

(2014) 03 KAR CK 0196
In the Karnataka High Court
Case No : M.F.A. No. 2071/2014 (CPC)

N. Srinivas

APPELLANT

Vs

V. Narayanaswamy, V. Venkatesh and Chandrappa

RESPONDENT

Date of Decision : 18-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1(r)

Constitution of India, 1950 — Article 243-Q, 243-W

Citation : (2014) ILR 2546 : (2014) 3 KarLJ 599 : (2014) 2 KCCR 1724

Hon'ble Judges : Mohan M. Shantana Goudar, J

Bench : Single Bench

Advocate : Nanjunda Reddy, Sr. Counsel for Sri. Nishanth. A.V., Advocate for the Appellant; P.S. Rajagopal, Sr. Counsel for Sri. B.M. Irshad Ahmed, Advocate for R2 and Sri. Vijaya Raghava Sarathy, Advocate for R1, Advocate for the Respondent

Judgement

Mohan M. Shantanagoudar, J.—The order passed by the Election Tribunal/Senior Civil Judge, Chickballapur in E. Misc. No. 9/2013 on I.A. No. 2 is called in question in this appeal.

2. Records reveal that the appellant herein was declared elected as Municipal Councilor of City Municipal Council, Chickballapur (Ward No. 30). The election of the appellant is questioned by a voter-respondent No. 1 herein in E. Misc. No. 9/13 in the Court of Senior Civil Judge, Chickballapur. In the said Election Petition, application came to be filed by the 1st respondent herein under Order 39 Rules 1 and 2 of CPC praying for an order of injunction restraining the appellant herein from casting his vote in the ensuing election of President and Vice President of City Municipal Council, Chickballapur. The election is scheduled to be held on 19.03.2014 at 1.00 p.m. The said application came to be allowed, after hearing both the parties, by the impugned order. Consequently, appellant is restrained from casting his vote in the ensuing election of President and Vice President of City Municipal Council, Chickballapur.

3. Sri. Nanjunda Reddy, learned senior advocate for the appellant submits that the impugned order is bad in law inasmuch as it does not assign any reason much less valid reason; that the Election representative cannot be restrained from performing his normal duties as elected member of the Municipal Council; consequently, appellant cannot be restrained from casting his vote also.

He relies upon the judgments of this Court in W.P. No. 39405/2013 disposed of on 6th March 2014 in the case of Smt. Devi Vs. Smt. Lath and Others, in the case of P. Siddanna Vs. Zilla Parishad, Bellary and Others (1991 (4) Kar. L.J. 451), in the case of Mahadev Jyoti Umrani Vs. Smt. Sumitra, and in the case of Vinaykumar Soorinje and Another Vs. The Returning Officer/Tahsildar and Others, in support of his contentions, that, the elected member cannot be prohibited to perform his normal duties including to cast his vote in the ensuing election of President and Vice President of City Municipal Council, Chickballapur.

Sri. P.S. Rajagopal, learned senior advocate appearing on behalf of respondents 1 and 2 opposes the appeal by contending that the appeal itself is not maintainable inasmuch as no appeal is provided under Karnataka Municipalities Act as against the interim order passed by the Senior Civil Judge, Chickballapur/Election Tribunal; the Court below on viewing the CD produced before it and being satisfied about the fraud committed by the Tahsildar to help the appellant, has granted the order of injunction. He further submits that there is no bar for the Election Tribunal to grant the interim order of injunction particularly when Section 24 of the Karnataka Municipalities Act specifies that the provision of CPC shall be followed by the Election Tribunal.

4. Section 24, 25 and 27 of the Karnataka Municipalities Act reads as under:

24. Procedure to be followed by the Election Tribunal.--The procedure provided in the Code of Civil Procedure, 1908, in regard to suits shall be followed by the Election Tribunal as far as it can be made applicable, in the trial and disposal of an election petition under this Act.

25. Decision of the Election Tribunal.--(1) At the conclusion of the trial of an election petition, the Election Tribunal shall make an order,--

(a) dismissing the election petition; or

(b) declaring the election of all or any of the returned candidates to be void; or

(c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

(2) If any person who has filed an election petition has in addition to calling in question the election of the returned candidate, claimed declaration that he himself or any other candidate has been duly elected and the Election Tribunal is of opinion,--

(a) that in fact the petitioner or such other candidate received a majority of the valid votes, or

(b) that but for the votes obtained by the returned candidate by corrupt or illegal practices the petitioner or such other candidate would have obtained a majority of the valid votes,

the Tribunal shall, after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected.

27. Appeal.--An appeal shall lie from an order of the Election Tribunal u/s 25, to the High Court within a period of thirty days from the date of the order of the Tribunal excluding the time requisite for obtaining a copy of the order and the decision of the High Court on such appeal shall be final and conclusive.

5. u/s 27 of the Karnataka Municipalities Act, the appeal shall lie against an order passed by the Election Tribunal u/s 25 to the High Court; Section 25 of the Karnataka Municipalities Act deals with the final decision of the Election Tribunal. The present appeal is not an appeal filed against an order passed u/s 25 of the Karnataka Municipalities Act. As the provisions of CPC are made applicable u/s 24 of the Karnataka Municipalities Act, the provision relating to the appeal as contained under CPC in respect of interim orders will also apply. Admittedly, application was filed under Order 39 Rules 1 and 2 of CPC by the 1st respondent before the Election Tribunal and the impugned order came to be passed. Against the order passed under Order 39 Rules 1 and 2 of CPC, appeal lies under Order 43 Rule 1(r) of CPC. Therefore, this appeal is maintainable and hence is entertained.

6. On merits, though the learned counsel for respondent No. 1 is justified that the interim order can be passed in rarest of rare cases, the matter is not the one which falls under the category of rarest of rare cases. The appellant's election is declared as back as on 31.7.2013. He has been performing his normal duties as councilor since the date of his election. His election cannot be termed as bad in the eye of law during the pendency of election petition that too at the stage of casting his vote in the ensuing election of President and Vice President of City Municipal Council, Chickballapur. It is clear that the appellant has conducted himself as the Councilor Municipality from the date of his election. Normally, the democratic set up requires that the elected candidate should not be prohibited from doing his normal duties attached to his office. Normally, the verdict of electorate has to be respected and given effect to until the election is set aside.

The Municipalities have been conferred constitutional status by amending the Constitution and adding Part IX-A vide the 74th Amendment Act, 1992 w.e.f. 1.6.1993. The Municipalities have been constituted under Article 243-Q of the Constitution. They have also been conferred various powers, authority and responsibilities under Article 243-W of the Constitution which reads thus:

243W. Powers, authority and responsibilities of Municipalities, etc.

Subject to the provisions of this Constitution, the Legislature of a State may, by

law, endow--

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to--

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in Schedule XII;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in Schedule XII.

Amendment in the Constitution by adding Parts IX and IX-A confers upon the local self-government a complete autonomy on the basic democratic unit unshackled from official control. Thus, exercise of any power erroneously having effect of destroying the Constitutional institution besides being outrageous is dangerous to the democratic set-up of this country. Therefore, the elected representative cannot be restrained from doing his normal duties including electing the President and Vice-President of the Municipality unless the circumstances are extraordinary in nature, that too by following procedure prescribed by law. The Courts/Election Tribunals cannot adopt casual approach while deciding such matters. The Courts being the custodian of law will not tolerate any attempt to thwart the institution.

It is the duty of the Councilors of the Municipality to elect the President and Vice-President democratically. The President and the Vice-President who are elected with due process of law will formulate the policy for and on behalf of the Municipality with the help of Councilors. There is clear distinction between elected representatives and civil servants. The elected representatives will formulate policy and civil servants will execute it by implementing programmes and policy decisions. In matters of formulation of policies and programmes also, civil servants may make significant contribution by bringing the relevant data to the notice of the political executive. Likewise, elected representatives may inform civil servants about problems and difficulties of people which can be taken care of by the administration. Having regard to the fact that the Municipal Councilors are required to function as per the provisions of the Karnataka Municipalities Act, 1964 and as certain important, obligatory and special functions are to be carried out by the Municipal Councilors under the Act, the Courts would normally be very slow in interfering with the normal duties of the elected representatives.

The trial Court has not at all assigned any reason much less valid reason while passing the impugned order. Upto Para. 3 of the impugned order, the Court below

narrates the pleadings. Para. 4 merely states that the Tribunal has heard both sides arguments, perused the several documents including CD produced by the applicant therein. Para. 5 the impugned order narrates the arguments of the respondent No. 1 herein (election petitioner). The Court below has not at all adverted to the arguments of the petitioner herein. In Para. 6, the Election Tribunal abruptly arrived at the conclusion. By such a non-speaking order, the elected representative cannot be restrained from casting his vote.

Since the impugned order cannot be sustained inasmuch as the same is unreasoned, the same stands set aside.

Accordingly, the impugned order dated 15.03.2014 passed on I.A. No. 2 in E. Misc. No. 9/2013 by the Senior Civil Judge, Chikkaballapur is set aside.

The Election Petition shall be expedited by the Tribunal.