
(2003) 01 KAR CK 0051
In the Karnataka High Court
Case No : Writ Petition No. 38039 of 2002

B.M. Krishnappa Gowda

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 31-01-2003

Acts Referred:

Citation : (2003) ILR (Kar) 2405 : (2003) 3 KarLJ 589 : (2003) 2 KCCR 101 SN

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Vivek S. Reddy, for K.N. Reddy, for the Appellant; Shoba Patil, High Court Government Pleader for Respondents-1, 2 and 4 and T. Seshagiri Rao and M. Geetha for Respondent-5, for the Respondent

Final Decision : Allowed

Judgement

V. Gopala Gowda, J.—The short question involved in this writ petition is, whether the tenure of office of an elected person can be curtailed or restricted in the proceedings recorded contrary to the provisions of bye-laws?

2. The 3rd respondent-Karnataka Pradesh Krishik Samaj (hereinafter referred to as "Samaj") is a society registered under the erstwhile Mysore Societies Registration Act in the year 1940. It was formed for the welfare of the agriculturists in the State of Karnataka. As per the bye-laws of the Samaj, it consists of Taluk, District and State Committees. In the elections held on 16-5-2001 the petitioner got unanimously elected as State representative. As per the bye-laws, the tenure of the elected body was five years. The petitioner was unanimously elected for the post of President. However, in the proceedings recorded by the 4th respondent, it has been mentioned that for the first one year the petitioner is unanimously elected and for the remaining four years the 5th respondent was unanimously elected. Hence, the earlier President Sri M. Yellappa, who presided over the proceedings, wrote letter at Annexure-D, dated 20-3-2002 to the Returning Officer pointing out the wrong recording of the proceedings without bringing to his notice and requested him to rectify the same.

Similar letters as per Annexure-D1, dated 21-5-2001, and Annexures-D2 and D3 were written. Even the petitioner also wrote letters as per Annexures-F3, dated 21-5-2002, F-2, dated 1-2-2002 and F-4, dated 11-9-2002 pointing out that the period of elected body is for five years and requested to rectify the mistake. Since the 4th respondent did not take any steps, the petitioner has filed this writ petition seeking a declaration that he is elected for a period of five years and to direct the respondents to consider the representations at Annexures-D1 to D-3.

3. In the statement of objections filed on behalf of the 5th respondent justifying the proceedings recorded and seeking dismissal of the writ petition. Annexure-R1 is produced to show that petitioner has signed the proceedings dated 16-5-2001.

4. Arguments of the learned Counsels for the parties were heard on I.A. No. II of 2002 filed on behalf of the 5th respondent seeking to vacate the interim order. When the matter was listed on 12-12-2002 for dictating order on I.A. No. II, both the Counsels submitted that the matter be disposed of on merits as arguments on merits and on I.A. No. II are one and the same. Accordingly, the matter is taken up for disposal on merits.

5. The election of the petitioner as State representative is not in dispute. The only difference is in respect of the tenure of office of the petitioner. The crux of the matter lies in the provisions of bye-laws of the Samaj. The original file relating to this case is summoned and perused. The amended bye-laws of the Samaj is found in the file. At page 10 of the bye-laws provisions relating to State Executive Committee is found. The second para thereof states that even though the election meetings are held once in five years, the General Body Meeting shall be held once in a year for the purpose of acceptance of accounts, social welfare programmes discussion etc. The emphasized portion makes it clear that election is held once in five years. The tenure of elected representatives co-exist with the duration of election period. Quite naturally, the elected person will hold office for a period of five years.

6. At page 11 of the bye-laws, the amendment made is found. It clearly mentions that there shall be 54 elected members (two members from each district). It categorically spells out that the duration of the Executive Committee is five years. The said duration cannot be curtailed or restricted unless the bye-law is suitably amended after following procedure as provided under the provisions of the Act and Rules.

7. In the instant case, as per the proceedings recorded at Annexure-C, it was unanimously consented that for the first year the petitioner shall be the State representative and for the remaining four years the 5th respondent shall be the State representative. The provisions of the bye-laws of the Samaj do not provide for such arrangement. Neither the members were authorised to do so nor the 4th respondent should have permitted it. Even assuming that such a decision was in fact taken, as the same is contrary to the bye-laws, the 4th respondent should not have allowed to take such a decision contrary to the provisions of the bye-

laws. Such a decision also curtails the right of the petitioner to hold the post for the full term of five years provided in the bye-laws.

8. It is also to be noted that the post of an elected representative cannot be filled up by another person unless the post held by the elected representative become vacant on account of resignation, death, removal or if he does not assume the office of the post. Further, the members who are to elect the office-bearers cannot make selection or election according to their whims and fancies. They have to make the same in accordance with the provisions framed for that matter. If at all they want a unanimous decision, such decision should be confined to only one person and the unanimity shall not extend to others, as has been done in the present case. Instead of electing a single representative, two representatives are elected simultaneously for split up periods which is not provided for in the bye-laws.

9. The inaction on the part of 4th respondent on the representations submitted to rectify the mistake while recording the proceedings, is not correct and he was not justified in keeping silence over the matter when he was repeatedly demanded and made aware of the mistake committed by him. The 4th respondent not only kept quiet despite repeated representations, but also not made any attempts before this Court to justify the proceedings recorded by him by filing objections to the writ petition. Obviously, he could not defend as, he has permitted an action not contemplated or has wrongly recorded the proceedings as alleged by the petitioner. In the circumstances, the petitioner is entitled to the declaratory relief sought for in the writ petition.

10. Since it is held that petitioner is entitled to the first relief, the second relief sought to direct the respondents to consider the representations at Annexures-D1 to D-3 has become infructuous.

11. The writ petition is allowed declaring that the petitioner is entitled to continue as State representative of 3rd respondent-Samaj for a period of five years from the date of his election.