
(1975) 10 KAR CK 0007
In the Karnataka High Court

H. Annappa Kamath

APPELLANT

Vs

Deputy Commissioner and Another

RESPONDENT

Date of Decision : 08-10-1975

Acts Referred:

Constitution of India, 1950 — Article 227

Karnataka Municipalities Act, 1964 — Section 306 (1), 41, 41 (1)

Citation : AIR 1976 Kar 130 : (1976) ILR (Kar) 108 : (1975) 2 KarLJ 399

Hon'ble Judges : V.S. Malimath, J

Bench : Single Bench

Advocate : Mohandas N. Hegde, for the Appellant; B.B. Mandappa, Government Pleader, for the Respondent

Judgement

1. The petitioner is a Councillor of the Town Municipal Council, Thirthalially. The Municipal Council passed a resolution on the 19th of January, 1975, at a special general body meeting, copy of which is produced in the case as Exhibit-A, u/s 41 of the Karnataka Municipalities Act, 1964 (hereinafter referred to as the Act), recommending to the State Government that disciplinary action should be taken against the petitioner and that he should be removed from the office of the councillor of the Town Municipal Council, Thirthahally. The petitioner filed a petition before the Deputy Commissioner of Shimoga District u/s 306(1) of the Act and prayed for suspending the execution of the resolution or prohibiting giving effect to the said resolution. The Deputy Commissioner, by his order dated 5th of April, 1975, produced in the case as Exhibit-B, rejected the petition holding that there was no sufficient ground to exercise the powers vested in him u/s 306(1) of the Act. It is in this background that the petitioner has filed this writ petition under Article 227 of the Constitution praying that a writ in the nature of certiorari may be issued quashing the resolution of the Municipal Council dated 19th of January, 1975 - Exhibit-A and the order of the Deputy Commissioner - Exhibit-C.

2. Section 41(1) of the Act, under which the impugned resolution has been

passed reads as follows:

"41 (1) the Government, if it thinks fit on the recommendation of the municipal council may remove any councillor elected or appointed under this Act, after giving him an opportunity of being heard and after such enquiry as it deems necessary, if such councillor has been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, or has become incapable of performing his duties as a councillor."

What the Municipal Council has done is to recommend to the State Government to take action to remove the petitioner from the office of the councillor. It is clear from Section 41(1) of the Act that after receipt of the recommendation of the Town Municipal Council, the State Government has to take further action after giving the petitioner an opportunity of being heard and after holding such enquiry as it deems necessary. Section 41(1) of the Act prescribes the complete procedure to be followed in the matter of removal of a councillor. All that has happened in this case is the passing of the resolution by the Town Municipal Council making a recommendation to the State Government u/s 41(1) of the Act for removal of the petitioner. After the receipt of the said recommendation, the State Government has to take further action u/s 41(1) of the Act. Hence. I will not be justified in interfering under Article 227 of the Constitution with the recommendation made by the Town Municipal Council to the State Government under the impugned resolution of the 19th of January, 1975.

3. So far as the order of the Deputy Commissioner dated 5th of April 1975 Exhibit-C is concerned, it is clear that the Deputy Commissioner could not have acted u/s 306(1) of the Act having regard to the facts and circumstances of the case. As Section 41(1) of the Act is a complete code in the matter pertaining to the removal of a personal from the office of the councillor, the question of invoking the power u/s 306(1) of the Act by the Deputy Commissioner does not arise. If the Deputy Commissioner exercises his power u/s 306(1) of the Act and suspends the operation of the resolution of the Town Municipal Council passed u/s 41(1) of the Act, it will have the result of rendering the power of the State Government u/s 41(1) of the Act nugatory. I have therefore no hesitation in holding that the Deputy Commissioner had no competence to entertain the petition filed by the petitioner u/s 306(1) of the Act.

4. It is not as though the petitioner is without any remedy whatsoever. If the State Government is inclined to accept the resolution of the Town Municipal Council and remove the petitioner from the office of the Councillor, it has to give an opportunity to the petitioner of hearing and hold enquiry as it deems fit as required by Section 41(1) of the Act. There is nothing to indicate that the provisions of Section 41(1) of the Act will not be followed by the State Government. As and when the power is exercised by the State Government u/s 41(1) of the Act, the petitioner will have an opportunity of placing his case before the State Government.

5. For the reasons stated above this writ petition fails and is rejected.
6. Sri B. B. Mandappa, learned High Court Government Pleader, is permitted to file his memo of appearance within three weeks from today.
8. Petition dismissed.