

(2011) 11 KAR CK 0392

In the Karnataka High Court

Case No : Writ Petition No's. 83776 to 83777 of 2011 (LB-ELE)

Chandrashekar Gurubasappa Yelagod and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 03-11-2011

Acts Referred:

Citation : (2013) 1 AKR 409 : (2013) 4 KarLJ 196

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : I.R. Biradar and G.G. Chagashetty, for the Appellant; Manvendra Reddy and Amaresh S. Roja, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—The question for consideration in these writ petitions is whether the expression "writing under his hand" occurring in Section 48(1) of the Karnataka Panchayath Raj Act, 1993 (for short "the Act") as conveying the meaning that the letter of resignation by the Adhyaksha or the Upadhyaksha of the Grama Panchayat should be in their own hand writing? The necessary facts for disposal of these writ petitions may be briefly stated as follows:

The petitioners were elected as the members of the Grama Panchayath, Sungathan from their respective constituencies in the election held on 17.5.2010. The office of Adhyaksha and the Upadhyaksha of the Grama Panchayat was reserved for General Merit and Scheduled Caste (woman) categories respectively. The petitioners were elected as the Adhyaksha and the Upadhyaksha of the Grama Panchayat respectively. It is the case of the petitioners that they have not tendered their resignations and the letters received by the Assistant Commissioner appears to be the result of fraud committed by their opponents. The petitioners have produced copies of the said letters dated 22.8.2011 at Annexures "D" and "E" respectively. It is further contended that without following the procedure contemplated in Section 48(4) of the Act, the third respondent has accepted the resignations as per the order at Annexure "F" dated

2.9.2011 and directed the 4th respondent to exercise the powers and perform the duties of the Adhyaksha and the Upadhyaksha until they are newly elected. On the basis of the order of the second respondent, 4th respondent has issued calendar of events to hold the election to the office of the Adhyaksha and the Upadhyaksha as per Annexure "G". Therefore, the petitioners have filed these writ petitions seeking the following reliefs:

(a) Issue a writ of certiorari and to quash the order dated 2.9.2011 passed by the 3rd respondent in No. Election/CR/19/11-12 produced at Annexure F and calendar of events dated 9.9.2011 issued by the 4th respondent in No. Ta.pam/Gra.pam/Chunavane/CR-2/2011-12 produced at Annexure "G".

(b) Issue any other suitable writ, order or direction as this Hon"ble Court deems fit under the facts and circumstances of the case.

2. Learned Counsel for the petitioners contends that petitioners have not submitted the letters of resignation as per Annexures "D" and "E" respectively to the third respondent. Though he does not dispute the signature of the first petitioner at Annexure "D" and the left hand thumb impression of the second petitioner at Annexure "E", it is contended that the said documents have been created by their opponents and submitted to the third respondent. It is argued that the letters at Annexures "D" and "E" are not in the hand writing of the petitioners. Therefore, the third Respondent should not have accepted the same having regard to sub-section (1) of Section 48 of the Act. It was incumbent upon the third respondent to hold an enquiry as provided u/s 48(4) of the Act. It is further argued that the term of office of the petitioners is for a period of 30 months from the date of their election. There was no compelling reason for them to tender their resignations. Thus, the order at Annexure "F" is violative of the principles of natural justice.

3. On the other hand, learned Advocates appearing for the respondents submitted that the petitioners have tendered their resignations as per Annexures "D" and "E" on their own volition. They have not withdrawn their resignations within 10 days from the date of its receipt by the Assistant Commissioner as provided in Section 48(3) of the Act. That is why the third respondent has passed the order at Annexure "F" accepting the resignations of the petitioners and has directed the 4th respondent to be incharge of the Grama Panchayat till the Adhyaksha and the Upadhyaksha are elected. The 4th respondent has issued the calendar of events as per Annexure "G" for the election of the Adhyaksha and the Upadhyaksha. It is argued that Section 48(1) of the Act does not contemplate holding of an enquiry when the resignation is tendered by the Adhyaksha and the Upadhyaksha. It is argued that the letters at Annexures "D" and "E" are typewritten and signed by the petitioners. Placing reliance on the decision of the Division Bench of this Court in Vice Chairman, Village Panchayat, Maranbeed Vs. Channabasappa B. Gaddi and Others, it is submitted that the expression "writing under his hand" includes typewritten letter duly signed by the person tendering the resignation or left hand thumb impression of the person

tendering the resignation. It is not necessary that the contents of the resignation letter should be in writing of the person tendering resignation. It is further argued that Section 48(4) has no application to the facts of these cases.

4. The undisputed facts are that the petitioners were elected as the members of the Grama Panchayat in the election held on 17.5.2010 for a period of 30 months. It is also not disputed that the letter at Annexure "D" contains the signature of the first petitioner and the letter at Annexure "E" contains the left hand thumb impression of the second petitioner. Section 46 of the Act provides for term of office and conditions of service of Adhyaksha and Upadhyaksha. The term of office of every Adhyaksha and every Upadhyaksha of the Grama Panchayat is 30 months from the date of his election or till he ceases to be a member of the Grama Panchayat, whichever is earlier. Section 48 of the Act provides for resignation or removal of Adhyaksha or Upadhyaksha. Sub-sections (1) and (3) of Section 48 are relevant for the purpose of these cases, which are as under:

Section 48. Resignation or removal of Adhyaksha or Upadhyaksha.--(1) The Adhyaksha of the Grama Panchayat may resign his office by writing under his hand addressed to the Assistant Commissioner and the Upadhyaksha of the Grama Panchayat may resign his office by writing under his hand addressed to the Adhyaksha and in the absence of the Adhyaksha to the Assistant Commissioner.

(2) xxxxx xxxxx xxxxx

(3) Every resignation under sub-section (1) shall take effect on the expiry of ten days from the date of its receipt by the Assistant Commissioner or the Adhyaksha, as the case may be, unless within the period of ten days he withdraws such resignation by writing under his hand addressed to the Assistant Commissioner or the Adhyaksha, as the case may be.

(4) xxxxx xxxxx xxxxx

(5) xxxxx xxxxx xxxxx

5. It is clear from the aforesaid provisions that the Adhyaksha may resign his office under his hand addressed to the Assistant Commissioner and the Upadhyaksha may resign his office by writing under his hand addressed to the Adhyaksha and in the absence of Adhyaksha to the Assistant Commissioner. The resignation shall take effect on the expiry of 10 days from the date of its receipt by the Assistant Commissioner or the Adhyaksha as the case may be unless within the period of 10 days, he withdraws the said resignation by writing under his hand addressed to the Assistant Commissioner or the Adhyaksha as the case may be.

6. As noticed above, the letters of resignation are not in the handwriting of the petitioners. There is no dispute that the letter of resignation at Annexure "D" contains the signature of the first petitioner and the Annexure "E" contains the

left hand thumb impression of the second petitioner. It is obvious that the second petitioner is not a literate person.

7. A Division Bench of this Court in Vice Chairman, Village Panchayat, Maranbeed Vs. Channabasappa B. Gaddi and Others, was considering the meaning to be assigned to the expression "writing under his hand" found in Section 31 of the Karnataka Village Panchayats and Local Boards Act, 1959. Section 31 of the said Act is in pari materia with Section 48 of the Karnataka Panchayat Raj Act, 1993. After considering the definition of the word "writing" provided in Section 3(42) of the Karnataka General Clauses Act, 1899, the meaning assigned to the word "hand" in 20th Century Dictionary, Unabridged, II Edition, and the definition of the word "sign" in Section 3(37) of the Karnataka General Clauses Act, this Court has held that the expression "writing under his hand" conveys that it is enough if the letter of resignation written or typed bears the signature of the person tendering the resignation. The Court has distinguished the decision of the Apex Court in Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, relied on by the learned Counsel for the petitioners. The Court has considered the decision of the Apex Court in Tirath Singh Vs. Bachittar Singh and Others, wherein it is observed that where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice presumably not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. The Court has also taken note of the fact that if the Chairman does not have hands or if he is not literate he would not at all be in a position to write the letter of resignation in his own handwriting. Therefore, if the Chairman, who is not literate or a Chairman, who does not have hands cannot at all resign from the office of the Chairman, if the argument of the petitioners has to be accepted. The Court therefore held as under:

We have already observed that the expression writing under his hand, if properly interpreted, conveys that it is enough if the letter of resignation, written or typed, bears the signature of the person tendering the resignation. It is not at all necessary that the contents of the resignation letter should be written in the handwriting of the person tendering his resignation. It appears to us that the discussion will not be complete unless we express ourselves on what the word "signature used by us, conveys in the context. The word "sign" is defined in S. 3(37) of the Karnataka General Clauses Act, 1899 to mean with its grammatical variations and cognate expressions, (that it) shall with reference to a person who is unable to write his name, include "mark" with its grammatical variations and cognate expressions. If the Chairman is not in a position to write his signature, any mark of his denoting his signature could be affixed. The interpretation pressed for our acceptance by Sri S.S. Ujjannavar is reasonable and advances the object of the Act and renders it workable. As the interpretation placed by the learned Single Judge leads to great hardship and inconvenience and renders the provision unworkable and defeats the very object of the Act, the same cannot be

accepted.

8. From the above discussion, it is clear that the expression "writing under his hand" conveys that it is enough if the letter of resignation written or typed bears the signature of the person tendering the resignation. If the person is unable to write his signature, it is sufficient if he affixes any mark denoting his signature.

9. There is no merit in the submission of the learned Counsel for the petitioners that the Assistant Commissioner should have held an enquiry when he received the letters of resignations from the petitioners. Sub-section (4) of Section 48 applies to a case for removal of the Adhyaksha or Upadhyaksha from his office by the Government for being persistently remiss or guilty of misconduct in the discharge of his duties. In the present case, the petitioners have sent their resignation letters u/s 48(1) and have not withdrawn the same within 10 days again by writing under their hand addressed to the Assistant Commissioner or the Adhyaksha as the case may be. Therefore, the resignation of the petitioners has taken effect after the expiry of 10 days from the date of its submission. There is no merit in these writ petitions. They are accordingly dismissed. No costs.