

**(2014) 11 KAR CK 0054**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 50658/2014 (LB-ELE)**

Rathnamma

APPELLANT

Vs

State of Karnataka

RESPONDENT

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**Date of Decision :** 11-11-2014

**Acts Referred:**

Karnataka Panchayat Raj Act, 1993 — Section 43A, 48[4)

**Citation :** (2015) 1 KarLJ 1 : (2015) 4 KCCR 3123

**Hon'ble Judges :** Ram Mohan Reddy, J

**Bench :** Single Bench

**Advocate :** Ravi H.K., Advocate for the Appellant; D. Nagaraj, A.G.A, Advocate for the Respondent

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## Judgement

Ram Mohan Reddy, J.—Petitioner, when elected as "Upadhyaksha" of the 2nd respondent Grama Panchayat is said to have illegally done away with four pipes belonging to Grama Panchayat to "Devastanada Gudigowdaru" by creating Minutes of Meeting dated 26.12.2011, following which a notice was issued, to show cause as to why she should not be removed from the Membership of Grama Panchayat on charges of misconduct in terms of section 48[4] and 43A of the Karnataka Panchayat Raj Act, 1993, for short Act".

2. Petitioner responded to the show cause notice by a reply stating that the four pipes were handed over to Grama Panchayat by A. Nagaraj, Junior Engineer, Kadur, in charge of the pipeline work in Ward No. 1 of Hirenellur Grama Panchayat limits, stating that they were old, unwanted pipes. According to the petitioner, those four pipes were given to "Devastanada Gudigowdaru" in the Meeting of the Grama Panchayat held on 26.12.2011, when petitioner was a stand by "President" [Incharge President] on the basis of a requisition dated 18.12.2011 of Sri Ere Beeralingeswara Temple Committee, expressing the need for such pipes for the Temple. The Executive Officer of the Grama Panchayat is said to have inspected the four old and unwanted pipes and instructed the Grama Panchayat to dispose of the same by way of auction, in accordance with law,

which was accordingly held on 19.1.2012, whence one H.B. Puttappa, Chairman of the Committee of Ere Beeralingeswara Temple, purchased the same for Rs. 430/- and deposited the said sum to the Government on 12.1.2012. Therefore, it was contended that there was no illegality in the proceedings for disposal of the said four pipes.

3. Petitioner was also subjected to criminal prosecution in Crime No. 0128/2012. The 1st respondent Secretary [Panchayati Raj], Department of Village Development, Government of Karnataka, declined to accept the explanation offered by the petitioner and accordingly by order dated 18.9.2014 Annexure-A, held the petitioner guilty of the charge and accordingly removed her from the membership of the Grama Panchayat. Hence this petition.

4. Although learned Counsel submits that the petitioner, when subjected to criminal prosecution, after an investigation, when no case was made out, a "B" report when filed the case is closed, is unacceptable for the very simple reason that the proceeding u/s. 43A of the "Act", relating to removal from membership does not require strict proof of evidence over the charge while the degree of proof is one of preponderance of probabilities, not akin to criminal prosecution.

5. There is no dispute that Rule-3 of the Karnataka Panchayat Raj [Acquisition and Transfer of movable and immovable properties by Grama Panchayat] Rules, 1996, provides for disposal of movable properties of the Grama Panchayat, requiring the Grama Panchayat to secure prior sanction and permission of the Taluk Panchayat.

6. Admittedly, such permission or sanction is not obtained by the petitioner before disposal of the four pipes in favour of one H.B. Puttappa, said to be the Chairman of the Committee of Sri Era Beeralingeswara Temple for Rs. 430/-. If that is so, then this is an open and shut case of proof of charge against "Incharge President" of the Grama Panchayat the petitioner the elected "Upadhyaksha" on the date of sale. So also sub-rule [3] of Rule-3 provides for auction though in cases where value of movable properties subject matter of sale is more than Rs. 5,000/-. Merely because petitioner says that it is worth Rs. 430/-, is not the value of the said property. It is only in an auction that there could be a revelation of the actual value of the property. Auction notice was not issued. The sale seems to be more private in nature between the "Incharge President" i.e., the petitioner and H.B. Puttappa.

7. In the circumstances, 1st respondent was fully justified in removing the petitioner from the Membership of the Grama Panchayat being guilty of charge of misconduct in the discharge of duties as a "Member" by order Annexure-A.

8. Petition devoid of merits, is rejected.