

(2010) 04 KAR CK 0090
In the Karnataka High Court
Case No : Writ Petition No. 10709 of 2010

B.M. Prakash

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 05-04-2010

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 42 (10)

Citation : (2010) 3 KarLJ 282

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : Nanjunda Roddy for D.P. Mahesh, for the Appellant; R. Devdas, A.G.A. and S. Mahesh, for the Respondent

Judgement

A.S. Bopanna, J.—Sri S. Mahesh, learned Counsel accepts notice for respondent 4. Since the respondents are now served and the matter lies in a narrow compass, the petition itself is taken up for consideration with the consent of the learned Counsel and disposed of by this order.

2. Sri Nanjunda Reddy, learned Senior Counsel appearing on behalf of the petitioner while assailing the impugned order dated 24-3-2010 would contend that the said order on the face of it would indicate that the petitioner has not been given opportunity and an unilateral decision has been taken by the Deputy Commissioner. The learned Senior Counsel refers to the proviso to Section 42(10) of the Karnataka Municipalities Act, 1964 (for short, the "KM Act") to point out that an opportunity should be granted to the petitioner.

3. In this regard, the decisions in the case of S.L. Kapoor Vs. Jagmohan and Others, and in the case of M. Puttaranganaika v. Director of Municipal Administration and Ors. 1994(5) Kar. L.J. 454 are relied on.

4. Sri R. Devadas, learned Government Advocate would point out that the very manner in which the Deputy Commissioner has recorded the proceedings in the impugned order would disclose that the petitioner had been provided

opportunity, but he has failed to utilise the same. When serious allegations were made against the petitioner and when he was called upon to reply and when the petitioner does not choose to reply to the same, the Deputy Commissioner would be left with no other alternative, but to come to a conclusion on the available material. As such, in the instant case, the Deputy Commissioner in that view has come to his conclusion in the facts and circumstances of the case. Therefore, the said order does not call for interference.

5. In the light of what has been contended, the facts involved in the present case is that the allegation made against the petitioner is of certain financial irregularities relating to the grant of permission to lay the optic fiber cable by M/s. Vodafone. The allegation is that certain amount received by him had been credited to his account. In this regard, the Deputy Commissioner has chosen to exercise the power available u/s 42(10) of the KM Act. It is no doubt true as pointed by the learned Government Advocate and as recorded by the Deputy Commissioner, the Deputy Commissioner had called upon the petitioner to put forth his version with regard to the said allegation. The petitioner had sought for certain documents and the same was also furnished. Thereafter, the petitioner had once again sought for 15 days time to make his reply. The Deputy Commissioner in fact noticed the same and has thereafter come to his conclusion and has exercised the power to remove the petitioner from the post of President.

6. In this background, firstly what requires to be noticed is that even though the learned Government Advocate strongly contended that the Deputy Commissioner was left with no other alternative, a perusal of the order on the face of it would indicate that in the absence of the objections by the petitioner, the Deputy Commissioner has thereafter not considered objectively with regard to the allegation which was put forth against the petitioner. Even in the absence of the objections, the Deputy Commissioner was required to look into the documents and thereafter should have assigned detailed reasons, since the order would visit the petitioner with civil consequences. Be that as it may, insofar as the correctness or otherwise of the order on merits, it is premature to comment at this stage, since it is ultimately for the Deputy Commissioner to take a decision. In this regard, the only question to be considered is as to whether the opportunity granted could be assumed as sufficient or not?

7. To what extent, the decision relied on by learned Senior Counsel would be applicable to the present facts. No doubt, the petitioner had sought for time. It was for the Deputy Commissioner to intimate the petitioner that his request has not been accepted and should have called upon him and thereafter should have proceeded with the matter. However, since the petitioner had sought for time, the Deputy Commissioner was of the view that the petitioner is prolonging and has thereafter concluded the matter as if that itself could lead to the inference that he is guilty. Such course is not sustainable.

8. In a matter of this nature, where serious civil consequences are involved and also to see that the ends of justice is met, it would be appropriate to provide an

opportunity by fixing a time frame so that the petitioner is granted opportunity and the object of the provision of law is also achieved. Therefore, to enable this, the order dated 24-3-2010 is quashed.

9. However, the matter is remitted to the Deputy Commissioner, Kolar to restore the proceedings. The petitioner shall file his version including the objections and documents, if any, within seven days from the date on which a certified copy of this order is ready for delivery. Immediately thereafter, the Deputy Commissioner shall consider the records including the objections put forth by the petitioner and conclude the matter one way or the other within ten days from the date on which the petitioner files his objection statement.

In terms of the above, the petition stands disposed of with no order as to costs.

In view of the disposal of the petition, Misc. W. 3616 of 2010 does not survive for consideration.