
(1983) 07 KAR CK 0002
In the Karnataka High Court
Case No : W.A. No. 1533 of 1982

Honnagiri Gowda

APPELLANT

Vs

State of N. Karnataka and Others

RESPONDENT

Date of Decision : 22-07-1983

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 16

Citation : (1984) 1 KarLJ 440

Hon'ble Judges : V. S. Malimath, Acting C.J.;N. Venkatachala, J

Judgement

Malimath, C.J.-The appellant Honnagiri Gowda was the president of the Town Municipal Council. Pandavapura. The Deputy Commissioner, Mandya, on receipt of a petition from some Councillors making certain allegations of misconduct against the appellant, directed the" Assistant Commissioner, Pandavapura, to enquire into those allegations. There were as many as 34 allegations against the appellant, and the Assistant Commissioner, on enquiry, came to the conclusion that only six charges are sustainable, and accordingly made a report to the Deputy Commissioner who in turn made a further report to the Divisional Commissioner, Mysore Division, Mysore. The Divisional Commissioner, on the basis of the said report and also the further allegations which he received subsequently, framed as many as 8 charges against the appellant, and on enquiry came to the conclusion that charges Nos. 2, 3, 7, and 8 are proved and that charges Nos. 1, 4, 5 and 6 are not proved. The Divisional Commissioner further came to the conclusion that the findings recorded by him in regard to charges 2, 3, 7 and 8 are sufficient to justify an inference that the appellant is guilty of misconduct. In that view of the matter, he made an order on 11th of April 1982, under S. 42(10) of the Karnataka Municipalities Act, 1964, (hereinafter referred to as "the Act"), removing the appellant from the office of the President of the Town Municipal Council, Pandavapura, on the ground of proved misconduct. The appellant challenged the said order of the Divisional Commissioner in W.P. No. 16498/82. The learned Single judge having dismissed the Writ Petition by his order dt. 8th of July 1982, the appellant has come up

with this appeal.

2. Sri R.B. Guttal, learned Counsel for the appellant, contended that the procedure followed by the Divisional Commissioner is clearly illegal as the principles of Natural justice have been seriously violated. He submitted that the Divisional Commissioner could not have relied upon any material which the appellant had no opportunity of meeting. His contention is that the Divisional Commissioner has recorded his findings on the basis of the report of the Assistant Commissioner, and as the Assistant Commissioner when he held the enquiry and made his report did not give any opportunity to the appellant to participate in the said enquiry proceedings, the Divisional Commissioner could not have relied upon the report of the Assistant Commissioner without furnishing a copy of the report of the Assistant Commissioner to the appellant and giving him an opportunity of showing in that behalf.

3. The contention so put forward is prima facie very attractive. But it appears to us on a closer scrutiny of the facts that there is no basis for the argument of Sri Guttal. The fundamental basis of the argument of Sri Guttal, is that the Divisional Commissioner has relied upon the report of the Assistant Commissioner for coming to the conclusion that the appellant is guilty of charges 2, 3, 7 and 8. If Sri Guttal is right in arguing that the Divisional Commissioner has relied upon the report of the Assistant Commissioner, he would be further right in contending that the finding of the Divisional Commissioner would stand vitiated, the appellant not having been given an opportunity to show cause in respect of the report of the Assistant Commissioner. But, on a careful and close reading of the order of the Divisional Commissioner, it is not possible to agree with the contention of Sri Guttal that the Divisional Commissioner has relied upon the findings recorded by the Assistant Commissioner. It is no doubt true that in the preamble portion of the order of the Divisional Commissioner he has adverted to what happened before he commenced the enquiry. He has stated that on receipt of the petition containing allegations the Assistant Commissioner held an enquiry in respect of 34 allegations and on holding an enquiry the Assistant Commissioner reported that only 6 charges are proved, and the report of the Assistant Commissioner was forwarded to the Dy. Commissioner who in turn forwarded a further report to the Divisional Commissioner with a recommendation to hold an enquiry. Apart from stating this historical background of what happened before the enquiry was commenced by the Divisional Commissioner, we do not find in the order of the Divisional Commissioner any reliance being placed by him on the report of the Assistant Commissioner for coming to the conclusion that charges 2, 3, 7 and 8 are proved. There is independent discussion of the material placed during the course of the enquiry, made by the Divisional Commissioner in respect of all the eight charges. The Divisional Commissioner has given an opportunity to the appellant of placing evidence in support of his case. It is after giving such an opportunity and after giving him an opportunity of being heard that the Divisional Commissioner has recorded his findings. In the discussion pertaining to charges 2, 3, 7 and 8 of

which the appellant is found guilty, we do not find any reference to the enquiry report of the Assistant Commissioner. It is, therefore, not possible to agree with the contention of Sri Guttal that the Divisional Commissioner has for his findings relied upon the report of the Assistant Commissioner. It is in this background that the learned single Judge has taken the view and in our opinion rightly that the appellant was not entitled to a copy of the report of the Assistant Commissioner as that report of the Assistant Commissioner was in respect of an enquiry held for finding as to whether there is a prima facie case made out justifying a regular enquiry being held by the appropriate authority, We are, therefore, clearly satisfied that there is no violation of the principles of Natural justice in this case.

4. So far as the merits of the case are concerned, the learned single Judge has observed that there was no serious argument in that behalf. We also find on a perusal of the findings recorded by the Divisional Commissioner that his findings are based on the material collected by him during the course of the enquiry held by him. It is not possible to take the view that his findings are so perverse as to justify interference by this Court under Art 226 of the Constitution of India. The sum and substance of the four charges of which the appellant is held guilty, is that the appellant in his capacity as President of the Town Municipal Council has tried to discharge many functions which were the legitimate functions of the Chief Officer and that they were carved out exclusively for the functioning of the Chief Officer. In other words, the clear effect of the findings of the Divisional Commissioner is that the appellant has in his capacity as President usurped some of the powers which were required to be exercised by the Chief Officer at his own discretion. If that is the thrust of the functioning it is not possible to accept the contention of Sri Guttal that the charges of misconduct cannot be regarded as having been proved.

5. Before concluding we would like to advert to the provisions of proviso (c) to sub-sec. (1) of S. 16 of the Act which empowers the State Government to remove the dis-qualification that gets attracted for a period of 4 years under clause (f) of the said sub-section. Having regard to the nature of the findings recorded by the Divisional Commissioner, the appellant can move the Government for appropriate relief in this behalf.

6. For the reasons stated above, this appeal fails and is dismissed. No costs.

7. Sri R.H. Chandanagoudar, Learned Government Advocate, Is permitted to file his memo of appearance for respondents 1 to 4.