
(2006) 03 KAR CK 0016
In the Karnataka High Court
Case No : Writ Petition No. 4253 of 2006

Maruti Parashram Kugaji and Others	Vs	APPELLANT
State of Karnataka and Others		RESPONDENT

Date of Decision : 21-03-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Karnataka Panchayat Raj Act, 1993 — Section 136

Citation : (2006) 03 KAR CK 0016

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Vagdevi Associates, for the Appellant; Asha M. Kumbargerimath, High Court Govt. Pleader for Respondents 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The petitioners 1 to 19, questioning the legality and validity of the impugned notices vide Annexures-D1 to D13, issued by the 2nd respondent dated 3-3-2006, bearing even No. Sain:Gra:A:Pa:27:JiPaSa:2006 and declare and quash the said notices as totally devoid of bona fides, the authority of law and as arbitrary and capricious, have presented this writ petition. Further, the petitioners have sought for a direction calling upon the 1st respondent to enquire into and take the required remedial action against the 3rd respondent for the usurpation and assumption of the powers of the Government that the 3rd respondent has resorted to in issuing the impugned notices dated 3-3-2006 mentioned above, and ensure the rule of law adumbrated in Article 14 of the Constitution of India.

2. The only grievance made out by the petitioners in this writ petition is that, all these petitioners are duly elected members of the 4th respondent-Taluk Panchayat. The first meeting of the said Taluk Panchayat, after general elections to the said local authority was held in the month of December 2005 had been scheduled to be held on 27th February, 2006. Accordingly, notice has been issued

on 15-2-2006 vide Annexure-A, fixing the date of newly elected members of the Taluk Panchayat-4th respondent. When things stood thus, it is shock and surprise to these petitioners, when they have received the notices vide Annexures-D1 to D18 issued by the 2nd respondent without jurisdiction and he is not a Competent Authority to issue such notices u/s 136 of the Karnataka Panchayat Raj Act, 1993. The said notices issued by the 2nd respondent is one without jurisdiction and the same is null and void. Therefore, petitioners are constrained to approach this Court, by assailing the correctness of the impugned notices vide Annexures-D1 to D18 and seeking further directions as referred above.

3. Learned Senior Counsel for the petitioners vehemently submitted that, 2nd respondent herein by invoking Section 136 of the Panchayat Raj, Act, assuming the power, has issued the impugned notices dated 3-3-2006 vide Annexures-D1 to D18 and the same are one without jurisdiction. Immediately after the receipt of the notices to be on safer side, these petitioners have filed their detailed reply and the reply filed by one of the petitioners i.e., petitioner 10 is at Annexure-C, specifically pointing out that, the said notice is issued without any authority of law, against Article 14 of the Constitution of India and the principles of natural justice. The petitioners have reserved their liberty to question the same in appropriate proceedings under Article 226 of the Constitution of India. Learned Counsel for the petitioners submitted that, it is well-settled principles of law laid down by this Court and Apex Court that, if any notice is issued without jurisdiction is nullity in the eye of law and the parties are entitled to assail the same by invoking extraordinary jurisdiction of Article 226 of the Constitution of India. Therefore, he submitted that, the impugned notices issued by the 2nd respondent are one without jurisdiction and they are liable to be set aside.

4. I have heard the learned Senior Counsel appearing for the petitioners. After careful perusal of the grounds urged by the petitioners in this writ petition and other materials available on file and after considering the submission made by the learned Counsel for the petitioners, it emerges on the face of the materials available on record that, 2nd respondent herein has issued the notices on 3-3-2006 vide Annexures-D1 to D18 to these petitioners mentioning the reasons for issuing said notices. In pursuance of the said show-cause notices issued, all these petitioners have filed their objections as submitted by the learned Senior Counsel for petitioners and one of the objection filed by the petitioner 10 is produced at Annexure-C. When these petitioners have filed their objections raising jurisdictional point and that the notices issued u/s 136 of the Karnataka Panchayat Raj Act are one without jurisdiction, the Competent Authority will consider the same and pass appropriate orders. When the matter is seized before the Competent Authority, the interference by this Court, at this stage, is premature. If the replies given by these petitioners satisfies the authority, the authority may drop the proceedings. Only on apprehension that the objections filed by these petitioners will not be considered and the authority will not comply with the principles of natural justice, the interference by this Court exercising extraordinary jurisdiction under Article 226 of the Constitution of India, at this

stage, is not justifiable. What are the grounds urged by the petitioners in this writ petition, more than that, they have taken stand in their reply and each and every provision of law has been pointed out and the same will be considered and orders will be passed by the Competent Authority. If the said order goes against these petitioners, they are at liberty to assail the same before the Competent Authority. Therefore, entertaining this writ petition by this Court, at this stage, is premature in nature.

5. For yet another reason, the writ petition filed by the petitioners is liable to be rejected is, in view of the well-settled law laid down by the Supreme Court in hosts of judgment holding that, the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed an retarding investigative process to fine actual facts with the participation and in the presence of parties is deprecated and the writ petitions should not be entertained for the mere asking and as a matter of routine, and writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court. In the instant case, admittedly, these petitioners have filed their reply to the impugned notices issued by the 2nd respondent and approached this Court, at this premature stage. Therefore, I am of the considered view that, entertaining this writ petition, at this stage, invoking extraordinary jurisdiction of Article 226 of the Constitution of India is not justifiable. Therefore, the writ petition filed by the petitioners is liable to be rejected on this ground also.

6. Having regard to the facts and circumstances of the case as stated above, the writ petition filed by the petitioners is dismissed as premature in nature.