

(1989) 12 KAR CK 0017
In the Karnataka High Court
Case No : W.P. No. 4261/88

M.H. Somasekharappa

APPELLANT

Vs

Tahsildar, Bhadravathi and Others

RESPONDENT

Date of Decision : 05-12-1989

Acts Referred:

Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 — Section 11(1)(K)

Citation : (1990) 1 KarLJ 180

Hon'ble Judges : K. A. Swami, J

Judgement

Swami, J.-In this petition under Articles 226 and 227 of the Constitution, the petitioner has sought for quashing the order dated 10-1-1988/1-2-1988 passed by the Chief Secretary, Zilla Parishad, Shimoga, suspending the supply of fair price commodities to the fair-price shop of the petitioner. The ground on which the suspension of (supply of) fair-price commodities is ordered is that the petitioner who holds authorisation to distribute fair-price commodities to the cardholders of Mydolalu village is disqualified to hold the authorisation since he is a Member of Mydolalu Mandal Panchayat as per clause (k) of Section 11(1) of the Karnataka Zilla Parishads, Taluk Panchayat Samithies, Mandal Panchayats and Nyaya Panchayats Act, 1985 (hereinafter referred to as the "Act"). Accordingly, under the impugned order Annexure-B, the petitioner has been directed to surrender the authorisation. If the authorisation had been suspended on any other grounds, this court would not have entertained this writ petition since it would be purely matter of breach of contract. But in the instant case, it is not in dispute that the petitioner is a member of the Mydolalu Mandai Panchayat constituted under the Act. Section 11 of the Act deals with disqualifications for a candidate. It provides that a person shall be disqualified for being chosen or nominated and for being a member of a Mandal Panchayat:

(a) to (j) xx xx k) if, save as hereinafter provided, he has directly or indirectly any share or interest in any work done by order of the Mandal Panchayat, or in any contract of employment with, or under, or by, or on behalf of, the Mandal

Panchayat."

According to the Chief Secretary of the Zilla Parishad, the aforesaid clause (k) of Section 11(1) of the Act is attracted, therefore, the petitioner is not entitled to continue the authorisation and distribute the fairprice commodities.

2. On a plain reading of the aforesaid provision, it is not possible to hold that the Chief Secretary, Zilla Parishad, Shimoga, is correct in holding that the petitioner being a Member of the Mandal Panchayat cannot have authorisation to distribute the fairprice. commodities.

4. The functions as to distribution of fairprice commodities and grant of authorisation have not been entrusted to the Mandal Panchayat. It is not one of the functions of the Mandal Panchayat. It is one of the functions of the Zilla Parishad. Therefore, the fact that the petitioner holds authorisation to distribute fairprice commodities does not cause any disqualification to him nor clause (k) of sub-section (1) of Section 11 of the Act is attracted.

5. For the reasons stated above, the writ petition is allowed, the impugned order Annexure-B dated 10-1-1988/1-2-1989 bearing No. ZPS. FCS: FPS: 89/87-88 and also the communication dated 28-11-1987 bearing No. FSD.CR. 426/87-88, Annexure-A issued by the B.D.O. Bhadravathi are hereby quashed.

6. Sri T.R. Subbanna, learned Government Advocate is permitted to file his memo of appearance on behalf of the respondents in six weeks.

Writ petition allowed.