

(2017) 11 KAR CK 0052
In the Karnataka High Court
Case No : 51121 of 2016 (LB-RES)

SRI. SATHISH K.

APPELLANT

Vs

THE STATE OF KARNATAKA & ANR

RESPONDENT

Date of Decision : 23-11-2017

Acts Referred:

[Karnataka Panchayat Raj Act, 1993](#), [Section 43-A](#)

Citation : (2017) 11 KAR CK 0052

Hon'ble Judges : Vineet Kothari

Bench : SINGLE BENCH

Advocate : G. BALAKRISHNA SHASTRY, B.R. SRINIVASA GOWDA, D.R. ANANDEESWARA

Final Decision : Allowed

Judgement

1. The petitioner Mr.Sathish.K S/o Sheenappa Poojary by this writ petition is challenging the order of his removal from the post of President of Grama Panchayath, Ithoor, Sunkatadatte Village, Puttur Taluk, D.K.District by the order Annexure-P dated 14.9.2016. The relevant portion of the impugned order passed by the respondent - Deputy Director and Designated Under Secretary to Government, Department of Rural Development and Panchayath Raj, is quoted below for ready reference:- "Notice was issued to appear for enquiry to Sri Sathish.K former president and present member Ituru Grama Panchayath Putturu Taluk, Dakshina Kannada District as per above referred (4) and the said person was present for oral enquiry held on 30.5.2016 and 13.6.2016 in the court of Chief Secretary to Government (Panchayath Raj).

In the enquiry held in the court of Chief Secretary to Government (Panchayath Raj), Sri Sathish K. former President and present member, Ituru Grama Panchayath, Putturu Taluk stated that, in the Ituru Gramapanchayath meeting held on 10.6.2016, sanction was obtained to distribute sintex water tank to 20 beneficiaries belonging to scheduled caste and scheduled tribe. On 29.9.2011

cheque was issued for Rs.50,730/- to Guru Agro Agency, cheque drawn on Vijaya Bank Nittana Branch and the amount was paid. Regarding purchase and distribution was sintex water tank to 20 beneficiaries, it is entered in the Grama panchayath petty purchase and stock registrar. These details are also mentioned in the cash book. Photographs were taken for having distributed sintex water tank to 20 people and it has been stated so.

The Executive Officer, Taluk Panchayath, Putturu has stated that, in the report made by Panchayath Development Officer it is stated that, in connection with distribution of sintex water tank at 20% subsidy for the period 2011-12 Sri Sathish.K former president and present member Ituru Gramapanchayath, Putturu Taluk, Dakshina Kannada District, the following lacunas are found.

1. The work scheme was sanctioned on 08.07.2011. However, even before the sanction of work scheme the water tank has been distributed to some of the beneficiaries in the gramasaba held on 28.6.2011.
2. In the work scheme one of the beneficiary Sundara son of Ramamugera Kodenkiri has been selected however application is received in the name of Sundari wife of Sundara and no proper document is available for change of name.
3. The signature of secretary is not found in any of the bill. There is no signature of secretary with regard to purchase and distribution of goods. There are no document regarding inviting quotation. There is no comparable rate list. It is suspicious that quotation is not called for.
4. In the original by there is application by 7 beneficiaries and receipt for having received the goods. In the general meeting held on 05.08.2015 it has been resolved and file is submitted to panchayath.
5. The caste certificate taken at the time of school life of Premalatha is produced and there is no document to show that, whether Premalatha Shivakumar is entitled to become beneficiary.
6. The file of Kalababu Mugeru is made over on 05.08.2015 however in the file the caste certificate dated 28.8.2015 is found.
7. One Lakshmi wife of Monta Parava is beneficiary however in the file, caste certificate of Janardan son of Monta Parava is found.
8. Smt.Leela wife of Krishnamurthy has submitted Caste Certificate on 10.12.2014. However there is no connecting documents to show that, she had reservation to obtain the facility on the date of receiving the same.

When the above points is perused it is found that, Sri Sathish.K former President and present member Ituru Gramapanchayath Putturu Taluk, Dakshina Kannada District while comparing the report given by Panchayath Development Officer Ituru Gramapanchayath and the written statement has come to know that the report from Lokayuktha investigation may go adverse to him and has misused his post of president and it appears that, has attempted to usurp the enquiry

report and it is also prima facie found that the files are created after the enquiry had commenced and Hon"ble Upalokayuktha as recommended to take action against Gramapanchayath President Sri Sathish.K former president and present member Itturu Gramapanchayath, Putturu Taluk, Dakshina Kannada District, and it is found that, Sri K.Sathish former president and present member Itturu Gramapanchayath, Putturu Taluk, Dakshina Kannada District, as committed irregularities in discharge of his duties, it is decided by the Government to remove him from the Itturu Gramapanchayath membership under Section 43 (A) of Karnataka Gramaswaraj and Panchayath Raj Act, 1993. Accordingly the following orders.

Government Order No.Gra.A.Pa/823/

Gra.Pam.A/2015 Bangalore, dated 14.9.2016.

In the background of the points described in the prolog it is hereby ordered that, Sri Sathish.K former president and present member, Itturu Gramapanchayath, Putturu Taluk, Dakshina Kannada is removed from the membership of Itturu Gramapanchayath under Section 43(A) of Karnataka Grama Swaraj and Panchayath Raj Act 1993, with immediate effect

[Sanction accorded by Chief Secretary to government (Panchayath Raj)]

In the name of and upon the orders of

Government of Karnataka

Sd/-

(T.V.Arun Kumar)

Deputy Director and Designated

Under Secretary to Government

Department of Rural Development and

Panchayath Raj."

2. Mr.G.Balakrishna Shastry, the learned counsel for the petitioner has urged before the Court that though relevant evidence for purchase of 20 Sintex Water Tanks, which was for distribution to the poor persons of the Grama Panchayath were produced to the concerned Authority, including the site photographs of distribution to poor persons in a function organized by the said Grama Panchayath, the respondent has chosen to pass the impugned order to remove the petitioner from the membership under Section 43-A of the Karnataka Panchayath Raj Act, 1993 ("Act").

3. Mr.D.R.Anandeeswara, the learned Additional Government Advocate appearing for the respondent-State and Mr.B.R.Srinivasa Gowda, learned counsel for the respondent No.2, however, supported the impugned order.

4. Having heard learned counsel for the parties and upon perusal of the reasons assigned in the impugned order, this Court is satisfied that for minor irregularities in the production of evidence of purchase and distribution of Sintex Water Tanks under the Scheme they cannot be held to be sufficient ground for removal of an elected President from the membership of the said Grama Panchayath.

5. The alleged reasons quoted above in the impugned order are at best only some irregularities, which could be cured at the end of said Grama Panchayath and even with the assistance of Government Authorities and concerned Authorities including the PDO present in the said Grama Panchayath. Instead of doing so, unfortunately, the removal proceedings were undertaken under Section 43-A of the Act, which is an extreme step and which can be taken only in a strong proved case of misappropriation, fraud or corruption made out against an elected Representative. The respondent- Under Secretary, Rural Development and Panchayath Raj Department has chosen to pass the impugned order in a rather mechanical and non-speaking manner. The same cannot be sustained in law.

6. The petition therefore deserves to be allowed and it is allowed accordingly. The impugned order Annexure-P dated 14.9.2016 is quashed and set aside. No order as to costs.