

(1982) 05 KAR CK 0002
In the Karnataka High Court
Case No : Writ Petition No. 14701 of 1982

K.H. Honnappa

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 13-05-1982

Acts Referred:

Karnataka Municipalities (President and Vice-President) Election Rules, 1965 — Rule 3 (1), 3 (5), 9 (1)
Mysore Town Municipalities Act, 1951 — Section 23 (9), 27 (3)

Citation : AIR 1983 Kar 53 : (1982) ILR (Kar) 1180 : (1982) 2 KarLJ 556

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : H.B. Datar, for H.L. Datar and Prabha Girimaji, for the Appellant;
V.C. Brahmarayappa, Government Advocate, for the Respondent

Judgement

1. Though this petition is posted for orders; but it is taken up for final hearing on a submission made by the learned counsel appearing for both the sides that the main petition itself be heard instead of hearing and deciding the interlocutory application.

2. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has sought for a writ of certiorari to quash Annexures "A" and "B" dated 2-4-1982 and also to pass such other orders as are deemed fit under the circumstances of the case. Annexures "A" and "B" are dated 2-4-1982. Annexure-A is the notice of the Bye-election proposed to be held to the office of the President, Town Municipal Council, Kadur under Rule 3 (1) of the Karnataka Municipalities (President and Vice President) Election Rules, 1965 (herein-after referred to as the "Rules"). Annexure-B is another notice issued by the Election Officer stating that a meeting of the Municipal councillors will be held on 16-4-1982 at 11.00 a.m. to elect the President, Town Municipal Council in question and voting will take place from 11.00 a.m. to 12 noon and thereafter counting of votes also will take place. Pursuant to the notice issued under Rule 3 (1) of the Rules, the petitioner and the additional respondent Sri. K.M.

Ramaswamy (the application for impleading Sri. K.M. Ramaswamy has been allowed to-day by a separate order) have filed the nominations to contest for the office of the President of the Town Municipal Council, Kadur. It is at this stage that the validity of the aforesaid notices (Annexures "A" & "B") have been challenged. In the first instance by an interim order the entire election was stayed. But subsequently on 15-4-1982 it was modified and the election was allowed to take place, but the counting and declaration of the result of the election were stayed. Accordingly, the election has now taken place. The counting and declaration of the result of the election could not take place because of the interim order passed by this court.

3. The one and the only contention urged by Sri H.B. Datar, learned counsel for the petitioner is that the notice in Form No.1 published under R.3 (1) of the Rules is not served upon the petitioner as required by R. 3(5) of the Rules, therefore, the entire election process is vitiated. It is contended that a copy of the notice published in Form No.1 under Rule 3(1) of the Rules is actually required to be served upon every councillor as per sub-rule (5) of Rule 3 thereof and in the absence of such actual service the entire process of election gets vitiated and the Election Officer will not have jurisdiction to proceed further in the matter. It is also further contended by the learned counsel that the learned single Judge of this Court in Thammiah B. v. Election Officer, Banavara, reported in (1980) 1 Kant LJ 19, while interpreting Rule 3(5) of the Rules in question, following a decision of the Supreme Court reported in K. Narasimhiah Vs. H.C. Singri Gowda, has held that in the absence of actual service of the notice which may even take place by refusal of the addressee, there is no compliance with Rule 3(5) of the Rules, therefore, the notice published as per Rule 3(1) of the Rules is bad in law. It is also further submitted that the decision of a Bench of two Judges of this court reported in the case of S. Ramaiah v. State of Mysore, reported in (1969) 1 Mys LJ 395, has no application to the present case because in that case what is interpreted is Rule 9(1) of the Rules and not Rule 3(5) of the Rules. Therefore, it is submitted that the aforesaid decision in Thammaiah's case, must be applied to the instant case.

4. On the contrary it is submitted by the learned counsel Sri. Brahmarayappa, appearing for the Election Officer and also by the learned counsel for the additional respondent Sri. K.S. Ramaswamy, that sending of notice by a registered post is sufficient compliance with Rule 3 (5) of the rules and that is what is contemplated even u/s 27 of the Karnataka General Clauses Act 1899. It is further submitted that the judgment of the learned single Judge in Thammiah's case 1980) 1 Kant LJ 19 does not lay down the law correctly and it is opposed to the decision of a Bench of two Judges in S. Ramaiah's case (1969) 1 Mys LJ 395 which had not been brought to the notice of the learned Judge who has decided Thammiah's case. It is further submitted that even though in S. Ramaiah's case the Court was concerned with Rule 9 (1) of the Rules in question, but nevertheless the material words, with which we are concerned in this case, used in Rules 9(1) and 3(5) of the Rules are identical therefore, the

aforesaid decision of a Bench of two Judges in S. Ramaiah's case holds good even in respect of Sub-rule (5) of R.3 that there cannot be two interpretations in respect of the same words used in the same Rules pertaining to the same subject i.e., election of President and Vice President of the Municipality; therefore, even though in S. Ramaiah's case R.9 (1) of the Rules is considered, but nevertheless it must be held to apply to Rule 3(5) of the Rules also.

5. The contention of Sri. Datar, learned counsel for the petitioner that having regard to a decision of the learned single Judge in Thammiah's case (1980 1 Kant LJ 19) it must be held that sending of notice by registered post is not sufficient to comply with 3(5) of the Rules and it is necessary that there should be actual service of notice or a refusal by the addressee to receive it, cannot be accepted. In the instant case a copy of the notice in Form No.1 published under R.3(1) of the Rules has been sent by registered post with acknowledgment due as required by R.3(5) of the Rules to the petitioner. The records have been produced before me. It is clear from the records that the notice as per R.3(5) of the Rules has been sent by registered post with acknowledgment due to all the councillors including the petitioner to whom it is sent on 3-4-1982 itself. The endorsements made on the cover sent to the petitioner are as follows :

"Not found 5-4-1982, 7-4-1982, 8-4-1982. 10-4-1982, 12-4-1982, 13-4-1982, 14-4-1982, continues not found returned to the sender."

Thus it was established beyond doubt that the notice as per R.3(5) of the Rules had been sent by registered post with acknowledgment due but it was returned because of the fact that the petitioner was not found.

6. Now the question for consideration is as to whether the aforesaid decision of a Bench of two Judges in S. Ramaiah's case (1969 1 Mys LJ 395) is applicable to the present case wherein R.3(5) of the Rules is required to be considered. Rr. 3(5) and 9(1) of the Rules are as follows :

Rule 3(5) : "A copy of the notice published under sub-rule (1) shall be sent to every councillor and shall be sent by registered post."

Rule 9 (1) : Votes to be taken at meeting - "Where votes of the councillors are to be taken for the purpose of the election the Election Officer shall convene a meeting of the Municipal Council on the date appointed under clause (c) of sub-rule (1) of Rule 3 at the Municipal Office at such time as he thinks fit, and a notice of the date, hour and place of the meeting shall be sent to every member of the council by registered post not less than five days before the date of the meeting. A copy of the notice shall also be affixed on the notice board of the Office of the Election Officer and the notice board of the Municipal Office."

(Underlying is by me)

Thus the words used in both the Rules are similar i.e., "shall be sent by registered post". These words are interpreted in S. Ramaiah's case (1969 1 Mys LJ 395) by a Bench of two Judges and it is held as follows :

"The word "sent" occurring in Rule 9(1) if it is given the ordinary meaning which should be given to it, refers merely to the despatch of the notice, and if that meaning is given to that word in sub-rule (1), there would be obedience to Rule 9(1) if the notices are delivered at the post office for being sent to the Councillors by registered post. Although in a different context it may be possible to place a construction that the statute which directs notice to be sent insists upon the despatch of the notice in such a way that in the ordinary course it would be received by the addressee before the commencement of the interval of time to which the statutory provision refers, we do not think that we should understand the word "sent" occurring in Rule 9(1) in that way.

As explained by Lord Uthwatt in *Tank Express A/S v. Campaigned Financiers Belge Das patrols S.A.* (1949 AC 76) "sending" means sending and does not involve receipt. A somewhat different interpretation which was accepted by the Court of Appeal in *Browne v. Black* (1912 1 KB 316) was persuaded by the context in which the words "sent by post to" occurred in S. 37 of the Solicitors Act, 1843, although Buckley L.J. was a contrary view.

7. In *Retail Dairy Company Ltd. v. Clarke* (1912 2 KB 388), Ridley J., said that the word "send" occurring in S. 20, sub-section (1) of the Sale of Food and Drugs Act 1899 should be given the ordinary meaning, and in that context he observed :

"Sending in the ordinary sense is mere despatching. The word "send" may however be used in connection with other words so as to imply that by "sending" is meant such a sending as that the thing may be the time specified pass into the hands of the person to whom it was sent."

..... In our opinion all that is necessary for the Election Officer to do under Rule 9(1) is to despatch the notice by registered post and when he does so the duty enjoined by Rule 9(1) is fully performed."

The duty enjoined under R.9(1) of the Rules regarding sending of notice is also similar to the duty enjoined by R.3 (5) of the Rules. Further R.3 (5) and 9 (1) of the Rules pertain to the same subject matter viz., the election to the office of the President and Vice President of the Municipal Council. The notice required to be sent under R.3(5) of the Rules is the notice published in Form No.1 containing the calendar of events. The notice required to be sent under R.9 (1) of the Rules is the notice containing the date, hour and place of the meeting of the Municipal Council scheduled to be held for the purpose of electing President or Vice President or both as the case may be of the Municipal Council. Thus the object sought to be served by the notice sent under R.9(1) of the Rules is not in any way less important than the one sought to be served by the notice sent as per R.3 (5) of the Rules. Therefore, the enunciation made with reference to the words "sent by registered post" occurring in R.9(1) of the Rules is applicable to a case wherein R.3 (5) of the Rules is required to be considered. Therefore, I do not see any reason to hold that the aforesaid enunciation made in *S. Ramaiah's*

case (1969 1 Mys LJ 395) is not applicable to the present case. The decision in Thammaiah's case is per incuriam, as such in the presence of the aforesaid decision in S. Ramaiah's case, which is not either set aside or a contrary view is taken by a larger Bench of this Court, the decision in Thammaiah's case cannot be held to have become a binding precedent.

8. Further it is submitted that the learned single Judge in Thammaiah's case has followed a decision of the Supreme Court in K. Narasimhiah Vs. H.C. Singri Gowda, ; therefore, the view taken in Thammaiah's case must prevail in as much as the aforesaid decision of the Supreme Court in K. Narasimhiah's case has not been considered in S. Ramaiah's case. In K. Narasimhiah's case the Supreme Court was not concerned with R.3 (5) or R.9(1) of the Rules in question. It was concerned with the question whether the requirement of 3 days notice for the holding of a special general meeting as embodied in S.27 (3) of the Mysore Town Municipalities Act 1951, was a mandatory provision. It was held that it was not a mandatory provision. Further the proviso to S.23 (9) of the Mysore Town Municipalities Act 1951 which was also considered in that case contained the words "notice has been given of the intention to move the resolution." In the context in which the word "given" was used; it was held by the Supreme Court that the "giving" of anything as ordinarily understood in the English language was not complete unless it had reached the hands of the person to whom it had to be given. It was also further held that in the eye of law however "giving" was complete in many matters where it had been offered to a person but not accepted by him. Tendering of a notice was in law therefore, giving of a notice even though the person to whom it was tendered refused to take it. It was also further held that there was no authority or principle for the proposition that as soon as the person with a legal duty to give the notice dispatched the notice to the address of the person to whom it had to be given, the giving was complete. In the instant case the words used in Rules 3 (5) and 9(1) of the Rules are as it is already pointed out "sent by registered post". Therefore, in my opinion the enunciation made in the aforesaid decision of the Supreme Court cannot be made applicable to a case where the notice is required to be sent by a registered post.

9. If, as contended by Sri. Datar, learned counsel for the petitioner, it is held that R.3 (5) of the Rules can be said to have been complied with only when the notice sent by registered post is either actually delivered to the addressee or it is refused to be received by the addressee, it will not be possible for the Election Officer to hold the election. Such an interpretation which is not warranted by the words used in R. 3(5) of the Rules would also give handle to such of the councillors who intend to postpone the election and they can very well avoid to receive the notice.

10. This conclusion of mine further receives support from the provisions contained in S. 27 of the Karnataka General Clauses Act 1899 which reads as follows :-

"Where any Mysore Act made after commencement of this Act authorises or requires any document to be served by post, where the expression "serve" or either of the expressions "gave" or "send" or any other expression is used, then, unless different intention appears the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post." From the aforesaid provision also it is clear that if a notice is sent by properly addressing, prepaying and posting by registered post, the service shall be deemed to have been effected. It is not possible to find out a different intention from the provisions contained in R.3(5) of the Rules. It is not the case of the petitioner that the notice sent by registered post is not properly addressed nor it is his case that the service has been manipulated and purposely the notice has been got returned without tendering it to the petitioner.

11. For the reasons stated above, I am of the opinion that the decision in S. Ramaiah's case (1969 1 Mys LJ 395) rendered by a Bench of two Judges with which I respectfully agree forms a binding precedent for the case on hand. Therefore, I am of the view that the requirement of R.3 (5) of the Rules is complied with as soon as the notice containing proper address of a Councillor is sent by a registered post. Consequently the contention of the petitioner fails.

12. In the result the writ petition fails and the same is rejected. The Election Officer is directed to proceed with the further stages of the election.

13. Petition dismissed.