
(2006) 02 KAR CK 0043
In the Karnataka High Court
Case No : Writ Petition No. 1562 of 2006

K. Anand

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 14-02-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Panchayat Raj Act, 1993 — Section 12, 280

Citation : (2006) ILR (Kar) 1888 : (2006) 2 KarLJ 360 : (2006) 2 KCCR 1145

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : S.N. Aswathanarayana, for the Appellant; H.B. Narayan, High Court Government Pleader for Respondent-1 and K.H. Jagadish and M.N. Munireddy for Respondent-2, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The petitioner questioning the legality and validity of the order dated 20-1-2006 in proceedings No. KA/IM/PARAVAVI/TENDER/CHI.PURA/SA.IM. 1/05-06,3584 vide Annexure-C on the file of the 2nd respondent filed the instant writ petition. Further the petitioner sought for a direction to the 2nd respondent-authority to issue work orders.

2. The grievance made by the petitioner in the instant petition is that, he claiming to be Class II, Civil Contractor-cum-a Gram Panchayat member of the Thimmanayakanahalli Panchayat has filed his tender pursuance to the tender notification issued by the 2nd respondent dated 16-9-2005 vide Annexure-R1 produced by the 2nd respondent along with his objections. His tender being the lowest amongst other contractors who have participated in the tender, the same has been accepted without any justification, he was under a fond hope that he will get the work order from the Competent Authority-2nd respondent. Be that as it may. To the shock and surprise of the petitioner, when he received the impugned order dated 20-1-2006 vide Annexure-C his tender has not been

accepted on the ground that he is the sitting member of the Gram Panchayat and he has got the interest directly or indirectly. Hence he was disqualified for participating in the tender, placing reliance on the circular issued by the Government dated 4-1-2006 vide Annexure-D. The impugned order has been passed and communicated to the petitioner. The said circular has been issued u/s 12 read with Section 280 of the Karnataka Panchayat Raj Act, 1993 (hereinafter called for short "the Act"). Assailing the correctness of the impugned order dated 20-1-2006 vide Annexure-C and seeking further direction as stated supra the petitioner herein felt necessitated to presented the instant writ petition.

3. The learned Counsel for the petitioner submits that, once his tender has been accepted there is no power for the authority to cancel the same without affording an opportunity to the petitioner. To substantiate his submission he had taken me through Annexures-B1 to B4 respectively and submitted that his tender has been accepted by the 2nd respondent, once they accepted the tender they are bound to issue the work order to the petitioner. The reliance placed on by the respondent for issue of the impugned order u/s 12 read with Section 280 of the Act is not applicable to the petitioner and is not disputed. He vehemently submitted the fact that he is the Class II, Contractor and a sitting member of the Thimmanayakanahalli Panchayat, he has not put up any tender in respect of the Thimmanayakanahalli Gram Panchayat is concerned and there is no representation as such for prohibition in the tender being a concrete in respect of other Gram Panchayat. Therefore, the reason assigned for cancelling and not issue of the work order cannot be justified nor permissible under the Panchayat Raj Act. To substantiate his submission he placed reliance on the judgment of this Court in Ramachandraiah v. Election Officer, Bukkapatnam Panchayat and Ors. 1968(2) Mys. L.J. 470 and Anr. judgment in M.H. Somasekhampappa v. Tahsildar, Bhadravathi 1990(1) Kar. L.J. 180. He submitted that there is no prohibition as such for him to participate in the tender in respect of work carried out to the other Gram Panchayat, Therefore, he submitted that the impugned order passed by the 2nd respondent herein is liable to be set aside.

4. Per contra, the Counsel for the 2nd respondent, inter alia, contended and substantiated that, the impugned order passed by the Competent Authority is in strict compliance of the mandatory provisions of the Act and circular issued by the Government dated 4-1-2006 in which it has been clearly stated that the sitting member of the Gram Panchayat is not entitled to participate in the tender to carry out the work on the ground that he being a sitting member may influence the officers within the Gram Panchayat or Taluk Panchayat or Zilla Panchayat. Placing reliance, the 2nd respondent has issued the impugned order dated 20-1-2008. Therefore, no error or illegality has been committed for passing the impugned order. Further the learned Counsel appearing for the 2nd respondent has filed his objections. In para 3 of the objections it is specifically pointed out so far as the items 9 and 25, the work pertaining Road Development from Alagurki to Budugavarahalli and item 25 is the Drainage Construction from Rayappanahalli to Budugavarahanahalli. These two works come within the

Thimmanayakanahalli Gram Panchayat only remaining four items come to other Gram Panchayat. Out of six, two come within the jurisdiction of the Thimmanayakanahalli Gram Panchayat, wherein the petitioner is the Gram Panchayat member and other works come under the Dibburahalli and Thimmasandra Gram Panchayats of Shidlagatta Taluk. The 2nd respondent is a tendering authority of the said six works, they come within the same Taluk Panchayat and further they placed reliance on the circular issued by the Government u/s 12 read with Section 280 of the Act. The member of the Gram Panchayat/Taluk Panchayat/Zilla Panchayat members cannot take any contract work in their respective panchayat or show interest in the said work. Therefore, the learned Counsel for respondent 2, submitted that the writ petition filed by the petitioner is not maintainable at the threshold on this ground alone. The petitioner cannot maintain this writ petition without assailing the correctness of the circular issued by the Government. To substantiate this specific submission, the Counsel for the 2nd respondent placed reliance on the judgment of the Supreme Court in *K. Vasudevan v. Mohan N. Mali and Ors.*, (2002) 10 SCC 117 and submitted that when there is no challenge about the legality as stipulated in the circular dated 4-1-2006 he cannot assail the impugned order passed by the Competent Authority. Therefore, the Counsel appearing for the respondent submitted that petition filed by the petitioner is liable to be dismissed on this ground also.

5. I have heard the learned Counsel for the petitioner and respondents and after careful perusal of the material available and the rival contentions of both the parties, the only question that arises for consideration in the instant writ petition is that: whether the impugned order passed by the 2nd respondent is in accordance with law?

6. After careful evaluation of the material on record, it emerges on the face of the record that vide Annexures-B1 to B4 petitioner's tender has been accepted subject to condition that there is objection filed and after taking necessary orders or clarification from the higher authority the work order came to be issued. That note has been specifically put on the Annexures-B1 to B4 in the 2nd page of the respective Annexures, It is significant to note that in the tender notification issued vide Annexure-R1 filed along with the objection filed by the 2nd respondent dated 16-9-2005 there are totally seven conditions put for at the time of issuing tender notification. It is relevant to take into consideration condition No. 6 i.e., "all the rights reserved by the Competent Authority to reject or change without giving any reason". When these 7 conditions accepted by the petitioner and the petitioner participated in the tender process and come before this Court to substantiate those conditions and even deliberately gone to the extent stating that he has not put up any tender in the village coming within the Thimmanayakanahalli Panchayat, the 2nd respondent has rightly pointed out in the objection at paragraph 3 that items 9 and 25 comes within the Thimmanayakanahalli Gram Panchayat alone and it is not open for him at this stage to contend before this Court that he may be disqualified insofar as items 9

and 25 and he is entitled for work order insofar as items 32, 35, 44 and 45 comes within the Dibburahalli and Thimmasandra Gram Panchayat, The said submission made by the Counsel appearing for the petitioner is liable to be rejected at the threshold on the ground that petitioner being a Class II, Contractor and sitting member of the Gram Panchayat of Thimmanayakanahalli once accepted the terms and conditions of the tender notification it is binding on him. Further yet another reason as to why he is not entitled for any relief stated supra as envisaged under Article 226 of the Constitution of India is that the impugned order passed by the 2nd respondent vide Annexure-C placing reliance on the circular issued by the Competent Authority from the Government Circular dated 16-9-2005 vide Annexure-RI produced by the 2nd respondent along with his objections. It has been clearly stated that no member is entitled to participate wherein the interest of the panchayat directly or indirectly and cannot take any work in their respective constituency of the Gram Panchayat organisation. If a member of the Gram Panchayat/Taluk Panchayat/Zilla Panchayat is liable to be influenced such an officer with regard to the any such situation cannot take any work contract in the jurisdiction or interest in the said work. One more reason in this instant case is that all these three Gram Panchayats come under the same Taluk Panchayat of Shidlagatta and therefore the Competent Authority placing reliance on the circular issued by the Competent Authority and in consonance with Section 12 read with Section 280 of the Act. The work order has not been rightly issued to the petitioner. One more aspect that is taken into account is that the acceptance of his tender is subject to confirmation by the Competent Authority. In the instant case it is specifically stated by the 2nd respondent on 15-10-2005 in the objection, the same may be clarified by the Chief Executive Member of the Zilla Panchayat, therefore his case can be considered for issuing the work order. In pursuance of putting this condition vide Annexures-B1 to B4 in page 2 of the respective pages, he referred the matter through communication dated 4-1-2006 after obtaining the clarification and placing reliance on the Government Order, the impugned order has been issued by the Competent Authority. I do not find any good reason or justification to interfere in the impugned order passed by the 2nd respondent vide Annexure-C, dated 20-1-2006. The petitioner has also made out any good ground to interfere to the impugned order passed by the Competent Authority. The reliance placed on by the learned Counsel for the petitioner to substantiate his contentions referred above and the facts and circumstances of the case involved in those cases are entirely different to the facts and circumstances in the instant case. The said reliance placed by the petitioner cannot be helpful nor it is applicable to the instant case. Therefore, the reliance by the Counsel appearing for the petitioner cannot be applicable to the facts and circumstances of the case. Yet another reason as to why the instant writ petition filed by the petitioner is liable to be rejected at the threshold is that the petitioner being a well-qualified Class II, Civil Contractor, being an elected member of the Gram Panchayat deliberately suppressed the material in the writ petition that he did not participate or filed any tender for doing the work in the Thimmanayakanahalli

Gram Panchayat jurisdiction. As a matter of fact as rightly pointed out by the learned Counsel for the 2nd respondent in their objections, the items 9 and 25 comes within the jurisdiction of Thimmanayakanahalli Gram Panchayat alone.

Taking into consideration the facts and circumstances of the case stated above, the writ petition filed by the petitioner is dismissed as devoid of merits.