

(2001) 12 KAR CK 0034

In the Karnataka High Court

Case No : Writ Petition No's. 48545 and 48546 of 2001

M. Bhaktha Vachalam and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 28-12-2001

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 11 (1)

Citation : (2002) ILR (Kar) 1040 : (2002) 2 KarLJ 593 : (2002) 2 KCCR 967

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : S.P. Shankar, for the Appellant; G.K. Bhat, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedhar Rao, J.—Petitions filed challenging the elections to the posts of Adhyaksha and Upadhyaksha of which Robertsonpet Town Municipal Council scheduled to be held on 29-12-2001. Sri S.P. Shankar, appearing for the petitioner pointed out two objections touching the validity of the proposed election.

2. It is contended that under Rule 3 of the Karnataka Municipalities (President and Vice-President) Election Amendment Rules, 1996, seven days notice to the Councillors prior to the election date is mandatory and in the instant case, it is said that the first petitioner has received the notice on 24-12-2001 and thereby he has not been given seven clear days of notice as contemplated. Secondly, Sri S.P. Shankar contended that the second petitioner is a MLC and u/s 11 of the Karnataka Municipalities Act of 1964 is entitled to vote in the proceedings relating to the election of the President and Vice-President and he has not been given the notice of the proceedings. Therefore, it is contended that the proposed elections to be held are tainted by material irregularity vitiating the entire proceedings.

3. Relied on the decision of the Supreme Court in K. Narasimhiah Vs. H.C. Singri Gowda, , it is contended that the words "giving of notice" has been interpreted thus:

" "Giving" of anything as ordinarily understood in the English language is not complete unless it has reached the hands of the person to whom it has to be given. In the eye of law however "giving" is complete in many matters where it has been offered to a person but not accepted by him. Tendering of a notice is in law therefore giving of a notice even though the person to whom it is tendered refuses to accept it. Thus as soon as the person with a legal duty to give the notice despatches the notice to the address of the person to whom it has to be given the giving is not complete".

4. In the present case, the first petitioner has been served with notice and so also other Councillors. But however, the only grievance made out is that the period of notice from the date of delivery falls short of 7 days.

5. Per contra the Counsel for the respondent relied on the decision of this Court in K.H. Honnappa Vs. State of Karnataka and Another, , in paras 8, 9 and 10 it is observed thus:

"8. Further it is submitted that the learned Single Judge in Thammiah B. v. Election Officer, Banavara 1980(1) Kar. L.J. 19, has followed a decision of the Supreme Court in K. Narasimhiah's case, supra; therefore, the view taken in Thammiah's case, supra, must prevail inasmuch as the aforesaid decision of the Supreme Court in K. Narasimhiah's case, supra, has not been considered in S. Ramaiah v State of Mysore 1969(1) Mys. L.J. 395. In K. Narasimhiah's case, supra, the Supreme Court was not concerned with Rule 3(5) or Rule 9(1) of the rules in question. It was concerned with the question whether the requirement of 3 days notice for holding of a special general meeting as embodied in Section 27(3) of the Mysore Town Municipalities Act, 1951, was a mandatory provision. Further the proviso to Section 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 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 despatched 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 Rule 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 Rule 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 Section 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 affected by properly addressing, prepaying the posting by registered post, a letter containing that document and unless the contrary is proved to have been affected at the time at which the letter would be delivered in the ordinary course of post".

From the aforesaid provisions 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 affected. It is not possible to find out a different intention from the provisions contained in Rule 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".

6. After carefully going through the decision of the Supreme Court in K. Narasimhiah's case, *supra*, it is noticeable the provisions of Section 27(3) of the Mysore Town Municipalities Act came up for consideration which relates to moving a motion for no-confidence to be preceded by three days clear notice. In the context of the provisions of law Supreme Court has made the following observation in paras (14), (19) and (20) thus:

"(14) It is necessary also to remember that the main object of giving the notice is to make it possible for the Councillors to so arrange their other business as to be able to attend the meeting. For an ordinary general meeting the notice provided is of seven clear days. That is expected to give enough time for the purpose. But a lesser period of three clear days is considered sufficient for "special general meetings" generally. The obvious reason for providing a shorter period of such meetings is that these are considered more important meetings and Councillors are expected to make it convenient to attend these meetings even at the cost of some inconvenience to themselves. Where the special general meeting is to dispose of same matter of great urgency it is considered that a

period of even less than three clear days notice would be sufficient.

(19) The existence of this provision in Section 36 is a further reason for thinking that the provision as regards any motion or proposition of which notice must be given in Section 27(3) is only directory and not mandatory.

(20) We are, therefore, of opinion that the fact that some of the Councillors received less than three clear days notice of the meeting did not by itself make the proceedings of the meeting or the resolution passed there invalid. These would be invalid only if the proceedings were prejudicially affected by such irregularity already stated, nineteen of the twenty Councillors attended the meeting. Of these 19, 15 voted in favour of the resolution of no-confidence against the appellant. There is thus absolutely no reason for thinking that the proceedings of the meeting were prejudicially affected by the "irregularity in the service of notice" ".

7. It has been clearly held by the Supreme Court that the period of notice envisaged for making no-confidence motion is only a directory in nature and the violation of the same does not vitiate the proceedings. The present provisions which insists 7 days notice relating to elections are also analogous in word and spirit therefore to be construed as only directory in nature and not mandatory. It is held by this Court in Honnappa's case, supra, the date of receipt of the notice is not the determinative factor but the date of posting of the letter is to be considered for reckoning the period of notice, in fact the decision of the Supreme Court cited above is considered and distinguished in Honnappa's case, supra.

8. Regarding the second contention, Sri S.P. Shankar referred to the Karnataka Act No. 24 of 1998 which has amended the provisions of Sub-section (1-c) of the Karnataka Municipalities Act. Section 2 of the said Amendment Act No. 24 of 1998 is reproduced herein for convenient reference.

"KARNATAKA ACT No. 24 OF 1998

(First published in the Karnataka Gazette, Extraordinary, on the Tenth day of June, 1998)

THE KARNATAKA MUNICIPALITIES AND OTHER LAW (AMENDMENT) ACT, 1998

(Received the assent of the President on the Ninth day of June, 1998)

An Act further to amend the Karnataka Municipalities Act, 1964 and the Karnataka Municipal Corporation Act, 1976.

Whereas, it is expedient further to amend the Karnataka Municipalities Act, 1964 (Karnataka Act No. 22 of 1964) and the Karnataka Municipal Corporation Act, 1976 (Karnataka Act No. 14 of 1977), for the purposes hereinafter appearing;

Be it enacted by the Karnataka State Legislature in the Forty-ninth year of the Republic of India as follows:

1. Short title and commencement.--(1) This Act may be called the Karnataka

Municipalities and Other law (Amendment) Act, 1998.

(2) It shall come into force at once.

2. Amendment of Karnataka Act No. 22 of 1964.--In the Karnataka Municipalities Act, 1964 (Karnataka Act No. 22 of 1964, in Section 11, in Sub-section (1), in Clause (c), the words " and who are registered as electors within the Municipal area" shall be omitted.

3. Amendment of Karnataka Act No. 14 of 1977.--In the Karnataka Municipal Corporations Act, 1976 (Karnataka Act No. 14 of 1977), in Section 7, in Sub-section (1), in Clause (c), the words "and who are registered as electors within the city" shall be omitted.

By order and in the name of the Governor of Karnataka.

(M.R. Hegde) Secretary to Government Department of Parliamentary Affairs and Legislation".

9. Sri S.P. Shankar also referred to the clarification issued by the Secretary, Urban Development Department regarding voting rights of MLAs and MLCs. The text of clarification is reproduced herein for convenient reference.

"From HUD 95 MLR 96 Secretary, Urban Development Department, Karnataka Government, Bangalore.

To The Deputy Commissioner, Kolar District, Kolar. Sir,

Sub: Clarification regarding voting rights of MLAs and MLCs.

Please refer to your fax dated 5-2-1996. As regards conducting of election to the office of the President and Vice-President of Robertsonpet CNC, the Government Advocate in the High Court is being contacted to seek clarification from the High Court.

Section 11(1)(c) and (d) of the KM. Act, 1964 as amended has the answer for your question relating to voting rights of MLAs and MPs. Members of Lok Sabha and Legislative Assembly whose constituency lie wholly or partly in a Municipality and who has registered as voters within that municipality have the right to vote in that Municipality. In other words, Members of Lok Sabha and Legislative Assembly should satisfy two conditions, namely, the Municipality should be within their constituency and they should be voters in that Municipality.

Members of Rajya Sabha (Members of Council of State) and MLCs who are registered as voters within the municipal area have the voting rights in that Municipality.

Yours faithfully,

Sd/- (Shaik Ahmed) Under Secretary to Government, Urban Development Department, (Establishment)".

10. It was strenuously contended that the clarification issued by the Secretary, Urban Development Department no longer holds good in view of the amendment of provisions of Section 11 of the Municipalities Act by Karnataka Act No. 24 of 1998. The insistence of the MLCs being the registered electors within the Municipal area of their constituency is no longer a requisite factor to determine their voting rights.

11. After carefully going through the provisions of Clause (c) of Sub-section (1) of Section 11 which deals with the voting rights of the MLAs. However, Section 11(1)(d) specifically deals with the voting rights of the MLCs. The amendment has not altered the position of law relating to MLCs being necessarily registered electors within the municipal area of their constituency to have the voting rights. In that view of the matter, I find that the amendment to Section 11(1)(c) of the Karnataka Municipalities Act has not altered the position of law in relation to MLCs who were governed by Section 11(1)(d) of the Karnataka Municipalities Act. I find no merit in the petition. Accordingly, the petition is dismissed.