

(1997) 11 KAR CK 0035
In the Karnataka High Court
Case No : Writ Petition No. 29560 of 1997

Smt. T. Bhagyalakshmi

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 14-11-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10 (2), 151
Karnataka Panchayat Raj Act, 1993 — Section 48 (4)

Citation : (1998) ILR (Kar) 478 : (1998) 1 KarLJ 731

Hon'ble Judges : B.N. Mallikarjuna, J

Bench : Single Bench

Advocate : Sri Chennaraya Reddy, for the Appellant; Sri A. Nagarajappa, Government Advocate, for the Respondent

Judgement

1. Petitioner has sought for quashing the order of respondent 2-Divisional Commissioner, Bangalore Division, dated September 29, 1997 made in exercise of power under sub-section (4) of Section 48 of the Karnataka Panchayat Raj Act, 1993 (hereinafter referred to as "The Act") removing the petitioner from the office of Adhyaksha of Madanayakanahalli Grama Panchayat in Bangalore North Taluk. Annexure-E is the order.

2. Briefly stated, the facts are:

Petitioner-Smt. T. Bhagyalakshmi, it is stated was elected as member to Laxmipura Village Panchayat in the election held on December 29, 1993 and later called as Madanayakanahalli Village Panchayat. Further, in the election held on March 12, 1994 for the office of Adhyaksha to the said panchayat, petitioner was elected. It would appear that petitioner during the course of one to one and a half years while functioning as Adhyaksha of the panchayat issued 18 general licences and 10 licences under her signature though in fact law did not permit the Adhyaksha to issue such licences. Only 4 out of 18 and one out of 10 had the approval of the panchayat and in the case of other licences Adhyaksha had not brought the subject before the panchayat.

3. It would appear that on a complaint by one Sri Seenappa from Madanayakanahalli village and a member of the Zilla Panchayat, Chief Executive Officer of the Zilla Panchayat instructed the Deputy Secretary to enquire into the matter. Deputy Secretary visited the panchayat office on April 17, 1996, examined the records and submitted his report to the Chief Executive Officer complaining that 4 out of 18 general licences and one out of 10 licences had been issued by the Adhyaksha without the approval of the panchayat. Chief Executive Officer, therefore, on April, 30, 1996 issued notices calling for explanation. Petitioner on July 2, 1996 submitted her reply contending inter alia that not knowing the law or the procedure, being an uneducated lady and coming from a backward community has issued licences, but at any rate those licences have been issued after recommendation by the Secretary and has also sought for excuse. The Chief Executive Officer, on July 27, 1996 reported the matter to respondent 2-Divisional Commissioner proposing action u/s 48(4) of the Act.

On receipt of the recommendation respondent 2 caused notice dated November 4, 1996 served on the petitioner, Annexure-C is the said notice calling for explanation. Petitioner in reply submitted in writing on November 18, 1996 reiterating what she had stated earlier and also assuring that she would not give scope for such lapses or irregularity in future. Respondent 2 posted the case for hearing and by the order impugned dated September, 1997 directed the removal of the petitioner from the office of Adhyaksha, but however continued her as the member of the Grama Panchayat. This order is under challenge in this writ petition.

4. In the counter filed on behalf of the respondents, it is stated that petitioner being the Adhyaksha was expected to know the rules and regulations of the Act. Section 62 of the Act which deals with the duties of Adhyaksha did not provide for issuance of licence and as such petitioner cannot plead ignorance of law. It is further stated that petitioner should have placed all those matters before the panchayat before signing and issuing the licence, the fact that she is uneducated and comes from a backward class is no ground to claim excuse, sufficient opportunity was provided before making the order impugned and as such petitioner cannot have any grievance. The order impugned does not call for any interference.

5. Learned Counsel for the petitioner argued that the charge being most serious, respondent 2 should not have treated the matter so casually as has been dealt, respondent 2 ought to have held an enquiry and ascertained as to whether there was persistent default on the part of the petitioner and has disobeyed the instructions in this behalf deliberately warranting action u/s 48(4) of the Act. Learned Government Advocate while supporting the order contended that the ignorance of law has no excuse and the petitioner having obtained approval in the case of this nature ought to have followed the same procedure in the case of other licences and having not done she cannot now have a grievance that she was not given an opportunity of hearing. Since there is no dispute as to the fact

that petitioner had issued certain licences without the approval of the panchayat, order impugned does not call for any interference.

Learned Government Advocate also made available to me the records of the proceedings before respondent 2 for perusal.

6. Before adverting to the merits or demerits of the rival contentions urged before me, it would be necessary to dispose of two I.As. I and II. I.A. I is an application under Order 1, Rule 10(2) read with Section 151 of the CPC by one Sri M. Bhaskar, one of the members of Madanayakanahalli Grama Panchayat. I.A. II is another similar application by one Sri H. Seenappa, a Zilla Panchayat Member. Learned Advocate appearing for the petitioner contended that their presence in resolving the dispute or in deciding the controversy is very essential and therefore they may be permitted to be brought on record as respondents. I find absolutely no merit in this contention. Order 1, Rule 10(2) of the CPC permits to implead the name of any party either with or without an application if their presence is absolutely necessary in order to enable the Court to adjudicate and settle all questions effectively and completely. Provisions of the P.R. Act empowers respondent 2 to remove Adhyaksh or Upadhyaksha on being satisfied that they are persistently remiss in discharge of their duties in certain cases. The impugned order is made by respondent 2 in exercise of power u/s 48(4) of the Act. The grievance of the petitioner is that the order is made without giving her sufficient opportunity and without holding an enquiry. In deciding the said matter, presence of the interveners is certainly not necessary. On the other hand, what the records reveal is that the whole proceedings have been initiated at the behest of one of the applicants Sri S. Seenappa making certain allegations, second intervener is a member of the panchayat and if he had any grievance he could have as well moved the matter in the panchayat and in the circumstances and having regard to the nature of the dispute require to be resolved in the proceedings, presence of either of the petitioners is certainly not necessary and therefore those two applications are dismissed.

7. Section 48 of the Act deals with the resignation and removal of Adhyaksha or Upadhyaksha of Panchayat. Sub-sections (4) and (5) of Section 48 of the Act read thus:

"48. Resignation or removal of Adhyaksha or Upadhyaksha.-

(1), (2) and (3).....

(4) Every Adhyaksha and Upadhyaksha of Grama Panchayat shall, after an opportunity is afforded for hearing him, be removable from his office as Adhyaksha or Upadhyaksha by the Commissioner for being persistently remiss in the discharge of his duties and an Adhyaksha or Upadhyaksha so removed who does not cease to be a member a member under sub-section (2) shall not be eligible for re-election as Adhyaksha or Upadhyaksha during the remaining term of office as member of such Grama Panchayat.

(5) An Adhyaksha or Upadhyaksha removed from his office under sub-section (4) may also be removed by the Commissioner from membership of the Grama Panchayat".

(emphasis supplied)

A plain reading of sub-section (4) of Section 48 of the Act makes it very clear that an action of removal is warranted if there is persistent default on the part of Adhyaksha in the discharge of his/her duties and not otherwise. The charge that Adhyaksha was careless or irregular or has done certain acts by abusing the power of office being a most serious charge, authority conferred with the power of removal is required to consider each one of the allegations levelled against the Adhyaksha and only on being satisfied that there is persistent default or remiss can proceed to make the order under sub-section (4) and not otherwise. The whole scheme and object of the legislature in enacting the Act is to decentralise the administration of villages and to confer certain powers on the elected bodies with a considerable measure of independence. Therefore in the process of administration, if the charge is that Adhyaksha or Upadhyaksha has ignored the relevant provisions or the mandate of the Act, the authority conferred with the power to remove them on such charges being proved, is required to hold an enquiry and satisfy about the truth or otherwise of the charge. In the instant case, petitioner was elected as Chairman in the month of March, 1994. The records reveal that one Sri H. Seenappa on November 6, 1995 made a complaint to the Chief Executive Officer alleging that petitioner and her husband beget the Secretary and the Secretary in turn reported that the cause for beating is for non-obliging the petitioner in the matter of grant of "No Objection Certificate". Based on that report, Chief Executive Officer directs the Deputy Secretary to hold an enquiry, Deputy Secretary visits the office on April 17, 1996 and makes a report that petitioner has issued 18 general licences and 10 licences, out of 18 only 4 and out of 10 only one had the approval of the panchayat. Petitioner at one point of time contends that she had not signed so many licences viz., 14 general licences and 9 other licences without the approval of the panchayat and without the recommendation of the Secretary and apprehends that the licences must have been forged. To illustrate or in support of her claim she has also produced Annexure- A, an application by one Eshwarappa seeking licence to install 5 HP electrical installation in his premises and this application is on November 28, 1995. Adhyaksha marks this application to the Secretary and the Secretary puts a note that the application is according to the provisions of the Act and the Rules and the licence may be granted. Annexure-B is the licence dated December 18, 1995. This would demonstrate that after 20 days after the application and on the recommendation of the Secretary, petitioner has sanctioned the licence.

Secondly, in reply to the notices both by the Chief Executive Officer and respondent 2 petitioner clearly states that she had no intention nor she has signed the licence by abusing the power as Adhyaksha and even if there is any such instance she may be excused. Further, in reply Annexure-D she gives an

assurance to the Divisional Commissioner to see that such thing did not occur. In these circumstances, respondent 2 who has made the impugned order should have enquired and determined as to whether there was any persistent default on the part of the petitioner even after being warned that she cannot sign or issue licence as it contravenes the provisions of the Act and Rules. On the other hand, proceedings would reveal that no such enquiry has been held, the matter has been adjourned from time to time and the order impugned is made solely on the report of the Deputy Commissioner. In the circumstances, I find considerable merit in the arguments advanced on behalf of the petitioner that the matter is being dealt either causally or mechanically. Having regard to the nature of the charge and the civil consequences that followed, respondent 2 ought not to have treated the matter either casually or mechanically, was required to verify whether there was persistent default for the simple reason that even the order indicates that such licences were being issued by the Adhyaksha of several Panchayats in the State and a circular had been issued by the Government on July 27, 1996 instructing the Chairman not to issue the licence, except with the approval of the panchayat. Therefore, in the circumstances, respondent 2 ought to have satisfied whether there was any default on the part of the petitioner in the matter of issuing licence even after the circular dated July 27, 1996.

8. It would be useful to refer to an observation made by respondent 2 during the course of the order, which reads thus:

"In this case the Adhyakshini has admittedly signed the licences which have not even been vetted by the Secretary. She is therefore completely in the wrong in issuing such licenses on her own. She cannot really excuse herself on the grounds that she was uneducated or that she was misled by the Secretary".

Petitioner admits, on more than one occasion (in the reply submitted by her before the Chief Executive Officer and before respondent 2) that she had signed the licenses but contends that she has signed it at the instance or at the recommendation of the Secretary and with a view to avoid difficulty and hardship to the villagers. She has also showed an instance to indicate that she has issued the licence on the recommendation of the Secretary. The power of removal is conferred on respondent 2 only if the alleged default or irregularity or abuse of power of office is continuous and persistent and not otherwise. Therefore, it was the duty of respondent 2 to have verified whether there was any persistent default on the part of the petitioner in discharge of duties entrusted to her or in the matter of issuance of licence.

9. What is "persistent default" came up for consideration in Chhotey Lal and Others v State of Uttar Pradesh, Division Bench of Allahabad High Court after considering the dictionary meaning of the word "persist", has made the following observation:

"Learned Counsel's contention is that the word "persists" connotes the idea of successive defaults in spite of warning or protest and opposition; and that a

single default in the performance of a duty or a series of single defaults in the performance of different duties will not bring the conduct of the Board within the ambit of the section. The verb "persist" is defined in Murray's Dictionary as "To continue firmly or obstinately in a state, opinion, purpose, or course of action, especially against opposition, or remonstrance". It implies a course of action coupled with an intention to continue in that course. The members of a Board must be presumed to know what their duties are, and if they repeatedly made default in the performance of these duties I think that they can properly be described as persisting in making default".

(emphasis supplied)

10. Sub-section (4) of Section 48 of the Act empowers the authority to remove the Adhyaksha or Upadhyaksha as the case may be on being satisfied that there is persistent remiss in discharge of his/her duties. This would demonstrate or indicate that what warrants an action under sub-section (4) of Section 48 is a continuous neglect on the part of Adhyaksha or Upadhyaksha as the case may be in discharge of duties. The word "persist" or "persistently" suggests an attitude of mind. In certain situation, even a single act by a person may reveal persistent attitude if the person sticks to his act of omission after he has been warned or his/her attention has been drawn to it. In the instant case, no such thing is forthcoming nor respondent 2 held an enquiry as revealed from the proceedings to satisfy that petitioner was persistent or that she continued to issue licences even after she was informed that law did not permit. On the other hand, in both the replies she has confessed that she has issued under certain circumstances and prays for excuse. If after the circular dated July 27, 1996 and the reply, she had continued to issue licences, perhaps the authority would have been right in holding that there is persistent default. It is also the definite case of the petitioner that she has issued licence on the recommendation of the Secretary and further contends that Secretary must have forged some of the licences. In the circumstances, respondent 2 before making the order impugned ought to have satisfied by making an enquiry but without making any such enquiry proceeds to make the order impugned solely on the report of the Deputy Secretary and the Chief Executive Officer of the panchayat and therefore the order impugned is not sustainable.

11. In the result, issue rule. Order impugned dated September 29, 1997, Annexure-E is hereby quashed. No costs.