

(1997) 04 KAR CK 0039

In the Karnataka High Court

Case No : Writ Appeal No's. 1518 and 1640 of 1997

R. Srinivasa Reddy

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 16-04-1997

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 49

Karnataka Panchayat Raj Rules, 1993 — Rule 3 (1)

Citation : (1999) 4 KarLJ 529

Hon'ble Judges : R.P. Sethi, C.J.;G. Patri Basavangoud, J

Bench : Division Bench

Advocate : Sri K.N. Subba Reddy, for the Appellant; Sri H. Rangavittalachar, Government Advocate and Sri C.B. Srinivasan, for the Respondent

Judgement

R.P. Sethi, C.J.—Respondents 6 and 7 were Adhyaksha and Upadhyaksha respectively of Neralur Grama Panchayat which comprises of 19 members. On 7-9-1996 a written notice to move a motion of no-confidence against the said respondents was given by more than V3rd of the total number of the members of the Panchayat. Elected members of the Panchayat were intimated about the motion and for convening a Meeting for consideration of the said motion on 10-10-1996. In the Meeting 15 out of 19 members of the Panchayat participated. Fourteen members voted for the motion and 1 member voted against the motion. The motion was declared to have been passed by majority of more than 2/3rd members of the Grama Panchayat. The validity of the no-confidence motion was challenged by respondents 6 and 7 in the writ petition which was allowed by the learned Single Judge vide the order impugned in this appeal.

2. The present appeal has been filed by the appellant who was not impleaded as a party-respondent in the writ petition despite his unanimous election on 15-11-1996 as Adhyaksha of the aforesaid Panchayat. The impugned judgment is stated to be against the principles of natural justice and contrary to provisions of the Karnataka Panchayat Raj Act (hereinafter called the "Act" for short) and the

rules made thereunder.

3. Relying upon Rule 3 of the rules framed under the Act the learned Single Judge held that as the no-confidence motion was passed after 30 days from the date on which the notice under sub-rule (1) was delivered to the Assistant Commissioner, the same being contrary to law was liable to be quashed. After referring to the provisions of the Act, rules made thereunder and the judgment of the Supreme Court in Karnal Leather Karamchari Sanghatan (Regd.) Vs. Liberty Footwear Company (Redg.) and others, , the learned Judge held:

"In my considered view, Section 49 of the Act read with the rules are a complete code in themselves deliberately provided by the legislature having regard to the elective office of Adhyaksha and Upadhyaksha. Therefore, by any stretch of imagination it cannot be said that sub-rule (2) of Rule 3 of the rules merely directory".

4. The learned Counsel appearing for the appellant has vehemently argued that as his client was not impleaded as a party-respondent in the case despite his election during the pendency of the writ petition, the order of the learned Single Judge is not binding upon him and that the writ petition was liable to be dismissed for non-joinder of the necessary party. We find substance in this argument of the learned Counsel. The admitted position is that the W.P. No. 31018 of 1996 is shown to have been filed in this Court in the month of November 1996 and decided on 16-1-1997. Admittedly the impugned resolution had not been stayed during the pendency of the writ petition. It is also not disputed that the appellant herein was unanimously elected as Adhyaksha of the Neralur Grama Panchayat on 15-11-1996. Respondents 6 and 7 are obviously presumed to have the knowledge of the appellant being elected as Adhyaksha during the pendency of the writ petition but intentionally chose not to implead him as a party in the writ petition. It also appears that no effort was made to amend the writ petition with prayer for setting aside the unanimous election of the appellant as Adhyaksha of the Grama Panchayat. The impugned order was therefore the result of suppression of material facts by the writ petitioners who having lost the confidence of the 2/3rd majority of the members of the Panchayat incurred the disqualification of losing the confidence of this Court as well. The suppression of material facts and non-joinder of necessary parties rendered the writ petition to be dismissed. Under the cloak of technicalities the writ petitioners could not be conferred the benefit of usurping the public office from which they were removed by the overwhelming majority of the members of the Panchayat.

5. After coming to know about the passing of the order by the learned Single Judge the appellant herein appears to have filed I.A. for being impleaded, for recalling of the order and for stay which were dismissed by the learned Single Judge vide his order dated 17-2-1997 on the plea that as the writ petition stood disposed of, there was no occasion for him to pass orders on the aforesaid I.As. as according to him the appellant herein was at liberty to challenge the order of

the Court dated 16-1-1997 by way of a writ appeal.

6. For the reasons noted herein above we are of the opinion that as the order impugned in the writ petition was procured by the respondents 6 and 7 by suppression of material facts and by not impleading the necessary parties to the writ petition, their writ petition was liable to be dismissed on this ground alone. In view of this finding of ours there is no necessity for deciding the other pleas raised before us.

7. Under the circumstances the appeal is allowed by setting aside the order of the learned Single Judge and holding that the writ petition filed by respondents 6 and 7 shall be deemed to have been dismissed. Rule issued is discharged. The appellant herein shall be permitted and allowed to assume the charge of Adhyaksha of Neralur Grama Panchayat to which he was unanimously elected on 15-11-1996, The appellant is also entitled to costs assessed at Rs. 1,000/-.