

(1998) 08 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition Nos.: 20395, 22171, 23969, 24002, 24361-362 and 24841 of 1998

Sayeed Akbar

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 28-08-1998

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 18 (1) (a), 42 (1), 42 (12)

Citation : (1998) ILR (Kar) 3519

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : Jaykumar S. Patil, Nageshwarappa and Subhash B. Adi, for the Appellant; K. Nagaraja, HCGP for R1 and R2 and Ashok Haranhalli, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Chandrashekaraiah, J.—In all these Writ Petitions the petitioners have sought for a declaration that the term of office of president or Vice President of the Municipal Council is 30 months from the date of their election to the said posts and for other reliefs.

2. The petitioners in these petitions were elected as either President or Vice-president of their respective Municipalities in the vacancies caused during the currency of the term of the elected President or Vice President of the said Municipalities. It is in their submission that though they were elected in the vacancies caused during the currency of the term of the offices of the President or Vice-President, they are entitled to continue in office for a period of 30 months from the date of their election. In support of this contention the petitioners relied upon the decision of the Division Bench in the case of M. SIDDAPPA v. THE STATE OF KARNATAKA AND ORS., W.P. No. 33497/96 with Connected petitions.

3. The learned Government Pleader appearing for the respondent-State submitted that the petitioners having been elected in the casual vacancies are

entitled to hold their offices only for the remainder of the term of offices of the President or Vice President elected to the regular vacancies and not beyond.

4. On these rival contentions the point that arises for consideration is:-

Whether the petitioners are entitled to hold their offices either as President or Vice President for a period of 30 months from the date of their election?

or

Are they entitled to continue so long as the President or Vice President in whose place they are elected would have been entitled to hold office if the vacancies had not occurred?

5. In order to consider the above said point it is useful to refer to certain provisions of the Act. u/s 18(1)(a) of the Karnataka Municipalities Act, 1964 (for short "the Act") the term of the office of the elected councillor is five years. Section 42(1) of the Act, provides that every Municipal Council shall have a President and a Vice President. Section 42(2) of the Act, reads thus:-

"2. Subject to the provisions of Sub-section (2-A) the Councillors shall at the first meeting of the Municipal Council after the general election and at a subsequent meeting held immediately before the expiry of term of office of the president and vice president chose two members from amongst the elected councillors to be respectively President and Vice President and so often as there is a casual vacancy in the office of the President, or Vice President shall choose another member from amongst the elected councillors to be the President or Vice President, as the case may be."

(emphasis supplied)

Section 42(2-a) of the Act, provides for reservation of the posts of President and Vice President for certain categories such as Scheduled Castes, Scheduled Tribes, Backward Classes and for 1/3rd of the total number of offices of the President and Vice President from each of the categories reserved for persons belonging to Scheduled Castes, Scheduled Tribes and Backward Classes and those which are not reserved, for women. The reservation of the posts of President and Vice President for the categories referred to above shall be allotted by rotation to different Municipal Councils.

6. Section 42(11) and (12) of the Act, reads as follows:-

"42(11) Save as otherwise provided under this Act, the President and Vice President shall hold office for a period of thirty months from the date of their election, provided that in the mean time they do not cease to be councillors.

(12) In the event of the non-acceptance of office, death, resignation or removal from office of a President or Vice President or of his election being void, or of his becoming incapable of acting in such office or having ceased to be a Councillor, previous to the expiry of his term of office as President or Vice President, the

vacancy shall be filled up by election, in accordance with the provisions of the foregoing sub-sections."

Sub-section (2) of Section 42 of the Act provides for filling up the regular vacancy of the President and Vice President immediately after the general election to the Municipal Council and also provides for filling up of the casual vacancy in the office of the President or Vice President. Section 42(11) of the Act, provides for the term of office of the President and Vice President. u/s 42(12) of the Act, if the office of the President or Vice President becomes vacant on the happening of the events provided for in the said section, before expiry of the term of office of President or Vice President who are elected in the regular vacancy, the said vacancy shall be filled up by election.

7. The provisions referred to above provides for election both to the regular vacancy and also the casual vacancy. The term of office of the President and Vice President is 30 months as provided u/s 42(11) of the Act even though the term of the Municipal Council is five years. Therefore during the term of the Municipal Council, there will be two elections to the office of the President and Vice President, one immediately after the general election to the Municipal Council and the second on the expiry of 30 months from the date of the election of the President and Vice President who are elected immediately after the general election. The posts of the President and Vice President as stated above, is subject to the reservation to be made in respect of certain categories. The person elected as a President or Vice President, immediately after the general election, holds office for a period of 30 months from the date of his election. In the event during the currency of the term of the President and Vice President vacancy is caused on the happening of certain events as provided u/s 42(12) of the Act, the said casual vacancy is to be filled by election.

8. From a reading of Section 42(2) and 42(12) of the Act, it is clear that the Legislature in their wisdom distinguished the post of regular vacancy and the casual vacancy. Any election to the post of President and Vice President held immediately after the general election to the Municipal Council and the election to be held on the expiry of first 30 months is for a regular vacancy whereas an election to the office of a vacancy caused on account of the happening of events as provided u/s 42(12) of the Act, is for a casual vacancy. The term of the office of President and Vice President specified u/s 42(11) of the Act, is for a regular vacancy and the said term cannot be treated as a term of office of a casual vacancy.

9. This Court in the case of C.R. SHIVANANDA v. THE ELECTION OFFICER & HEAD QUARTERS ASSISTANT TO THE D.C. DIST., OFFICE AND ORS. AIR 1976 Kant 225 interpreting the very sections has held thus:-

"4. Sub-section (12) deals with a different kind of vacancy. It stated that in the event of the non-acceptance of office, death, resignation or removal from office of the President or Vice President or of his election being held void, or of his

becoming incapable of acting in such office, etc., the vacancy caused thereupon shall be filled up by appointment or election. It is a casual vacancy which this Sub-section is concerned with. It is optional to hold the election whenever there is a casual vacancy. Such vacancy may be filled up either by appointment or election. It is undisputed that the petitioner was elected to the casual vacancy caused on the resignation of Keshavamurthy, the previous incumbent in the office. The petitioner, therefore, has no right to remain in office for a full term of one year from the date he became the President of the Municipal Council. If he is also held entitled to remain in office for a term of one year, then Sub-section (11) of Section 42 and the Government Order dated 16th March 1967 would be rendered nugatory and the difference between the regular vacancy and casual vacancy in the office of the President or Vice President would be obliterated. I, therefore, reject the contention urged for the petitioner."

No doubt subsequent to the abovesaid decision, there is an amendment introduced to Section 42(11) and (12) of the Act. The said amendment has not altered or changed the intention of the Legislature in distinguishing the regular and casual vacancies.

10. The Division Bench in M. Siddappa's case (supra) no doubt while interpreting the provisions of the Karnataka Panchayat Raj Act, has held that the persons elected as Adhyakshas and Upadhyakshas are entitled to hold the office for a period of 20 months from the date of their election or till such time they cease to be the members of the Panchayat. The said decision is not applicable to the facts of this case, since in the Karnataka Panchayat Raj Act, there is no provision similar to Section 42(12) of the Act. Further, the Division Bench has held that no distinction is contemplated with respect to the vacancy filled by election under the normal circumstances and one filled by election upon existence of a casual vacancy interpreting the provisions of the said enactment. Therefore, there is no substance in the contention of the petitioners that they are entitled to hold their office for a period of 30 months from the date of their election. For the reasons stated above, I hold that, the person who is elected in the casual vacancy created on the happening of certain events as provided u/s 42(12) of the Act, is entitled to hold the office only for the remainder of the term of office of the President or Vice President v/ho was elected in regular vacancy.

11. There is one other reason to reject the contention of the petitioners. The posts of President and Vice President of the Municipal Council in the State of Karnataka is subject to the reservation as provided u/s 42(2-A) of the Act. The total term of the office of the Municipal Council is 60 months, that is, five years. As per the reservation provided for, if the first term of President is reserved for one category, the second term is to be reserved for another category. Under such circumstances, the first term of the office of the President is reserved for backward class and during the term of office if the person holding the post vacates office after expiry of 20 months from the date of his election, there shall be an election to fill up the said post. Accordingly, if election is held, the person

belonging to the category for which it is reserved for is alone entitled to contest in the election. If that is so, he can hold office only for the remainder term, because he cannot continue beyond that period, as the second term of office of the President has been reserved for some other category. If the person elected in the casual vacancy is allowed to be continued beyond the term of office of original vacancy holding that he is entitled to be in office for a period of 30 months from the date of his election, it would result in depriving a person who is to be elected for the second term from holding the office for the period of 30 months, since the term of the Municipal Council itself expires before the expiry of 30 months. If the contention of the petitioners is accepted it is not possible to give effect to the reservation as provided u/s 42(2-A) of the Act, as it defeats the very scheme of the Act, and also contrary to the mandate of the Constitution.

For the reasons stated above, these petitions are rejected.