
(2016) 10 KAR CK 0102
In the Karnataka High Court
Case No : W.P. No. 204989 of 2016 (LB-RES)

Fatima Anwar Ali

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 27-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Municipalities Act, 1964 — Section 315

Citation : (2017) 1 AirKarR 183

Hon'ble Judges : B.S. Patil, J.

Bench : Single Bench

Advocate : Mohd. Vikharuddin and Sri. J.K. Bukka, Advocates, for the Petitioners; Sri. Syed Habeeb, AGA, for the Respondent Nos. 1 to 6; Sri. Gourish Kashampur, Advocate, for the Respondent No. 7

Final Decision : Allowed

Judgement

B.S. Patil, J. - One of the councillors of City Municipal Council, Bidar, has filed this writ petition challenging the notification dated 20.09.2016 issued by the State Government in exercise of powers under Section 315 of the Karnataka Municipalities Act, 1964 (for short, "the Act"), appointing the Deputy Commissioner, Bidar, as Administrator with effect from 20.09.2016. Incidentally, petitioner was discharging her duties as President of City Municipal Council, Bidar, at the time when the notification was issued. Her period as President was to expire on 21.09.2016, so also the term of Vice-President. That is why calendar of events had been published on 07.09.2016 as per Annexure-C to conduct election to the post of President and Vice-President. Election was scheduled to be held on 20.09.2016.

2. The post of President had been reserved by issuing a notification dated 24.02.2016 in favour of Scheduled Tribe (women). There was a sole candidate who was elected as councillor as against the reserved category of Scheduled Tribe (women). Her caste certificate was cancelled by the Tahsildar. Despite such

cancellation, election to the post of President was sought to be proceeded with. It is in that background, one of the candidates by name Saraswati filed W.P.No.204707/2016. This Court granted interim stay for the election to the post of President as per the notification dated 07.09.2016. Another defeated candidate by name Muttamma had also filed writ petition. So far as the post of Vice-President was concerned, there was no stay and the notification reserving the post of Vice-President in favour of BCA (women) was not stayed by this Court. Hence, there was no impediment for the authorities to proceed with the election to the post of Vice-President.

3. However, instead of proceeding to conduct election to the post of Vice-President, exercising power under Section 315 of the Act, the State Government has appointed an Administrator to manage the affairs of the City Municipal Council, Bidar. In this background, petitioner has challenged the appointment of Administrator.

4. I have heard the learned counsel for both parties and perused the entire materials on record.

5. Sri. J.K. Bukka, learned counsel for the petitioner has placed reliance on the judgment in the case of V. Subba Reddy v. State of Karnataka - ILR 1989 Karnataka 101.

6. Section 315 of the Act deals with power to appoint Administrator in certain cases. It reads as under :

"315. Power to appoint administrators in certain cases : (1) Whenever. -

(a) any general election to a Municipal Council under this Act or any proceedings consequent thereon have been stayed by an order of a competent Court or authority, or

(b) the election of all the councillors or more than two-thirds of the whole number of councillors of the Municipal Council has been declared by a competent Court or authority to be void, or

(c) XXXX]

(d) all the councillors or more than two-thirds of the whole number of councillors of the Municipal Council have resigned, the State Government shall by notification in the Official Gazette, appoint an administrator for such period as may be specified in the notification and may, by like notification, curtail or extend [either prospectively or retrospectively] the period of such appointment [so however, the total period of such appointment shall not exceed six months].

(2) Notwithstanding anything contained in this Act, on the appointment of an administrator under sub-section (1), during the period of such appointment, the said Municipal Council and committees thereof and [the President and Vice-President] charged with carrying out the provisions of this Act, or any other law, shall cease to exercise any powers and perform and discharge any duties or

functions conferred or imposed on them by or under this Act or any other law and all such powers shall be exercised and all such duties and functions shall be performed and discharged by the administrator.

2. The State Government may, if it thinks fit, appoint an advisory council to advise and assist the administrator appointed under subsection (1) in the exercise of the powers and the performance and discharge of the duties and functions conferred or imposed on him under this Act or any other law. The members of the advisory council shall hold office during the pleasure of the State Government."

7. Learned Additional Government Advocate submits that sub-clause 1(a) of Section 315 has application to the present case, inasmuch as this Court had stayed the election to the post of President thereby necessitating appointment of Administrator to manage the affairs of the City Municipal Council, Bidar. This contention cannot be accepted.

8. This is not a case where for the first time general election to the office of the councillors was being held to elect the City Municipal Council or any proceeding consequent thereon was to take place which was the subject-matter of writ petition before this Court wherein interim stay was granted. General election appointing the councillors was held way back in the year 2013. President and Vice-President were duly elected. Their term was to expire on 21.09.2016. The new President and Vice-President from among elected councillors had to be elected. Election to the post of President could not be held because this Court had stayed calendar of events insofar as post of President was concerned. The reason why such an interim order came to be passed was apparent because the only one candidate who belonged to Scheduled Tribe (women) suffered ineligibility to contest as the Tahsildar cancelled her caste certificate. Therefore, election to the post of President could not be held.

9. There was no impediment to proceed with the election to the post of Vice-President, but for reasons best known to the respondent -authorities, election to the post of Vice-President was not conducted. If only election to the post of Vice-President was conducted, elected Vice-President would have assumed office and he/she would have discharged the functions and duties of the President. The State Government has adopted this extraordinary and ingenious method of appointing an Administrator thereby depriving the whole elected body of councillors of their role in the management of affairs of the City Municipal Council. Section 315 of the Act is not designed to confer such a power in the State Government. It cannot be said that the power so exercised in the instant case is exercised in a bona fide manner.

10. Therefore, the order under challenge is vitiated and cannot be sustained. Hence, this writ petition is allowed. Impugned notification is set aside. Respondent - State and Deputy Commissioner are directed to immediately hold election to the post of Vice-President for which reservation has been already

notified and proceed with the election to the post of Vice-President and also eventually to the post of President in accordance with law.