

(2016) 11 KAR CK 0100
In the Karnataka High Court
Case No : Writ Petition No. 8988 of 2016

B.N. Krupananda B. Nagaraju

APPELLANT

Vs

Secretary, Rural Development and Panchayat Raj
Department, Bengaluru

RESPONDENT

Date of Decision : 30-11-2016

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 12, Section 43A

Citation : (2017) 2 AirKarR 92

Hon'ble Judges : Dr. Vineet Kothari, J.

Bench : Single Bench

Advocate : Nagarajappa A., Advocate, for the Petitioner; V. Shreenidhi, AGA, for the Respondents

Final Decision : Disposed Off

Judgement

Dr. Vineet Kothari, J.—The petitioner-Mr. B.N. Krupananda, a member of the Basavanahalli Grama Panchayat has filed this writ petition before this court under Article 226 of the Constitution of India seeking a quashing of impugned show cause notice given to him vide Annexure-A dated 01.01.2016 under Section 43A of The Karnataka Gram Swaraj and Panchayat Raj Act, 1993 (hereinafter referred to as "Act of 1993") calling upon him to show cause as to why sanction for construction of a Function Hall was issued by him when he was a "Adhyaksha" - of said Grama Panchayat during his previous term in the year 2005-10. The petitioner held the office of the "Adhyaksha" of said Grama Panchayat upon being elected in the election to the Grama Panchayat in the year 2005-10 and after a lapse of five years, he was again re-elected to the said Grama Panchayat in the elections held in the year 2015 and impugned notice was issued on 01.01.2016 during his second term for alleged misconduct committed by him as "Adhyaksha" of the said Grama Panchayat in his previous tenure in 2005-10.

2. The petitioner instead of filing any reply to the said show cause notice and

also the summons issued to him vide Annexure-B on 06.02.2016 by the respondent No.2 to appear before the said authority on 18.02.2016, filed this writ petition before this court.

3. While issuing notice on the said writ petition on 17.02.2016 a Co-ordinate Bench of this court granted an interim order as prayed for, namely, staying the proceedings in pursuance of the show cause notice.

4. The Respondent-State Government has filed its statement of objections on 29.06.2016 and it has been argued on behalf of the State that against show cause notice, the writ petition is not maintainable and petitioner should be directed to file his reply to the said show cause notice which is bound to be decided by the competent authority in accordance with law. The reason for issuing the said show cause notice is said to be that in the term 2005-2010 the present petitioner while acting as the "Adhyaksha" of said Grama Panchayat issued a building sanction in favour of one Smt. Feroz Bhanu and on the complaint of one Sri. B. Anjanamurthy, these proceedings were initiated against him by issuing the notice under Section 43A of the Act, which provides for the removal of members from the Grama Panchayat on certain grounds stated in the said provision, inter alia, including the grounds of misconduct and award of contracts to the relatives of the concerned member. Paragraphs 6 and 7 of the Statement of objections filed by the State are reproduced below for ready reference:

"6. It is submitted that the Director (Suvarna Gramodaya) and IFA has submitted an Inspection Report to the Government, wherein, it has been reported that there is no provision in Karnataka Panchayat Raj Act, 1993 to authorize the "Adhyaksha" of Grama Panchayat to approve the building plan. The petitioner, who is Ex- President of Grama Panchayat during his Chairmanship, had approved the building plan of the function hall. Further, it was reported that he had misused the office during 2010-15 while he was "Adhyaksha" of the said Grama Panchayat.

7. It is submitted that the Government has sent a Report to the Hon'ble Lokayuktha, wherein it is explained that the action against the Petitioner, the present Member and Ex- President of the Grama Panchayat has been proposed under Sections 43A and 48 of Karnataka Panchayat Raj Act, 1993. Copy of the Report is produced and marked as Annexure- R4. The Petitioner instead of replying to the Notice, has hastily approached this Hon'ble Court"

5. Learned counsel for petitioner Mr. A. Nagarajappa has relied upon the decision of Division Bench of this court in the case of Iraganteppa Alias Veeragantappa v. Hanumanth and others reported in ILR 2003(3) Kar 3035 and has vehemently submitted that the provisions of Section 43A of the Act are not at all attracted to the present case, as the term of the member to which the alleged incident pertains was over long back in the year 2010 itself, the term being 2005-10 and after a gap of five years when the present petitioner was re-elected in the year

2015, on account of extraneous reasons and political rivalry reasons, the impugned notice could not have been issued to the petitioner seeking to disqualify him for a period of six years or more and therefore the impugned notice being wholly without jurisdiction and contrary to the provisions of the Act deserves to be quashed by this court under Article 226 of the Constitution of India.

6. Learned counsel for petitioner also submitted that provisions of Section 12 which deal with the disqualification for members in its clause (I) reproduced below clearly stipulates that a member can be disqualified, only if he is found guilty or directly involved in misuse or abuse of power for misappropriation of funds of Grama Panchayat, during the term of his membership. He therefore reiterated that the term of his membership in the present case was over in the period 2005-10 and he cannot be called upon to explain any of his alleged misconduct which could result in disqualification of his membership in a past period and he cannot be disqualified for the current term for 2015-2020 upon his reelection for the fresh term, for the alleged misconduct or incident which does not pertain to his act as a member during the current tenure of his membership.

7. He heavily relied upon the Division Bench Judgment in the case of Iraganteppa Alias Veeragantappa v. Hanumanth and others (supra) particularly paragraph 6 thereof. Learned counsel for petitioner submitted that Section 43A is limited to the situations that arise in relation to the period of time when the candidate has held the office and those are the parameters which the court will have to enforce and Section 43A is limited to the acts or misconduct committed only after candidate has assumed the office and during tenure in office and not the past conduct or period anterior to the tenure in office as member for which he is intended to be disqualified.

8. On the other hand learned counsel for the State Mr. V. Sreenidhi, AGA submitted that while the writ petition is premature being directed only against a show cause notice issued by Respondent and this court cannot examine the merits of allegations or the possible explanation of the petitioner, but since apparently the provisions of Section 64 of Act, 1993 provides that a building construction sanction can be issued only by the Grama Panchayat itself as a body corporate, the petitioner singularly acting as "Adhyaksha" of the Grama Panchayat during his previous term in 2005-10 had no jurisdiction to issue any such building sanction and therefore there are justifiable grounds to call for his explanation in this regard and if the competent authority comes to conclusion about his proved misconduct or acting beyond the provisions of law, it may or may not result in disqualifying of a member of Grama Panchayat for this current term.

9. Mr. Sreenidhi, also relied upon the Judgment of learned single Judge of this court in the case of P.K. Mohammed Hanif, President, South Karnataka Salafi Movement, Somwarpet v. The Executive Officer, Taluk Panchayat, Somwarpet and others reported in ILR 2013 Kar 2198 : (2012 (1) AIR Kant HC 29) wherein in

paragraph 15 of said Judgment, the learned single Judge quashed a similar building sanction permission issued by the Panchayat Development Officer holding it to be without authority of law. Paragraph 15 of the said Judgment is also quoted below for ready reference.

"15. In the present case, the Panchayat Development Officer appears to have granted permission as per Annexure-D to construct the building on the basis of the power delegated by the Panchayat in its Resolution dated 30.10.2010. Learned Counsel for the petitioner and respondent Nos.1 to 3 have not pointed out any statutory provision in the Act authorizing the Grama Panchayat to delegate its power of granting permission to erect the buildings to the Panchayat Development Officer. Therefore, question of granting permission to erect the building by the Panchayat Development Officer is without authority of law. The Grama Panchayat alone is authorised to grant permission to erect the buildings within the Panchayat area. The resolution of the Panchayat dated 30.10.2010 (Annexure-R-3) is invalid. Even otherwise, the grant of permission as per Annexure-D is illegal for non-compliance of Rules 3 and 5. Had the Panchayat issued public notice under Rule 3, the 2nd respondent or any other person opposing the construction would have filed objections. In fact, several persons have sent a representation as per Annexure-R-1 dated 02.03.2011 to the elected representatives, the Hon''ble Minister for Home Affairs and other authorities including the Panchayat opposing construction of the building in question. Therefore, the permission granted by the Panchayat Development Officer as per Annexure- D dated 06.03.2011 permitting the petitioner to construct the building on the land in question is illegal and without jurisdiction. Rule of law is the sole and backbone of democratic life and it has got to be followed by all institutions. Law is the solemn expression of legislative Will. Stated broadly, a law generally is a body of rules which have been laid down for determining legal rights and legal obligations recognised by courts. When the law requires an action to be taken in a particular manner, the same has to be taken in the same manner. In Rama Chandra Keshav Adke (Dead) v. Govind Joti Chavare and others, the Hon''ble Supreme Court has held that where a power is given to do certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. The Apex Court in Babu Verghese and others v. Bar Council of Kerala and others (AIR 1999 SC 1281), has held that if the manner of doing a particular act is prescribed under any statute the act must be done in that manner. It has been held thus:

"It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor which was followed by Lord Roche in Nazir Ahmad v. King Emeroro, who stated as under:

"where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.

This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of U.P. and again in Deep Chand v. State of Rajasthan. These cases were considered by a three Judge Bench of this Court in State of U.P. And Singhara Singh and the rule laid down in Nazir Ahmad case has again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law."

10. Mr. V. Sreenidhi, learned counsel appearing for respondent-State also submitted that there is no prohibition in Section 43A of the Act against enquiry into alleged misconduct of a member for his previous term also and operation of Section 43A cannot be restricted to the current term of a member only even though upon the misconduct being proved such a member may be held to be disqualified to hold the office as a member of the concerned Grama Panchayat in the current term for his alleged misconduct committed by him in the past or in the previous term as a member or as "Adhyaksha" of the concerned Grama Panchayat.

11. I have heard learned counsel at length and given my dispassionate consideration to the rival contentions made at the bar and also perused the relevant provisions of the Act of 1993 and Judgments cited. It is considered appropriate to reproduce relevant provisions hereunder for ready reference.

"12. Disqualification for members.-A person shall be disqualified for being chosen and for being a member of a Grama Panchayat,-

(a) to (k)

(l) If he is found guilty, directly involved in any act of misuse or abuse of power or authority as member of the panchayat in executing any scheme, plan or project of the panchayat or of misappropriation of funds or other assets of the panchayat during the term of his membership.

Section 43A. Removal of members.-(1) The Government if it thinks fit, on the recommendation of the Gram Panchayat, or otherwise, may remove any member after giving him an opportunity of being heard and after such enquiry as it deems necessary,-

(i) if he has been guilty of misconduct in the discharge of duties or of any disgraceful conduct;

(ii) become incapable of performing duties as a member, or persistently remiss in performing duties;

(a) on being medically unfit to hold the post as may be certified by the district surgeon;

(b) as a result of insolvency or of unsound mind,

(iii) has failed to attend four consecutive meetings of the panchayat, and in the case of an Adhyaksha or Upadhyaksha, failed to convene two consecutive

meetings which were either due or were necessary; or

(iv) if the member, by coercion or fraud entice any voter or member of Gram Panchayat or Taluk Panchayat or Zilla Panchayat as the case may be to trade the post of member or Adhyaksha or Upadhyaksha of Gram Panchayat or Taluk Panchayat or Zilla Panchayat, as the case may be, during election for a consideration;

(v) in the execution of any work of the panchayat, contractual or otherwise found involved directly with any person who is a nearest relative in the family or otherwise associated in any transaction related to such work as a partner, employee or a member on the Committee of such organization, or otherwise.

Explanation: For the purpose of this section, nearest relative in the family means,-

(a) the wife or husband of a person residing with her or him;

(b) son or daughter or step-son or step-daughter;

(c) any other person related, whether by blood or marriage who is wholly dependent on such person.

(2) An Adhyaksha or Upadhyaksha or member so removed shall cease to function as such member and shall be disqualified from contesting election as provided in Sections 12 of the Act to any panchayat for the next six years.

Section 64. Regulation of the erection of buildings.- (1) Subject to such rules as may be prescribed, no person shall erect any building or alter or add to any existing building [or correct advertisement hoarding or set up mobile towers atop or alongside or in any vacant space within the premises] or reconstruct any building without the written permission of the Grama Panchayat. The permission may be granted on payment of such fees as may be specified by bye-laws.

The Judgment of Division Bench of this court in Iraganteppa alias Veeragantappa v. Hanumath and others (supra) which was heavily relied upon by learned counsel for petitioner be dealt with by this court, first.

12. A reading of the preamble of said Division Bench Judgment throwing light on the factual aspects of the case would reveal that the issue before the court in that case arose because the petitioner Iraganteppa alias Veeragantappa produced a false caste certificate as if he belonged to " Simpi caste, whereas the complainant produced before the authority concerned a certificate that the petitioner actually belonged to " Lingayat caste and therefore issue was raised as to whether his election against reserved seat on the basis of his false caste certificate would amount to a "disqualification" and for that purpose whether the proceedings under Section 43A of the Act can be initiated against him or not. Answering the said question, the Division Bench of this court in paragraph 6 of the Judgment held as under:

"6. As far as the main issue is concerned, we have very carefully applied our minds to the provisions of Section 43-A. It is true that this Section empowers the Government, and that too for good reasons, to enquire into different heads and shades of misconduct committed by elected representatives of a Panchayat and if the result of the enquiry is adverse which disqualified the candidate to remove the person from office, the legislature has for good reasons circumscribed the ambit and scope of Section 43-A and after looking at these provisions in relation to several other similar provision we find that it could be extremely hazardous to accept the argument put forward by the original petitioner namely that different acts of misconduct which may have been committed in relation to other issues prior to the date of assumption of office can also form the subject matter of enquiry under the Section 43-A. We are not prepared to do any violence to the Section or for that matter to go against the legislative intent for the simple reason that having regard to the general situation that is prevalent in relation to these bodies or for that matter all elected bodies where there are rivalries and hostilities it would open virtually a Pandora's box giving raise to complaints or anything under the Sun committed in relation to all sorts of situations at any point of time and the result would be virtually disastrous. This Section is limited to situations that arise in relation to the period of time when the candidate has held office and those are the parameters which a Court will have to enforce. It is in this background that we need to interpret Section 43-A as clearly limiting the act of misconduct to those committed only after the candidate has assumed office and during the tenure in office issues relating to corrupt practices, misconduct or other illegalities even with regard to the election will have to be dealt with separately. The Act itself makes provision under Sections 19 and 20 for taking action. As far as these situations are concerned, there is also enough scope in appropriate cases for the High Court to exercise jurisdiction under Article 226 of the Constitution if the situation so warrants. The cause of action in the present Writ Petition was confined to the complaint filed by the Respondent No.1 under Section 43A of the Act and in our considered view that complaint was misconceived insofar as Section 43-A will have no application to the present charges. We make it clear that these observations are with regard to the present proceeding which are limited to the interpretation of the present Section and that they shall have no other bearing on any other proceedings".

13. In the considered opinion of this court, the said Division Bench judgment relied upon learned counsel for petitioner supports the case of the respondent-State rather than the case of the present petitioner. The case which was brought before the court in Iraganteppa's case (supra) was an incident prior to the petitioner entering the office as a member of Grama Panchayat namely production of a false caste certificate for seeking election against the reserved seat. It had nothing to do with the misconduct of such member committed by him "during the tenure of his office as a member". The misconduct which can result in disqualification as envisaged in Section 12 of the Act of 1993 is a misconduct committed by a member during the tenure of the person concerned

as a member and not anything done by him prior to his entering the office as a member, as a normal person or even as a candidate seeking election like in Iraganteppa's case (supra). Obviously, the provisions of Section 43A and the disqualification under Section 12 of the Act would pertain to a person only if he can be treated as a member of the concerned Grama Panchayat at the relevant point of time. Since the production of the false caste certificate could not be said to be the conduct or misconduct on the part of the person concerned "as a member" of the Grama Panchayat, obviously the court held, and with great respects, rightly so, that the complaint against petitioner of his having furnished a false certificate could not result in his disqualification by holding an enquiry for removal under Section 43-A of the Act.

14. Here, in the present case, the facts are just otherwise. What is sought to be enquired in the present case by serving the impugned show cause notice to the petitioner is his alleged conduct or misconduct or incident committed by him as a member, while holding the office as a "Adhyaksha" of that concerned Grama Panchayat, may be for a period anterior in point of time. This court does not find any ground to uphold any restricted application of Section 43-A to a member only for his alleged misconduct committed by him during this tenure concerned itself. Holding it so would prevent any enquiry into the misconduct if it comes to light only later on for the alleged incident of misconduct in the past period as a member or as "Adhyaksha" or "Upadhyaksha". Had the present petitioner been not re-elected for the current term in 2015-2020, there was apparently no question of proceeding against him under Section 43-A which might cause his removal or disqualification for this term. It is only because he happens to be a member of the said Grama Panchayat at the point of time when the impugned show cause notice is issued to him, that the question of holding enquiry against him under Section 43-A can arise. There appears to be no justification for non-suiting or cutting short any enquiry in the misconduct of a member or "Adhyaksha" allegedly committed by him even in the past period. If it were to be so, it would militate against the very concept of holding the elected persons who hold public offices, accountable for anything which they might have done during their concerned tenure as a member or "Adhyaksha", just after that period is over. Such an intention cannot be gathered from any provisions of the Act, much less from Section 43-A of the said Act of 1993.

15. It may be noteworthy to point out that in the case of Iraganteppa (supra) the Division Bench itself noticed that the Act itself makes, the provisions under Sections 19 and 20 of the Act for taking action against the person, if he has committed some wrong prior to beginning of his term of office as a member or "Adhyaksha" and on such grounds, the election itself can be declared to be void under Sections 19 and 20 of the Act. Since a remedy for the misconduct or acts or incidents prior to the date of election was separately provided for in the Act itself in the 1993 Act, the Division Bench held that Section 43-A of the Act for removal of person concerned from membership could not be invoked under Section 43-A of the Act, which envisaged an enquiry for the alleged misconduct

of the person concerned committed by him " during the tenure of his office as a member or "Adhyaksha".

16. Therefore the said Judgment relied upon by learned counsel for petitioner is not only distinguishable on facts, but the ratio decidendi of the said Judgment, clearly supports the contentions of the learned counsel for respondent-State that the enquiry envisaged under Section 43-A for removal from the membership can be initiated against the petitioner for the alleged misconduct committed by him as a member or as a "Adhyaksha" in the previous term also.

17. This court will not, for obvious reasons, go into the merits of the case, either the merits of the allegations made in the complaint or the possible explanation of the petitioner, since the writ petition is only directed against the show cause notice and this court has come to the conclusion that such show cause notice can be validly issued to the petitioner under Section 43-A of the Act.

18. Therefore, the petitioner is left free to show cause before the concerned authority in pursuance of the said show cause notice.

19. This writ petition is therefore found to be premature and is liable to be dismissed as such. The petitioner is therefore directed to furnish his reply and explanation before the concerned authority in pursuance of the impugned show cause notice and in the first instance may appear before the said authority on 15.12.2016 and it is expected of the said concerned authority to provide a reasonable opportunity of hearing to the petitioner and also allow him to lead evidence in support of his contentions and then pass appropriate orders in accordance with law.

With these observations and directions writ petition is disposed of. No costs.