

(2006) 03 KAR CK 0028
In the Karnataka High Court
Case No : Writ Petition No. 27054 of 2005

D. Narayanappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 27-03-2006

Acts Referred:

Citation : (2006) 3 KCCR 1381

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : S.C. Vijayakumar and H.G. Sandhya Vijayakumar, for the Appellant; L.K. Srinivasa Murthy, Additional Govt. Advocate for Respondent 1, Balaraj, for N.K. Siddeshwara, for Respondent 4 and G. Papireddy, for Respondent 5, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—Writ petition by a person who is presently working as a "watermen" in the respondent 4-Honnudike Grama Panchayat, Gulur Hobli, Tumkur Taluk and District who is basically aggrieved by the appointment of respondent 5 to the post of "bill collector" in terms of as many as three resolutions passed by the fourth respondent-Honnudike Grama Panchayat.

2. The Panchayat in its meeting held on 4-7-2003 and as recorded on 21-7-2003 (copy at Annexure-R1) had resolved to appoint the fifth respondent as a bill collector at its office, as an incumbent in the office had retired. The Panchayat had for such purpose invited applications from eligible persons by putting up a notification in this regard on its notice board.

3. The petitioner, fifth respondent, who was a former member of the very Panchayat and 10 others, it appears, had applied and amongst them, the fifth respondent was selected and appointed in terms of the resolution dated 4-7-2003.

4. The petitioner being aggrieved had preferred an appeal to the third

respondent-Executive Officer, Taluk Panchayat, Tumkur - as against this resolution and initially met with success, as the Appellate Authority stayed the resolution in terms of order dated 12-8-2003 (copy at Annexure-D), staying the implementation of the resolution. However, this order of stay was subsequently vacated by the very Appellate Authority in terms of the subsequent order dated 9-2-2004 (copy at Annexure-E); that it appears that the appeal continues to remain pending.

5. It appears, in the meanwhile, the fifth respondent filed W.P. No. 1416 of 2005 before this Court, praying for issue of a writ of mandamus to direct the Chief Executive Officer, Zilla Panchayat, Tumkur to accord approval to the resolution of the Panchayat appointing him as the bill collector, particularly when the Appellate Authority having vacated the order of stay against the resolution. The fifth respondent had also sought for payment of salary etc. Interestingly, the petitioner was not a party to this writ petition, and the writ petition came to be disposed of by this Court in terms of the order dated 23-9-2005 (copy at Annexure-F), inter alia, observing that the writ petitioner had the liberty to represent the approving authority and the approving authority, if such representation is made, to consider the same and pass appropriate orders thereon.

6. The Zilla Panchayat in terms of its official memorandum dated 24-1-2005 (copy at Annexure-G) promptly approved the appointment of fifth respondent in terms of the resolution of the Zilla Panchayat dated 4-7-2003, but having been reiterated on 28-2-2004 and 29-5-2004, as in the meanwhile the earlier resolutions having not worked and the Panchayat had passed identical resolutions for similar reasons. It is challenging the legality of such approval dated 24-10-2005 and for quashing the same, the present writ petition.

7. Insofar as the basic resolution is concerned, it appears an appeal is still pending at large before the respondent 3-Executive Officer, Taluk Panchayat, Tumkur District. It is in such a writ petition, this Court had granted interim order of stay staying the impugned order under Annexure-G.

8. Respondent 5 who is a beneficiary of the resolutions passed by the Grama Panchayat for appointing him as a "bill collector" and who is now stumped because of the stay granted by this Court staying the approval by the respondent 2 has filed an application praying for vacating the interim order of stay dated 21-12-2005 passed in this writ petition.

9. I have heard Sri S. Papireddy, learned Counsel for respondent 5 who has filed the application for vacating stay, Sri Vijayakumar, learned Counsel for the petitioner as also Sri Srinivasamurthy, learned Additional Government Advocate appearing for respondent 1 and Sri Balaraj, learned Counsel appearing for Sri N.K. Siddeswara, learned Counsel for respondent 4.

10. Submission of Sri Papireddy, learned Counsel for respondent 5 is that the respondent 5 had been appointed as a "bill collector"; as he had the necessary

qualification of having passed SSLC; that the Grama Panchayat has passed resolution in his favour not once but thrice; that the respondent 5 even functioned as a "bill collector" for a month; that the present interim order has come in the way of his continued working and therefore the interim order should be vacated and the respondent 5 enabled to work as a "bill collector" particularly as the post is vacant in the Panchayat; that pending determination of the appeal of the petitioner before the respondent 3 there cannot be any impediment for the respondent 5 working as a "bill collector".

11. Submission of Sri Balaraj, learned Counsel appearing for the Panchayat is that the Panchayat having passed a resolution not less than three occasions, the intention of the Panchayat should be given effect to and the resolution should not be modified and at any rate not at the instance of the petitioner in this writ petition etc.

12. Petitioner admittedly is an employee working as a "watermen" in the respondent 4-Grama Panchayat. The manner of appointment or filling up of post of "bill collector" in such Grama Panchayats has been regulated in terms of the Government guidelines/circulars issued from time to time earlier under the Grama Panchayat and Mandal Panchayat Act and later Karnataka Panchayat Raj Act, 1993, which has replaced the earlier statutory provisions.

13. One such Government order governing such appointment is in terms of a Government Order No. GRA/PA/102/VEL/90, Bangalore, dated 10-1-1994 (copy at Annexure-J). In terms of this Government Order, the mode of appointment to the post of the "bill collector" in a Grama Panchayat is by promoting the existing employees who were working earlier in the Mandal Panchayat, on seniority basis or on the basis of continuous officiating and by refixing their seniority if they were earlier employees of the Mandal Panchayat etc.

14. What is pointed out by Sri Vijayakumar, learned Counsel for the petitioner is that there is no scope for direct appointment to the post of the "bill collector" either under this notification or even under a current circular dated 10-1-2005 (copy at Annexure-H). If such is the legal position, submission of the learned Counsel is that there was no occasion for appointing the respondent 5 as a "bill collector" and if the appointment itself suffered from such defect, there was no further occasion for the Zilla Panchayat to have approved such an invalid appointment albeit by the resolution passed by the Gram Panchayat.

15. A perusal of the relevant Government Orders/Circulars does indicate that the post of "bill collector" is not one that can be filled up by direct recruitment, but it is only by way of promoting the existing employees who have suitable qualification such as having passed SSLC. If the petitioner is a person who is an aspirant and who could have filled the post, there was no occasion for the respondent 4-Panchayat to have invited applications. There was never any possibility of appointing a person like respondent 5 for the post of "bill collector" in terms of the Government Order/circular and therefore an approval of the

resolution passed by the Grama Panchayat may be even for the third time, is definitely not proper in law when the resolution is not one appointing a person in terms of the relevant Government Order/Circular issued for the purpose of making such appointment.

16. The approval of the Zilla Panchayat is obviously not sustainable in law and therefore while the application for vacating stay cannot be allowed, on the other hand, the writ petition having been heard for disposal with the consent of all the learned Counsels appearing for the parties, writ petition is disposed of allowing the writ petition, quashing the order of approval No. TU/G/PA/SABA/C(2)/VI/VA/122-2004-05, dated 24-11-2005 passed by the Chief Executive Officer, Zilla Panchayat, Tumkur District, Tumkur (copy under Annexure-G) by issue of a writ of certiorari.

17. Rule issued and made absolute.

18. In the light of the legal position clarified in this writ petition, it is necessary that the authorities whether it is the Appellate Authority or original authority have to pass appropriate orders at the earliest in consonance with the legal clarification made in this order within a period of twelve weeks from the date of receipt of this order.

19. Ordered accordingly. Writ petition allowed.