

(1991) 09 KAR CK 0026
In the Karnataka High Court
Case No : W.P. No. 20753/1991

B.S. Vidyashankar

APPELLANT

Vs

Returning Officer and Tahsildar, Sakleshpur and Another

RESPONDENT

Date of Decision : 24-09-1991

Acts Referred:

Mysore Municipalities (President and Vice-President) Election Rules, 1965 — Rule 3(6)

Citation : (1991) 3 KarLJ 191

Hon'ble Judges : P. K. Shyamasundar, J

Judgement

1. A Vice-President in office of a town municipal council in the small town of Sakleshpur in Hassan District is the petitioner. His endeavour is to combat the steps taken by the Tahsildar, Sakleshpur to hold elections to fill the office of the President of the town municipal council which had fallen vacant due to the death of incumbent thereof, which event is said to have taken place on 8th July, 1991.

2. Respondent No. 2 Returning Officer, who is none other than the Tahsildar of Sakleshpur promulgated a meeting notice as per Annexure-A dated 11th September, 1991 scheduling a meeting to be held on 25-9-1991 for holding elections to the office of the President which had presumably fallen vacant on the death of the earlier incumbent. It is common ground that the petitioner who is the Vice-President is the officiating as the President. Not unnaturally and it is only reasonable to expect that he should legitimately or otherwise feel aggrieved by the impugned proceedings which might bring a new incumbent to the office of the President.

3. Smt. Pramila, learned counsel for the petitioner says that her client has not offered his candidature to the office of President in the elections scheduled but counsel who appears for the caveator tells me that the petitioner was also one of the candidates in the poll-fray scheduled for tomorrow. Counsel for the caveator further says that the nomination of the petitioner had been rejected. But, I am not going to rely on all that since on record I do not find any information pertaining to the projected interest of the petitioner in the office of the President.

4. Be that as it may, presently, the challenge as I mentioned earlier is to the meeting notice at Annexure-A and rests on a very short ground argued with great pertinacity and in a crisp fashion by learned counsel Smt. Pramila who appears for the petitioner. The following is the crux of her argument:

"i) The death of the former President not merely caused a vacancy in the office of the President but it also led to dwindling in the number of Councillors of the municipality and, therefore, it was but proper for the Returning Officer to have taken in the first instance steps to fill up the vacancy caused in the membership of the municipality before proceeding to fill the office of the President which fell vacant."

At this state Sri Chandre Gowda who appears for the Caveator tells me that this step was also taken and somebody was elected as the election held on 26th August, 1991 and only after re-constitution of the Municipality by filling up the vacancy that had occurred due to the passing away of the President, the Returning Officer had taken steps to fill the vacancy of the post of the President. Smt. Pramila, of course, has no information in this behalf. But, then, nor do I have any material to conclude this controversy one way or the other on facts. What is more this is a point which has not been urged in the writ petition and on this aspect counsel does not demur. Smt. Pramila asked me not to reject the plea on the ground that it is not raised in the writ petition. May be I would have acceded to this submission if the question raised was purely one of law without reference to facts. Now, I have information coming from very responsible quarters. The counsel appearing for the caveator tells me that the election to fill up the vacancy of the member to the Council has been held and concluded. In that situation it would not be appropriate to ask the Court to investigate into that aspect of the matter without there being as much as an averment or plea in the writ petition to the contrary. I am afraid I must decline the invitation to investigate into the said aspect of the matter in the absence of factual data. Therefore, I must content myself by leaving that issue open for subsequent investigation if necessary in other forums.

5. Nextly, Smt. Pramila, submitted that the election if held in accordance with the notice impugned herein would contravene sub-rule (6) of Rule 3 of the Mysore Municipalities (President and Vice-President) Election Rules, 1965 ("the Rules" for short). The said rule reads:

"(6) In the case of election held under sub-rule (2) or sub-rule (4), the election shall ordinarily be held before the expiry of four weeks from the date of constitution or re-constitution of the municipal council, or from the date of occurrence of a vacancy referred to in sub-rule (4), as the case may be."

(emphasis supplied)

Sub-rule (4) which is relevant to the facts of the case reads:

"In the case of an election to fill a vacancy of the President or Vice-President

occurring by reason of his death, resignation, removal or otherwise, a notice under sub-rule (1) shall be issued as soon as may be after the occurrence of such vacancy."

It may be noticed that sub-rule (6) of Rule 3 of the Rules postulates no outer limit or deadline is set, the stipulation being "shall ordinarily be held before the expiry of four weeks". The phrase "shall ordinarily be held" (to my mind merely indicates the desirability of holding an election within 4 weeks from the date of occurring of the vacancy in the manner enjoined by sub-rule (4) but it does not mean that after the expiry of the four week deadline no election could be held at all. To a question put by me as to what would happen if the elections are not held within four weeks, counsel says the intention is to allow the Vice-President to continue as President till the end of the tenure. I am very sure that such was not the intent of the Legislature for the simple reason that sub-rule (6) does not stop at saying that the elections shall be ordinarily held within four weeks. It also states when the four week period would begin to operate. It can be, either from the date of constitution or re-constitution of the municipal council or it could even be from the date of the occurrence of the vacancy itself. Herein, I have information to the effect that re-constitution of the council had taken place. As to when it took place is nevertheless not forthcoming. It is for the petitioner to state as to when this re-constitution took place for it is he who is aggrieved by the notice and seeks quashing of the same and any action undertaken to fill up a void, which under the Act, Council is empowered to do, cannot be brought to a stand-still and made to lie in a vacuum without any good reason. Thus, whatever way one looks at it, I find little reason to interfere with the notice now impugned.

6. In the result, for the reasons stated above, this writ petition fails and is rejected. No costs.

In the light of the order which I have now passed there is no need to dispose off I.A. No. I. which is ordered to be filed.