

(2016) 11 KAR CK 0098

In the Karnataka High Court

Case No : Writ Petition Nos. 11359-11365 of 2015

Kareppa, Member Taluk Panchayat

APPELLANT

Vs

Basangouda Bygawat

RESPONDENT

Date of Decision : 29-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Local Authorities (Prohibition of Defection) Act, 1987 — Section 3(1)(a),
Section 3A

Citation : (2017) 2 AirKarR 438

Hon'ble Judges : Vineet Kothari, J.

Bench : Single Bench

Advocate : Sri. Nandish Patil, Advocate, for the Petitioner; Sri. Hareesh Chandra M. for Sri. K.N. Phanindra, Advocates, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—For the Petitioner :- Mr. Nandish Patil Advocate.

For the Respondents :- Mr. Hareesh Chandra M. for Sri. K.N. Phanindra, Advocate.

Disqualification on Defection-Separation from Political Party - Whip disobeyed.

These writ petitions have been filed by Sri. Kareppa and six others. The seven petitioners in number were elected members of Taluk Panchayat, Kavital Village, Manvi Taluk, Raichur District on the tickets of their recognised political party - Bharatiya Janata Party.

2. In the election of Adhyaksha and Upadh-yaksha, which took place on 03.01.2014, the present seven petitioners did not follow the whip issued by the party and voted against the Bharatiya Janata Party and therefore on a complaint filed against them by the respondent Sri. Basanagouda Bygawat, District President of BJP, the respondent No.2-the State Election Commission, Karnataka, Bangalore has passed the impugned order on 09.03.2015 holding that all these seven petitioners were disqualified to hold the office as elected Councillors to

Manvi Taluk Panchayat under the provisions of Karnataka Local Authority (Prohibition of Defection) Act, 1987 (hereinafter referred to as "the Act") as per Section 3A of the said Act.

3. The learned Election Commission-Respondent No.2 has assigned the following reasons and relying upon the judgment in similar circumstances in the case of Byrappa and others v. The Deputy Commissioner, Mandya District and Others reported in ILR 2010 Kar 397 : (AIR 2010 (NOC) 790 (Kar) held that the formation of separate group by the petitioners without the split in the political party to which they belonged having been given due recognition as such, rendered them disqualified under Section 3A of the said Act.

4. The relevant portion of the impugned order passed by the State Election Commission is quoted below for ready reference:

"Para 21. . .

Para 36. The question whether for satisfying the requirements of Para 3, it was enough to make a claim of the split of the Original Political party or it was necessary to at least prima facie establish it, fell to be considered in the decision in Jagjit Singh v. State of Haryana - (2006) II SCC 1 : (AIR 2007 SC 590) rendered by a Bench of three Judges to which one of us (Balasubramanyan.J.) was a party.

Para 37. Thus, in the above decision, it has been clarified that it is not enough that a claim is made of a split in the original party, in addition to showing that one third of the members of the legislature party have come out of the party, but it is necessary to prove it at least prima facie, those who have left the party, will have, prima facie, to show by relevant materials that there has been a split in the original party. . .

Para 22. In the case of Kedar Shashikant Deshpande & others v. Bhore Municipal Council and others, reported in (2011) 2 SCC 654 : (AIR 2011 SC 463), the pleadings of the appellants before the Additional Collector and the High Court, suggested a split of the appellants from their original political party i.e., NCP. The appellants had contended that they had voluntarily separated from NCP and formed a separate group/aghadi/front. There was no mention of split in NCP or the appellants joining Congress (I) Party. Noticing that the original party of the appellants was NCP and it was not their case that their original party NCP had merged with Congress (I) party at any point of time and the admission of the appellants that they had separated from their original political party and had formed a separate group known as Bhore Shahar Vikas Swabhimani Sanghatana Party, while ascertaining whether the appellants have incurred disqualification in terms of Section 3 (1) (a) of the Maharashtra Local Authority Members Disqualification Act, 1986, it has been held as follows:

42. As mentioned above Section 3 (1) (a) without any qualification or rider provides that a Councillor or a member belonging to any political party or aghadi

or front shall be disqualified, if he has voluntarily given up his membership of such political party or aghadi or front. The provisions are absolute in terms and are mandatory.

"61. The contention that it is well settled that the Court should not interfere with the election of the democratically elected candidate and, therefore, the appeals should be accepted is difficult to accept. It is true that it is laid down in a series of reported decisions of this Court that the Court normally should not lightly interfere with the election of a democratically elected candidates. However, here in this case the Court finds that the appellants had incurred disqualification under the Act. The question of disqualification of the appellants was raised by respondents 4 and 5 and, therefore, not only the competent authority under the Act was required to decide the said question, but this Court also has to determine the question whether the disqualification is incurred by the appellants had incurred the disqualification in terms of the provisions of the Act then the Court has no alternative but to interfere with the election of the appellants even though they have been democratically elected candidates. However, merely because they are democratically elected candidates, it would be wrong to contend that they can never be disqualified. If such an interpretation as suggested by the learned counsel for the appellants is accepted, it will defeat the object of the Act, which cannot be countenanced.

Para 23. There being no dispute that the appellants contested and won the election as Councillors of Mandya City Municipal Council as candidates of JD (S) party and thereafter voluntarily left JD(S) party and formed "Abhivrudhi Ranga" on 07.01.2009, Section 3(1) (a) of the Act having been attracted, the appellants incurred disqualification from continuing to be the Councillors of Mandya City Municipal Council. The contentions advanced by Sri. Jaikumar S. with regard to the Act not having the definition of "Legislature Party" and "Original Political Party" and that the approach of the learned single Judge to the matter as erroneous, is without any merit, in view of the clear and unambiguous meaning of the "political party" under Section 2 (vi) of "the Act".

Para 24. Keeping in view the scope and ambit of the Act, the para materia provisions in the Tenth Schedule of the Constitution of India and the rigorous interpretation of the provisions of Tenth Schedule by the Apex Court in catena of decisions, merely because the Act does not contain the definition of "legislature party", it cannot be said that, learned single Judge erred in placing reliance on the decisions of the Apex Court interpreting the provisions of Tenth Schedule to the Constitution. In our considered opinion, the object and purpose of the Act being the same as that of the Tenth Schedule of the Constitution have equal application in the matter of interpretation of the provisions of the Act.

Para 25. Learned Single Judge having considered the rival contentions and upon examining the record of the case and finding that no case was made out by the appellants that there was a split in the JD(S) political party and the split even according to the appellants being only in the JD (S) Councillors of Mandya City

Municipal Council and the group formed by the appellants under the banner "Abhivrudhi Ranga" being not a political party, the appellants having voluntarily given up their membership of JD (S) party under whose symbol they had got elected as Councillors to the Council, is justified in holding that the appellants incurred the disqualification and consequently, upholding the order passed by the Deputy Commissioner disqualifying the appellants herein from the membership of the City Municipal Council, Mandya.

Admittedly, there were 15 Bharathiya Janata Party members in the Taluk Panchayat, Manvi and a separate group alleged to have been formed by the respondent Nos.1 to 7 has definitely consisted of more than one third of total strength of the Bharathiya Janata Party members of the Taluk Panchayat. But, as it is clear from the case cited above i.e., ILR 2010 Kar 397 Byrappa and Others v. The Deputy Commissioner, Mandya District and others, unless such "group representing a faction has arisen as a result of split in his political party-which is defined under Section 2 (vi) of the Karnataka Local Authority (Prohibition of Defection) Act, 1987, the mere formation of a group of not less than one third members automatically does not provide immunity to the respondents from incurring disqualification.

The respondent Nos.1 to 7 have undisputedly formed a separate group. But, they have not produced any evidence on record to show that there was a split in the political party to which they belong to at any time and the said formation of a separate group was in consequence of such split. As a result, the respondent Nos.1 to 7 cannot seek protection or exception under Section 3A (a) of the Karnataka Local Authority (Prohibition of Defection) Act, 1987. When the provision under Section 3A(a) does not come to the rescue of the respondents, invariably respondent Nos.1 to 7 incur disqualification.

Accordingly, I answer this point in the negative."

Sd/-

(P. N. Sreenivsachary)

State Election Commissioner

Karnataka

5. The learned counsel for the petitioners Mr. Nandish Patil has vehemently urged before the Court that firstly the petitioner No.5 Smt. Vijaylaxmi Nadagouda was not served with the whip said to have been issued by the political party-Bharatiya Janata Party and there is no finding in the impugned order by the State Election Commission that she was so served with the whip while there is a finding recorded by the Election Commission that remaining other six petitioners were specifically served with the whip and on account of their disobedience of the said whip they incurred the disqualification under the provisions of the said Act. Secondly, he urged that since, the information about their forming of separate group was duly given to the Assistant Commissioner concerned on 30.12.2013

vide Ex.P6, therefore, the petitioners were not bound with the whip issued by the political party-Bharatiya Janata Party and they did not incur the disqualification under the said provisions.

6. The learned counsel for the respondent-State Election Commission Mr. Hareesh Chandra M., however, opposed these submissions and along with the original record produced before this Court, he sought to satisfy the Court about the service of whip on all the petitioners including the A.D. Receipt purportedly signed by petitioner No.5-Smt. Vijaylaxmi Nadagouda. However, those A.D. Receipts were relating to the proceedings before the State Election Commission itself and not about the whip served upon her prior to election on 03.10.2014. The learned counsel for the respondent-Election Commission also submitted that the group of seven petitioners separately formed was never recognised by the State Election Commission as having spilt from BJP and therefore, they should be deemed to have voluntarily surrendered the membership of the said recognised political party-Bharatiya Janata Party as defined under Section 2 (vi) r/w Section 3A(a)(i) of the Karnataka Local Authority (Prohibition of Defection) Act, 1987 and therefore, the said Election Commission has rightly held them to be disqualified under the said provision.

7. I have heard both the learned counsels and perused the impugned order passed by the State Election Commission and the related provisions of the Act. The provisions under Sections 3, 3A, 3B & 4 of the Act are quoted below for ready reference:

3. Disqualification on the ground of defection- (1) Subject to the [provisions of Sections 3A, 3B and 4], a councillor or a member, belonging to any political party, shall be disqualified for being such councillor or member,-

(a) if he has voluntarily given up his membership of such political party; or

(1)[(b) if he votes or abstains from voting in, or intentionally remains absent from any meeting of the Municipal Corporation, Municipal Council, Town Panchayat, Zilla Panchayat or Taluk Panchayat, contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf without obtaining the prior permission of such party, person or authority and such voting, abstention or absence has not been condoned by such political party, person or authority within fifteen days from the date of voting or such abstention or absence].

(1) Substituted by Act 13 of 1995 w.e.f. 3.5.1995.

Explanation - For the purposes of this sub-Section, - (a) a person elected as a councillor, or as the case may be, a member, shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such councillor or member.

(1)[(b) a person elected as a councillor or as the case may be, a member, otherwise than as a candidate set up by a political party shall be deemed to

belong to the political party of which he becomes a member before the expiry of six months from the date of commencement of his term of office, or in the case of a councillor or member whose term of office has commenced on or before the date of commencement of the Karnataka Local Authorities (Prohibition of Defection) (Amendment) Act, 1995 within six months from such date].

(1) Substituted by Act 13 of 1995 w.e.f. 3.5.1995.

(2) An elected councillor, or as the case may be, a member, who has been elected as such, otherwise than as a candidate set up by a political party shall be disqualified for being a councillor or, as the case may be a member if he joins a political party (1) [after expiry of six months from the date of commencement of his term of office, or in the case of a councillor or member whose term of office has commenced on or before the date of commencement the Karnataka Local Authorities (Prohibition of Defection) (Amendment) Act, 1995, after expiry of six months from such date].

(1) Substituted by Act 13 of 1995 w.e.f 3.5.1995.

[(3) x x x] [Omitted by Act 13 of 1995 w.e.f. 3.5.1995.]

(4) Notwithstanding anything contained in the foregoing provisions of this Section, a person who on the commencement of this Act, is a councillor shall,-

(a) where he was a member of a political party immediately before such commencement, be deemed for purposes of sub-section (1) to have been elected as a councillor as a candidate set up by such political party.

(b) in any other case, be deemed to be an elected councillor who has been elected as such otherwise than as a candidate set up by any political party for the purpose of sub-section (2)

(1) [3A. Disqualification on the ground of defection not to apply in case of split, - Where a councillor or a member makes a claim that he and any other members of his political party constitute the group representing a faction which has arisen as a result of a split in his political party and such group consists of not less than one-third of the members of such political party,-

1. Sections 3A and 3B inserted by Act 13 of 1995 w.e.f. 3.5.1995.

(a) He shall not be disqualified under sub-section (1) of Section 3 on the ground,-

(i) that he has voluntarily given up his membership of his political party: or

(ii) that he has voted or abstained from voting in, or intentionally remained absent from, any meeting of the Municipal Corporation, Municipal Council, Town Panchayat, Zilla Panchayat or Taluk Panchayat contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining in any case, the prior permission of such political party, person or authority and such voting or abstention or absence has not been condoned by such political party, person or authority within fifteen days

from the date of voting or such abstention or absence; and

(b) From the time of such split, such faction shall be deemed to be the political party to which he belongs for the purpose of sub-section (1) of section 3 and to be his political party for the purpose of this section.

3B. Disqualification on the ground of defection not to apply in case of merger,—(1) A councillor or a member shall not be disqualified under sub-section (1) of Section 3, where his political party merges with another political party and he claims that he and any other members of his political party,—

(a) have become members of such other political party, or as the case may be, of a new political party formed by such merger; or

(b) have not accepted the merger and opted to function as a separate group, and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-section (1) of Section 3 and to be his political party for the purposes of this Section.

(2) for the purposes of sub-section (1) of this Section,—

(a) the merger of the political party of a councillor or a member shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the political party concerned have agreed to such merger:

(b) the expression "such other political party" and "new political party" shall include a political party whether such political party has been recognised or not by the Election Commission of India as a National party or a State party in the State of Karnataka under the Election Symbols (Reservation and Allotment) Order, 1968]

4. Decision on the question as to disqualification on the ground of defection, - (1) A complaint that a member or a councillor has become subject to the disqualification under Section 3 may be made by a member, councillor or a political party to the Chief Executive officer of the concerned local authority,—

(a) in a case falling under clause (a) of sub-section (1) after the member of the councillor gives up the membership of the political party.

(b) in a case falling under clause (b) of sub-section (1), after the expiry of fifteen days specified therein;

(c) in a case falling under sub-section (2), after he joins the political party; and

[(d) x x x] (1)

(1) [Omitted by Act 13 of 1995 w.e.f 3.5.1995.]

(2) Where a complaint under sub-section (i) is received by the Chief Executive officer of the concerned local authority, he shall, within twenty-four hours from

the receipt of such complaint, refer the same for decision to,-

(1) [(i) in the case of Zilla Panchayat, to the State Election Commissioner" ;]

(1) Substituted by Act 19 of 1995 w.e.f 5.6.1995.

(ii) in the case of Municipal Corporation, (5)[to the Regional Commissioner] ;

5. Substituted by Act 17 of 2010 w.e.f. 16.04.2010.

(iii) in the case of a City or Town Municipal Council, (2) [or Town Panchayat] to the Deputy Commissioner;

2. Inserted by Act 13 of 1995 w.e.f 3.5.1995.

[(iv) in the case of a Taluk Panchayat, to the State Election Commissioner.]; (1)

1. Substituted by Act 19 of 1995 w.e.f 5.6.1995.

Who shall decide the question within (3)[thirty days] (1) after the receipt by him of the reference and his decision shall be final.

1. Substituted by Act 19 of 1995 w.e.f 5.6.1995.

3. Substituted by Act 13 of 1995 w.e.f 3.5.1995.

(4) [Proviso x x x] (4)

4. Proviso omitted by Act 19 of 1995 w.e.f. 5.6.1995.

Explanation,- In this Section,-

(1) "Chief Executive officer" means,-

(1)[(a) in the case of Zilla Panchayat, the Chief Executive officer of the Zilla Panchayat;

(b) in the case of a Taluk Panchayat, the Executive officer of the Taluk Panchayat;] (1)

1. Substituted by Act 13 of 1995 w.e.f. 3.5.1995.

(c) in the case of Municipal Corporation, the Commissioner;

(d) in the case of a City Municipal Council, the Municipal Commissioner,

(e) in the case of a Town Municipal Council, the Chief officer;

(1)[(f) in the case of a Town Panchayat, the Chief officer;]

1. Inserted by Act 13 of 1995 w.e.f. 3.5.1995.

(1) [(2) " Local Authority" means the Zilla Panchayat, Taluk Panchayat, Municipal Corporation, City or Town Municipal Council or Town Panchayat]

(1) Substituted by Act 13 of 1995 w.e.f. 3.5.1995.

(1)[(3) " State Election Commissioner" means the State Election Commissioner appointed under Section 308 of the Karnataka Panchayat Raj Act, 1993.]

1. Inserted by Act 19 of 1995 w.e.f. 5.6.1995.

8. The respondent No.2-State Election Commission has clearly recorded a finding following the judgment of this Court in the case of Byrappa and others v. The Deputy Commissioner, Mandya District and Others (AIR 2010 (NOC) 790 (Kar) (supra) which in turn relied upon the Supreme Court judgments in the case of Jagjit Singh v. State of Haryana reported in 2006 II SCC I : (AIR 2007 SC 590) and Kedar Shashikant Deshpande & others v. City Municipal Council and others reported in (2011) 2 SCC 654 : (AIR 2011 SC 463) and the Election Commission has clearly held in the portion of the impugned order quoted above that mere formation of a separate group by intimating the Assistant Commissioner concerned on 30.12.2013 was not enough and unless the group of seven persons was recognised as a split from their political party by the State Election Commission, they could not have the benefit of exception from disqualification specified under Section 3A of the Act. On the other hand, each one of them will be deemed to have voluntarily surrendered the membership of the said recognised political party - Bharatiya Janata Party and thus incurred the disqualification under Section 3(1) (a) of the Act quoted above on that ground.

9. So far as the contention of the learned counsel for the petitioner that petitioner No.5 was not served with whip, it appears that the name of petitioner No.5 Smt. Vijaylaxmi Nadagouda is not mentioned in the impugned order in Para No.26 (Re Point No.2) where the State Election Commission has given the findings of service of the whip on other six petitioners (viz., Sri. Kareppa, Sri. Shivaraj, Smt. Narasamma, Smt. Bheemava, Smt. Veena & Sri. Kariyappa) but that does not affect the final conclusion of the State Election Commission about the disqualification incurred by all the seven petitioners in terms of Section 3(1) (a) of the Act quoted above for the aforesaid reason. It was for the petitioner No.5 to specifically contend before the State Election Commission that she has not been served with any notice or whip as claimed by her but it was not so done. On the other hand, the State Election Commission has recorded a categorical finding that the petitioners have failed to lead any evidence before it.

10. As held by this Court in the case of Byrappa and others v. The Deputy Commissioner, Mandya District and others (AIR 2010 (NOC) 790 (Kar) (supra) that mere formation of a separate group known as "Abhivruidhi Ranga" even though representing 3rd or more of the number of elected members of the political party, upon separation from the recognised Janata Dal (S) did not entitle the petitioners before the Court in that case to have the exception from disqualification under Section 3A of the Act applied to them.

Similarly, in the present case also, for the present seven petitioners on the basis of their communication Ex.P6 dated 30.12.2013 informing the Assistant Commissioner about formation of their separate group having splitted from the

recognised political party Bharatiya Janata Party, it is not enough to save them from the disqualification under Section 3(1)(a) of the Act. Unless and until the splitted group is recognised as such by the State Election Commission, the Anti Defection disqualification under Section 3A of the Act would get attracted and would render such members of the splitted group disqualified under Section 3A of the Act on the ground that they have voluntarily surrendered the membership of the political party in question.

11. These categorical findings of the State Election Commission do not appear to be vitiated in any manner and there is no other material brought before this Court to hold that the findings of the learned State Election Commission are perverse in any manner on the basis of such material. Consequently, the writ petition is devoid of merit and the same is liable to be dismissed. Petitions are dismissed accordingly. No costs.