-01-1996

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 128 (2), 129 (2), 133

Citation : (1996) ILR (Kar) 3462 : (1996) 7 KarLJ 607

Hon'ble Judges : S. Rajendra Babu, J;R.V. Raveendran, J

Bench : Division Bench

Advocate : B. Veerabhadrappe, for the Appellant; Khaleemulla Sheriff, for R-3, for the Respondent

Final Decision : Allowed

Judgement

R.V. Raveendran, J.—Petitioner and the third respondent are members of Muka Gram Panchayat in Bellary Taluk, having been elected on 22.2.1994. While holding such office as member of the Gram Panchayat, the third respondent contested the elections for the Bellary Taluk Panchayat, and was selected as a member. The names of members elected to the said Taluk Panchayat were notified on 31.3.1995 u/s 133 of the Karnataka Panchayat Raj Act, 1993 ("Act" for short). The first meeting of the Bellary Taluk Panchayat was held on 4.5.1995. The third Respondent thereafter submitted his resignation in regard to the seat held by him in Muka Gram Panchayat on 6.5.1995.

2. The petitioner contends that if the third Respondent wanted to be a member of the Taluk Panchayat, he ought to have complied with the mandatory requirement of Section 128(2) of the Act by resigning his seat in the Village Panchayat within 15 days from 31.3.1995 which was the date of notification u/s 133 of the Act, declaring his name as a member elected to the Bellary Taluk Panchayat and has he failed to do so, the seat held by the third respondent in the Bellary Taluk Panchayat became vacant. The petitioner claims to have brought this fact to the notice of the First Respondent with a request to take

action in the matter u/s 129(2) of the Act. The grievance of the petitioner is that the first respondent has not taken any action. Hence he has filed this petition seeking a direction to the First and second respondents to take action u/s 129(2) of the Act and declare that the seat held by the third respondent in Bellary Taluk Panchayat has become vacant and to further declare that the third respondent has ceased to be a member of the Bellary Taluk Panchayat and has no competence to continue as such member.

3. The third respondent however contends that his seat as a member of the Taluk Panchayat would have become vacant only if he had failed to resign his seat in the Gram Panchayat within 15 days from the date of commencement of the term of office as a Member of the Taluk Panchayat and as the five year term of office of the third respondent as a Member of the Bellary Taluk Panchayat commenced only on 4.5.1995, he had time to submit his resignation regarding the membership of the Gram Panchayat within 15 days from 4.5.1995; and as he submitted his resignation in regard to his seat in the Muka Gram Panchayat well within 15 days from 4.5.1995, that is, on 6.5.1995 itself, he continues to be a member of the Bellary Taluk Panchayat and his seat has not become vacant.

4. To appreciate the rival contentions, a reference to the relevant provisions of the Act is necessary. Chapter VII of the Act deals with the constitution of Taluk Panchayats. Section 128 deals with disqualification for being chosen and for being a Member of the Taluk Panchayat. Sub-section (2) of Section 128 deals with the circumstances in which the seat of a person who has been chosen to the Taluk Panchayat will become vacant. Section 128(2) is extracted below:

"If a person who is chosen as a member of a Taluk Panchayat is or becomes a member of the House of the People, the Council of States, the State Legislative Assembly or the State Legislative Council, or is or becomes a Municipal Councillor or a Councillor of a Municipal Corporation or a Member of a Sanitary Board or a Town Board or Zilla Panchayat or Grama Panchayat or a Notified Area Committee, then at the expiration of a period of fifteen days from the date of notification of the names of the members u/s 133 or, as the case may be within fifteen days from the date of commencement of term of office of a member of the House of the People, the Council of States, the State Legislative Assembly or the State Legislative Council or a Municipal Councillor or a Councillor of a Municipal Corporation or a Member of a Sanitary Board or a Town Board or a Notified Area Committee, Zilla Panchayat or Grama Panchayat, his seat in the Taluk Panchayat shall become vacant unless he has previously resigned his seat in the House of the People, the Council of States, the State Legislative Assembly, the State Legislative Council, the Municipal Council, the Municipal Corporation, Sanitary Board or Town Board, Zilla Panchayat or Gram, Panchayat or the Notified Area Committee, as the case may be."

5. The said Section is detailed, specific and unambiguous. The following become evident from a careful reading of the said Section 128(2) by assigning the normal, natural and ordinary meaning to the words used:

(a) Holding of the office of a MP, MLA, MLC or of a member of any Local Authority, is not by itself a disqualification for being chosen as a member of the Taluk Panchayat.

(b) But if a person who holds any such office (specified in the said Section) is elected as a member of a Taluk Panchayat and he fails to resign his other seat already held by him (as MP, MLA, MLC or Member of Municipality, Municipal Corporation, Sanitary Board, Town Board, Zilla Panchayat, Gram Panchayat or Notified Area Committee) within 15 days from the date of notification of his election as a member of the Taluk Panchayat u/s 133, his seat in the Taluk Panchayat will become vacant.

(c) On the other hand, if a person who is holding the seat of a Member of Taluk Panchayat, subsequently, becomes a MP, MLA, MLC or a Member of any of the specified Local Authorities, then his seat already held in the Taluk Panchayat shall become vacant, if he does not resign from such new seat within 15 days from the date of commencement of term of Office as a MP, MLA, MLC or a Member of the Local Authority."

6. The Third respondent would however like to read Section 128(2) in a different manner, by relying on Section 134(2) & (3). Section 134(2) provides that the term of office of members of a Taluk Panchayat, elected at a general election shall commence on the date appointed for the first meeting of the Taluk Panchayat. Section 134(3) provides that the term of office of a member elected to fill a casual vacancy in the Taluk Panchayat shall commence on the date of publication of his name as an elected member u/s 133. He contends that the seat of a person chosen as a member of a Taluk Panchayat will become vacant if he did not resign his seat already held by him in a Grama Panchayat or in any other Local Authority or Houses specified therein in two circumstances that is: (a) in a case of a member so elected, to fill a casual vacancy in the Taluk Panchayat, within 15 days from the date of notification of his name u/s 133; and (b) in the case of a member elected at a general election to the Taluk Panchayat, within 15 days from the date of commencement of his term of office as a member of the Taluk Panchayat and as the third respondent was elected to the Taluk Panchayat at a General Election, it was sufficient if he resigned from the Grama Panchayat seat within 15 days from the date of commencement of the term of office, that is the date of first meeting of the Taluk Panchayat.

7. It is next contended by third respondent that the intention and object of Section 128(2) is that a person shall not simultaneously hold office as a Member of the Taluk Panchayat and as a Member of any of the Houses or other Local Authorities; and that object will be achieved even by interpreting Section 128(2) as sought to be done by the third respondent, that is permitting resignation from the other seat already held, within 15 days from the date of commencement of the period of his office as member of Taluk Panchayat, instead of 15 days from the date of notification, declaring that he had been elected.

8. The third respondent relies on the words "within fifteen days from the date of commencement of term of office" occurring in Section 128(2) to contend that he can resign within 15 days from the date of commencement of his office as member of the Taluk Panchayat. But the said words are not used with reference to the term of office as a member of the Taluk Panchayat, but with reference to the term of the other office held by him, that is, the office of a Member of any of the Houses or Local Authority specified therein. The Offices specified with reference to the said words are, member of the House of the people, the Council of States, the State Legislative Assembly or the State Legislative Council or a Municipal Councillor or a Councillor of a Municipal Corporation or a member of a Sanitary Board or a Town Board or a notified Area Committee, Zilla Panchayat or Grama Panchayat. The third respondent wants to add "Taluk Panchayat" to the list of offices specified with reference to the said words "within fifteen days from the date of commencement of the term of office".

9. But the other Offices are specified in central-distinction from the office of the Taluk Panchayat. When the words of the Section are clear and unambiguous and specify the consequences that will follow, if a certain thing is not done within a certain time, it is not possible to interpret the section so as to apply the consequences to a different set of circumstances. The fact that such an interpretation will not cause any prejudice or that such an interpretation will also achieve the intended object are not grounds to add words to the Section. Reading additional words or substituting existing words, as a tool of interpretation, is contemplated only if the section as it stands is meaningless or ambiguous. It is therefore, not permissible to read something more in the Section, that is to read the words "within fifteen days from the date of commencement of term of office" as referring to the term of office as a member of Taluk Panchayat in addition to the offices specified. To accept the contention of the third respondent would amount to reframing the legislation itself, which is impermissible. Hence the third respondent's contention is liable to: be rejected.

10. The words "at the expiration of a period of fifteen days from the date of notification of the names of members u/s 133" apply where the person who is chosen as a member of the Taluk Panchayat is already a member of any of the Houses or other Local Authorities specified in the Sub-section (2) of Section 128. On the other hand, the words "within fifteen days from the date of commencement of the term of office" apply to any of the other specified offices to which, a person who is already a member of the Taluk Panchayat, is elected or chosen. This is evident from the words "if a person who is chosen as a member of a Taluk Panchayat is or becomes a member of..." and the use of the words "as the case may be" between the two situations referred to thereon, that is "at the expiration of a period of fifteen days from the date of notification of the names of members u/s 133" and "within fifteen from the date of commencement of the term of office." This is also evident from Section 167(2) which relates to a Zilla Panchayat seat becoming vacant in similar circumstances.

11. The facts in this case are not in dispute. It is admitted that the third respondent did not resign from his seat in the Gram Panchayat within 15 days from 31.3.1995, but only resigned on 6.5.1995 which is beyond 15 days from the date of notification of the names of the members of Taluk Panchayat u/s 133. The seat held by the third respondent in the Bellary Taluk Panchayat having thus become vacant on the expiry of 15 days from 31.3.1995, u/s 128(2) of the Act, the first respondent is bound to take action u/s 129(2) in regard to third respondent.

12. Hence this petition is allowed. Rule made absolute. The first respondent is directed to take action as provided u/s 129(2) of the Act in regard to the seat held by the third respondent in the Bellary Taluk Panchayat, in the light of the above observations, within three months from the date of receipt of this order.

13. The Counsel for the third respondent orally requests that the operation of this order may be stayed for eight weeks from today. Ordered accordingly.