

(2006) 05 KAR CK 0013
In the Karnataka High Court
Case No : Writ Petition No. 6452 of 2006

Sri. M. Bhaktavatsala

APPELLANT

Vs

Deputy Commissioner and Others

RESPONDENT

Date of Decision : 31-05-2006

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 42 (2) (2-A), 42 (2A), 42 (5), 42 (7)

Citation : (2006) 4 KarLJ 640

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : M.B. Nargund and Sona Vakkund, for the Appellant; B. Papegowda, for R-4 and 5, A.K. Subbaiah, for R-6 and B. Manohar, AGA for R-1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ petition is by a person who had been elected as Vice President of Robertsonpet, KGF Municipal Council and who has been functioning as the President of this Municipal Council pursuant to a resolution dated 25.1.2006, copy at Annexure-D to the petition, passed by the members of this council purporting to be under Sections 42(6) and 42(7) of the Karnataka Municipalities Act, 1964, (for short the "Act") electing the petitioner to act as President for a period of five months therefrom in view of the incumbent President one Smt. Dilshad Begum having gone on leave for a period of six months.

2. The grievance of the petitioner is in the context of issue of notice dated 26.4.2006, copy at Annexure-H to the petition, issued by the Assistant Commissioner, Kolar Sub-Division, Kolar, purporting to be in his capacity as the returning officer for conducting the election to elect a member of the Council as president in view of the vacancy in the post of president due to the death of the incumbent president Smt. Dilshad Begum on 11.4.2006.

3. A notice had been issued fixing the date of the meeting for such election to be on 6.5.2006 at 1.00 p.m. at the Office of the Municipal Council and had also indicated the calendar of events for conduct of this election.

4. It is questioning the legality of this notice the present writ petition. This Court in terms of the order dated 4.5.2006 while directing issue of emergent notice to the respondents has stayed the operation of the notice.

5. On service of notice to the respondents the other members of the Municipal council also have become active, they have sought for impleadment to the writ petition through applications which were ordered by this Court and accordingly have joined this writ petition as respondents 4, 5 and 6. These respondents have also subsequently filed applications for vacating the interim order of stay through I.As, III & V/06 and it is in this context the matter had come up before this Court for orders and with the understanding of the learned Counsel for the parties, the matter has been taken up for disposal itself and is being disposed off by this order.

6. I have heard Sri. M.B. Nargund, learned Counsel for the petitioner, Sri. B. Papegowda, learned Counsel for the respondents 4 and 5 as also Sri. Ponnanna, learned Counsel for 6th respondent, both of whom have argued on applications for vacating the interim order of stay as well as on merits and Sri. Manohar, learned Additional Government Advocate appearing for the statutory respondents 1 and 2.

7. While various factual averments are reiterated in the course of submissions, what is essentially urged by Sri. Nargund, learned Counsel for the petitioner is that the notice at Annexure-H dated 26.4.2006, is bad in law for more than one reason that the Asst. Commissioner could not have issued a notice of this nature fixing the date for electing a President to the Municipal Council even during the present tenure of the petitioner, which according to the learned Counsel for the petitioner, is for a period of five months from 25.1.2006 in terms of the resolution of that date and five months having not expired the petitioner having been elected as President pursuant to the statutory provisions u/s 42(7) of the Act, the notice is in contravention of provisions of Section 42(7) for taking action which is contrary to the position pursuant to the resolution of the Municipal Council in terms of Sub-section (7) of Section 42 of the Act.

8. The second legal contention urged by Sri. Nargund is that the very manner in which the notice has been issued fixing a date for electing the President to the council is indicative of the undue haste and lack of bona fides, particularly as though several vacancies have arisen in the membership of the Council including the members contesting to the post of President reserved for Backward Class - A Category (Lady), while it is allowed to remain so for the past several years, the Assistant Commissioner has very suddenly become active to hold elections to the post of President even prior to the expiry of the tenure of the petitioner and therefore the action lacks bona fides. Learned Counsel submits this coupled with

the fact that Government has in a subsequent development issued show-cause notice for the dissolution of the very Council and for appointment of an Administrator and in case the Assistant Commissioner having not taken such action after consulting the Government nor after seeking proper directions from the Government the action taken by the Asst. Commissioner is not bona fide. In the light of such development the submission of the learned Counsel for the petitioner is that the situation is orchestrated that the petitioner loses his post as of now and therefore the notice is bad.

9. Yet another reason urged by Sri. Nargund, learned Counsel for the petitioner is that the post of President had been reserved in favour of a person belonging to Backward Class-A Category and a lady in that; that the earlier incumbent was such a person, that she had been elected for the remainder period of elections conducted during the year 2001 to the Municipal Council; that the post already having been reserved in favour of a candidate belonging to Backward Class-A Category, lady candidate, when the post is sought to be filled up by conducting elections again in the next round, the requirement of applying rotation rule for the purpose of reservation has to be necessarily implemented and if the post had earlier been reserved, it cannot be reserved yet again in successive elections and therefore the notice fixing the calendar of events indicating that the post of President having been reserved in favour of candidate belonging to Backward Class-A Category (Lady) is bad in law and in violation of statutory provisions of Section 42(2)(2-A) r/w Rule 13(A) of the Karnataka Municipalities (President and Vice-President) Election Rules, 1965, (Referred to as "the Rules" hereinafter).

10. In support of his submission, learned Counsel for the petitioner has relied upon the following decisions of this Court to urge that the rotation is inevitable.

a) Yellappa and Another Vs. State of Karnataka and Others,

b) Sidharam and Another Vs. State of Karnataka and Others,

11. It is also the submission of Sri. Nargund, learned Counsel for the petitioner, that the Assistant Commissioner has not been duly authorized to act as the Returning Officer to conduct elections that he is not the competent authority; that in the absence of a valid authorization in his favour, a notice issued for the purpose of holding elections which does not even indicate whether the Assistant Commissioner has been duly authorized for the purpose of conducting elections is not valid and submits that for this reason also the notice is bad in law.

12. Submissions made on behalf of the respondent is that the writ petition itself is without bona fides; that the petitioner is a person who has managed to remain in the post of President time and again; that the petitioner was the President of the very council in the first part of the elected period when the post was available to the general category; that in the second part of the elected period the post had been reserved for a person belonging to Backward Class-A category (Lady); that the reservation is for the entire period of 30 months which is the remaining portion of the period of the elected members of the council; that in unfortunate

circumstances the incumbent President Smt. Dilshad Begum had taken ill and had proceeded on leave, that the petitioner who was Vice-President had been by resolution elected to act as President, but the petitioner is trying to prevent holding of fresh and proper elections to fill up the casual vacancy as the incumbent President has expired as on 11.4.2006 and thereafter the election of the petitioner as President for the leave period also has come to an end and if so the petitioner has no right to remain in the post of President on and after the death of the incumbent President as on 11.4.2006 and cannot press into service the provisions of Sub-section (7) of Section 42 of the Act. It is specifically urged that assuming the petitioner had been elected as a President to act for the leave period in terms of provisions of Sub-section (5) of Section 42 that will enure to his benefit only during the leave period of the incumbent President and not after his/her expiry. Thereafter the vacancy becomes a leave vacancy and not a casual vacancy. Therefore the Vice-president acting as President cannot come in the way of election any further, but the relevant statute will take over. It is submitted that in the light of the vacancy that has arisen as of now, and the effort on the part of the Assistant Commissioner to conduct elections is perfectly justified in law.

13. Another submission on behalf of the respondents defending the action is that the holding of elections is fully justified as the post has fallen vacant due to the death of the incumbent President Smt. Dilshad Begum, who had been elected as against the post reserved for a Backward Class-A category (Lady) and if the very reservation is indicated in the notification for the remainder period, it is fully in consonance with the provisions of Section 42(2)(A) r/w Rule 13(A) of the Rules and therefore the notice is valid and justified.

14. Submission of the learned Counsel is that the rotation of members applies for the next period of electing a person to the post of President and not even within the period when there may arise a vacancy due to resignation or death of a person who is holding the post of President in which event while the reservation remains so it should be considered as a rotation required to be put into operation in the next round of election for the said post etc.

15. Sri. Manohar, learned AGA appearing on behalf of the statutory respondents has asserted that the issue of notice for conducting of elections by the Assistant Commissioner is well justified; that the Assistant Commissioner is a duly authorized person to be the returning officer to conduct such elections; that in terms of a Government notification dated 13.8.2004 indicated vide Annexure-H, which has been even referred to by the Assistant Commissioner, he is the officer competent to conduct such election; that he is fully authorized to hold and conduct the elections; that the notice is justified not only in terms of his statutory powers but also in view of delegation of powers by the Government in his favour.

16. The basic fact is that the post of the President for the second term of the elected period in the KGF Municipal Council had been reserved in favour of a

person belonging to Backward Class-A Category (Lady). The reservation insofar as the President and Vice-President is concerned, is made into two parts of the elected period and it is rotated for each part. The elected period of members is normally for a duration of 60 months and election to the post of President and Vice-President is held once in every 30 months i.e. elected period of members is split into two parts for the purpose of the election of the President and the Vice-President and the reservation is rotated in each part. As per the provisions of Section 42(2)(2-A) read with the reservation rules it has been properly understood and implemented.

17. Section 42(2)(2-A) reads as follows:

Section 42(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 choose two members from amongst the elected councillors to be respectively president and Vice-President shall choose another member from amongst the elected councillors to be the President or Vice-President, as the case may be.

(2-A) There shall be reserved by the Government in the prescribed manner:

a) such number of offices of President and Vice-President in the State for the persons belonging to the scheduled castes and scheduled tribes and the number of such offices bearing as nearly as may be the same proportion to the total number of offices in the State or of the scheduled tribes in the state bears to the total population of the State.

b) Such number of offices of President and Vice-President in the State which shall as nearly as may be one-third of the total number of offices of President and Vice-President in the State for the persons belonging to the Backward Classes;

c) Not less than one-third of the total number of offices of the President and Vice-President in the State from each of the categories, reserved for persons belonging to the scheduled castes, scheduled tribes and backward classes and those which are non-reserved, for women:

18. Reservation is not with reference to a particular person or the incumbent officer holding the post of President or Vice-President as the case may be and not as and when he/she changes. If it should be as contended by the learned Counsel for the petitioner then under these statutory provisions the reservation in respect of the post of President cannot be for the entire remainder portion of the elected period. But the learned Counsel for the respondents submit that it is up to December 2006 and within that period there cannot be any further rotation.

19. If the provisions relating to reservation should be properly understood the provisions of Section 42(7) which provides for an ad hoc arrangement of electing a person as a President during the period when the incumbent president has

gone on leave should also be construed in consonance with such reservation and even in terms of Section 42(7) one should be a person who answers the requirement in terms of the notification reserving the post of a President for a particular category. If that is to be the understanding of the provisions of law then if a person does not qualify to be an eligible candidate in terms of the notification, insofar as reservation is concerned even u/s 42(2)(2-A), then a person elected u/s 42(7) of the Act cannot contend it can override the statutory provisions particularly Section 42(2-A) r/w the relevant Rules. If so I find even the present holding of the post by the petitioner to be in contravention of the reservation notification and therefore, in violation of Section 42(2-A) of the Act r/w Rule 13-A of the Rules.

20. If that be the legal position any further attempt on the part of the petitioner to seek for interference in the notice fixing the date and meeting for electing a President to the Council in view of the death of the incumbent president and indicating that the post is reserved for a person belonging to Backward Class-A category (Lady) it, need not be examined any further for pronouncing on the legality of this notice at the instance of a person like the petitioner. It is clear that the effort on the part of the petitioner is only to avoid further election so that if not for a longer period at least for the remainder part of the period in terms of the resolution dated 21.1.2006, he can remain in office.

21. Though that may be the order desire of the petitioner, I find the legal position is not as such. Even otherwise, I do not find any illegality in the notice as I find that the notice has been properly issued by the Assistant Commissioner who has been validly authorized in terms of the Govt. notification to hold and conduct the elections.

22. Reliance placed by the learned Counsel for the petitioner on the decisions referred to supra is of no consequence as the rotation is not required to be implemented at a stage even within the stipulated period but only after the expiry of the period i.e. after the 30 months duration which has not expired as of now. The decisions are of no avail to advance the case of the petitioner.

23. In the result I find no merit in this petition, particularly for the purpose of quashing the notice under Annexure-H dated 26.4.2005. Petition deserves to be dismissed and is dismissed imposing costs of Rs. 2,000/- on the petitioner.

24. Now that the date fixed for holding and conducting of election has already come to an end and the notice having been stayed by this Court in the meanwhile, it is necessary that the Returning Officer - Assistant Commissioner issues a fresh notice fixing a fresh calendar of events and proceeds in accordance with the statutory provisions.