

(2000) 01 KAR CK 0011

In the Karnataka High Court

Case No : Writ Petition No"s. 21974-75 of 1999

Sri. Viswanath Kappathanavar and Another

APPELLANT

Vs

Sri. Channu Patil and Another

RESPONDENT

Date of Decision : 31-01-2000

Acts Referred:

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

Citation : (2000) 2 KCCR 1250

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : B.S. Patil, for the Appellant; V.T. Rayareddi, for Respondent 1 and P.G.C. Chengappa, Government Advocate for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

Tirath S. Thakur, J.—By an Order made by him u/s 4 of Karnataka Local Authorities (Prohibition of Defection) Act, 1987, the State Election Commissioner has disqualified the Petitioners from the membership of the Zilla Panchayat on the ground of defection contrary to Section 3 of the said Act. Aggrieved the Petitioners have questioned the validity of that order in the present writ petitions.

2. Elections to the post of "Adhyaksha". (President) and "Upadhyaksha". (Vice-President) of the Zilla Panchayat, Gadag held on 25th of April, 1998, in which, the Petitioners were elected as "Adhyaksha". (President) and "Upadhyaksha". (Vice President). A complaint filed by Respondent Shri Channu Patil, more than two months after the election alleged that the Petitioners were guilty of defection within the meaning of Section 3 of Act aforesaid and had thereby incurred a disqualification to continue as Members of the Panchayat. According to the complaint the Petitioners had contested the election to the post of Adhyaksha and Upadhyaksha contrary to the directions issued by their party to support the candidature of those nominated by the party for the posts. The Petitioners it was alleged had violated the directive from the party and thereby incurred a disqualification to continue as member of the Panchayat.

3. In the objections filed by the Petitioners before the Election Commissioner, the allegation that a direction had been issued by the party to its Zilla Panchayat members to vote for any candidate set up by it, was denied. The locus standi of the complainant to maintain a complaint was also questioned among other defences that were set up by the Petitioners. On the basis of the pleadings of the parties, the Election Commissioner, identified as many as five issues. Answering issue No. 1 in the affirmative, the Election Commissioner held that the complaint filed before him was maintainable. An authorisation to issue a Whip was in the opinion of the Election Commissioner, an authorisation valid even for purposes of instituting a complaint against those who may have defied any such whip. Issue No. 2 related to the holding of a party meeting and passing of a resolution selecting candidates for the office of Adhyaksha and Upadyaksha. While the Election Commissioner did not record any specific finding as regards the passing of a resolution nominating the candidates, it was of the view that the passing of such a resolution was proper.

4. Issue No. 3, which was by far the most important issue in the case related to the issue of a whip to the members of the Zilla Panchayat and the violation thereof by the Petitioners. The Election Commissioner held that the issue of a direction to the members was not established by any credible evidence. Issue No. 4, dealt with the competence of the General Secretary of the erstwhile Dharwad District to issue Whips to the Members of the Zilla Panchayats, which was answered in the affirmative by the Election Commissioner.

5. Issue No. 5, dealt with the right of the Petitioners to contest the Election against the party candidates and whether their knowledge about the nomination of the Official Candidates by the party was enough to disqualify them from continuing as Members of the Panchayat. Answering the issue in the affirmative, the Election Commissioner held that even when the issue of a whip to the Members of the Zilla Panchayat was not established, the Petitioners having known about the nomination of official candidates for the post of President and Vice-President of the Panchayat by the party were bound to vote for the said candidates and suffer disqualification if they did not do so. He accordingly proceeded to disqualify the Petitioners from the Membership of the Panchayat on the ground of defection contrary to Section 3 of the Act.

6. Appearing for the Petitioners Mr. Patil made a two-fold submission. He urged that the Election Commissioner was not justified in holding that the complaint filed by the Respondent was maintainable. The complaint was not according to the learned Counsel, filed either by a Member of the Panchayat or by a political party. It was also not filed by any person authorised by the political party to do so. An authorisation to issue a whip was not, argued the learned Counsel, the same thing as an authorisation for instituting a complaint against a member alleged to have violated the whip. Alternatively, he contended that the Election Commissioner was in error in holding that a disqualification could be ordered u/s 3 even in the absence of a whip or service thereof upon the members of the

party concerned. There was according to Mr. Patil, no logical basis for the view that the members of a political party could incur a disqualification only on the basis of their knowledge about the Nomination of party candidates for any elected office in the Panchayat.

7. Section 3(1) of the Karnataka Local Authorities (Prohibition of Defection) Act, 1987, provides for disqualification of Councillors or Members belonging to any political party in two distinct situations. The first is where the Councillor or Member voluntarily gives up the Membership of his party and the 2nd where he votes or abstains from voting in, or intentionally remains absent from any Meeting of the Municipal Corporation, Municipal Council, Town, Zilla or Taluk Panchayat, contrary to any direction issued by the political party or by any person or authority authorised by it in that behalf. A careful reading of Section 3(1)(b) of the Act, which deals with the latter of the two situations, would show that the disqualification under the said provision, is envisaged only where a direction is issued by the political party to which the member concerned belongs or by any person or authority authorised by such party. Issue of a direction by the political party or by the person or authority authorised to do so on its behalf is a sine qua non for an order of disqualification under the said provision. A charge of violation of the party directive can be made against the members only if a direction is proved to have been not only issued but duly served upon the member. Both these pre-requisites must therefore be firmly established before a Councillor or Member can be made to lose his membership or suffer other consequences flowing from an order of disqualification.

8. The Election Commissioner has in the instant case clearly held that the issue of a Whip to the Zilla Panchayat Members of the Janata Dal Party had not been established. The critical requirement of there being a direction from the party or from a person authorised to issue the same on its behalf, was not therefore satisfied in the instant case. The question of service of any such non-existent direction or violation thereof by the Petitioner could not therefore arise. The inevitable consequence of the finding recorded by the Election Commissioner, ought to have been the dismissal of the complaint lodged against the Petitioners. Instead of doing so, the Commissioner appears to have gone on a tangent and held the Petitioners disqualified on the ground that they had the knowledge of the nomination of M/s. S.P. Kalkeri and Pikanavva Lamani, as party candidates for the post of Adhyaksha and Upadhyaksha of the Panchayat. This knowledge according to the Commissioner was enough to constitute a direction to all the Zilla Panchayat Members of the party to support their candidature so that any one contesting against the said candidates would be liable to be disqualified. The Commissioner held thus:

Though the Complainant has not proved that he served the written whip on the ZP members of JD party, the Respondents ought to have treated their knowledge they had acquired that the party nominees i.e., S.B. Kalkeri and Pikanavva Lamani had filed their nominations as a party direction and ought not to have

contested against the party candidates as they had no other choice but to vote in favour of the party candidates even if they had not received the written whip.

9. I find it difficult to subscribe to the above line of reasoning. Nomination of a candidate by the party for any elected office, does not ipso facto constitute a direction to the members of the party to either vote or support any such candidature. There is indeed no juristic basis for the proposition propounded by the Commissioner nor was any suggested at the Bar by the learned Counsel for the Respondents. Situations are not inconceivable where a political party even when it has nominated a candidate for an elected office, does not consider it necessary to issue a Whip to its members to necessarily support the official nominee. Nor is it unknown for political parties to leave it to the members to vote according to their conscience, even when an official nominee is in the fray. Nomination of an official candidate or knowledge about any such nomination cannot therefore tantamount to a direction within the meaning of Section 3(1)(b) of the Act. While it is true that any such direction is not required to be in writing or in any particular form, yet looking to the consequences that flow from a violation of such a direction, the least that is required to be established is that there was a clear and unequivocal directive from the party to its members to support the candidature of its nominee. No such directive can be assumed merely because the party has set up a candidate. It is also true that the provisions of the Act, were intended to prevent unprincipled and unethical conduct on the part of the members of political parties, yet a provision which leads to disqualification of an elected member and has thus far reaching consequences not only for the member but his constituents also must be interpreted strictly. Political morality and ethical behaviour in public life are weighty considerations but an interpretation which may amount to re-writing the statutory provisions cannot be placed only to promote what may appear to be ethically sound. Words used in the statutes must be given their ordinary meaning and the legislature understood to have meant what the expressions used by it convey. So understood a direction within the meaning of Section 3(1)(b) of the Act, must be explicit and not implied. It must in no uncertain terms convey to the member what the party wishes him to do. The Scheme of the Act does not recognise the nomination of a candidate by any political party as a direction to the members of the party to vote for support his candidature. The Election Commissioner was in error in holding that even in the absence of a direction, a disqualification could follow on proof of no more than the nomination of an official candidate by the party. In that view, it is unnecessary for me to go into the alternative question whether or not the complaint made by the Respondent Sri Channu patil was maintainable.

10. In the result, this petition succeeds and is hereby allowed. The impugned order passed by the Commissioner shall stand quashed and the complaint filed against the Petitioners dismissed. No costs.