
(2010) 04 KAR CK 0055
In the Karnataka High Court
Case No : Writ Petition No. 3925 of 2008

Jayaramaiah

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 13-04-2010

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 12, 13 (2)

Citation : (2010) 4 KarLJ 376

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : K.R. Nagendra, for Nag Associates, for the Appellant; R. Devdas, A.G.A. and C.A.R. Associates, for the Respondent

Judgement

A.S. Bopanna, J.—The petitioner is before this Court praying that a mandamus be issued to the respondents 2 to 4 to consider the representation of the petitioner dated 1-12-2007 marked as Annexures-H, J and K to the petition.

2. The contention of the petitioner is that the fifth respondent herein is a member of the Madhugiri Taluk Panchayat. The petitioner is a member of the Grama Panchayat. The Grama Panchayat of which the petitioner is a member has constructed a shopping complex and in the meeting of the Grama Panchayat, it was decided to allot the shops by way of auction. The petitioner contends that the fifth respondent though not entitled to participate in the auction and make use of the premises which belong to Panchayat had selected certain persons to bid on his behalf and further rents are also not being paid in respect of the said premises. It is in that regard, the petitioner is said to have submitted the representations as at Annexures-H to K pointing out this aspect of the matter and also indicating that in view of the said action, the fifth respondent has incurred disqualification as provided u/s 12 of the Karnataka Panchayat Raj Act, 1993 (for short, "the Act").

3. The grievance of the petitioner is that despite lapse of sufficient time, the respondents 2 to 4 have not acted upon the representations. In this regard, the

petitioner is before this Court seeking for issue of mandamus.

4. Insofar as the allegations made by the petitioner against the fifth respondent, the fifth respondent seriously disputes the same by contending that he has not committed any act so as to incur disqualification.

5. The learned Government Advocate would however point out that the action for the disqualification incurred u/s 12 is to be taken as contemplated u/s 13 of the Act. In this regard, Sub-section (2) of Section 13 of the Act would provide that the action is to be initiated in a case of disqualification either suo motu or on a report made to the State Election Commission. In this regard, it is pointed out that the representations made to the respondents though had not been acted upon, it is open for the petitioner to make appropriate representation to the Election Commission. As such, in a matter of this nature, a mandamus need not be issued.

6. Having considered the rival contentions, with regard to the correctness or otherwise of the allegation against the fifth respondent having incurred disqualification, the same need not be gone into in detail since it is the State Election Commission which is the authority that would have to consider that aspect of the matter. Therefore, the only aspect to be considered in this petition is as to whether a mandamus needs to be issued in this petition or any other order is to be made.

7. It is no doubt true as pointed out by the learned Government Advocate that it is the State Election Commission, which has to act in this regard as provided u/s 13(2) of the Act. The action to be initiated by the Election Commission could either be suo motu or based on a report. Therefore, in a normal circumstance, the representation submitted by the petitioner as at Annexures-H to K were sufficient for the respondents 2 to 5 to look into the same and if there was any act as alleged by the petitioner, a report could have been submitted to the State Election Commission. Despite the said position, at this juncture, I see no reason to issue a mandamus to the respondents herein to consider the same and thereafter submit a report to the Election Commission if any truth is found in the allegation. I am of the said view since sufficient time has elapsed and there is no further details available before this Court as to the subsequent developments that have taken place with regard to the auctioning of the building and also the manner of continuation of the fifth respondent and as to whether the allegations are true or not.

8. Therefore, the present petition is disposed of, reserving liberty to the petitioner to make an appropriate representation to the State Election Commission, if still according to the petitioner the grievance survives and the petitioner can indicate certain acts which have been committed by the fifth respondent incurring disqualification as indicated u/s 12 of the Act. If such representation is made by the petitioner to the State Election Commissioner, it is needless to mention that the State Election Commissioner will act in accordance

with law.

In terms of the above, the petition stands disposed of with no order as to costs.