

(1976) 03 KAR CK 0014
In the Karnataka High Court
Case No : Writ Petition No. 2308 of 1976

C.R. Shivananda

APPELLANT

Vs

The Election Officer and Head Quarters Assistant to the
Deputy Commissioner District Office, Chickmagalur and
Others

RESPONDENT

Date of Decision : 04-03-1976

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 42 (11), 42 (12)

Citation : AIR 1976 Kar 225 : (1976) ILR (Kar) 961 : (1976) 1 KarLJ 389

Hon'ble Judges : K. Jagannatha Shetty, J

Bench : Single Bench

Advocate : S. Vijayashankar, for the Appellant; M. Ramakrishna, High Court
Government Pleader and S.C. Daddakelagowda, for the Respondent

Judgement

1. One H. R. Keshavamurthy was elected as President of the Town Municipal Council, Chickmagalur. His term of office was one year. Before the expiry of the period, he resigned. In the vacancy caused thereby, the petitioner was elected as President. The Election Officer wants to hold the fresh election stating that the petitioner has no right to remain in the office beyond the term of Keshavamurthy. But the petitioner says "No". He says that his term is fully one year from the date he had entered the office. So he challenges the validity of the Proposed election in this writ petition.

2. I think, the question resolves itself if one peruses closely the provisions, of sub-sections (11) and (12) of Section 42 of the Karnataka Municipalities Act. They read as follows:

"42 (11). The term of office of every President and of every Vice-President shall, save as provided in this Act, cease on the expiry of the term of office as councilor; provided that the Government may, with the consent of the municipal council concerned, direct that their term be limited to one year and that elections therefore be held every year."

"42 (12). In the event of the non-acceptance of office, death, resignation or removal from office of a president or vice-president or of his election being held void, or his becoming incapable of acting in such office or having ceased to be a councillor, previous to the expiry of his term of office as president or vice-president, the vacancy shall be filled up by appointment or election, as the case may be in accordance with the provisions of the foregoing sub-sections. When any vacancy not otherwise provided for occurs the Government may appoint any person to perform all the duties and exercise all the powers of a president or vice-president during such vacancy."

Sub-section (11) of Section 42 concerns with the term of office of the President and Vice-President. Ordinarily, the term is conterminous with the term of office as councillor. But the Government, with the consent of the Municipal Council concerned could limit the said term to one year. In exercise of this Power, the Government had made an order dated 16th March, 1967 limiting the term of President and Vice-President of the Town Municipal Council, Chickmagalur for one year, a fact of which is not disputed. The said order reads:

"ORDER NO. LMA 12 TEL 67 BANGALORE DATED THE 16TH MARCH, 1967.

In exercise of the powers conferred by the proviso to sub-section (11) of Section 42 of the Mysore Municipalities Act, 1964 (Mysore Act No. 22 of 1964), the Government of Mysore hereby direct that the term of the office of the President and Vice-President of the Town Municipal Council, Chickmagalur, be limited to one (1) year and the elections thereafter be held every year as per council resolution dated 15-12-1966.

By order and in the name of the Government of Mysore

Sd/- xx xx xx

(K. Abdul Rahim Khan)

Under Secretary to Government, Labour and Municipal Administration Department."

3. The operative portion of the Government Order states that the term of office of the President and Vice-President of the Town Municipal Council, Chickmagalur be limited to one year and the elections shall be held every year. Sub-section (11) also provides that the election shall be held every year if the term of the President or Vice-President is limited to one year. Both deal with regular vacancy in the office of the President and Vice-President and to fill up such vacancy, it is obligatory to hold the election every year.

4. Sub-section (12) deals with a different kind of vacancy. It states that in the event of the non-acceptance of office, death, resignation or removal from office of the President or Vice-President or of his election being held void, or of his becoming incapable of acting in such office, etc., the vacancy caused thereupon shall be filled up by appointment or election. It is a casual vacancy which this

sub-section is concerned with. It is optional to hold the election whenever there is a casual vacancy. Such vacancy may be filled up either by appointment or election. It is undisputed that the petitioner was elected to the casual Vacancy caused on the registration of Keshavamurthy, the previous incumbent in the office. The petitioner, therefore, has no right to remain in office for a full term of one year from the date he became the President of the Municipal Council. If he is also held entitled to remain in office for a term of one year, then sub-section (11) of S. 42 and the Government Order dated 16th March 1967 would be rendered nugatory and the difference between the regular vacancy and casual vacancy in the office of the President or Vice-President would be obliterated. I, therefore, reject the contention urged for the petitioner.

5. There is one other reason why I cannot accept the contention urged for the petitioner. If the petitioner is permitted to remain in office for a full term of one year, then every elected President also should be given such a term, which in the very nature of the term of the Council would be impossible because no President could remain in the office beyond the term of the Council.

6. In the result, rule is discharged, but in the circumstances, without an order as to costs.

7. Petition dismissed.