

(2015) 01 KAR CK 0384

In the Karnataka High Court

Case No : Writ Appeal No. 3563/2014 (LB-RES)

Rudragouda

APPELLANT

Vs

The Govt. of Karnataka and Others

RESPONDENT

Date of Decision : 27-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Penal Code, 1860 (IPC) — Section 323, 353, 379, 420, 504

Citation : (2015) 01 KAR CK 0384

Hon'ble Judges : A.S. Pachhapure, J.; L. Narayana Swamy, J.

Bench : Division Bench

Advocate : S.S. Halalli, for the Appellant; Shivakumar Tengli, A.G.A., Advocates for the Respondent

Final Decision : Allowed

Judgement

L. Narayana Swamy, J.—The appellant was elected as member of Gram Panchayat in Gour-B, in the general elections held on 28.05.2010, for a period of five years. He has been also elected as Adhyaksha of the Gram Panchayat in Gour-B, held on 22.12.2012 for a period of 30 months, which ends on 22.06.2015.

2. When the facts stood thus, the Government has issued a show cause notice dated 06.11.2014 to the appellant directing him to show cause as to why he should not be removed from the membership of Gram Panchayat under Section 43(A) of Karnataka Panchayat Raj Act, 1992 (for short "Act") The allegations in the show cause notice are that while the appellant was working as President, he has misappropriated the funds and violated the guidelines in execution of work of Gram Panchayat. The appellant has submitted his reply to the show cause notice and denied the allegations. He has specifically contended that for the year 2013-14 and 2014-15, the work was approved in the ratio of 80:20 i.e., material and labour respectively and accordingly work has been executed. Upon his denial to the show cause notice, a criminal case has been registered on 06.09.2014 in

Crime No. 224/2014 by Afzalpur police station for the offences punishable under Sections 379 and 420 of IPC against the Panchayat Development Officer. Subsequently, the name of the appellant also has been included in the case on 08.09.2014.

3. On the basis of FIR filed against the appellant and Panchayat Development Officer, the Government has addressed a letter dated 19.11.2014 to the Chief Executive Officer of Zilla Panchayat, Gulbarga to invoke Section 62(3) of the Act stating that Upadhyaksha/Vice-President has to discharge the duties of Adhyaksha/President. By virtue of communication between the Chief Executive Officer, the Vice-President of the Gram Panchayat has taken charge of Adhyaksha/President. The removal right of the appellant as Adhyaksha was challenged by him before this Court in Writ Petition No. 207252 of 2014. By its order dated 18.12.2014, the learned Single Judge disposed of the petition observing that since the enquiry proceedings are not being concluded expeditiously, a direction was given to the Government to conclude the enquiry proceedings expeditiously and also observed that if the government drops the removal proceedings or exonerate the appellant from the charges, consequentially the appellant's right to become Adhyaksha would stand revived. The said order of the learned Single Judge has been challenged in this appeal.

4. It was the specific case before this Court that the order impugned is lack of jurisdiction and power and the writ petition has been disposed of not giving any opportunity to the parties. The learned Single Judge has disposed of the writ petition referring the judgments cited by the parties by assigning the reasons. Since, the allegation made against the petitioner is with regard to misappropriation of public fund, he is not entitled for the relief of setting aside the impugned order.

5. Learned counsel for the appellant submits that the Government has no power under Section 62(3) of the Act. The Vice-President/Upadhyaksha can be directed to take charge only in two circumstances when the Adhyaksha is absent and on leave or is incapacitated from functioning duties. Under these circumstances, Section 62 of the Act is not available to the respondents since the appellant was neither absent nor he was incapacitated for functioning his duties as Adhyaksha.

6. As long as these conditions are set aside, the respondents cannot pass the impugned order. In support of his submission, learned counsel for the appellant has relied upon the judgments of this Court in the case of Basanagouda Vs. The State of Karnataka and Others, ; and in the case of Shantamma Vs. The Principal Secretary and Others, and submitted that in these judgments it is held that only on the conditions stipulated under Sub-Section (3) of Section 62 of the Act, no person elected would be inserted.

7. Learned counsel for respondent Nos. 2 and 3 has supported the impugned order and prays for dismissal the appeal. A serious case was registered against the appellant and also against the Panchayat Development Officer, for

misappropriation of public funds. When such major allegation is there against the appellant, he should not be permitted to discharge his duties as Adhyaksha. He is working for public purpose. In support of his submission he has relied upon the judgment of Gujarat High Court in the case of Kathi Kalu Raning Vs. State of Gujarat, wherein it is held that the writ petition cannot be allowed where the allegation of misappropriation of public fund is alleged. The discretionary power of this Court under Articles 226 and 227 of Constitution of India is exercised in a rare case for public interest.

8. Learned Government Advocate appearing for the 1st respondent submitted that a criminal case has been registered against the appellant and charge sheet has not been filed. But the Government felt that a person of this nature should be kept away from discharging his duties. He also supports the impugned order.

9. Heard the learned counsel for the parties. The show cause notice was issued to the appellant. The appellant was given an opportunity and the allegations in the show cause notice were denied. No doubt, the case of the respondents is that the appellant has committed misappropriation of funds to the tune of rupees five crore which is a public fund. The allegation is made against the sitting President, but, the question would be whether the Government could invoke Section 62(3) of the Act for the purpose to prevent the person to discharge his duties upon the allegation of misappropriation. On a plain reading of the said provision, it is observed that only on two circumstances i.e., when the Adhyaksha is absent, on leave or when he is incapacitated from discharging duties, the Vice-President/Upadhyaksha can be directed to take charge of President/Adhyaksha and the Government is competent to pass such order. Here the show cause notice has been issued to the appellant and he was not available and probably he was making attempt to secure the anticipatory bail and after securing the anticipatory bail he has power to discharge his duties.

10. If it is the case of the respondents that they directed the Vice-President/Upadhyaksha as per Section 62(3) of the Act, even after returning of Adhyaksha, the Upadhyaksha should have handed over his charge to the Adhyaksha. The respondents directed the Upadhyaksha to take charge, could have been only in the absence of Adhyaksha. The impugned order to Upadhyaksha to take charge came only after the appellant secured the anticipatory bail and resumed his duties, which shows that the communication made to the Chief Executive Officer, Zilla Panchayat at Gulbarga to direct the Vice-President/Upadhyaksha to take charge, and the same is not proper under Sub-Section (3) of Section 62 of the Act. When the Adhyaksha is incapacitated to discharge his duties, then Sub-Section (3) of Section 62 of the Act have to be invoked. The ordinary meaning of "incapacitated" is understood that in the circumstances of Adhyaksha becoming ill, suffering from mental disorder to work or convicted and sentenced to jail for the offences, if any, etc. No such defences are forthcoming to set aside the requirement of incapacity under Sub-Section (3) of Section 62 of the Act. In a democracy, the members elected to work as the representatives, ordinarily,

should not be prevented from discharging their duties in the office. Even if they are to be removed or terminated, that could be done only in accordance with law. The rule of law requires the functioning of the duties strictly and purely and only in accordance with law.

11. In this regard as is referred in the case of BASANAGOUDA (supra), it is still a premature stage to say that appellant has committed any offence. Accordingly the order DATED 18.12.2014 passed in Writ Petition No. 207252/2014 by learned Single Judge is set aside.

12. In the case referred above, the appellant therein was working as Adhyaksha for functioning the duties. The charge sheet has been filed for the offence punishable under Sections 323, 353, 504 and 506 of IPC. In the instant case, the case was registered, the investigation is not completed, the charge sheet has not been filed and he was not convicted.

13. The reliance is placed by the learned counsel for the appellant on the judgment of this Court in the case of SHANTAMMA (supra) wherein it is held as follows:

"At the cost of repetition, it is to be observed that, Gram Panchayat is a creature of a statute and the powers and functions of the Adhyaksha or Upadhyaksha are all regulated by the Act. There is no inherent power either in Government or any other Authority, to make any interim arrangement , in exercise of power under sub-section 3 of Section 62 of the Act, pending consideration of the proceedings under Section 48(4) of the Act against the Adhyaksha. If the Legislature had the intention that, mere institution of a criminal case against the holder of an electorate office may lead to an order of suspension, it could have stated so, in clear terms. The Act does not provide for either a suspension of an elected representative such as Adhyaksha or Upadhyaksha or other kind of interim arrangement being made by the Government or any other authority, to handover the powers and functions of the Adhyaksha to the Upadhyaksha. The provision relating to disqualification to hold an office should be clear and unambiguous like a penal law. In the even, the statute is not clear, recourse to strict interpretation must be made for the construction thereof." 14. In the light of the above judgment what is to be understood is that what is provided in the Act cannot be presumed and assumed by the authorities. The purpose for which the provisions are made are to followed strictly. Hence, the order passed by the respondents is arbitrary in nature and is one, which is passed with non-application of mind.

15. The submission of the learned counsel for respondent Nos. 2 and 3 relying on the judgment in the case of KATHI KALU RANING (supra) that while the interest of public is involved and the same has to be protected is concerned, the said submission cannot be accepted for the reason that the interest of public is protected while the person has approached tins Court under Articles 226 and 227 of Constitution of India. This Court has got extraordinary power to exercise its discretion to protect the interest of public. In the said judgment, it has been held

that depending upon the gravity of the things, the public should be protected from mischief.

16. If at all, the appellant is to be removed in order to protect the public and also curb mischief, though the Government has not exercised its power under Section 48(4) of the Act, this Court has read the same for the purpose of dismissal of this appeal. Even after affording an opportunity to the appellant, it is for the respondents to invoke the said provision or any other provision of this nature, to remove the person who is democratically elected. In order to exercise the discretionary power, the respondents could have produced the materials to impress upon this Court to exercise the discretionary power. The investigation is not completed and the charge sheet has not been filed. In the absence of any such materials before this Court, we propose to exercise such power. Hence, the following:

ORDER

The appeal is allowed. The impugned communication made by the Government to the Executive Officer at Gulbarga is set aside. The appellant is permitted to discharge his duties as President/Adhyaksha. Liberty is also reserved to the respondents to take appropriate action in accordance with law.

In view of disposal of the appeal, I.A. 3/2014 filed for stay does not survive for consideration and is accordingly disposed of.