

(2009) 12 KAR CK 0059

In the Karnataka High Court

Case No : Writ Petition No's. 19299-311 of 2009

Byrappa and Others

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

Karnataka Local Authorities (Prohibition of Defection) Act, 1987 — Section 3 (1) (a), 3 A, 4 (1)

Citation : (2010) ILR (Kar) 397 : (2010) 1 KCCR 390

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : Jayakumar S. Patil for Jayakumar S. Patil Assts, for the Appellant; Prabhuling S. Navadgi, for C/R3, R4 and R5, M.C. Nagashree, HCGP for R1 and A. Nagarajappa, for R2, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Nagamohan Das, J.—In these writ petitions the petitioners have prayed for a writ in the nature of certiorari to quash the order dated 30.6.2009 as per Annexure-J passed by the first respondent, u/s 4(1) of the Karnataka Local Authorities (Prohibition of Defection) Act, 1987 (for short "Act") disqualifying the petitioners as members of second respondent - City Municipal Council, Mandya.

2. On 28.9.2007 elections were held to the second respondent - Municipal Council to elect 35 councillors from 35 wards. On 30.9.2007 the results of the election were declared and the same was published in the official gazette on 8.10.2007. As per this notification 21 councillors including the petitioners and 5th respondent were elected on Janata Dal (Secular) [for short JD(S)] political party symbol, 6 councillors from Indian National Congress (I) Party. 2 councillors from Bharatiya Janata Party and 6 councillors as independents. These elected councillors in turn elected one Smt. K.C. Nagamma as their President. Subsequently on 27.12.2008 the petitioners and other councillors filed an application before the first respondent to move no confidence motion against the

President - Smt. K.C. Nagamma. Accordingly the President of first respondent council called a meeting to be held on 16.01.2009 to consider the motion of confidence. In the meanwhile, the State President of JD(S) party issued a direction popularly called as WHIP on 9.1.2009 as per Annexure-C to all the 21 councillors including the petitioners elected on JD(S) political party symbol to defeat the motion of confidence in the meeting to be held on 16.1.2009 failing which to take appropriate action. This whip dated 9.1.2009 came to be served on the petitioners through the third respondent. - Mandya District President of JD(S) political party. Further the State President as per Annexure-C1 dated 9.1.2009 appointed the fourth respondent as Observer. In violation of the whip issued by the State President of JD(S) political party petitioners voted in favour of motion of no confidence.

3. Before the meeting on no confidence motion, the petitioners gave requisition on 7.1.2009 to the respondents 1 and 2 stating that they have voluntarily left JD(S) political party and formed a front called "Abhivrudhi Ranga" and requested for separate seating arrangement in respondent - Council meetings.

4. Since the petitioners violated the whip issued by the State President of JD(S) party and that; they have gave up their membership of the party, respondents 3 to 5 filed a complaint before the first respondent as per Annexure-A to disqualify the petitioners as councillors of Municipal council u/s 4 of the Act. In the complaint at Annexure- A, it is contended that petitioners have voluntarily given up their membership of JD(S) political party and have formed a Forum called "Abhivrudhi Ranga" and therefore they are to be disqualified u/s 3(1)(a) of the Act. Further the petitioners violated the whip issued by the State President of JD(S) political party and voted in favour of the motion in the special meeting held on 16.1.2009 and as such they are to be disqualified u/s 3(b) of the Act. On these grounds respondents 3 to 5 filed the complaint, before the first respondent.

5. Petitioners entered appearance before the first respondent and filed their statement of objections interalia contending that the State President of the JD(S) party has no authority to issue the whip and as such there was no valid whip served upon the petitioners and the question of violating the same will not arise. It is further contended that there is a split among the councillors of JD(S) political party in the respondent - Council and petitioners have formed a political platform by name "Abhivrudhi Ranga" under the leadership of Petitioner No. 11. Therefore the petitioners contend that there was a split among the elected councillors and as such the disqualification on the ground of defection is not attracted as per Section 3(A) of the Act. On these grounds the petitioners opposed the claim of respondents 3 to 5.

6. Before the first respondent, respondents 3 to 5 examined three witnesses as per PW. 1 to PW.3 and got marked Exs.P1 to P9, Petitioners examined RW. 1 to RW. 10 and got marked Ex.D1 to D3. First respondent after hearing arguments on both the side framed the following points for his consideration:

i) Whether valid directions was issued and served upon the respondents 1 to 33 by the political party to which they belong?

ii) Whether they have incurred disqualification u/s 3 of Karnataka Local authorities (Prohibition of Defection) Act, 1987.

iii) What order?

7. First respondent passed the impugned order on 30.6.2009 as per Annexure-J holding that the whip issued and served on the petitioners as valid and the petitioners have violated the whip. It is further held that there is no split in the JD(S) political party and therefore the petitioners are not entitled for exemption claimed u/s 3(A) of the Act. Consequently, the first respondent under the impugned order disqualified the petitioners. Hence this writ petition.

8. Heard learned Counsel for both the parties and perused the entire writ papers. The following points will arise for my consideration in this writ petition:

(i) Whether the whip issued by the State President of JD(S) political party is valid?

(ii) Whether the formation of separate political front by the petitioners will amount to split: as specified u/s 3A of the Act?

9. At this stage. It is necessary and useful to notice the object of enacting the Anti-defection legislation. The statement of objections and reasons appended to the Bill which was adopted as the Constitution (Fifty-second Amendment) Act, 1985 says:

The evil of political defections has been a matter of national concern. It is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. With this object, an assurance was given in the Address by the President to Parliament that the government intended to introduce in the current session of Parliament an anti-defection Bill. This Bill is meant for outlawing defection and fulfilling the above assurance.

10. Consequently the X Schedule, popularly known as the Anti-Defection Act was included in the Constitution in 1985 by fifty second Constitutional amendment. The Supreme Court in *Shri Kihota Hollohon Vs. Mr. Zachilhu and others*, while interpreting the Anti-Defection Act provisions held as under:

44. But a political party functions on the strength of shared beliefs. Its own political stability and social utility depends on such shared beliefs and concerted action of its Members in furtherance of those commonly held principles. Any freedom of its Members to vote as they please independently of the political party's declared policies will not only emharrass its public image and popularity but also undermine public confidence in it which, in the ultimate analysis, is its source of sustenance - nay indeed, its very survival. Intra-party debates are of course a different thing. But a public image of disparate stands by Members of the same political party is not looked upon, in political tradition, as a desirable

state of things.

11. The State Governments also brought anti defection laws on the lines of X schedule to the Constitution. The Government of Karnataka brought the Act 20 of 1987. The statement of objects and reasons to the Act 20 of 1987 states "It has been considered necessary to provide for prohibition of defection by members of Zilla Parishads Mandal Panchayats and councillors of Municipal Corporation and the City and Town Councils from the political parties by which they were set up as candidates. In order to provide healthy politics in the local bodies it is considered necessary to disqualify such councillors subject to certain conditions in the case of merger or split.

A Division Bench of this court in *Mariyappa Narasappa Halavagala Vs. Chief Secretary*, held as under:

The main object of the law is to prohibit defections by the Members of various local Bodies, from the political parties by which they were set up. The law, thus provides to maintain political decency and ethics, in a democratic society. For the smooth functioning of democratic system and stability of its institutions, it has been thought that multi-party system is essential. At any rate, political morality requires a person to come out of the office to which he entered through a particular political party, if he acts contrary to the mandates of the said party. Party discipline seems to have been accepted by the law makers as the cornerstone for the success of our political institutions. It is not for the courts to examine the wisdom behind this policy.

12. Keeping this object of Anti Defection legislation in mind, it is necessary to examine the controversy in the present case.

On point No. 1.

13. Identical issue came up for consideration before a Division Bench of this court in *Nijnagouda v. State Election Commissioner* in W.A. 910/2008 disposed on 19.12.2008 it is held as under:

In the absence of any authorisation in the Constitutional rule of JD(S) party or any resolution passed by the party authorising the State President of the party to issue whip and in the absence of valid whip issued by the authorised person, the condition for incurring disqualification of disobeying whip does not arise as held by the Hon"ble Supreme Court in *Sadashiva H. Patil's* case.

14. In the Instant case, admittedly, the whip was issued on 9.1.2009 by the State President of JD(S) political party. The petitioners have not produced the Constitution, bye laws, regulations nor rules of JD(S) political party to show that the State President of JD(S) political party had the power to issue the whip. No resolution passed by the executive committee of the JD(S) political party is placed on record to show that the State President was authorised to issue whip. Further the State President was not examined before the Deputy Commissioner in support of the contention that he had the power to issue the whip. In the

absence of any material on record and in view of the law laid down by this court in Nijnagouda's case, 1 answer point No. 1 in affirmative holding that the whip issued by the State President of JD(S) political party as not valid. When the whip was not valid, the question of disobeying the same by the petitioners will not arise. Therefore the petitioners are not liable to be disqualified u/s 3(b) of the Act. Accordingly, this point is answered in negative.

On point No. 2

15. Paragraph 2(1)(a) of the X Schedule to the constitution reads as under:

Paragraph 2, Disqualification on the ground of defection.

(i) Subject to the provisions of (paragraphs 4 and 5) a member of a House belonging to any political party shall be disqualified for being a member of the house,-

(a) If he voluntarily gives up his membership of such political party; or

(b)....

Paragraph 3. Disqualification on the ground of defection not to apply in case of split.

Where a member of a House makes a claim that he and any other members of his legislature party constitute the group representing a faction which has arisen as a result of the split in his original political party and such group consists of not less than one-third of the members of such legislature party,-

(a) he shall not be disqualified under sub paragraph (1) of paragraph 2 on the ground-

(i) that he has voluntarily given up his membership of his original political party; or

(ii) that he has voted or abstained from voting in such House contrary to any direction issued by such party or by any person or authority authorised by it in that behalf without obtaining the prior permission of such party, person or authority and such voting or abstention has not been condoned by such party, person or authority within fifteen days from the date of such voting or abstention; and

(b) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this paragraph.

16. The Supreme Court in Mayawati Vs. Markandeya Chand and Others, while interpreting paragraphs 2 and 3 of X Schedule held as under:

Before a claim is made by a member of the House under Para 3 of the Tenth Schedule, a split in the political party should have arisen. Such a split must have

caused its reaction in the legislature party also by formation of a group consisting of not: less than one-third of the members of that legislature party. We have to bear in mind that Clause (b) of para 3 mandates that "for the purposes of this paragraph" such/actions shall be deemed to be the original political party of the member concerned, "from the time of such split....

Before referring to Ravi S. Naik I would consider the question on first principles. Para 3 of the Tenth Schedule excludes the operation of Paras 2(1)(a) and (b) where a member of a house makes a claim that he and any other member of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one-third of the members of such legislature party. The following are the conditions for satisfying the requirements of the para

(I) A split in the original political party giving rise to a faction.

(II) The faction is represented by a group MLAs in the House.

(III) Such group consists of not less than one-third of the members of the legislature party to which they belong.

For the purpose of that para, all the three conditions must be fulfilled. It is not sufficient if more than 1/3rd members of a legislature party form a separate group and give to themselves a different name without there being a split in the original political party. Thus the factum of split in the original party and the number of members in the "group" exceeding 1/3rd of the members of the legislature party are the conditions to be proved.

(underline is mine)

17. In *G. Viswanathan Vs. The Hon'ble Speaker, Tamil Nadu Legislative Assembly, Madras* and another, held as under:

11. It appears that since the explanation to para 2(1) of the Tenth Schedule provides that an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member, such person so set up as a candidate and elected as a member, shall continue to belong to that party. Even if such a member is thrown out or expelled from the party, for the purposes of the Tenth Schedule he will not cease to be member of the political party that had set him up as a candidate for the election. He will continue to belong to that political party even if he is treated as "unattached"/The further question is when does a person "voluntarily give up" his membership of such political party, as provided in para 2(1)(a)? The act of voluntarily giving up the membership of the political party may be either express or implied. When a person who has been thrown out or expelled from the party which set him up as a candidate and got elected, joins another (new) party, it will certainly amount to his voluntarily giving up the membership of the political party which had set him up as a candidate for election as such member.

14. Our attention was drawn to the decision of this Court in Ravi S. Naik v. Union of India. In the said decision, para 2(1)(a) of the Tenth schedule of the Constitution was construed and it is observed atp.649 thus: (SCC para 11)

The said paragraph provides for disqualification of a member of a House belonging to a political party "if he has voluntarily given up his membership of such political party". The words "voluntarily given up his membership" are not synonymous with "resignation" and have a wider connotation. A person may voluntarily give up his membership of a political party even though he has, not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs.

If he of his own volition joins another political party, as the appellants did in the present case, he must be taken to have acquired the membership of another political party by abandoning the political party to which he belonged or must be deemed to have belonged under the explanation to para 2(1) of the Tenth Schedule. Of course, courts would insist on evidence which is positive, reliable and unequivocal.

18. In Sri Rajendra Singh Rana and Others Vs. Swami Prasad Maurya and Others, it is held as under:

38. Acceptance of the argument that the legislators are wearing two hats, one as members of original political party and the other as members of the legislature and it would be sufficient to show that one third of the legislators have formed a separate group to infer a split: or to postulate a split in the original party, would militate against the specific terms of para 3. That paragraph speaks of two requirements, one, a split in the original party and two, a group comprising of one third of the legislators separating from the legislature party. By acceding to the two hat theory one of the limbs of para 3 would be made redundant or otiose. An interpretation of that nature has to be avoided to the extent possible. Such an interpretation is not warranted by the context. It is also not permissible to assume that Parliament has used words that are redundant or meaningless. We, therefore, overrule the plea that a split in the original political party need not separately be established if a split in the legislature party is shown.

19. The relevant provisions in the Act for the purpose of this case are Section 3(1)(a). Section 3A(a)(i) & 2(vi) and they are as under:

Section 3(1)(a) Disqualification on the ground of defection (1) Subject: to the [provisions of Sections 3A, 3B and 4], a councillor or a member, belonging to any political party, shall be disqualified for being such councillor or member,-

(a) if he has voluntarily given up his membership of such political party: or

Section 3A(a)(i) Disqualification on the ground of defection not to apply in case of split. - Where a councillor or a member makes a claim that he and other

members of his political party constitute the group representing a faction which has arisen as a result of a split in his political party and such group consists of not less than one-third of the members of such political party-

(a) he shall not be disqualified under Sub-section (1) of Section 3 on the ground,-

(i) that he has voluntarily given up his membership of his political party;

The word "political party" used in Section 3(1)(a) and Section 3A(a)(i) is defined in Section 2(vi) and the same reads as under:

Section 2(vi) "Political party" in relation to a councillor or member means a political party recognised by the Election Commission of India as a National party or a State Party in the State of Karnataka under the Election Symbols (Reservation and Allotment) Order, 1968, and to which he belongs for the purpose of Sub-section (1) of Section 3.

20. Para 2 and 3 of X Schedule to the Constitution and Section 3 and 3A of the Act are identical except the word "legislative party". A combined reading of the above provisions in the Act and the law laid down by the Supreme court in the decisions referred to supra makes it clear that the following conditions are to be satisfied for seeking exemption from disqualification.

(i) There must be a split in the political party.

(ii) Such a split in the political party shall reflect in the local body splitting the elected representatives from such political party.

(iii) The group among the elected representatives shall represent a faction which has arisen as a result of split in his political party.

(iv) Such group shall consist not less than one-third of the members of the elected representatives of such political party.

21. Keeping these principles in view, the fact situation in the instant case is required to be examined. It is not in dispute that 21 councillors including the petitioners and 5th respondent were elected on JD(S) political party symbol in the respondent - Municipal Council. There is no plea before the Deputy Commissioner nor before this court and further there is no evidence to show that there was a split in JD(S) political party. On the other hand the petitioners contend that they gave a letter on 07.01.2009 to the respondent No. 1 and 2 stating that voluntarily they have come out from JD(S) political party and formed a front called "Abhivrudhi Ranga" and requested separate seating arrangement in the council meetings. The front "Abhivrudhi Ranga" is not a political party as defined u/s 2(vi) of the Act. Thus the petitioners voluntarily gave up their membership of their political party - JD(S). In the absence of split in the JD(S) political party the petitioners are not entitled to seek exemption of disqualification u/s 3A of the Act. The petitioners, by only forming a separate front without there being a split in the JD(S) political party, are liable to be disqualified. For these reasons this point is answered in negative.

For the reasons stated above, the writ petitions are hereby dismissed. The impugned order disqualifying the petitioners is hereby confirmed not for the reasons stated by the first respondent but for the reasons stated in this order.