

(1990) 06 KAR CK 0018
In the Karnataka High Court
Case No : Writ Petition No. 11263 of 1990

J.S. Basavaraj and another	Vs	APPELLANT
State of Karnataka and others		RESPONDENT

Date of Decision : 26-06-1990

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 18, 20, 38

Citation : AIR 1991 Kar 279 : (1990) ILR (Kar) 2595

Hon'ble Judges : N.Y. Hanumanthappa, J

Bench : Single Bench

Advocate : Basavaraj v. Sabrad, for the Appellant; Smt. Nimmi Swamy, Govt. Pleader and B.G. Sridharan, for the Respondent

Judgement

1. The petitioners have challenged in this petition the order passed by the Government (Annexure D) postponing the election to the offices of the President and the Vice President on the ground that such an order is illegal and without jurisdiction. The facts relating to the order are as follows:

The petitioners and several others had filed their nominations seeking elections to the Doddaballapur Town Municipal council which consists of 23 members to be elected from 5 wards. As per the calendar of events, 29-4-1990 was the date of election. Unfortunately one of the candidates of Ward 2 died before the election. Accordingly the election in Ward 2 was countermanded. The councillors to be elected from Ward 2 were 5 in number. As the election in Ward 2 was countermanded, the Returning Officer held election in the other wards, viz., Wards Nos.1,3,4 and 5 and 18 persons came to be elected including the petitioners. The list of elected members was published by the Deputy Commissioner in the Gazette as required u/S.20 of the Karnataka Municipalities Act, 1964. When 18 persons out of 23 were declared elected, it was felt by the authorities that the council has got more than 2/3 majority as per law and thus the council was duly constituted. It is not in dispute that under S.18(1)(a) of the Act the terms of office of the councillor is 4 years. S.18 of the Act reads as

follows:

"18.Term of office of councillors.-

(1) The term of a Councillor-

(a) elected at a general election shall be four years:

Provided that the Government may, by notification, for reasons to be specified therein, extend, either prospectively, or retrospectively the term of office of such councillors by such period or periods as it deems fit; so, however, that the total period so extended shall not exceed twenty four months;

(b) appointed u/S.12 shall be one year or till a Councillor is elected in the vacancy, whichever is earlier.

(1A) The term of office of councillors elected at a general election or appointed u/ S.12 shall commence on the date of publication of their names u/S.20 or immediately after the expiry of the term of office of the outgoing councillors, whichever is later. Where the names are so published on more than one date the date by which the names of not less than two thirds of the total number of councillors has been published shall be deemed to be the date of the publication of names for the purpose of this sub-section.

(2).....

(3) The date from which the term of office of not less than two-thirds of the total number of councillors commences under this section shall for purposes of this Act be deemed to be the date from which a municipal council is duly constituted, and the municipal council so constituted shall be competent to exercise the powers and perform the functions of the municipal council."

The proviso to S.18(1)(a) gives power to the Government to extend the term of councillors. But the power to reduce the said term is not conferred on the Government. The term of 4 years shall start from the date of publication of names in the notification as required u/S.20 of the Act. U/S.18(3) of the Act, the Municipal Council is deemed to be duly constituted and competent to exercise the powers and perform the functions of the municipal council once it is shown that not less than 2/3 of the total number of councillors are available.

2. On 16-5-1990 the Returning Offices of the President and the Vice President, when 2/3 of the total number of members were available. As per the said calendar of events, the last date for filing nominations was 23-5-1990 and in the event of contest the election was to be held on 30-5-1990. When the election process had commenced, one of the candidates of Ward 2 along with others moved the Deputy Commissioner to postpone the elections to the offices of the President and the Vice President to be held on 30-5-1990. The Deputy Commissioner refused their request. At that stage the Government sent a general circular to all the municipalities. The said circular at Annexure D was issued on 19-5-1990 to postpone the elections to the offices of the Presidents

and the Vice Presidents of all the Municipalities in the State. The circular is the subject matter of this writ petition. Pursuant to the said circular at Annexure D the elections to the offices of the President and the Vice President could not be held. No doubt, u/S.38 of the Act, the Government has got power to postpone the election.S.38 of the Act read as follows:

"38. Control of elections.-

(1)Every election of councillors shall be subject to the control and supervision of the Government and it shall be lawful for the Government of issue directions regarding all the matters connected with the elections including directions for cancellation of the calendar of events of postponement of the poll....."

Reading of S.38(1) makes it clear that the Government has got power to issue directions in all matters connected with elections including directions for cancellation of the calendar of events and postponement of poll, etc. It is proper to note at this stage that the power given to the Government to postpone the elections or to cancel the calendar of events shall not be exercise in each and every case and the Government cannot go on postponing or cancelling the elections. It can be exercised only when there is imminent threat or danger in the area and when there is imminent threat or danger in the area and when it is impossible to hold the elections. From this it is clear that under normal circumstances it is not proper for the Government to postpone the election or cancel the calendar of events even though S.38 of the Act empowers the Government to have control over the elections.

3. Though the said circular at Annexure D came to be challenged in this writ petition, the petitioner were not successful in getting an interim order staying Annexure D.As there was no staying the said Circular at Annexure D, the election in Ward 2 which was countermanded earlier was held on 17-6-1990 and the result were published in the Gazette as required u/S.20 of the Act,on 26-6-1990. A copy of the said publication is now made available by the learned Government Pleader. The correctness of the said publication is not disputed by either side.

4. What the petitioners contend is (i) once the election process is commenced neither the Deputy Commissioner nor the Government has power to interfere with;(ii) the Government has no authority or power to curtail the term of office of the councillors which, according to Section 18 of the Act, is 4 years;(iii) by virtue of the postponement of the election as per the Circular at Annexure D, virtually the Government has reduced the period of the office of the councillor from 4 years to a lesser period; and (iv) even though the law envisage that the term of office is 4 years, the same has been curtailed by the postponement of the election even thought the term of office of the councillors, President and the Vice President is conterminous. The petitioners also contended that it is proper for this Court to interfere with the Circular at Annexure D and to direct the Returning Office to proceed with the election to the offices of the President and the Vice President from the stage where it was stopped and further not to permit the

additional respondents who have come on record by impleading themselves as such to participate in the election of the President and the Vice President. Lastly, they contended that the postponement of election is nothing but mala fides on the part of the Government, as the Government wanted to see that the councillors following a particular political party shall be the President and the Vice President and not the petitioners.

5. Learned counsel for the petitioners, against the postponement of the election, relied on a decision of the Division Bench of this Court in *Sripad Ramachandra v. Getta* (W.P.No.1220 of 1979 decided on 3-12-1979 Short Note No.136 in 1980 (1) Kar LJ 43.

6. As a reply to the above contentions, the learned counsel for the additional respondents as well as the learned High Court Government Pleader submitted firstly that no illegality has been committed by the Government in postponing the election. Secondly, it is incorrect to state that the postponement of election to the offices of the President and the Vice President of the Town Municipal Council was with a mala fide intention as the petitioners have not shown any malice the Government had against the petitioners. Thirdly, the postponement of elections to the offices of the President and the Vice President is not only in respect of the Doddaballapur Town Municipal Council but also in respect of all the Municipalities by a general circular. Further, they contended that as there was no stay it is too much for the petitioners to say that the additional respondents who get themselves duly elected should not be allowed to contest the election to the office of the President and the Vice President. Lastly, they contended that if at all there is any curtailment of the term of offices of the President and the Vice President, it is not intentional but it is due to the circumstances beyond the control of the Government.

7. The learned High Court Government Pleader submitted that even now the Returning Officer is prepared to hold the elections if necessary direction is issued to do so within a reasonable time and it is proper to all the councillor duly elected are permitted to participate in the elections. This submission is placed on record.

8. After hearing the learned counsel for all the parties, I am of the view that, no doubt, u/S. 38 of the Act the Government has the power to cancel the calendar of events and postpone the elections, but such powers can be exercised only under extraordinary circumstances and not when the circumstances are normal. That is the true meaning of the Section. Otherwise, there will be no limitation for the Government to exercise such power to suit its convenience or to help its own people and in some circumstance the Government can as well postpone the elections for any length of time thus frustrating the very object of the election to the offices of the local authorities which will be antidemocratic. In view of the submission made by the learned High Court Government Pleader that the Returning Officer is prepared to hold the elections any day as directed by this Court, I do not like to discuss about the propriety of the Government in postponing the elections at Annexure D.

9. Accordingly, I make the following order: The Circular at Annexure D dated 19-5-1990 in so far as it relates to the elections to the offices of the President and the Vice President of Doddaballapur Town Municipal Council is hereby quashed. The 3rd respondent is directed to hold the elections to the offices of the President and the Vice President of the Town Municipal Council, Doddaballapur, on or before 16th July, 1990. He shall proceed with the election from the stage where it was stopped. However, it is made clear nominations seeking elections to the offices of the President and the Vice President. In order to avoid any possible litigation in future, the Returning Office shall make use of the nominations already filed and also receive the nominations of others within a particular date, scrutinize the same, give such time to candidates to withdraw their nominations and then hold the elections on or before 16th July, 1990. It is needless to say that the 5 councillor elected from Ward 2 as declared by the Deputy Commissioner in the Gazette dated 26-6-1990 are also entitled to seek elections to the office of the President and the Vice President. With these observations, I allow this writ petition in part.

10. No order as to costs.

11. Send a copy of this order both to the Deputy Commissioner and the Returning Officer forthwith. Government High Court Pleader is also directed to inform the Deputy Commissioner and the Returning Officer to hold the elections as ordered.

12. Order accordingly.