

(1986) 01 KAR CK 0068
In the Karnataka High Court
Case No : Writ Petition No. 12021 of 1983

M.G. Krishniah

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 24-01-1986

Acts Referred:

General Clauses Act, 1897 — Section 30

Karnataka Municipalities (Election of Councilors) Rules, 1977 — Rule 8 (1) (c)

Citation : (1986) ILR (Kar) 1074 : (1986) 1 KarLJ 341

Hon'ble Judges : Ramakrishna, J; Rama Jois, J

Bench : Division Bench

Advocate : A.C. Yaduraya Gowda, for the Appellant; N. Santosh Hegde, General, S.V. Jagannath, HCGP for R-1 to 3, H.K. Vasudeva Reddy, for R-1 to 8 and M. Jagannath, for R-9 to 8, for the Respondent

Final Decision : Dismissed

Judgement

Rama Jois, J.—In this Writ Petition in which the petitioners have questioned the legality of the calendar of events issued by the Tahsildar, and Returning Officer, for holding general election to Town Municipal Council, Mulbagal, constituted and functioning under the provisions of the Karnataka Municipalities Act 1964 (the "Act" for short), the following questions of law arise for consideration :

(i) Whether the public notice of the calendar of events for holding election to a Municipal Council constituted under the Act issued under Rule 8 of Councillors Rules, 1977 (the Rules for short) is invalid unless published in the Official Gazette?

(ii) If the Returning Officer is at liberty to adopt any one or more modes of issuing public notice of calendar of events including Official Gazette and such public notices are published on different dates, from which of those dates the seventh day, i.e., the last date of filing nomination papers should be calculated?

2. The facts relevant for considering the above questions are, as follows :

According to the petitioners the calendar of events for holding election to the Mulbagal Town Municipal Council in the District of Kolar, dated 28-6-1983 was published in a local Newspaper called "Kolar Patrike" on 29-6-1985. Notice was not published in the Official Gazette. The contention of the petitioners is that the publication of calendar of events in the Official Gazette was obligatory and therefore as it was not published in the Official Gazette, the whole election process was invalid. Alternatively, the contention of the petitioners is that the calendar of events was published in Kolar Patrike only on 29-6-1983 even though it was dated 28-6-1983. Therefore, as according to Rule 8 of the Election Rules, the last date for receiving the nomination papers was to be the 7th day and as the last date fixed in the calendar of events was 5th July 1983, the period so fixed was short by one day and on this ground the calendar of events has to be declared invalid.

3. This plea of the petitioners is met by the Returning Officer in para-2, 3 and 4 of the application filed for vacating the interim order : paras 2, 3 and 4 read thus :

"The third respondent published the calendar of events on 28-6-1983. The election calendar was duly published on 28-6-1983 in the morning in the (i) Office of the third respondents (ii) Taluk Office, Mulbagal, (iii) Municipal Office, Mulbagal, (iv) Block Office, Mulbagal and (v) Primary Land Development Bank, Mulbagal for the information of public. It was also announced through beating of tom-tom in the Town Municipal Council area on 28-6-1983. The Election Calendar was also published through Kolar Patrike and Kolar Vani News Papers on 29-6-1983.

3) According to Rule 8(1)(c), the last date for making nominations shall be the seventh day after the date of publication of election calendar. The object of the provision is to give proper opportunity to the public to file their nominations. Rule 8 merely directs the publication of Election Calendar. Neither the Act nor the Rules provide for the manner in which the election calendar has to be published. As mentioned earlier, the third respondent has published the Election Calendar in several public offices. Nearly 70 per cent of the population of Karnataka are illiterate. The publication of election calendar through beating of tom-tom is the most suitable manner of publication in our country. The third respondent has given wide publicity to the election by adopting about three modes of publication.

4) The petitioners have admitted in paragraphs 6 and 10 of the Writ Petition that the third respondent has issued the election calendar on 28-6-1983. The petitioners in the Writ Petition have not raised the ground that the election calendar is not duly published. They are the voters and they are not aggrieved by the issue of election calendar. All the formalities with regard to the conduct of the Election have been completed and the ballot papers are printed. The balance of convenience is in favour of respondents and in favour of holding of elections and in vacating the stay."

In the above paragraphs, the stand taken by the Returning Officer is that according to Rule 8(1)(c) the Returning Officer was only required to issue public notice and that no specific method of publication has been prescribed under the Rule. As far as the method adopted by the Returning Officer, he has stated that the calendar of events was published in the morning of 28-6-1983 in the office of the Tahsildar, Municipal Office, Block Development Office, Primary Land Development Bank. He has also stated that notice was announced by beat of tom-tom in the Municipal Area. In addition, he has also stated that it was published in the Kolar Patrike and Kolar Vani newspapers on 29-6-1983. In support of the contention, that the calendar of events must be published in the Official Gazette only and any other method cannot be regarded as valid, the petitioners rely on the definition of the word "Notification" used in Section 2(16) which reads thus :

"Notification means a Notification published in the Official Gazette."

They also rely on a Division Bench Judgment of this Court in A.P. Lawrence & Anr. v. State of Mysore & ors. 1970(1) Mys. L.J. 185 in which Rule 8(1)(c) of the Mysore Municipalities (Election of Councillors) Rules 1965 was interpreted, which has since been replaced by the Rules of 1977. Rule 8(1)(c) of the 1977 Rules is however similarly worded it reads :

"8. PUBLICATION OF ELECTION CALENDAR : (1) Whenever it is necessary to hold an election under the proviso to Section 12 or u/s 17 or election to fill a casual vacancy, u/s 19 the Returning Officer Shall publish a notice stating :

"xx xx xx xx (c) The last date for making nominations which shall be the seventh day after the date of publication of the notice under this Sub-Rule or, if that day is a public holiday and the place at which such nomination papers are to be delivered."

(underlining by us)

The above Rule requires the giving of public notice of calendar of events and further provides that the last date for making nominations should be the seventh day from the date of public notice and if that day happens to be a public holiday, the next succeeding working day would have to be fixed as the last day for receipt of nominations. The Rule does not say that calendar of events should be issued through a notification. It only requires that the Returning Officer has to issue a public notice of the calendar of events. Therefore, the word "Notification" on which reliance was placed by the Learned Counsel for the petitioner to say that the calendar of events must be published only in the Official Gazette and therefore if only it is published in the Official Gazette, it can be regarded as valid calendar of events, is untenable.

4. The Learned Counsel for the petitioner however, submitted that relying on Section 30 of the Mysore General Clauses Act, a Division Bench of this Court has taken the view that publication in the Official Gazette of the Calendar of events

were obligatory 1970(1) Mys. L.J. 185. The relevant portion of the Judgment in the said case on which they rely reads thus:

"Now, although Rule 8 of the Rules directs the publication of an election calendar) no rule specifies the manner of publication and there is no provision either in the Election Rules or the Mysore Municipalities Act. at variance with the rule of construction directed by Section 30 of the General Clauses Act. So, the publication of the Election calendar could be deemed to have been duly made only when it appears in the Official Gazette.

The material date for the computation of the period of seven days specified in Rule 8(1)(c) is therefore the date on which the election calendar appeared in the Official Gazette, which, in the case before us, was November 28, 1968. But that was also the date which was announced to be the last date for making nominations.

That being so, there was no interval whatsoever between the date of the publication of the election calendar and the last date specified for making nominations, and that is what amounts to plain disobedience of Rule 8(1)(c) of the Rules."

The ratio of the decision is that if the calendar of events is published in the official gazette then only the publication can be deemed to have been made validly on the date of the official gazette. It may be seen from the facts of the said case, the last date for receipt of nominations in respect of the General Election to Municipal Council, Kushalnagar fixed was 28th November 1968. The calendar of events was also published in the Official Gazette on 28th November 1968. Therefore the calendar of events could be deemed to have been duly published only on the said date. In the said case there was no plea and proof, that the calendar of events had been published on any earlier date in any other method. In the said situation, the Division Bench held that as the calendar of events was published in the Official Gazette on 28th November 1968, in view of Section 30 of the General Clauses Act, it must be regarded as having been duly published only on 28th November 1968, and consequently the calendar of events was invalid as the last date for receipt of nominations was the same day on which the calendar of events was published, and not the seventh day as required under the rule and therefore, the calendar of events was invalid.

5. In the above Judgment 1970(1) Mys. L.J. 185 the Division Bench has also pointed out that the rub did not specify the manner of publication and there was no provision either in the Election Rules or the Act prescribing the method of publication. The wording of Rule 8(1)(c) indicates, in what manner the public notice of the calendar of events should be given is left to the choice of the Returning Officer. The mandate of the Rules is that notice of calender of events must be issued by giving public notice and the last date for receiving nomination papers should be the seventh day and not any other day, from the date of public notice and if only the seventh day happens to be a general holiday, the last day

for receiving nomination papers could be fixed as the next succeeding working day. It is open to the Returning Officer to give public notice of calendar of events in any manner he considers expedient and sufficient having due regard to the object and purpose in giving public notice of calendar of events. He is also at liberty to give public notice by more than one method. If the Returning Officer chooses to issue public notice of the calendar of events in the Official Gazette and not in any other manner, in order to find out as to whether Rule 8(1)(c) has been complied with one has to look to the date of the Official Gazette in which the calendar of events was published. But in a case where the Returning Officer chooses to give public notice by more than one method, in our opinion the date of the earliest of the notices given should be taken as the basis to find out as to whether the seventh day is the last day for receiving nomination or not. Under the Rule there is no requirement that the calendar of events should be published in Official Gazettee. Therefore even in a case where the Returning Officer has chosen to have the calendar of events published in the Official Gazettee in addition to one or more of the other methods of publication also, the question as to whether Rule 8(1) (c) has been complied with or not has to be decided with reference to the earliest date of public notice. The only difference between the giving of public notice in the Official Gazette and any other method is, in the former case there arises a presumption as to the date of publication of the notice, in view of Section 30 of the General Clauses Act, whereas in the case of the latter, it has to be proved, if disputed.

6. In the present case the Returning Officer had adopted the three methods of giving public notice: (1) In the morning of 28th June 1983 he published the calendar of events in the Notice Board of the Taluk Office, Municipal Office, Block Development Office and Primary Land Development Bank Office. (2) On the same day he also announced through beating of tom-tom, in the Municipal area. (3) He also got it published in two local news papers which were published only on 29-6-1983. He did not choose to get it published in the Official Gazette. Therefore the ratio of the decision in the case of Lawrence 1970(1) Mys. L.J. 185 is of no assistance to the petitioners. The only question for consideration in this case is whether the giving of public notice of the calendar of events on 28-6-1983, as stated by the Returning Officer is proved.

7. It is true that the petitioners have denied the first two publications. But there are contesting respondents who have filed affidavits stating that the calendar of events had been published on 28-6-1983 at the Municipal Office and other Office as stated by the Returning Officer. There is no basis to disbelieve the statement made by the Returning Officer that he had published notice of calendar of events on 28-6-1983 itself in the manner stated by him. He also chose to have it published in the newspaper which however was published on 29-6-1983. This was only an additional public notice and could not constitute the basis to decide the validity of the public notice, with reference to Rule 8(1)(c) of the Rules.

8. The fact that the calendar of events was not published in the Official Gazette is

also no ground to say that the calendar of events invalid for violating Rule 8(1)(c), as it does not require it to be published in the Official gazette.

9. For the reasons aforesaid, we answer the first question in the negative and the second question as follows :

In cases where the Returning Officer adopts more than one mode of giving public notice of the calendar of events, if the last date fixed for filing nominations is the seventh day from the date of the earliest of the publications it would be in compliance with Rule 8(1)(c) of the Rules.

10. There are two other questions raised in this Petition which require to be considered. The petitioners have contended that the population of the Town Municipality was more than 20,000 according to 1981 census and therefore in view of Section 11 of the Act number of Councillors ought to have been fixed at 19, but the number of Councillors fixed was only 15 which was fixed according to 1971 census and therefore, it was violative of Section 11 of the Act. The above contention has been raised overlooking the proviso inserted with the Section.

"11. Constitution of Municipal Councils:

(1) The Municipal Council shall consist of such number of councillors as is indicated in the following table :

Population of Municipality

Number of Councillors

(1)

For a Municipality with a population not exceeding 20000

15

(2)

For a Municipality with a population exceeding 20000 but not exceeding 30000

19

Explanation : In this sub-section, "population" means the population as ascertained at the last preceding census of which the relevant figures are published.

Provided that the reference in this explanation to the last preceding census of which figures have been published shall, until the relevant figures for the first census taken after the years 2000 have been published be construed as a reference to the 1971 census".

From the above proviso it is clear that it is only the figures of the census held after 2000 A.D. which would prevail over the 1971 figures for fixing total number of seats for any of the Municipal Councils in this State. Hence, the contention is

untenable.

11. Another contention urged by the petitioner is that though "A" Division had got population of 5019, only three seats are allotted to the said division, though in the other two divisions to which three seats are allotted population was less than half, particularly in "B" Division. The petitioners have furnished the following figures stating that they are based on 1971 census.

"A Division.

5019.

B Division.

2344.

C Division.

2792.

D Division.

3222.

E Division.

3067.

16444.

According to the figures given by the petitioners, there is marked disparity between the population figures between Division-A and Division B. But the above figures have been disputed in the statement of objections. Further in a matter like this, there cannot be any mathematical precision and the divisions have to be made having due regard to territorial contiguity also. Therefore, we find it difficult to accept the contention of the petitioners that the territorial division and the allotment of seats has been done in an arbitrary manner.

12. The only question which remains for consideration is about the order which we should make in the Writ Petition. After issuing Rule Nisi, election process was stayed by this Court. By that time nomination had already been filed and the last date for receipt of nomination papers was over. As the validity of the calendar of events has been upheld we have to issue a direction to the Returning Officer to proceed with the election from the stage at which the election process was interrupted by the interim order of this Court.

13. Before concluding, we would like to observe as to the methods which might be adopted for giving public notice of calendar of events in addition to the publication at Municipal Office and other Public places. In the statement of the Returning Officer, he has stated that in addition to the publication of the calendar of events on 28-6-1983 at various offices as specified in the statement he had published the notice by beat of tom-tom. The Mulbagal Town Municipality is a

small Municipal Council and it might be a sufficient mode of giving wide publication of the calendar of events. However, it is an outmoded method of giving publication. Therefore, it is better, if modern amenities like, printing pamphlets, and distributing them and / or making the announcement through mike-fitted moving vehicle, or by giving slides to cinema theatres or through radio wherever possible, are used instead of giving public notice by beat of Tom Tom, and these publication are also made on the same date on which date the calendar of events is notified in the notice Board of the Municipal Council concerned and other public places.

14. In the result, we make the following :

ORDER

(1) Rule discharged.

(2) The Writ Petition is dismissed.

(3) The Returning Officer shall proceed to complete the election process from the stage at which it was interrupted by the interim order of this Court.