

(1979) 03 KAR CK 0023
In the Karnataka High Court
Case No : WP 45/79

Madhappa H.

APPELLANT

Vs

Divisional Commr, Mysore and Others

RESPONDENT

Date of Decision : 23-03-1979

Acts Referred:

Karnataka Village Panchayat and Local Boards Act, 1959 — Section 12(2)

Citation : (1979) 1 KarLJ 331

Hon'ble Judges : Puttaswamy, J

Judgement

1. Whether a seat that becomes vacant when a person elected from more than one Constituency, elects to serve from one of the Constituencies, can be filled up by election or by appointment is the short and interesting question that arises for determination in this writ petition.

2. At Hanakere, there is a group village, panchayat called as Hanaker Group Panchayat (hereinafter referred to as "the Panchayat") constituted and functioning under the provisions of the Karnataka Village Panchayats and Local Boards Act, 1959 (hereinafter referred to as "the Act.") General elections to the said panchayat were held on 8-7-1978. One Sri. H.L. Puttaiah had contested, from two Constituencies and he was declared duly elected from both the Constituencies. On 12-7-1978 Shri. H.L. Puttaiah, addressed a letter or issued notice in writing signed by him to the appropriate Assistant Commissioner choosing to continue as a member from one of the constituencies only viz., Block No. 3. He therefore, chose not to continue as a member from Block No. 1. On receipt of the aforesaid notice given by Sri. H.L. Puttaiah, the Assistant Commissioner reported the same to the Deputy Commissioner, Mandya. He appears to have suggested to the Deputy Commissioner, Mandya (hereinafter referred as the D.C.) to appoint the petitioner as a member to the vacant seat of Sri H.L. Puttaiah. On 16/18-8-1978 the Deputy Commissioner purporting to act under sub-section (5) of S. 5 of the Act appointed the petitioner in the vacant seat of Sri. H.L. Puttaiah as a member of the Hanakere Village Panchayat, the validity of which was challenged by respondents 3 and 4 under Section 207 of

the Act before the Divisional Commissioner, Mysore (hereinafter referred to as the Commissioner). On 19-12-1978 the Commissioner has allowed the revision petition filed by respondents 3 and 4 and has cancelled the appointment made by the D.C. In this writ Petition, the petitioner has challenged the order dated 19-12-1978 of the Commissioner.

3. Sri H.K. Vasudeva Reddy, learned counsel for the petitioner strenuously contended that the appointment of the petitioner made by the D.C. was really referable to the powers conferred on him by the first proviso to S. 35 of the Act and the same was a valid appointment and the view taken by the Commissioner to the contrary is illegal. Learned counsel for the respondents refuted the contention of Sri. H.K. Vasudeva Reddy and supported the order of the Commissioner.

4. Sri H.L. Puttaiah had been elected from more than one constituency; that he chose to continue as a member from only one constituency and gave the notice in writing as required by S. 12 of the Act and the Karnataka Panchayats and Taluk Boards Election Rules, 1959 (hereinafter referred to as the Rules) are not in dispute. The Act and; the Rules recognise the right of a person to contest from more than one constituency of a panchayat and for the voters to elect such a person from more than one constituency. But when a person is elected from more than one constituency, S. 12 of the Act declares that such a person shall continue to be a member of only one constituency of his choice. S. 12 prohibits simultaneous membership of a person from more than one constituency. S. 12 read with Rule 51 of the Rules requires a person elected from more than one constituency to give a notice in writing signed by him and delivered to the Assistant Commissioner of the area or such other officer authorised by him within seven days from the date on which he is declared to be elected or where the dates of such declaration are different in respect of different seats, within seven days from the last date of such declaration. The choice made by such person is declared final. The obvious result of such a notice given by a person under S. 12(1) read with R. 51 of the Rules is, a vacancy occurs in respect of the constituency from which he has chosen to discontinue as a member of such constituency. As to how the matter should be regulated in respect of such a constituency is provided in sub-sec. (2) of S. 12 of the Act, which reads thus;-

"(2) When any such choice has been made, the constituency or constituencies other than the constituency which such person has chosen to serve, shall be called upon to elect another person or persons."

Sub-sec. (2) requires the D.C. who is the controlling and co-ordinating authority of the Panchayats constituted and functioning in his district to call upon the constituency to elect another person from such a, constituency. The language of S. 12(2) of the Act in clear and un-ambiguous terms provides that the vacancy caused under S. 12(1) or under S. 12(3) to be filled up only by the process of election and not in any other manner. Sub-sec. (2) of S. 12 employs the word "shall". Ordinarily whenever the legislature uses the word, "shall" the legislative

intent is that such provision unless the context otherwise requires, is mandatory (vide *Sainik Motors v. State of Rajasthan*, AIR 1961 SC. 1481. A reading of S. 12(2) and other provisions of the Act and the Rules, shows that the legislative intent is mandatory. A mandatory enactment has to be strictly obeyed and anything done in disregard to it by any authority is generally void and cannot be upheld. In the present case, when a vacancy occurred in respect of the constituencies under S. 12 (1) of the Act, the D.C. did not call upon the constituency from which the vacancy occurred to elect another person and proceeded to appoint the petitioner in disregard to S. 12(2) which I have held to be mandatory. In this view the order passed by the Commissioner cancelling the appointment of the petitioner made by the D.C. is unexceptionable and does not call for my interference.

5. Sri H.K. Vasudeva Reddy did not rightly dispute that S. 5(5) under which the D.C. had appointed the petitioner had no application. S. 5(5) of the Act has its application only when the required number of members are not elected at an election held to the Panchayat and not to a case of vacancy arising thereafter and therefore the D.C. was clearly wrong in invoking S. 5(5) of the Act to appoint the petitioner as a member of the panchayat.

6. Sri H.K. Vasudeva Reddy is not right in his submission that the appointment made by the D.C. is referable to the first proviso of S. 35(1) of the Act. S. 35 provides for the filling up of vacancies caused by the disablement, death, resignation, disqualification, absence without leave or removal of a Chairman, or Vice-Chairman or member of the panchayat. S. 12 of the Act and R. 51 of the Rules dealing with the prohibition of simultaneous membership, the vacancy to be caused in respect of any or all the constituencies from which a person is elected, is a code in itself. In respect of a vacancy caused under S. 12, the authority is required to fill up the vacancy in the manner provided by S. 12(2) of the Act and the authority has no choice to ignore the same and resort to the first proviso to S. 35(1) of the Act. I am therefore, of the opinion that the appointment of the petitioner made by the D.C. cannot be sustained under the first proviso to S. 35(1) of the Act as contended by Sri H.K. Vasudeva Reddy. I therefore, reject this contention of Sri H.K. Vasudeva Reddy.

7. In the light of my above discussion, I hold that the order of the Commissioner cancelling the appointment of the petitioner, though not for the very reasons given by him, is legal and the rule issued is therefore, liable to be discharged,

8. Rule discharged.

9. In the circumstances of the case I direct the parties to bear their own costs.