

**(2017) 04 KAR CK 0122**  
**In the Karnataka High Court**  
**Case No : 11335-11336**

Ms. Srimathi Bangera

APPELLANT

Vs

President (Acting)

RESPONDENT

**Date of Decision :** 27-04-2017

**Acts Referred:**

[Karnataka Local Authorities \(Prohibition of Defection\) Act, 1987](#),  
[Section 4](#), [Section 3\(1\)\(b\)](#) - Decision on  
the question as to disqualification on the ground of defection - Disqualification on the

**Citation :** (2017) 04 KAR CK 0122

**Hon'ble Judges :** Raghvendra S. Chauhan

**Bench :** SINGLE BENCH

**Advocate :** Manmohan P.N., B. Lethif, A. S. Ponnanna, S. Chandrashekaraiah

## **Judgement**

1. Aggrieved by the order dated 01.03.2017, passed by the Deputy Commissioner, Madikeri, Kodagu District, the respondent No.2, whereby the respondent No.2 has disqualified the petitioners from the post of Councillor of the City Municipal Council, Madikeri, under Section 3 (1) (b) and 4 of the Karnataka Local Authorities (Prohibition of Defection) Act, 1987 ("the Act", for short), the petitioners have approached this Court.

2. Briefly the facts of the case are that in the election held on 16.03.2014, for the CMC, Madikeri, both the petitioners were elected as Councillors. Subsequently, on 14.08.2015, Ms. Srimathi Bangera, the petitioner No.1, was elected as the President of CMC, Madikeri. However, thereafter, the elections for the post of President and the Vice-President, CMC, Madikeri were scheduled to be held on 09.09.2016.

3. The respondent No.1, the President of District Congress Committee ("DCC", for short), Mr. T. P. Ramesh allegedly issued a direction (Whip), informing the Councillors belonging to the Congress party that the party had decided to field Smt. Kaveramma Sonnamma for the post of President, and Mr. Prakash Acharya for the post of Vice-President. Therefore, the Councillors belonging to the

Congress party were directed to vote for the official candidate of the Party.

4. However, despite the said whip, allegedly while Smt. Kaveramma Sonnamma was elected as the President of the CMC, but one Mr. T.S. Prakash was elected as the Vice-President of the CMC. Since the official candidate of the Congress party, Mr. Prakash Acharya was defeated in the election, it was alleged that the petitioners had defied the whip and had voted for Mr. T.P. Prakash, a Councillor belonging to the opposite political party.

5. Since the petitioners had allegedly violated the whip, on 10.09.2016, the respondent No.1 issued a showcause notice to the petitioners for showing cause as to why disciplinary action should not be initiated against them. The petitioner Nos. 1 and 2 submitted their replies on 17.09.2016, and 20.09.2016, respectively. They clearly claimed that the respondent No.1 had no authority to issue a whip. Thus, no whip was issued in accordance with law.

6. Further, on 26.09.2016, the respondent no.1 filed a complaint before the Deputy Commissioner, the respondent No.2, against the petitioners for having them disqualified under the Act. Both the petitioners appeared before the respondent No. 2. During the course of the proceedings, the respondent No.1 relied on the authorisation letter dated 06.09.2016, issued by the President of Karnataka Pradesh Congress Committee ("KPCC", for short), and an another authorisation letter also dated 06.09.2016, in order to prove that respondent No.1 was duly authorised to issue the whip. Consequently, the whip was issued on 08.09.2016. But notwithstanding the whip, the petitioners have voted against the interest of the Congress party. Therefore, they should be declared as disqualified.

7. On the other hand, relying on the constitution of the Indian National Congress Party, and on the resolution dated 06.01.2014, adopted by the Executive Committee, KPCC, the petitioners pleaded that the respondent No.1, did not have the authority to issue the whip. Therefore, no whip was legally issued. Hence, the question of disobeying the whip does not even arise. However, by order dated 01.03.2017, the respondent No.2 has declared the petitioners as disqualified under the Act. Hence, these petitions before this Court.

8. Mr. Manmohan P. N., the learned counsel for the petitioners, has pleaded that the respondent No.2 has ignored the requirement of law, namely that the burden of proof lay on the respondent No.1 to establish firstly, that a whip was duly issued by him in accordance with law; secondly, that the whip was duly served upon the petitioners; and thirdly, the petitioners have violated the whip. However, the respondent No.1 has failed to prove the first ingredient that the whip was duly issued in accordance with law. Secondly, the President, DCC was not legally authorised to issue the whip. For, according to resolution dated 06.01.2014, the President, KPCC, could authorise the General Secretary, KPCC, to issue the whip, or the President, KPCC could authorise the President, DCC, to issue the whip. However, the President, KPCC, could not authorise the General

Secretary, KPCC, to further authorise the President, DCC, to issue the whip. But, in the present case, instead of the President, KPCC, directing the President, DCC, to issue the whip, the President, KPCC, has empowered the General Secretary to authorise the President, DCC, to issue the whip. Therefore, the power to issue the whip was not properly delegated from the President, KPCC to the President, DCC. Thirdly, according to the resolution dated 06.01.2014, the power to issue whip could be delegated from President, KPCC, to General Secretary, KPCC. But, the said power could not be further delegated from General Secretary, KPCC, to the President, DCC. For, it is an established principle of law that a delegatee cannot further delegate the power to any other person. Fourthly, the authorisation letter dated 06.09.2016, issued by the President, KPCC, clearly reveals that the President, KPCC, had empowered the General Secretary, KPCC, to authorise Mr. T.P. Ramesh, the President, DCC, to issue the whip. Based on the said authorisation, by another authorisation letter, also dated 06.09.2016, the General Secretary authorised the President, DCC to issue the whip. However, under the resolution dated 06.01.2014, passed by the Executive Committee of KPCC, such an empowerment could not be issued by the President, KPCC to the General- Secretary, KPCC. Since the power to issue the whip has not been delegated in accordance with the resolution, any whip issued by the President, DCC, cannot be said to be legal. Thus, even if a whip were issued by the President, DCC, he did not have the authority to issue the said whip, as the power to issue the whip was not properly delegated. However, the respondent No.2 has ignored this essential fact. Thus, the respondent No.2 was not justified in concluding that "the President, DCC, was lawfully authorised to issue the whip, and the President, DCC, in fact, has issued a legal whip." Therefore, the entire basis of reasoning given by the respondent No.2 for disqualifying the petitioners is highly misplaced. Hence, the impugned order deserves to be set aside by this Court. In order to buttress his pleas, the learned counsel has relied on the case of *Sadashiv H. Patil v. Vithal D. Teke and Others* [ (2000) 8 SCC 82] and on the case of *Vishwanath Kappathanavar and Another v. Channu Patil and another* [ 2000 (3) Kar. L.J 56 ]

9. On the other hand, Mr. Ponnanna, the learned Additional Advocated General, has pleaded firstly, that the resolution dated 06.01.2014 itself authorises the President, KPCC, to authorise to the General Secretary, KPCC, directing him to delegate the power of issuing whip to the President, DCC. Secondly, in consonance with the resolution dated 06.01.2014, by authorisation dated 06.09.2016, Mr. G. Parameshwara, the President, KPCC, had empowered the General Secretary, KPCC, Mr. S.N. Bosaraju, to delegate the power of issuance of whip to the President, DCC. Consequently, by another authorisation letter dated 06.09.2016, the General Secretary, KPCC, had authorised the President, DCC to issue the whip. Thus, both the authorisation letters were in consonance with the resolution dated 06.01.2014. Therefore, the respondent No.1 has succeeded in proving the fact that the President, DCC, was legally authorised to issue the whip. Thirdly, relying on the case of *Sri. Jagadish Shetty Nellikatte and Others v.*

Mr. Aatoor Mohammed Ali and Another [ W.P.No.21381& 21463-467/2015 and other connected matters, decided by this Court on 29.03.2016], the learned AAG has argued that in the said case this court has opined that a whip issued by the President, DCC, is validly issued, even if it is based on an authorisation given by the General Secretary, KPCC. Therefore, the present case is squarely covered by the said decision. Fourthly, the Act defines the word "Political Party", under Section 2 (vi) of the Act. "Political Party" means, "in relation to a councillor or a member, a political party recognised by the Election Commission of India as a National Party, or a State Party in the State of Karnataka under the Election Symbols (Reservation and Allotment) Order, 1968, and to which the Councillor/ Member belongs for the purpose of sub-section 1 of Section 3". Therefore, at the national level, the Congress party is represented by the National Congress Committee, at the State Level, the said party is represented by the KPCC, and at the District level, it is represented by DCC. Hence, even if there is no delegation of power to issue a whip from the President, KPCC, to the President, DCC, even then, the President, DCC can sui moto issue a whip. In the present case, since the whip was issued by the President, DCC, on 08.09.2016, to the petitioners, they were bound by the same. Since they have violated the said whip, the respondent No.2 was justified in disqualifying them from the party. Fifthly, even if no whip were legally issued, even then the petitioners were well aware as to who are the official candidate fielded by the Congress Party. Therefore, they were required by party discipline to vote for the official candidate of the party. Since they have committed an act of indiscipline, they deserve to be disqualified by the respondent No. 2. Therefore, the learned AAG has supported the impugned order.

10. On the other hand, Mr. Lathiff, the learned counsel for the respondent No.1, has pleaded that according to the resolution dated 06.01.2014, the President, KPCC, could issue a direction through the General Secretary, KPCC, to authorise the President, DCC, to issue the whip. Therefore, the authorisation letters were legally valid. Thus, the President, DCC was validly authorized to issue the whip. Hence, the whip was legally issued to the petitioners.

11. Heard the learned counsel for the parties, perused the impugned order, and considered the case laws cited at the Bar.

12. In the case of S.H. Devaraj and others v. State Election Commissioner, Karnataka State Bangalore and Others [ 2000 (3) KAR. L.J. 229], this Court has clearly held that three factors need to be proved by the complainant for seeking the disqualification of a person as a councillor, or a member of the CMC: i) that the whip was duly issued by a political party, or a person, or an authority authorised to issue the whip, ii) the said whip was duly served upon the Councillor, or member, iii) that the concerned Councillor, or member has disobeyed the whip. Therefore, these three factors had to be established by the complainant in the present case.

13. Since the dispute is with regard to the issuance of a valid whip, the legal issue before this Court is whether the President, DCC, was legally authorised by

the President, KPCC, to issue a whip in accordance with the resolution dated 06.01.2014, or not ?

14. In order to examine the legality of the whip issued by the President, DCC, it is imperative to consider the resolution dated 06.01.2014. It is as under:- The Resolution adopted unanimously by the Executive Committee Meeting on 10.01.2004 at KPCC Office is herewith reproduced, which delegates the power to the President, KPCC to issue party directions or whip Resolution 3 In a resolution adopted unanimously, as per the provisions of Article XXVII (b) Constitution Indian National Congress, the Executive Committee of the Pradesh Congress Committee, delegates, power to issue the party direction (whip) to vote or to abstain from voting in or intentionally remain absent from any meeting of Local Authorities contrary to the direction given by the party. The President, KPCC is also authorised to delegate the power to General Secretary of KPCC, or to the President of District Congress Committee or President of Block Congress Committee of Local Authorities to issue the Party Direction (Whip) to the elected party members under their jurisdiction. It is also resolved to empower the President, KPCC to authorise the General Secretary of Presidents of the District and Block Congress Committees to proceed against the defected member who has voluntarily given upon the membership of the Congress party or defied and violated the party direction (Whip) before the competent authority. [ S.M . ANAND ] General Secretary (Admn.), KPCC

15. A bare perusal of the resolution clearly reveals that the Executive Committee of the KPCC has delegated the power to issue the whip to the President, KPCC. The President, KPCC, can further delegate the power to issue the whip to three persons, namely i) to the General Secretary, KPCC, or ii) to the President, DCC, or iii) to the President of Block Congress Committee of Local Authorities. Moreover, the President, KPCC, can further authorise the General Secretary, KPCC, or the President, DCC, to proceed against a member who has defected from the party by voluntarily giving up the membership of the party, or has defied and violated the party whip.

16. Thus, it is amply clear that the President, KPCC, can delegate the power to issue a whip to the General Secretary, KPCC, or directly delegate the power to the President, DCC. But the President, KPCC cannot delegate the power to issue the whip to the General Secretary, KPCC, to be further delegated by him to the President, DCC. In fact, the power to issue the whip has to be directly delegated from the President, KPCC to President, DCC. The said power cannot be routed through the General-Secretary, KPCC to the President, DCC. It is, indeed, trite to state that once a procedure has been established by the resolution dated 06.01.2014, the same has to be adhered to. Therefore, the President, KPCC, would not be justified in empowering the General Secretary, KPCC, to authorize the President, DCC, to issue the whip. If such a procedure were adopted by the President, KPCC, it would be in violation of resolution dated 06.01.2014.

17. The Authorisation letter dated 06.09.2016 issued by the President, KPCC, to

the General Secretary, KPCC, reads as under:- G. PARAMESHWARA President Dated: 06.09.2016 EMPOWERED TO ISSUE WHIP Empowered Sri. S.N. Bosaraju, General Secretary, Pradesha Congress Committee, authorised to issue Whip power, (Sachetakadesha) to Sri T.P. Ramesh, President, District Congress Committee, Kodagu, in the form of Party direction to be given, while casting vote by the elected members of the Congress Party, during the election of President and Vice- President for Madikeri Town Municipal Council, Kodagu District, to be held on 09.09.2016. If any kind of violation of this Whip to be given by the Competent authority, for not casting their vote as directed or intentionally away from without casting the vote, it is instructed to take action according to the Karnataka Local Authority (Anti-Defection) Act, 1987, and as amended during 1995. Sd/- ( Dr. G. Parameshwara) To: Sri. N.S. Bosaraju, M.L.C. General Secretary, K.P.C.C. Bangalore. According to this authorisation letter, the President has empowered the General Secretary, KPCC, to authorise the President, DCC, to issue the whip. But, such a procedure is clearly contrary to the resolution dated 06.01.2014. For the President, KPCC could not have "empowered" the General-Secretary, KPCC to authorize the President, DCC. Under the resolution dated 06.01.2014, the President, KPCC was required to directly delegate the power of issuing the whip to the President, DCC. He is not expected to go through the General Secretary, KPCC. Thus, the procedure established by the resolution dated 06.01.2014 has not been followed.

18. In consonance with the authorisation letter dated 06.09.2016, issued by the President, KPCC, by the other authorisation letter also dated 06.09.2016, the General Secretary has directed the President, DCC, to issue the whip. However, as the President, KPCC, could not have empowered the General Secretary, KPCC, to authorize the President, DCC to issue the whip, even the second authorisation letter also dated 06.09.2016, is in violation of resolution dated 06.01.2014. Therefore, the President, DCC, has not been delegated the power to issue the whip within the framework of resolution dated 06.01.2014. Hence, the delegation of power is improper and illegal. Thus, the President, DCC has not issued a legally valid whip.

19. The respondent No.2 had framed the issue, whether the President, DCC, is vested with the power to issue the whip to the petitioners or not? But the respondent No.2 has failed to trace out the source of the power to the resolution dated 06.01.2014. If the respondent No.2 had cared to consider the resolution dated 06.01.2014, the respondent No.2 would have realised that both the authorisation letters dated 06.09.2016 were not in terms of the resolution dated 06.01.2014. Therefore, the President, DCC, was not legally and validly authorised to issue the whip. Having ignored the very source of power given by the Executive Committee to the President, KPCC, by resolution dated 06.01.2014, the respondent No.2 has missed the woods for the trees. Therefore, the conclusion drawn by the respondent No.2 that the President, DCC was legally authorised to issue the whip is highly misplaced.

20. Mr. Lathiff is unjustified in claiming that resolution dated 06.01.2014, empowers the President, KPCC, to issue instructions to the General Secretary, KPCC to authorize the President, DCC to issue the whip. A bare perusal of the resolution clearly reveals that the President, KPCC, is empowered only to authorise the General Secretary, KPCC, to issue the whip. Since a delegatee cannot delegate the power further, the General Secretary cannot delegate the power to issue the whip to the President, DCC. The said power to issue the whip, therefore, has to be issued directly from the President, KPCC, to the President, DCC. But, the said delegation of power cannot be made through a middleman, namely the General Secretary, KPCC. Therefore, the contention made by Mr. Lethiff is clearly unacceptable.

21. Mr. Ponnanna, the learned Additional Advocate General has pleaded that the President, DCC, could sui moto issue a whip as he represents a political party at the district level. However, such an argument is both against the Constitution of the Indian Congress Party, and against the resolution dated 06.01.2014. According to the constitution of the party, the power to issue a whip is with the Executive Committee of the Pradesh Congress Committee. However, the Executive committee can delegate the power to the President, KPCC. While adhering to the Constitution, the Executive Committee had delegated its power to the President, KPCC, by resolution dated 06.01.2014. As mentioned above, the President, KPCC, could directly delegate the said power to the President, DCC, but not through the General Secretary, KPCC. Therefore, the contention raised by the learned AAG is belied by the Constitution of the party, and by resolution dated 06.01.2014.

22. Mr. Poonanna, the learned AAG, has also argued that even if a valid whip were not issued, even then the petitioners were legally bound to vote for the official candidate of the party. But, even the said contention is unacceptable. For, instances are not wanting when the party permits its Councillors or members to vote according to their conscience. Thus, in absence of a valid whip, the petitioners would be free to vote in accordance with their conscience. Thus, they cannot be faulted for having not voted for the official candidate of their own party. In the case of Vishwanath Kappathanavar and Another v. Channu Patil and Another [ 2000 (3) KAR. L.J. 56] this court had opined that merely because the official candidate of the party is known, in the absence of a valid whip issued by the party, the councillors and members would be free to vote according to their own free will.

23. Mr. Ponnanna, the learned AAG, has relied upon the case of Sri. Jagadish Shetty Nellikatte (supra) and argued that the present case is squarely covered by the said decision. In the said case, the President, KPCC, authorised the Secretary, KPCC, to issue the whip to the elected representatives from the party. Accordingly, the Secretary communicated the same to the District President by communication dated 02.09.2013. Subsequently, the District President issued the whip to the elected members from the Congress Party. Since the petitioners

therein had violated the whip, they were disqualified by the Deputy Commissioner by order dated 07.05.2015. Therefore, the issue before this Court was, whether the whip issued by the President, DCC, was legally valid or not ? This Court has relied upon a resolution passed by the KPCC, on 10.01.2004 (incorrectly mentioned in the order as 10.01.2014), which is the same as the resolution relied upon by this court in the present case as resolution dated 06.01.2014. However, in the said case, this court has overlooked the fact that by the resolution dated 06.01.2014, the President, KPCC is authorized to delegate the power to issue whip to three persons mentioned hereinabove. The President, KPCC is not authorized to empower the General-Secretary to further sub-delegate his power to the President, DCC. Since this cardinal fact has been overlooked by this Court, the case of Sri. Jagadish Shetty Nellikatte (supra) does not have a binding effect. For, this court has clearly misread the resolution dated 06.01.2014. Hence, the said case does not come to the rescue of the learned AAG.

24. Therefore, for the reasons stated above, these petitions are hereby allowed. The impugned order dated 01.03.2017, passed by the Deputy Commissioner, Madikeri, Kodagu District, is set aside.