

(1988) 08 KAR CK 0006
In the Karnataka High Court
Case No : W.P. Nos. 5599 to 5602/1988

Gurumurthy B.M. and Others

APPELLANT

Vs

Chief Secretary, Zilla Parishad, Chickmagalur and Another

RESPONDENT

Date of Decision : 11-08-1988

Acts Referred:

Karnataka Local Authorities (Prohibition of Defection) Act, 1987 — Section 4

Citation : (1988) 2 KarLJ 402

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

Judgement

Chandrakantharaj Urs, J.-These petitions coming up for orders regarding I.A.-1 for vacating stay, matters themselves are taken up for final disposal and disposed of by the following order:

These petitions are filed as a common petition by four of the members of the Mandal Panchayath, Bhukambudhi in Tarikere Taluk of Chickmagalur District. They are aggrieved by the order passed as at Annexure "A" by the Jilla Parishad. By the said order, Jilla Parishad in exercise of the power conferred on it under Sec. 4 of the Karnataka Local Authorities (Prohibition of Defection) Act 1987, disqualified the petitioners inter alia on the ground that they disobeyed the whip issued by the President of the District Committee, Janatha Party, Chickmagalur to vote for official candidates set-up by that party to fill the office the Pradhan and Upa-pradhan the elections to which were held on 4-3-1988.

On such complaint received, the 1st respondent-Chief Secretary, Zilla Parishad, Chickmagalur District, issued notice to the petitioners informing them about the complaint. It is seen from the records produced by the counsel for the 1st respondent that on 25-7-1987 a written statement was filed by the petitioners and presented in person denying that no one had issued any whip in regard to the election for the office of the Pradhan and Upa-pradhan much less a whip issued by the President, District Committee of the Janatha Party. It is also seen from the records that one S.K. Puttappa a member of the Mandal Panchayat belonging to the Janatha Party filed a written-statement addressed to the

Secretary. Bhukambudhi Mandal Panchayath and received by the said officer on 7-3-1988. A complaint was made by S.K. Puttappa to the Secretary, Mandal Panchayat that on account of the conduct of the petitioners in these writ petitions, he had lost the election to the office and therefore, the action must be taken under the aforementioned Act. The same was forwarded to the Secretary, Zilla Parishad who caused notice to be issued to the petitioners to appear before him for enquiry on 30-5-1988 at 11 a.m.

At 11'o clock, the petitioners did appear and asked for adjournment till 3'o clock to state their case. However, after deliberations the case was adjourned to 1 p.m. At 1 p.m., they filed their written-statement to which reference has been made earlier. Thereafter, the order at Annexure "A" has been passed on the same day cancelling the membership of the petitioners to the Mandal for violation of Sec. 3 of the Act.

In this court, the 1st respondent has relied upon the statement of T.G. Mallegowda who is the Organizing Secretary of Tarikere taluk Janatha Paksha, and that statement found in the records is to the effect that on 1-3-1988 the meeting was held to decide the official candidates for the office of Pradhan and Upa Pradhan at the election held on 4-3-1988. Nine members of the Janatha Party were present and at that meeting the official candidates were named and the consent of the members present were required to be taken under their signatures. It is alleged that one R.P. Basavarajappa was present at the time. It is further alleged in the statement while six members signed, five members refused to receive the direction and sign the consent letter. It is also alleged that they stated that the act in question was unfair and they may go and take whatever action they wanted. He has named the persons who refused, viz., Sriyuths-(1) B.M. Gurumurthy; (2) B.N. Ramesh, (3) Smt. Shanthamma, (4) Basappa and (5) Thimmappa. He has also said that he obtained the signature of B.P. Basavarajappa as a witness for refusal by the aforementioned members.

There is no record maintained either by the District committee, Janatha Paksha, Jilla Parishad, Chickmagalur-1st respondent or the Secretary, Mandal Panchayat, Bhikambudhi, Tarikere taluk, in regard to the service of the whip. As earlier noticed, all action commenced with the complaint of one S.K. Puttappa three days after the election. At that time, there was no statement made by the Secretary in regard to the refusal of service either before the Taluka committee of Janatha Party, Tarikere or the District Committee of the same party at Chickmagalur. The statement was filed only before the Chief Secretary, Jilla Parishad at the date of the enquiry. In other words the refusal of service could not have been put to the petitioners in the form in which it was placed before the 1st respondent and the records make it obvious that the opportunity to the petitioners to defend the charge was hopelessly inadequate, in as much as the very basis, that is, the refusal of the whip was never put to them nor established. The impugned order itself is indicative that it should be implied as such from the fact that the petitioners belonging to the same political party should be

presumed to have known who the official party candidates were. There is no discussion of the whip being served on the petitioners. Therefore, not only there was no proper application of the mind by 1st respondent but also there was violation of the rules of natural justice in passing the impugned order in so far as the petitioners are concerned, as they were not made aware of the factum of service of the whip which was brought to the notice of the Chief Secretary only on the date of the enquiry apparently behind their back. In fact the records do not disclose that the statement was brought to the notice of the petitioners. From the denial which they have made in their statement, it is obvious that they were not confronted with that statement nor was the Organizing Secretary who made the statement subjected to cross examination by them on that issue.

For the above reasons, the impugned order cannot be sustained as validly made. Therefore, it is set-aside with a direction to hear the complaint afresh after giving opportunity to the petitioners to defend the charge of violating the party whip after making available to them all material documents or otherwise on the basis of which the charge is intended to be proved by the complainant and thereafter pass appropriate orders on the complaint of the said Puttappa.

Accordingly, rule is made absolute.