

(1989) 08 KAR CK 0006
In the Karnataka High Court
Case No : W.P. No. 13827/89

D. Basavaraju

APPELLANT

Vs

Chief Secretary, Tumkur Zilla Parishad and Others

RESPONDENT

Date of Decision : 04-08-1989

Acts Referred:

Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 — Section 49

Citation : (1989) 3 KarLJ 590

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

Chandrakantaraj Urs, J.- The petitioner is the Upa-Pradhan of Mavinakere Mandal Panchayat in Tumkur district. He is aggrieved by the order dated 5-7-1989 passed by the Chief Secretary, Zilla Parishad, Tumkur, who has directed him to handover charge of the duties and functions of Pradhan which duties he was performing in his capacity as Upa-Pradhan on account of removal of the Pradhan. Pradhan has obtained an order of stay from this Court against his removal.

2. Mr. Gangadharaiah, learned Counsel appearing for the petitioner-Upa-Pradhan submits that the order is without the authority of law and without jurisdiction because once the vacancy occurred in the office of the Pradhan by removal of Pradhan in terms of Section 49 of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Samithis Act, 1983 (hereinafter referred to as the "Act") that vacancy must be Filled up by election and till that vacancy is filled up in accordance with Section 49 of the Act, Upa-Pradhan alone must continue to discharge the functions and duties of the office of Pradhan. He, therefore, placed reliance on the provisions contained in Section 42 which provides for election of Pradhan and Upa-Pradhan.

3. Section 42 of the Act does no more than providing procedure for election to those two offices as soon as Mandal Panchayat is constituted and provides that whenever there is a casual vacancy by reason of death, resignation, removal or otherwise in the office of Pradhan or Upa-Pradhan, the Mandal Panchayat shall

choose another member as Pradhan or Upa-Pradhan as the case may be. If there is no vacancy for whatever reason, then the question of holding election to that office does not arise. Indisputedly, the Pradhan who had lost office by virtue of his disqualification in terms of the provisions contained in Section 3(2) of the Karnataka Local Authorities (Prohibition of defection) Act, 1987 has obtained a stay order of his disqualification. In other words, he continues to be a member and since he was elected as Pradhan, his office has not become vacant until and unless his removal as member becomes absolute. As long as this court's stay order is operative, the petitioner cannot make a grievance of the order at Annexure-E.

4. The petition is mis-conceived and it is rejected.

Writ Petition rejected.