

(1994) 11 KAR CK 0015
In the Karnataka High Court
Case No : Writ Petition No. 2212 of 1994

M. Puttaranganaika

APPELLANT

Vs

Director of Municipal Administration

RESPONDENT

Date of Decision : 08-11-1994

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 42 (10)

Citation : (1995) ILR (Kar) 135 : (1994) 5 KarLJ 454

Hon'ble Judges : Kumar Rajaratnam, J

Bench : Single Bench

Advocate : G.S. Visweswara, for T.N. Raghupathy, for the Appellant; U.L. Narayana Rao, for B. Shivaram Bhat, for R-3 and Somayaji, HCGP for R-1, R-2 and R-4, for the Respondent

Final Decision : Allowed

Judgement

Kumar Rajaratnam, J

1. The Petitioner is the President to the Town Municipal Council, Gundlupet Town, Mysore District. He challenges the legality of the order dated 13.01.1994 passed by the Director of the Municipal Administration - First Respondent herein, - removing him from the office of the President of the Town Municipal Council, Gundlupet for alleged misconduct in the discharge of his duty by virtue of the power u/s 42(10) of the Karnataka Municipalities Act, 1964. Various grounds have been raised by the Petitioner. The Petitioner also challenges the Constitutional validity of Section 42(10) of the said Act. I have dealt with this case firstly to ascertain whether the impugned order passed by the First Respondent is based on legal evidence.

2. I have heard at length the submissions of Mr. G.S. Visveswara, learned Senior Counsel for the Petitioner and Mr. U.L. Narayana Rao, the learned Senior Counsel for the Third Respondent and the learned High Court Government Pleader,

3. Although various contentions were raised by the learned Counsel for the

Petitioner, it was urged that if no prima facie case is made out that the petitioner has committed an act of misconduct on the basis of the charge it would not be necessary for me to deal with the other question with respect to the Constitutional validity of Section 42(10) of the Karnataka Municipalities Act 1964.

4. I propose to deal with the facts of the case, which briefly, are as follows:

The petitioner was elected as the President of the Town Municipal Council, Gundlupet, in the year 1990. The First Respondent issued a show cause notice to the petitioner making certain allegations against him and as to why he should not be removed. The Petitioner submitted his explanation. The First Respondent was not satisfied with the explanation and hence passed an order removing the petitioner from the office of the President, Town Municipal Council, Gundlupet. The copy of the order has been produced before me as Annexure "A".

There were four charges levelled against the petitioner as per Annexure "A", the translated copy of which has been produced before me. However, in the course of the submissions Mr. U.L Narayana Rao, learned Senior Counsel confined himself to only first and second charges which were levelled against the petitioner.

5. The First Charge reads as follows:

"In respect of site bearing Assessment No. 1 and 20 measuring 120 ft. 150 ft. belonging to the Town Municipal Council even though offer had been for grant at Rs. 25/- per Sq.ft. by misusing your office and by ignoring the financial interest of the Town Municipal Council, you have taken decision to grant the site to your mother Smt. Basamma at Rs. 6/- per Sq.ft. Even though the resolution of the Town Municipal Council had been cancelled as per the order dated 1.8.1992 in No. DMA: SPR:14/92-93 of this office (Deputy Commissioner, Mysore) by violating the order of this office have again taken decision to grant the site to your mother in the general meeting dated 30.09.1992 under subject No. 11 and thereby you have contravened the law and you have indulged in act of nepotism and thereby caused financial loss to the Town Municipal Council."

6. According to the Respondent, a resolution was passed by the Town Municipal Council to grant a site to the mother of the petitioner at Rs. 6/- per Sq.ft. This resolution was subsequently cancelled as per the order dated 1.8.1992 in DMA:SPR:14/92-93 issued by the Deputy Commissioner, Mysore. Though this resolution was cancelled, the subject was placed before the General Meeting of the Town Municipal Council dated 30.09.1992 wherein it was decided to grant a site to the mother of the petitioner under subject No. 11. This resolution apparently was passed but it was not approved. Subsequently, on 12.2.1993 the Town Municipal Council passed another resolution to which the petitioner was also a party wherein it was held that they will abide by the decision of the Deputy Commissioner if he visits and inspects the spot and the Town Municipal Council will be bound by any decision taken by the Deputy Commissioner.

7. In these circumstances it is common ground that the Town Municipal Council

did not grant any site to the mother of the petitioner. In fact, the petitioner was a party to the resolution dated 12.02.1993 wherein it was categorically held that no effect will be given to any resolution granting the site to the mother of the petitioner and that the final decision will be made only after the Deputy Commissioner visits and inspects the spot and makes a decision. Therefore, no offence can be taken either against the Town Municipal Council or against the petitioner for having contravened any law or acted in any improper way.

8. Mr. Visveswara, the learned Senior Counsel, submits that the petitioner was only one person out of a total of 15 persons who are members of the Town Municipal Council. Therefore, any decision taken by the Town Municipal Council cannot by any stretch of imagination be said to have been taken by the petitioner. He cited the example of an Assembly of a State passing a resolution in which a particular person participated and submitted that the resolution is by the Assembly as a whole and cannot be that of the individual who participated in the voting. I see much force in this contention. Since the petitioner was only one of the 15 participants in passing the resolution, he cannot be singled out for any charge of indulging in any act of nepotism which has been alleged against the petitioner. It is seen that though the resolution was passed granting site to the mother of the petitioner, no effect was given to it. On the contrary, a resolution was passed whereby the entire decision was left to the Deputy Commissioner and it was also further resolved that the decision of the Deputy Commissioner would be binding on the Town Municipal Council. Therefore, to make personal charge against the petitioner that he has indulged in an act of nepotism and thereby caused financial loss to the Town Municipal Council cannot be held to be correct and I hold that on the facts of the case Charge No. 1 has not been proved against the petitioner and such a Charge cannot disqualify the petitioner of being a President of the Town Municipal Council.

9. The Second Charge reads as follows:

"After Sri Surya Kumar, left the old bus stand hotel, Town Municipal Council, over night in the middle of the year without clearing the dues to Town Municipal Council on 16-11.1990, without adjusting the amount realised from the sale of article left by the licensee towards the dues to the Town Municipal Council, you have misappropriated the said amount and thereby you have misused the office,"

10. The Second Charge which has been extracted above is more curious. It is stated that one Surya Kumar left the old bus stand hotel, Town Municipal Council, overnight in the middle of the year without clearing the dues to Town Municipal Council on 16.11.1990. The allegations against the petitioner was that certain articles were left in the premises which were handed over to the petitioner. These articles according to the learned Counsel for the Third Respondent, were sold by the petitioner and the said amount was not accounted for. Although this submission is made from the Bar by the learned Senior Counsel Mr. U.L. Narayana Rao, a perusal of the Charge does not indicate anything whatsoever that these articles were handed over to the petitioner and that the petitioner had

sold these articles.

11. The explanation of the petitioner reads as follows:-

"I am not in any way personally responsible for this charge; this charge is false and I have not misappropriated any money."

12. The findings of the First Respondent reads as follows:

"On a perusal of the Municipal file No. MUN:161/1991, it is seen that licensee having obtained the licence in the public auction on a monthly rent of Rs. 2,325/- for the period between 1.04.1990 to 31.03.1991. Thereafter in the middle of the year on 16.11.1990 he left the Town. The licensee had paid rents from 1.04.1990 to 31.07.1990. It is seen that in the proceedings of Town Municipal Council dated 14.12.1990 at subject No. 12 decision was taken to adjust the rent due from 1.8.1990 to November 1990 against the deposit of Rs. 9,300/- secured from the licensee."

13. It is clear from the findings that the deposit of Rs. 9,300/- was adjusted towards the arrears of rent. Having held that the deposit has been adjusted towards the rent, it is not known how a finding can be rendered by the First Respondent that the petitioner has misappropriated the money. Even from the findings rendered by the First Respondent, the entire amount that was due to the Town Municipal Council has been adjusted out of the deposit of Rs. 9,300/- which was lying with the Town Municipal Council. In these circumstances, I have no hesitation to hold that no prima facie case has been made out against the petitioner of the Charge of misappropriation.

14. Although the learned Senior Counsel for the Third Respondent does not seriously contend that he will be able to sustain Charges Nos 3 and 4, it may be necessary to give a finding on Charges Nos. 3 and 4. There appears to be no basis for Charges Nos 3 and 4 for proceeding against the petitioner u/s 42(10) of the Karnataka Municipalities Act, 1964.

Charge No. 3 reads as follows:

"It is established from the report of Tahasildar that you have abused councillor Smt. Puttamma in the council meeting dated 6.03.1991 in bad language and humiliated her."

15. The President has denied the allegation in Charge No. 3. However the First Respondent has perused the report by the Tahasildar and has stated that the Charge No. 3 has been proved, but no attempt was made to give a copy of the report of the Tahasildar to the Petitioner. Non-furnishing of the report of the Tahasildar to the petitioner is against all principles of Natural Justice and it is not open for the First Respondent to give a finding on Charge No. 3 without furnishing the copy of the Tahasildar's report.

16. Charge No. 4 reads as follows:

"You, the President, Town Municipal Council had made false allegations against the Chief Officer, Town Municipal Council and Senior Health Inspector without any reason and thereby obstructed the smooth functioning of Town Municipal Council."

17. The explanation of the President reads as follows:

"The staff of the Town Municipal Council are required to implement all the welfare programmes as the President or councillors may bring to their notice. But the staff had adopted a total non-co-operation attitude and this was brought to the notice of the Deputy Commissioner. There was no attempt to make a false allegation."

18. The findings of the First Respondent is again based on the report of the Tahasildar addressed to the Deputy Commissioner dated 7.12.1992. The said report was not furnished to the petitioner. In his findings the First Respondent also admits that the allegations had not been established. However, he says that these charges have been made with a view to intimidate the Chief Officers and employees and thereby the petitioner has acted in a dictatorial manner. It is not in doubt that even as per the findings of the Tahasildar with respect to Charge No. 4, the allegations have not been proved. In these circumstances it is not possible to understand how the First Respondent found the petitioner guilty of Charge No. 4. There is absolutely no basis on which the petitioner could have been found guilty with respect to Charge No. 4.

19. As stated earlier, the learned Senior Counsel Mr. U.L. Narayana Rao did not stress seriously before me that Charges No. 3 and 4 can be sustained and confined himself to Charges Nos. 1 and 2. In view of my findings that Charges Nos. 1 to 4 have not been established I hold that the impugned order passed by the First Respondent at Annexure "A" is liable to be quashed as no prima facie case has been made out against the petitioner. The First Respondent has passed this order without application of mind and without any basis. The collective responsibility of the Town Municipal Council has been fastened on to the petitioner and even in those cases the Charges were levelled against the petitioner were in his personal capacity and no case has been made out.

20. Section 42(10) of the Karnataka Municipalities Act 1964 reads as follows:

"Every President and Vice President shall (***) be removable from his office as such President or Vice President by the Government for misconduct in the discharge of his duties or for neglect of or incapacity to perform his duties or if he is unable to pay (dues he owes to the Municipal council or has suffered an order for commitment to civil prison for non-payment of any decretal debt) and a President and Vice President so removed who does not cease to be a councillor under Sub-section (2) of Section 41, shall not be eligible for re-election as president or vice president during the remainder of his term of office of councillor specified in Section 18:

(Provided that no such order shall be made except after the president or the Vice

president has been given an opportunity for submitting explanations).

(Explanation:-***)

21. A plain reading of Section 42(10) makes it clear that the President or the Vice President can be removed by the Government (the power has been now conferred on Director of Municipal Administration by a Notification No. HUD 103 MMM 85 Bangalore dated 8th July 1986). Now the Director of Municipal Administration can remove the President or the Vice President for misconduct in the discharge of his duties. Section 42(10) further states that a person so removed shall not be eligible for re-election as President or Vice President during the remainder of his term of office. To me it appears that serious consequences follow when a President or Vice President is removed from office by virtue of the power u/s 42(10) and before a person is removed from office, it is necessary that a case for misconduct has to be clearly established since it disables a person from seeking re-election as President or Vice President during the remainder of his term of office which is a serious matter and such disqualification shall not be made unless on valid legal grounds and on proven misconduct of his duties.

22. Section 42(9) of the said Act reads:

"Every President and every Vice President of a Municipal Council shall forthwith be deemed to have vacated his office if a resolution expressing want of confidence in him is passed by a majority of not less than two-thirds of the total number of councillors at a special general meeting convened for the purpose:

Provided that no such resolution shall be moved unless notice of the resolution is signed by not less than one-third of the total number of councillors and at least ten days notice has been given of the intention to move the resolution.

Provided further that where a resolution expressing want of confidence in any President or Vice President has been considered and negatived by a municipal council, a similar resolution in respect of the same President or Vice President shall not be given notice of or moved within one year from the date of the decision of the municipal council."

23. It is clear that if there was want of confidence in the President, it was always open for the Town Municipal Council to pass the resolution in conformity with Section 42(9). Admittedly this was not done. On the contrary, Section 42(10) was invoked by the First Respondent which certainly requires a high standard of proof with respect to the alleged misconduct in the discharge of the duties of the President. While Section 42(10) imposes upon the person who is removed, a condition that he shall not be eligible for re-election as President during the remainder of his term of office. This in my opinion is a disqualification and no President or Vice President can be removed for misconduct in the discharge of his duties unless there is a clear proof based on materials that have been placed before the First Respondent. In my view this has not been done and the standard of proof that is required u/s 42(10) has not been complied with and in these

circumstances the order passed by the first Respondent is liable to be quashed and is hereby quashed.

24. Since I have dealt with the facts of the case and since I have held that no case is made out against the petitioner it would not be necessary to deal with the Constitutional validity of Section 42(10) of the Karnataka Municipalities Act, 1964 and various other contentions and case laws laid before the Court both by the learned Senior Counsel for the Petitioner and the learned Senior Counsel for the Respondent No. 3. In these circumstances the Writ Petition is allowed. The order of the first Respondent at Annexure "A" is hereby quashed,

There will be no order as to costs.