

(1990) 07 KAR CK 0105

In the Karnataka High Court

Case No : W.As. 1476 and 1588 to 1591 of 1989

C.S. Kale Gowda

APPELLANT

Vs

Chief Secretary, Hassan District Zilla Parishad

RESPONDENT

Date of Decision : 25-07-1990

Acts Referred:

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

Citation : (1990) ILR (Kar) 2781 : (1990) 2 KarLJ 221

Hon'ble Judges : Mohan, C.J.; Shivaraj Patil, J

Bench : Division Bench

Advocate : A.K. Subbaiah, for the Appellant; N. Davadas, Government Advocate for R-1, H.B. Datar, Senior Advocate and D.L. Jagadeesh, for R-2, for the Respondent

Final Decision : Allowed

Judgement

Mohan, C.J.

1. All these Writ Appeals may be disposed of by this common order, since they raise one and the same point.

2. The appellants are the Members of Yelechagahalli Mandal Panchayat. They were elected as Members on 20th of January, 1987 under the provisions of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983. The appellant namely Y.M. Basappa was further elected as Pradhana of the Mandal Panchayat. The appellants received a notice dated 7th July, 1989 from the Chief Secretary, Hassan District Zilla Parishad, Hassan, calling upon them to show cause why they should not be disqualified u/s 3(1)(A) read with Section 4(1)(a) of the Karnataka Local Authorities (Prohibition of Defection) Act, 1987, stating that a complaint had been preferred by President, Hassan District Janata Party, Hassan (M.G. Dodde Gowda, respondent No. 2 herein) to the effect that the appellants had voluntarily left the party (Janata Party) on which ticket they were elected and joined the Congress-I party.

On receipt of the said show cause notice, the appellants made their appearance through their Advocate and filed their objections to the show cause notice. In their objections they contended that they had not committed any act opposed to the relevant provisions of the Act and therefore the complaint was misconceived and was liable to be dismissed. It was further contended that Janata Party is no more in existence in view of the fact that the said party had merged with Lok Dal and as a result of which Janata Dal has been formed.

3. Without conducting any enquiry or taking evidence, the matter was proceeded with by the first respondent (Chief Secretary, Zilla Parishad). He came to the conclusion that in so far as the appellants had not specifically denied their leaving Janata Party, it must be presumed that they have voluntarily left and therefore they are liable for disqualification. To this effect, he passed an order on 4th of August, 1989. This was questioned in the Writ Petitions.

4. Our learned Brother Chandrakantaraj Urs, J. was of the view that the complaint of the Writ Petitioners before him that no evidence was recorded and there is no proof that the petitioners before him had resigned from Janata Party and joined Congress-I party cannot be accepted, because the order of the Chief Secretary was a lengthy one. If the petitioners had not examined themselves, they alone were to be blamed. Further he held in so far as there is no specific denial of the parties, Order 8 Rule 5 of the CPC would apply. Thus, he dismissed the Writ Petitions. It is under these circumstances, the Writ Appeals have come to be preferred - Writ Appeals 1588 to 1591 of 1989 against Writ Petitions 14256 to 14259 of 1989 and Writ Appeal 1476 of 1989 against Writ Petition 14255 of 1989.

5. The contention of Mr. A.K. Subbaiah, the learned Counsel for the appellants is this:

In the matter of disqualification of any member as contemplated under Sections 3 and 4, serious consequences follow. The proceedings are quasi criminal in nature. First and foremost, therefore, it is essential on the part of the Chief Secretary, to decide a charge u/s 4, to have insisted upon atleast the minimum proof that was required of those who alleged that the appellants had left Janata party. A news item appearing in press cannot tantamount to proof. The Chief Secretary having held so cannot merely rest his conclusion on the non denial in the objection statement to the show cause notice filed by the appellants. Once the allegation is made that the appellants were subjected to disqualification, the onus of proving the disqualification is on the persons so alleging. In this case nothing whatever was done excepting to cause a complaint through the President of Hassan District Zilla Parishad and producing a news item appearing in the local newspapers. This cannot tantamount to proof at all. If really the proceedings are quasi criminal in nature, the appellants are even entitled to keep quiet. One cannot draw presumptions by the non-denial and then find that they have been subject to disqualification. Then again, what the law insists is a voluntarily giving up. This again clearly shows that it is a matter essentially of proof by evidence

and not dispensing with that evidence and proceeding upon the singular ground of non-denial and accepting it as proof of the allegation. From this point of view the order is bad in law, leave alone it being opposed to the principles of natural justice.

6. Mr. Datar, learned Counsel appearing for the second respondent complainant, would urge where a notice was given by the second respondent specifically stating that the appellants have left Janata Party and joined Congress-I party and equally another notice was given by the Chief Secretary, Hassan District Zilla Parishad, there was a duty to speak on the part of the appellants. They should have categorically denied that they still continue to be members of Janata Party. If they had not denied, when there is an onus to speak, it would amount to consent. Therefore, the Chief Secretary of Zilla Parishad was well in order in holding that in the absence of denial, the allegations stood proved. May be the proceedings are quasi criminal, but that does not mean, even when the appellants are confronted with the positive statement, they can get away with it without a specific denial. As a matter of fact when similar allegations were made against six other persons, they came forward with specific denial, which course the appellants also ought to have adopted. Accordingly he would submit that no exception could be taken to the order of the Chief Secretary and in turn the Judgment of the learned Single Judge.

7. In order to appreciate these respective arguments of the appellants and the respondents, it is necessary on our part to refer to the important provisions of the Karnataka Local Authorities (Prohibition of Defection) Act, 1987. This Act was passed with the avowed object of taking immediate action on defection by the Councillors of Municipal Corporations, and Municipal Councils and Members of Zilla Parishads and Mandal Panchayats from the political parties by which they were set up as candidates and matters connected therewith. Though this Act received the assent of the Governor on 2nd May, 1987, the operation of the Act was co-related to the coming into force of the Ordinance (Karnataka Ordinance No. 18 of 1986). Therefore, for all practical purposes, it was effective from 29th of December, 1986. Section 3 talks of disqualification on the ground of defection. We are now concerned with Sub-section (1) Clause (a). That reads as follows:

"3(1) Subject to the provisions of Section 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 this membership of such political party; "

Section 4 relates to the procedure to be adopted for deciding the question of disqualification on the ground of defection. That says as follows:

4. Decision on the question as to disqualification on the ground of defection - Where a complaint of defection is received from a Member or Councillor or a political party by the Chief Executive Officer of the concerned Local Authority, he shall, within twenty-four hours from the receipt of such complaint, refer the same for decision to -

- (1) in the case of Zilla Parishad, to the Chief Secretary to Government;
- (2) in the case of Municipal Corporation, to the Divisional Commissioner;
- (3) in the case of a City or Town Municipal Council, to the Deputy Commissioner;
- (4) in the case of a Mandal Panchayat, to the Chief Secretary to the Zilla Parishad;

who shall decide the question within seven days after the receipt by him of the reference and his decision shall be final. (Rest of the Section omitted as not necessary).

8. It is not denied before us that the appellants were elected on Janata Party tickets and the symbol allotted to Janata Party. However, what was done was a complaint was preferred on 6th of July, 1989 by the second respondent (Sri M.G. Dodde Gowda), President of the District Janata Party, Hassan, stating that the appellants had voluntarily left Janata Party from which they were elected and joined Congress-I party. On this complaint, a notice was issued by the Chief Secretary, Hassan District Zilla Parishad on 7-7-1989 calling upon these appellants why they should not be disqualified u/s 3(1)(a) of the Karnataka Local Authorities (Prohibition of Defection) Act, 1987 (hereinafter referred to as the Act). The appellants filed detailed objections in which they referred to the fact that the Janata Party was not in existence in the eve of law. It is a matter of wide publicity that a number of National Parties merged long time back and formed a separate party called Janata Dal. This was done by Janata Party also and on the coming into existence of Janata Dal, Janata Party has ceased to exist legally. The District units of all the political parties stood merged consequent on the merger of their respective National Parties into Janata Dal. Thus there is no separate District Janata Party as a separate political party for, the National Party of Janata Party has lost his identity when Janata Dal came to be formed. Having regard to this principal stand, no specific denial was made in those replies to the show cause notice. It was at this, the matter came up for consideration before the Chief Secretary. He was of the view that no doubt the Press Report on which the complaint was based cannot be taken as a basis, however he held -

"The respondents, including Pradhana against whom the complaint has been lodged, have not denied for having left the party neither in their statement of objections nor during the course of the argument. Under the circumstances, it is clear that the five persons have not denied the allegation that they voluntarily left their Party."

Having said so, the Chief Secretary refers again to the Press Report and then says that though the allegation was against eleven members, six persons have chosen to file affidavit that they did not leave the party, while such a course has not been adopted by these appellants. Accordingly, he declared the appellants as disqualified u/s 4(2) of the Act.

9. First and foremost, we are clearly of the view that the disqualification if proved

will entail serious consequences, in that the person against whom the disqualification is proved cannot be any longer corporator ("Corporator" used in generic sense).

(ii) It may affect his political career seriously.

(iii) The proof of such a disqualification is considered to be quasi criminal in nature.

Where, therefore, the law requires proof of such an allegation, it is imperative, having regard to Section 101 of the Evidence Act, that the person who alleges the disqualification must prove the same. To put it in other words, the minimum requirement of proof must be insisted upon. To this extent, we are of the view that Sri A.K. Subbaiah is right in his submission. But in this case what the Chief Secretary did was, he merely rested his conclusion on the non denial. We are unable to accept that line of reasoning. Where law insists a matter to be proved by positive evidence, even without the minimum evidence, from the fact of non-denial a presumption cannot arise. This is the reason why we said the proceedings partake the nature of quasi criminal in character. If that is so, looked at from this point of view, we find no evidence whatever was let in by the second respondent, who merely based his complaint on a Press Report. It is the practice of this Court and which is adopted in all Judicial proceedings that Press Reports cannot form evidence nor again can they be substitute for evidence. The Chief Secretary having held that the Press Report should not be acted upon, to buttress his conclusion that the appellants are disqualified, would refer to the fact that allegations were made against all the eleven Members, six have, chosen to deny the allegation and these five have not chosen to do so. That is not the proper way of looking at the matter. He ought to have insisted on proof from the second respondent. Therefore, the procedure adopted is wholly wrong.

10. Then again, what is to be proved u/s 3(1)(a) of the Act is voluntarily leaving the party. Whether the leaving the party was voluntary or not is a matter again to be established by evidence and that is the proof required. It is not merely leaving. Concerning that there is no proof at all. Therefore, the evidence is woefully lacking. Unfortunately, the learned Single Judge has not addressed himself to these aspects. He had also applied Order 8 Rule 5 of the CPC and has taken the view that there being no specific denial, it would tantamount to admission. We are unable to subscribe to this view.

11. Accordingly, we set aside the order of the Chief Secretary as confirmed by the learned Single Judge and allow the Writ Appeals. We direct that the Chief Secretary shall take evidence on the allegations made by the second respondent and the parties shall be afforded an opportunity to adduce evidence on the allegations and the counter allegations made before him and thereafter the matter shall be decided on merits uninfluenced by the observations contained in this Judgment or in the Judgment of the learned Single Judge.

We make it clear, now that we have set aside the order of the Chief Secretary,

there will be no legal impediment for the appellants to continue to occupy their respective positions as Members of the Mandal Panchayat or Pradhana, as the case may be, till the decision is rendered by the Chief Secretary as directed above. The Chief Secretary - respondent No. 1 is hereby directed to dispose of the matter in the manner indicated above on or before 30th of September, 1990. The first date of hearing shall be 13th of August, 1990. The parties have agreed to waive notice for the first day of hearing, which statement is recorded.

No costs.