

(1989) 06 KAR CK 0045
In the Karnataka High Court
Case No : W.P. No. 2977/1989

B.N. Suryanarayana Shetty

APPELLANT

Vs

Chief Secretary, Zilla Parishad, Bangalore Rural District and
Others

RESPONDENT

Date of Decision : 12-06-1989

Acts Referred:

Karnataka Local Authorities (Prohibition of Defection) Act, 1987 — Section 3

Citation : (1989) 3 KarLJ 331

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

Chandrakantharaj Urs, J.-The petitioner has come back to this Court once again after he had satisfactorily obtained an order in W.P. No. 3122/1988 disposed of on 3rd October, 1988 for a fresh enquiry under Section 4 of the Karnataka Local Authorities(Prohibition of Defection) Act.

2. After remand, the Chief Secretary, Bangalore Rural District Zilla Parishad has held an enquiry and passed the impugned order which is questioned in this writ petition. A reading of the impugned order indicates that there was no evidence that there was any official candidate sponsored by the Congress party for whom any vote should be cast in regard to the post of Upa-Pradhan. Section 3(b) of the aforementioned Act prohibiting defection by members clearly provides that the member of a Mandal Panchayat or other local authorities to which the Act applies shall incur disqualification if he votes or abstains from voting contrary to the direction issued by the party or authorised officer of that party.

3. In the instant case, the only material placed by the petitioner before the Chief Secretary (1st respondent in this writ petition) was the written statement filed by the petitioner and other members of the panchayat belonging to the Congress party which was neither affirmed by an affidavit, nor did any one of the Congress members enter the witness box and record his or her statement on oath supporting the allegations contained in the written statement. In fact, even in the written statement, there is no indication as to who the official candidate was

or when he was chosen an official candidate and on what date the directions were issued to all the Congress party members to vote for the official candidate. It is only the bare assertion contained in the written statement that one Chandrashekhar was the official candidate and it cannot be considered as proof that he was the official candidate of the party and that a direction in that behalf had been issued. The direction should be either oral or in writing. If it is oral it must be made in the presence of some people who are responsible for such statement being given in regard to the place and the time at which such direction was given. If it is in writing, the writing should be communicated to the members concerned and evidence of such communication must be forthcoming in addition to the text of the direction. If these things are not there, no case is made out that the direction was issued and therefore the respondent-Chief Secretary was correct in rejecting the complaint.

4. The order impugned does not call for interference. The petition is rejected.