

(1984) 07 KAR CK 0028
In the Karnataka High Court
Case No : Writ Petition No. 1029 of 1984

Dasegowda

APPELLANT

Vs

Election Officer

RESPONDENT

Date of Decision : 06-07-1984

Acts Referred:

Karnataka Municipalities (President and Vice-President) Election Rules, 1965 — Rule 3 (1) (a), 3 (4)
Karnataka Municipalities Act, 1964 — Section 18, 48

Citation : (1985) ILR (Kar) 3305

Hon'ble Judges : K.A. Swamy, J

Bench : Single Bench

Advocate : Ravivarma Kumar, for the Appellant; Brahmarayappa, Government Advocate for Respondent-1; Chandrasekharaiah, for Respondents-3 and 5, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Swami, J.—Though this Petition is posted for orders, having regard to the fact that it can be disposed of on a short point and also it relates to the election to be held to the office of the President of the City Municipal Council, Hassan, which has been stayed ; it is taken up for final disposal itself.

2. In this Petition under Article 226 of the Constitution, the petitioner has sought for quashing the Calendar of events, dated 30-12-1983 bearing No. Municipal (3) C.R. 99/83-84 (Annexure-A) issued by the Election Officer and the Deputy Commissioner, Hassan District, Hassan, for the purpose of holding an election to the office of the President of the City Municipal Council, Hassan, which is necessitated due to the death of the President on 3-12-1983. The petitioner is one of the Councillors. Respondents 2 to 6 are the other councillors, who have filed their nominations seeking election to the office of the President of the City Municipal Council, Hassan.

3. At the outset, a preliminary objection is raised by Sri Chandrashekharaiyah,

Learned Counsel for the Respondents 3 and 5, and also Sri V. C. Brahmarayappa, Learned Government Advocate appearing for the first Respondent, that the petitioner, having proposed the 2nd Respondent for the office of the President pursuant to the calendar of events in question, is not entitled to seek relief in this Petition ; and the jurisdiction under Article 226 of the Constitution, need not be exercised at his instance.

4. The contentions urged by Sri Ravivarma Kumar, Learned Counsel for the petitioner, admit of following three points for determination :

(1) that the last date fixed for filing the nomination paper falls short of one day ; therefore, the calendar of events is invalid ;

(2) that as one casual vacancy has occurred in the council due to the death of a councillor, the election is proposed to be held; therefore, the Council is not complete ; hence until the election to the casual vacancy is held, the election to the office of the President requires to be postponed ;

(3) that there should have been seven clear days notice for the meeting to be held on 13-1-1984 for electing the President, where-as, the petitioner has been given notice which falls short of 7 days.

5. POINT NO. (1) : The calendar of events is issued on 30-12-1983. The last date fixed for making nominations is 6-1-1984. According to the Learned Counsel for the petitioner, as per Rule 3(1) (a) of the Karnataka Municipalities (President and Vice-President) Election Rules, 1965 (herein-after referred to as "the Rules"), minimum 8 days ought to have been given from the date of issue of the calendar of events for making nominations. Rule 3 (1) (a) of the Rules reads as follows :

"The last date for making nominations which shall be a date not later than the eighth day after the date of publication of the notice."

From the aforesaid Rule, it is clear that the last date to be fixed for making nominations shall be a date not later than the eighth day after the date of publication of the notice. The Rule does not say that a minimum eight days should be provided. It does not say that the last date shall not be earlier than eighth day or less than eight days. What it says, is that the date shall not be later than eighth day. That means, any reasonable period which falls within 8 days from the. date of the publication of the calendar of events can be fixed for filing the nomination paper. In the instant case, the last date fixed is the 7th day from the date of the publication of the calendar of events, even excluding the date of publication. The period of seven days is quite sufficient and reasonable and it cannot be considered to be too short a period so as to hold it to be unreasonable. Therefore, it is not possible to hold that the calendar of events is bad in law on the aforesaid ground. Hence, this point is answered against the petitioner.

6. POINT NO. (2) : This contention also cannot be accepted because the council, which is constituted as per the provisions of the Karnataka Municipalities Act3

1964 (here in after referred to as "the Act") and the Rules framed there-under, does not become incomplete merely because a casual vacancy occurs in the council due to the death of one of the councillors. Section 18 of the Act, clearly provides that the date on which the names of not less than two-thirds of the total number of councillors are published, shall be the date from which the term of office of councillors commences and it shall also be deemed to be the date from which a Municipal Council is duly constituted, and the municipal council so constituted shall be competent to exercise the powers and perform the functions of the municipal council. One of the functions of the Municipal Council is to elect its President and Vice President. Sub-rule (4) of Rule 3 of the Rules provides that in the case of an election to fill a vacancy in the office of the President or the Vice President occurring by reason of his death, resignation, removal or otherwise, a notice under sub-rule (1) shall be issued as soon as may be after the occurrence of such vacancy. Sub-rule (6) of Rule 3 of the Rules, further provides that in the case of elections held under sub-rule (2) or sub-rule (4) the election shall ordinarily be held before the expiry of four weeks from the date of constitution or re-constitution of the Municipal Council, or from the date of occurrence of a vacancy referred in sub-rule (4) as the case may be. Therefore, it is not possible to accept the contention that the election to the office of the President, which is necessitated due to the occurrence of casual vacancy in the office of the President and due to the death of the President, has to be postponed until the casual vacancy in the council is filled up. Such a position is ruled out having regard to the various provisions of the Act and the Rules, referred to above. Hence, this point is also held against the petitioner.

7. POINT NO. (3): The last contention is based on Section 48 of the Act. The said provision itself provides for giving a notice of shorter period of a special general meeting. Further, Rule 9 of the Rules, which governs this aspect specifically, provides that a notice notifying the date and the place of the meeting shall be sent to every member of the council by registered post not less than five days before the date of the meeting. In the instant case, the records of the case made available by Sri Brahmarayappa, Learned Government Advocate, do show that the meeting notice had been sent by registered post to the councillors on the 6th January, 1984 i.e., more than 5 days before the date of the meeting which was scheduled to take place on 13-1-1984 : therefore, I do not see any substance in this contention also. In addition to this, this contention does not survive having regard to the conclusions reached by me on points (1) and (2); because, now a fresh date for poll has to be fixed and fresh notice is required to be given. Accordingly, this point is also held against the Petitioner.

8. In view of the fact that none of the contentions advanced by the petitioner is acceptable, it is not necessary to consider the preliminary objection raised on behalf of the Respondents. For the reasons stated above, this Petition is liable to be dismissed. It is accordingly dismissed.

9. It is brought to my notice that by the time the interim order came to be

passed on 12-1-1984, all the stages of the election were over except the Poll. The poll did not take place having regard to the interim order passed by this Court on 12-1-1984. Now, as a result of dismissal of this Petition, the interim order comes to an end. Respondent No. 1 is now required to proceed with the election process from the stage at which it was interrupted by the interim order passed by this Court. Accordingly, Respondent No. 1 is directed to fix a date for poll in accordance with law and proceed with remaining stages of the election to the office of the President of the Municipal Council in question. Compliance in two weeks from the date of receipt of this order.