

(2000) 01 KAR CK 0094

In the Karnataka High Court

Case No : Writ Petitions No's. 19376 to 82 of 1999

Sri. H.S. Devaraj and Others

APPELLANT

Vs

The State Election Commissioner and Others

RESPONDENT

Date of Decision : 31-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Local Authorities (Prohibition of Defection) Act, 1987 — Section 3 (1) (b), 4

Citation : (2000) 2 KCCR 1226

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : A.K. Subbaiah, for the Appellant; P.G.C. Chengappa and J. Chandrashekaraiah, for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

Tirath S. Thakur, J.—In this Petition for a writ of certiorari, the Petitioners have called in question the validity of an order made by the State Election Commissioner u/s 4 of the Karnataka Local Authorities (Prohibition of Defection) Act, 1987 disqualifying the Petitioners from the membership of the Zilla Panchayat, Mysore District on the ground of defection contrary to Section 3(1)(b) of the said Act.

2. The complaint filed against the Petitioners alleged that a meeting of the Mysore District Janata Dal was convened on 12th of December, 1998 at Mysore, in which apart from the Zilla Panchayat members of the Janata Dal, Sri Siddaramaiah, the then Deputy Chief Minister of the State, other Ministers, M.L. As., and M.L. Cs., also participated. The meeting was, according to the complaint, convened to nominate candidates for the post of President and Vice-President of the Zilla Panchayat for which elections were scheduled to be held on 14.12.1998, the complaint further stated that after discussion the decision to nominate the candidates for the two posts was left to Sri Siddaramaiah and the Janata Dal members of the Zilla Panchayat asked to present themselves in the meeting at 9

in the morning on 14th of December, 1998 to receive a party whip to be issued by the District President of the party in favour of those nominated by the party. The complaint went on to state that all the Zilla Panchayat members belonging to the Janata Dal party except the Petitioners attended the meeting on the 14th of December, 1998 at 9 am. and received the whip issued by the District President. The whip was thereafter served upon the Petitioners individually, which they refused to acknowledge. The result was that out of a total of 27 members belonging to the Janata Dal, only 20 voted for the party nominees viz. Smt. K.R. Jayalakshmi and K.C. Balaram while the remaining seven-Petitioners herein, voted for the other candidates in defiance of the whip leading to the defeat of the candidates set up by the party. The refusal of the Petitioners to accept and act in accordance with the whip issued to them was, according to the complainant, sufficient for their disqualification from the membership of the Panchayat.

In the objections filed by the Petitioners, the meeting held on 12th of December, 1998 was described as a dinner party hosted by the Deputy Chief Minister, in which no discussion regarding the selection of the party candidates had, according to the Petitioners taken place. That Sri Siddaramaiah was authorised to select the party candidates was also denied. The minutes of the meeting held on 12th of December, 1998 were dubbed as a concoction although the signature of the Petitioners on a sheet of paper accompanying the minutes in token of their being present were not disputed. According to the Petitioners, no official candidate having been selected till the date of Election on 14th of December, 1998 and no whip having been received by them from the party, they voted according to their conscience.

The Election Commissioner recorded the statements of the witness produced by the parties and upon appraisal of the oral and documentary evidence came to the conclusion that the Petitioners had acted contrary to the party direction which required them to support the candidature of the persons nominated to contest the election. The Commissioner was of the view that a meeting was held on the 12th of December, 1998 to select party candidates and that the minutes of the meeting were also recorded. He further held that the Petitioners had deliberately absented from the meeting of the party on 14th of December, 1998 fixed for receiving the whip issued by the party President and that they had voted in violation of the direction issued by the person authorised rendering them liable to disqualification.

I have heard learned Counsel for the parties and perused the record. Three crucial questions arise for consideration viz., (1) Whether a whip had been issued by the Janata Dal party or a person or authority authorised by it directing its Zilla Panchayat members to vote for the candidates nominated by the party, (2) Whether any such whip had been served upon the Petitioners in a manner known to law and (3) Whether the Petitioners had acted in violation of the whip issued to them. All these questions are pure and simple questions of fact to be determined on the basis of the evidence, which the parties have adduced in the

course of the enquiry before the Election Commissioner. As noticed earlier, the Election Commissioner has answered each one of these questions in the affirmative. It has held that the State Janata Dal President, who was admittedly the authority competent to issue the whip had in terms of Ex.P19 and Ex.D1 both dated 26th of November 1998, authorised the District President and the General Secretary of the Janata Dal to issue a whip in connection with the elections to the post of President and Vice-President of the Zilla and Taluk Panchayat, Mysore. In so far as the service of the whip upon the Petitioners is concerned, the Election Commissioner has on an appreciation of the evidence adduced by the parties held that Petitioners had deliberately stayed away from the meeting held on 14th of December 1998, in which the Zilla Panchayat members of the Janata Dal party had to receive the whip. The direction was then served upon them individually, though they declined to acknowledge the receipt thereof as is evident from mahazars-Exs.P10 to P16. In so far as violation of the direction issued to the party is concerned, the Petitioners have not even themselves disputed the fact that they did not vote for the official candidate. According to their version on account of the failure of the party to nominate official candidates for the two posts, they had voted according to their conscience. The findings recorded by the Election Commissioner do not in my opinion suffer from any perversity. The conclusion that the Petitioners had defied the whip issued to them was therefore inevitable.

Mr. Subbaiah however made a valiant attempt to persuade this Court to hold that the findings were not justified. It was, according to the learned Counsel, a case where there was no evidence either in regard to the issue of the whip or its service upon the Petitioners. Reference was also made by him to the statements recorded by the Election Commissioner to show that no official candidate had been selected by the Janata Dal Party either in the meeting held on 12th of December, 1998 or at any subsequent stage. In the absence of a proper selection of the candidates either by the party or its delegate, there was, accommodation to Mr. Subbaiah, no question of issuing a whip. The authenticity of the minutes allegedly drawn up on 12th of December, 1998 was also seriously assailed.

The Election Commissioner while exercising jurisdiction u/s 4 of the Act acts as a statutory Tribunal for determination of questions of fact and law involved in a dispute touching upon the disqualification of a member. A finding of fact recorded by any such Tribunal cannot in proceedings under Article 226 be assailed except on the ground that the Tribunal has acted on evidence, which was legally inadmissible or has refused to admit evidence that was admissible or has returned a finding, which is not supported by any evidence whatsoever. The present does not, in my opinion, fall in any one of these categories. It is not the case of the Petitioners that any evidence had been shut out or that any evidence, which is inadmissible has been taken into consideration. The argument that there is no evidence at all in support of the findings returned by the Tribunal has not impressed me. The oral evidence recorded by the Tribunal and the documents produced by the parties in the course of the enquiry can, in my opinion,

reasonably support the findings recorded by the Election Commissioner. So long as there is some evidence, which if believed, can justify the finding under challenge the mere possibility of a contrary finding on a reappraisal of the evidence is not a sufficient ground for this Court to interfere or to substitute the finding of the Tribunal by its own finding. Decisions of the Apex Court in *Jt. Registrar of Co-operative Societies Madras and Others Vs. P.S. Rajagopal Naidu and Others*, and *Sawarn Singh and Another Vs. State of Punjab and Others*, lend considerable support for that proposition.

That brings me to the alternative submission of Sri Subbaiah. It was contended that since the selection and nomination of the candidates had not taken place in the meeting held on 12th of December, 1998 and 14th of December, 1998, no whip could have been issued to support their candidature. There is, in my opinion, no merit in that submission either. The decision in the meeting held on 12th of December, 1998 was two fold. Firstly to leave the nomination of the candidates to Sri Siddaramaiah and secondly to call the members of the Zilla Panchayat belonging to the party on 14th of December, 1998 to receive the party directive. It is not the case of the Petitioners that the direction issued on 14th of December, 1998 under the signatures of the District party President did not identify the party nominees in whose favour the Zilla Panchayat members were asked to vote. A whip from the party or the person authorised is sufficient to establish that the person in whose favour the same is issued has been selected by the party as its candidate. That being so, a member of the Panchayat belonging to any such party would have no option, but to abide by the directive issued to him. He cannot defy the directive on the ground that the person nominated as the official candidate did not either deserve to be nominated or had not been validly selected. The very purpose of issuing a whip to the members of the Panchayat, Municipal Council or Corporation would be defeated if the efficacy of any such directive were to depend upon the person receiving the whip agreeing with the nomination of the candidate in whose favour the same is issued. As to how a candidate is nominated by the party to contest an election for any Office is an intra party matter. Different parties may have different methods and mechanisms for selection and nomination of their candidates. Any such nomination or selection process is not regulated by the Statute. What is crucial is whether the selection process has eventually culminated in the issue of a whip by or under the authority of the party concerned. If it has, all those to whom the whip is issued can defy the same only on the peril of losing their membership. The fact that Sri Siddaramaiah did not make any formal declaration of the official candidates is therefore wholly inconsequential so long as the party had authorised the District President to issue the whip and the person authorised had identified the candidates, in whose favour the whip was issued. It is in that view unnecessary to go into the question whether the proceedings said to have been recorded on 12th of December, 1998 present a faithful account of whatever transpired in that meeting. The issue of the whip, its service upon the Petitioners and the violation thereof by them having been established, the Election

Commissioner was justified in directing their disqualification. I see no error of law or jurisdiction or other procedural impropriety in the order made by the Election Commissioner to warrant interference.

These Writ Petitions accordingly fail and are hereby dismissed with costs assessed at Rs. 1,000/- in each Petition.