

(1988) 09 KAR CK 0038
In the Karnataka High Court
Case No : W.P. No. 7600 & 7601/1988

Manjunatha, S. and Another

APPELLANT

Vs

The Chief Secretary, Zilla Parishad, Kolar and Another

RESPONDENT

Date of Decision : 05-09-1988

Acts Referred:

Karnataka Local Authorities (Prohibition of Defection) Act, 1987 — Section 4(2)

Citation : (1988) 2 KarLJ 549

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

Chandrakantaraj Urs, J.-In these two Writ Petitions the petitioners have challenged the order of the Chief Secretary, Zilla Parishad dated 16-5-1988 disqualifying them in accordance with sub-section (2) of Section 4 of the Karnataka Local Authorities (Prohibition of Defection) Act, 1987 (hereinafter referred to as the "Act").

2. The brief facts which are required to be stated are as follows:

On 18-6-1987 election to the offices of Pradhan and Upa-Pradhan for Otadahosahalli Mandal Panchayat in Gowribidanur Taluk took place. At that meeting the petitioner in the first of the petitions was elected as Pradhan and one Adinarayanappa was elected as Upa-Pradhan. Both of them belong to Janata Party. It is alleged that a report was submitted to the Secretary of the Panchayat in the following month seeking appropriate action under the Act against the petitioners and another who acted contrary to the instructions issued at the meeting held on 17-6-1987 in the office of the Taluk Janata Party where-in one Sri V.P. Narayana Gowda and another Sri R. Hanumantha Reddy were declared as official candidates for Janata Party for the offices of Pradhan and Upa-Pradhan and they were responsible for the defeat of the official candidates while the petitioner in the first of the Writ Petitions got himself elected as Pradhan. On such complaint or report being received, the Secretary forwarded the same to the Chief Secretary of the Zilla Parishad who called upon the petitioners to appear on 18-7-1987 before him and show cause as to why action should not be

taken against them. The petitioners appeared and gave a signed Written Statement by which they denied the allegations made against them and asserted:

- (i) that they did not vote against the official candidates of the Party;
- (ii) that Janata Party did not specify any one as the official candidates;
- (iii) that they had not worked against the Party; and (iv) that there was no proper instructions regarding the official candidates and that Manjunath and Adinarayanappa contested the offices of Pradhan and Upa-Pradhan respectively and are duly elected to protect the interests of the Janata Party and therefore, no disqualification has been incurred by the petitioners and another.

3. On receipt of such a statement, the respondent-Chief Secretary, Zilla Parishad, Kolar, has proceeded to dispose of the matter holding that they were informed on 17-6-1987 to vote for the official candidates as evidenced by the document produced by the President of the District Janata Party bearing the date 17-6-1987 which showed that at the meeting which took place on 17-6-1987 the petitioners, amongst others, were informed that they should vote for the official candidates. Before the Chief Secretary there appears to have been another document produced which was dated 23-4-1987 and which purported to the decision of the district Janata Party to field V.P. Narayana Gowda and H. Hanumantha Reddy as official candidates for the offices of Pradhan and Upa-Pradhan respectively. In that circumstance, the Chief Secretary came to the conclusion by inference that the petitioners and another who were present at the meeting on 17-6-1987 knew the official candidates and therefore they wilfully disobeyed the directions issued by the Janata Party by way of a Whip and therefore, incurred disqualification under sub-section (2) of Section 3 of the Act resulting in their expulsion as members of the Mandal Panchayat. That order was challenged in Writ Petition No. 11592 to 11594 of 1984 in this Court and by the order dated 3-8-1987 this Court stayed the order and on 14-3-1988 the Writ Petitions were disposed of directing the petitioners to appear before the Chief Secretary, Zilla Parishad and file their objections. It was in that circumstance, they filed Written Statements to which reference has already been made.

4. From the statement of objections filed on behalf of the respondent and from the records produced for perusal of the Court, it is seen that no enquiry as such was held by the Chief Secretary of the Zilla Parishad, Kolar, at which the petitioners were confronted with the documents on which the Chief Secretary has relied on, nor did the complaints filed by the official candidate Narayana Gowda and the President of the District Janata Party put to the petitioners. The district Janata Party President nor the official candidate Narayana Gowda have been examined by the Chief Secretary. In other words, it was only the petitioners and another who were called upon to file their statements.

5. In similar circumstances I have taken the view that an order of disqualification under Sub-section (2) of Section 3 of the Act entails the loss of office which is an elective post and therefore, the minimum requirements of rules of natural justice

satisfying the judicial conscience should be observed by the Chief Secretary while exercising power under sub-section (2) of Section 4 of the Act. Despite the earlier remand order by this Court, there does not appear to have been sufficient care taken by the respondent-Chief Secretary, Zilla Parishad, Kolar to confront the petitioners with the documents and the complaints on which he was going to found his conclusions. Therefore, that there has been violation of the rules of natural justice is not in doubt. No contemporaneous record appears to have been maintained. In the records produced what are found the copies of the proceedings of the District Janata Party on 23-4-1987 and 17-6-1987 and the telegram issued by Narayana Gowda, the official candidate for the office of Upa-Pradhan and the complaint that followed. That these documents were put to the petitioners. there is no evidence at all. Therefore, the order impugned is liable to be set-aside and the matter once again remitted to the Chief Secretary, Zilla Parishad. Kolar, to hold a proper enquiry in the light of the observations made in the course of this order and to pass appropriate orders on the complaint of Narayana Gowda and the President of Janata Party, Kolar.

6. Rule will accordingly issue and be made absolute. In the circumstances of the case, there will be no order as to costs.

Writ petition allowed.