

(2010) 02 KAR CK 0035

In the Karnataka High Court

Case No : Writ Petition No's. 80004 and 80007-80011 of 2010 C/w No. 83952 of 2009

Hanumanthappa Togari and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 05-02-2010

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 186, 186 (2), 186 (2A), 188, 197 (2)

Citation : (2010) ILR (Kar) 2915 : (2011) 5 KarLJ 39

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : Shivakumar Malipatil and Veeresh B. Patil, for the Appellant; S.S. Kumman, G.A. for R1 and Ameet Kumar Deshpande, for R2 and R3 in W.P. Nos. 80004 and 80007-11/2010, S.S. Kumaran, GA for R-1, Ameet Kumar, Deshpande, for R-2 and P. Vilas Kumar, for R-3 in W.P. No. 83952/2009, for the Respondent

Judgement

Mohan Shantanagoudar, J.—The Notification Annexure-G dated 30-11-1999 issued by the Chief Executive Officer, Zilla Panchayat, Raichur, in respect of formation of the Standing Committees to the Zilla Panchayat, Raichur, is called in question in W.P. No. 83952/2009.

The petitioners in the said writ petition have also prayed for a writ in the nature of mandamus to direct the first and second respondent to elect the members of the Standing Committees by following the due process of law.

2. W.P. No. 80004/2010 and 80007-11/2010 are filed by the members of Standing Committees for quashing certain restrictive condition found in the Notification dated 30th November 2009 vide Annexure-S to the writ petition. The Notification Annexure- S issued by the Chief Executive Officer, Zilla Panchayat mentions that the Standing Committees are formed subject to the ultimate decision of the State Government.

3. The petitioners in W.P. No. 83952/2009 are the elected members of the Zilla

Panchayat. Their grievance is that the Standing Committees are formed by the Adhyaksha of Zilla Panchayat by selecting and nominating the members to the committees and not by election from among the members of the Zilla Panchayat.

The total term of an elected member of the Zilla Panchayat is five years i.e. 60 months. The Standing Committees are formed under the provisions of Section 186 of the Karnataka Panchayatraj Act. The term of office of every member of the Standing Committees is 20 months from the date of his election or till he ceases to be the member of the Zilla Panchayat. Thus, the Standing Committees will be formed for three terms of 20 months each within the period of five years.

Raichur Zilla Panchayat consists of forty elected members. The meeting of the Raichur Zilla Panchayat was called to elect the Standing Committee members for the third term on 24-10-2009. On that day, resolution No. 4 was passed by the majority of the members of the Zilla Panchayat (24 in number) authorising the Adhyaksha of Zilla Panchayat to nominate the members for the Standing Committees. Remaining sixteen members of Zilla Panchayat, however, opposed such authorisation to be given to the Adhyaksha of Zilla Panchayat. Sixteen members including the petitioners contended in the meeting that the members of the Standing Committees should be elected by the due process of election as per Section 186(2) of Karnataka Panchayat Raj Act, 1993 (hereinafter referred to as the "Act"). Pursuant to the said resolution No. 4 dated 24-10-2009, the members of the Standing Committees were selected by the Adhyaksha of Zilla Panchayat and consequently, five Standing Committees are formed as is clear from Annexure-G to W.P. No. 83952/2009. The formation of such committees is called in question in the writ petition.

4. Based on the provisions of sub-Section (2) of Section 186 of the Act, it is contended on behalf of the petitioners in W.P. No. 83952/2009 that the resolution by majority of members authorising the Adhyaksha of Zilla Panchayat to select the members of the Standing Committees is bad in the eye of the law and consequently formation of Standing Committees by Adhyaksha of Zilla Panchayat without conducting election from among the members of the Zilla Panchayat is illegal and arbitrary. It is further contended that the Chief Executive Officer of Zilla Panchayat ought to have resubmitted the resolution for re-consideration of Zilla Panchayat and ought to have advised the Zilla Panchayat to have recourse to the election of the members of the Standing Committees.

Per contra, it is contended on behalf of the Zilla Panchayat, Raichur that no regulations are framed relating to election of members of standing committees u/s 188(1) of the Act and therefore, the election could not have been held for electing the members of the standing committees; that in the absence of any regulation relating to the election of members of the committees, the Zilla Panchayat opted to follow its own precedent of authorising the Adhyaksha of the Zilla Panchayat to select the members of the standing committees. It is brought to the notice of this Court by the Learned Advocate appearing on behalf of the respondents that all through till this day, the elected members of the Zilla

Panchayat used to authorise the Adhyaksha of Zilla Panchayat to nominate elected members of the Zilla Panchayat to the Standing Committees and the same procedure is followed on this occasion also, particularly in the absence of any regulation relating to the election of members of the standing committees. Thus, according to the respondents there is no illegality committed by the respondents.

It is contended on behalf of the Chief Executive Officer that here submitted the resolution to the Zilla Panchayat for reconsideration, but the same was of no use inasmuch as the resolution pertaining to granting authorisation to the Adhyaksha of Zilla Panchayat to select the standing Committees members was not altered by Zilla Panchayat even subsequently. Having no other go, the Chief Executive Officer has sent the resolution passed by the Zilla Panchayat, forming Standing Committees, to the State Government for approval u/s 197(3) of the Act. Since the Government did not communicate its decision on the subject within 15 days from the date of receipt of the letter of the Chief Executive Officer, the resolution relating to formation of Standing Committees was implemented.

5. It is relevant to note the provisions of Sections 186(2), 186(2A), 188 and 197 (2) and (3) of the Karnataka Panchayatraj Act:

186((2) Each Standing Committee shall consist of such number of members not exceeding seven including the Chairman as specified by the Zilla Panchayat elected by the members of the Zilla Panchayat from amongst the elected members. The election of members of Standing Committee shall be held as soon as may be after every general election of member of Zilla Panchayat or on its reconstitution or establishment under this Act or immediately before the expiry of the term of office of the members of the Standing Committee:

Provided that the Social Justice Committee shall consist of at least one member who is a woman and one member from either the Scheduled Castes or the Scheduled Tribes whichever has more number of elected members.)

((2A) The term of office of every member of the standing Committee shall, save as otherwise provided in this Act, be twenty months from the date of his election or till he ceases to be a member of the Zilla panchayat, whichever is earlier.)

188 Procedure of Committees: (1) The Zilla Panchayat may frame regulations relating to election of members of Committees, conduct of business therein, and all other matters relating to them.

197(2) The Chief Executive Officer shall attend every meeting of the Zilla Panchayat and shall have right to attend the meeting of any Committee thereof and to take part in the discussion but shall not have the right to move any resolution or to vote. (If in the opinion of the Chief Executive Officer any proposal or resolution before the Zilla Panchayat or any Committee or any order of the Adhyaksha is violative of, or inconsistent with, the provisions of this Act, or any other law or rule or order made thereunder or any financial regulation or

budget provision or is in derogation of the functions and powers of the Zilla Panchayat, or its committee or the Adhyaksha, it shall be the duty of the Chief Executive Officer to advise the Zilla Panchayat or the Committee or the Adhyaksha in the form of written note containing the reasons for his opinion and specifying the law, rule, order, regulation or provision with which the proposal or resolution or order is inconsistent and if the proposal or resolution or order has been considered and passed by the Zilla Panchayat or the committee or the Adhyaksha before such advise is tendered, the Chief Executive Officer may resubmit the proposal or resolution or order with his advice after such examination as he considers necessary.)

(3) If the Zilla Panchayat or any of its committees or the Adhyaksha passes the resolution or order without resolving the inconsistency referred to in sub-Section (2) it shall be the duty of the Chief Executive Officer, notwithstanding any other provisions in this Act, to forward forthwith to the Government under intimation to the Adhyaksha a copy of the said resolution or order along with his written note and he shall not implement such resolution or order otherwise than as decided by the Government.

Provided that if the Government does not communicate its decision within fifteen days from the date of receipt of such letter, the Chief Executive Officer shall take action to implement such resolution of the Zilla Panchayat or the committee or the order of the Adhyaksha.

(Emphasis Supplied)

From the aforementioned provisions, it is clear that the Standing Committees would be for the period of 20 months. The Standing Committees shall consist of the members who are elected from amongst the elected members of the Zilla Panchayat. The election process of Standing Committees shall be held as soon as may be after every general election of Zilla Panchayat or on its reconstitution or immediately before the expiry of the term of the office of the members of the Standing Committees. Section 188 requires the Zilla Panchayat to frame the regulations relating to election of members to the Committees.

6. Provisions of sub-Section (2) of the Section 186 make it amply clear that the members of the each Standing Committee shall be elected from among the elected members of Zilla Panchayat. However, the word "may" is used in Section 188 with regard to framing of regulations relating to election of the members of the Committees etc., Ordinarily the word "may" is not the word of compulsion. It is enabling word and it only confers capacity, power or authority and implies discretion. It is used in a statute to indicate that something may be done which prior to it could not be done. But, when a capacity or power is given to a public authority, there may be circumstances which couple with the power a duty to exercise it or the manner in which it may only be exercised. In other words, the legal and factual context in which the power is to be exercised may combine the power with an obligation to exercise it even though it is conferred by use of the

word "may". Where a power is deposited with a public officer/authority for the purpose of being used for the benefit of persons, that power ought to be exercised and the Court will require it to be exercised. The enabling words are considered as compulsory whenever the object of the power is to effectuate the legal right. Even if the words used in the statute are prima facie enabling, the Courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right - public or private - of a citizen. When the context shows that the power is coupled with an obligation, the word may should be construed to mean a command.

The word "may" is often read as "shall" or "must" when there is something in the nature of the thing to be done which makes it the duty of the person on whom the power is conferred to exercise the power. *Sardar Govindrao and Others Vs. State of Madhya Pradesh*, .

In fact, it is not quite accurate to say that the word "may" by itself, acquires the meaning of "must" or "shall" sometimes. This word however, always signifies a conferment of power. That power may, having regard to the context in which it occurs, and the requirements contemplated for its exercise have annexed to it an obligation which compels its exercise in a certain way on facts and circumstances from which the obligation to exercise it in that way arises. In other words, it is the context which can attach the obligation to the power compelling its exercise in a certain way. The context, both legal and factual, may impart to the power that obligatoriness. *The Official Liquidator Vs. Dharti Dhan (P) Ltd., and Shri Rangaswami, The Textile Commissioner and Others Vs. The Sagar Textile Mills (P) Ltd. and Another*, ".

Thus, the question to be determined in such cases always is whether the power conferred by the use of the word "may" has annexed to it an obligation that, on the fulfillment of certain legally prescribed conditions, a particular kind of order must be made. In such a case, it is always the purpose of the power which has to be examined in order to determine the scope of the discretion conferred upon the donee of the power. If the conditions in which the power is to be exercised in particular cases are also specified by a statute then, on the fulfillment of those conditions, the power conferred becomes annexed with a duty to exercise it in that manner. u/s 186(2) of the Karnataka Panchayat Raj Act, it is mandatory on the part of the Zilla Panchayat to form Standing Committees by election from among the elected members of the Zilla Panchayat. Thus, it is clear that the power conferred on Zilla Panchayat by the use of the word "may" in Section 188(1) of the Panchayat Raj Act has annexed to it an obligation that the Standing Committees should be formed through elections. For conducting the elections to the Standing Committees, the regulations are necessary and must. In that context, it is obligatory on the part of the Zilla Panchayat to frame regulations u/s 188(1) of the Act. Hence, the word "may" as found in sub-Section (1) of 188 means "must". The Zilla Panchayat has to make regulations before conducting elections unless members of the Zilla Panchayat agreed for

unanimous choice.

In this matter, Section 186(2) obligates and mandates that the members of Standing Committees should be elected from among the elected members of the Zilla Panchayat. Thus there is no question of selection of any Standing Committee member by anybody including Adhyaksha. The mode of conducting elections has to be regulated by the regulations. Such regulations will have to be framed u/s 188 of the Karnataka Panchayat Raj Act. Since the election of the Standing Committee members is compulsory, framing of regulations relating to election of members of Standing Committees is also compulsory.

7. The word "may" used in Section 188 if not construed as "shall" would defeat the purpose of the Act and would lead to unjust results. The context shows that the power to form the Standing Committees is coupled with an obligation to elect the Standing Committees members. The use of permissive word "may" in Section 188(1) of the Act is the usual courtesy shown by the legislature in dealing with the Panchayat institutions. There cannot be any dispute that the three tier Panchayat Raj system in the Karnataka with the elected bodies of Grama, Taluka and District levels is created for greater participation of the people and more effective implementation of the rural development programmes in the State.

Looking to the scheme of Panchayat Raj Act, it is clear that the Panchayats at Grama, Taluka and Zilla levels and the Standing Committees formed thereunder are through the democratic process of election. In view of the same, it is mandatory on the part of the Zilla Panchayat to frame regulations relating to election of the members of the Committees, etc.,

Thus it is clear that the word "may" used in Sub-Clause (1) of Section 188, shall have to be construed and read as "shall". Otherwise, Sub-section (2) of Section 186 requiring the elected members from among the elected Zilla Panchayat members to form standing committees will be of no meaning.

8. There cannot be any dispute that each of the Standing Committees of the Zilla Panchayat should be formed from among the elected members of the Zilla Panchayat. The same should be through election process inasmuch as the Standing Committees members also should be elected from among the elected members of the Zilla Panchayat. Section 186(2) is clear on the subject. Had there been unanimity among the members of the Zilla Panchayat of authorising the Adhyaksha to nominate the Standing Committee members, the things would have been otherwise. But in the case on hand, there was no unanimity among the elected members of the Zilla Panchayat for authorising the Adhyaksha to nominate the members of the Standing Committees. Admittedly 16 members out of 40 elected members of the Zilla Panchayat opposed such authorisation. They specifically contended in the meeting that the Standing Committees should be formed by electing the members as per Section 186(2) of the Act. Ignoring such assertion of 16 members, majority of the members viz., 24 members authorised the Adhyaksha of Zilla Panchayat to select the members of the Standing

Committees. Consequently, Adhyaksha of the Zilla Panchayat has selected the members to the Standing Committees allegedly from out of those 24 members who authorised him to form the Standing Committees. The procedure adopted by the Zilla Panchayat particularly in the light of the opposition by the 16 elected members, authorising the Adhyaksha of Zilla Panchayat to form Standing Committees is illegal, arbitrary and undemocratic and is opposed to the specific provisions of the Sub-clause (2) of the Section 186 of the Act. When the law prescribes that the Standing Committees should be formed in a particular manner, i.e. by election, the Zilla Panchayat ought to have formed the Standing Committees only in that manner. The mandate contained in Sub-clause (2) of Section 186 is highly democratic in nature, inasmuch as it mandates that the Standing Committees should be formed by the members who are elected from among the elected members of the Zilla Panchayat, which means the legislature wants the Standing Committees should be formed only by way of election of the members and not by selection by the Adhyaksha of the Zilla Panchayat. In view of the same, the procedure adopted by the Zilla Panchayat in forming the Standing Committees is illegal.

Even under the provisions of Section 302-A(1)(c), it is mandatory that the members of the Committees u/s 186 shall be elected to the Zilla Panchayat of the new District if the new District is constituted under the Karnataka Land Revenue Act by altering the limits of such Districts.

9. Though the Panchayat Raj Act has come into force in the year 1993, it is unfortunate that Raichur Zilla Panchayat has not framed the regulations relating to election of members of the Standing Committees. As aforementioned, the framing of regulation for election of members of standing Committees is a must. In the absence of such regulations, Sub-clause (2) of Section 186 will be meaningless.

10. During the course of the hearing, this Court directed the Chief Executive Officer, Zilla Panchayat, Raichur, to find out from other Zilla Panchayats of the State, as to the procedure adopted by them while forming the Standing Committees. On 23-01-2010, a memo is filed by the respondent No. 2 along with certain records before the Court. The records produced by the Chief Executive Officer, Zilla Panchayat, Raichur reveal that out of 29 Zilla Panchayats in the State.(apart from Raichur Zilla Panchayat), 21 Zilla Panchayats have framed regulations, out of which 19 Zilla Panchayats have opted for electing members of the Standing Committees through secret ballot, whereas two Zilla Panchayats namely Hassan and Tumkur have opted for electing the Standing Committees by raising hands. From among the eight Zilla Panchayats which have not framed regulations for conducting the elections to the Standing Committees, six Zilla Panchayats have elected the members of the Standing Committees unanimously i.e. all the elected the members of the six Zilla Panchayats have unanimously agreed and elected the members of the Standing Committees of such six Zilla Panchayats. The remaining two Districts are Yadgir and Bellary. Yadgir is newly

formed District and consequently the members of Standing Committees are not elected as on this day for the said Zilla Panchayat. However, no information is supplied to the Court, in respect of Bellary Zilla Panchayat.

From the above, it is clear that 21 Zilla Panchayats in the State, that is majority of the Zilla Panchayats have already framed regulations in respect of electing the members of the Standing Committees. The remaining Zilla Panchayats have elected the Standing Committees members unanimously i.e. by unanimous choice. But unfortunately, Raichur Zilla Panchayat, neither has framed the regulations relating to elections to the Standing Committees nor has elected the Standing Committees members unanimously.

11. On the other hand, Raichur Zilla Panchayat by majority of 24:16 members have authorised the Adhyaksha of Zilla Panchayath to select the Standing Committees members. Since there is no unanimity among the members of the Zilla Panchayat, authorisation should not and could not have been given by the majority of the members to the Adhyaksha for selecting the Standing Committees members. The mandate contained in Sub-clause (2) of Section 186 is that the members of the Standing Committees should be elected from among the elected members of the Zilla Panchayat members. The word election cannot be equated to "selection". Election must be through democratic process, either through the process of secret ballot or through raising of hands. It can also be through the unanimous election of the Standing Committees members. Even if one elected member of the Zilla Panchayat opposed to the process of selection of the members of the Standing Committees. The only course open to the Zilla Panchayat is to elect the Standing Committees members through democratic process of election.

12. As the election to the members of the Standing Committees is not conducted based on political parties "symbol" even a single member or two members who does/do not belong to any political party or belonging to the political party which has got minority in the Zilla Panchayat may contest and get elected as Standing Committees member/members. In this view of the matter, the procedure of majority of members of authorising the Adhyaksha of Zilla Panchayat to nominate the Standing Committee members is illegal and undemocratic. As aforementioned, six of the Zilla Panchayats of the State of Karnataka, where in the regulations relating to election to the Standing Committees are not framed, have unanimously elected members to the Standing Committees. Such procedure is also not adopted by the Raichur Zilla Panchayat. Therefore, the Notification containing the constitution of the Standing Committees by the Zilla Panchayat, which is impugned in writ petition No. 93952/2009 is bad in the eye of law and therefore, the same is liable to be quashed.

13. It is unfortunate that, in spite of the best efforts of Chief Executive Officer of the Zilla Panchayat, Raichur in bringing to the notice of the Adhyaksha and other members of the Zilla Panchayat, Raichur about the correct procedure to be followed, majority of the elected members of the Zilla Panchayat have opted for

the illegal method of selecting the Standing Committee members of their own choice by authorising the Adhyaksha of the Zilla Panchayat. Therefore, no fault can be found in the working of the Chief Executive Officer as he has done his best to safeguard the relevant provisions of the Karnataka Panchayat Raj Act and working of Zilla Panchayat, Raichur.

14. It is brought to the notice of the Court by the Learned Advocate appearing for the Zilla Panchayat that the term of existing Zilla Panchayat members, Raichur would expire on 24-01-2011. Since the constitution of the Standing Committees of the Zilla Panchayat, Raichur and the consequent Notification dated 30-11-2009 issued by the Chief Executive Officer is illegal, the same is liable to be quashed. Thus standing committees will have to be constituted once again by the due process of election, at least for the future period.

15. This Court hopes that the Zilla Panchayat, Raichur will frame regulations as early as possible so as to avoid confusion and to have a definite procedure in respect of electing the Standing Committees members. Since, regulations are not framed by the Zilla Panchayat, Raichur as on this day, in the matter of electing the Standing Committees members, this Court proposes to direct the Raichur Zilla Panchayat during interregnum, to fall in the line with the majority of the Zilla Panchayats in the State who have conducted the elections to the Standing Committees through the process of secret ballot. Koppal District is the newly formed District carved out of erstwhile (united) Raichur District, Koppal Zilla Panchayat has formed regulations for conducting elections to the Standing Committees. In my considered opinion, interest of justice will be met, if the Zilla Panchayat, Raichur is directed to conduct elections to the Standing Committees taking guidance from the regulations framed by the Koppal Zilla Panchayat as an interim measure. By the said process, no prejudice or injustice will be caused to anybody. Accordingly, the following order is made:

ORDER

(i) The Notification dated 30-11-2009 issued by the 2nd respondent vide Annexure-G in W.P. No. 83952/2009 of formation of Standing Committees to the Zilla Panchayat, Raichur stands quashed.

(ii) The respondents in W.P. No. 83952/2009 are directed to elect the members of the Standing Committees by the process of secret ballots to be conducted from among the elected members of the Zilla Panchayat by taking guidance of the regulations of Koppal Zilla Panchayat for the remaining term of office.

(iii) The Chief Executive Officer of the Zilla Panchayat, Raichur shall receive the nominations of the intending candidates and thereafter conduct the elections for standing committees.

(iv) It is hoped that the Raichur Zilla Panchayat will frame regulations in the matter of conducting elections to the Standing Committees as earlier as possible.

With the above directions, the writ petition No. 83 952/2009 is disposed of and

W.P. Nos. 80004/2010, 80007-11/2010 are dismissed.