
(1979) 08 KAR CK 0023
In the Karnataka High Court
Case No : WP. 7812/79

Thammiah B.

APPELLANT

Vs

Election Officer, Banavara and Others

RESPONDENT

Date of Decision : 21-08-1979

Acts Referred:

Karnataka General Clauses Act, 1899 — Section 27
Karnataka Municipalities (President and Vice-President) Election Rules, 1965 — Rule 3(5)

Citation : (1980) 1 KarLJ 19

Hon'ble Judges : Bhimiah, J

Judgement

1. In the above writ petition, the petitioner has sought for issue of a writ of Mandamus directing the first respondent to issue fresh calender of events in respect of the election to the post of President and Vice President to the Banavara Town Municipal Council after complying with the mandatory requirements of law.

2. The case of the petitioner is that he was elected as a member of the Municipal Council in the month of May, 1979 as per Ext-A. The first respondent was required to hold the election to the post of President and Vice President of the Municipality. According to sub-Rule (5) of Rule 3 of the Karnataka Municipalities (President and Vice-President) Election Rules, 1965 (hereinafter referred to as the Rules), a copy of the notice published for the election under sub-rule (1) was required to be sent to every councillor by registered post. He did not receive the notice of the calendar of events sent by any registered post. On 30-6-1979 at 4 pm. on enquiry he learnt that the last date for filing nominations was between 11 am. and 3 pm. on 30-6-1979. His grievance is that he was denied opportunity to contest the election to the post of President and Vice-President due to non-compliance of rule (3) 5 of the Rules. He has approached this Court for relief as stated above.

3. The only question for decision is whether there is compliance with sub-Rule (5) of Rule 3 of the Rules. The relevant sub-rule reads thus:

"A copy of the notice published under sub-rule (1) shall be sent to every councillor by registered post."

4. The contention of Sri Venkataranga Iyengar, learned counsel for the petitioner, is that a copy of the notice published under sub-rule (1) should reach the hands of the person to whom it is addressed, as otherwise, the requirements of the Rule are not complied with. Reliance is placed upon the decision in *Narasimhaiah K. v. Singri Gowda*, AIR 1966 SC. 330. While interpreting the word "giving", the Supreme Court has enunciated the principle of law as follows:

"Giving" of anything as ordinarily understood in the English language is not complete unless it has reached the hands of the person to whom it has to be given. In the eye of law however "giving" is complete in many matters where it has been offered to a person but not accepted by him. Tendering of a notice is in law therefore giving of a notice even though the person to whom it is tendered refuses to accept it. We can find however no authority or principle for the proposition that as soon as the person with a legal duty to give the notice despatches the notice to the address of the person to whom it was to be given, the giving is complete. We are therefore of opinion that the High Court was wrong in thinking that the notices were given to all the Councillors on the 10th October. In our opinion, the notice given to five of the Councillors was of less than three clear days."

It is clear from what has been excerpted above that giving notice means that it should reach the hands of the person to whom it has to be given and the giving is complete when it has been offered to a person but not accepted by him. In the instant case, the learned Government Pleader produced the registered envelopes sent to the Councillors. The endorsement of the postman reads thus.

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The endorsement is to the effect that the addressee was not available at his residence. From the above endorsement it is not possible to infer that the postman offered the registered post but the petitioner did not accept it. If there is endorsement of refusal, it may be reasonably inferred that the registered post was offered and the petitioner refused to accept it. However, the learned Government Pleader contended that sub-rule (5) of Rule 3 of the Rules does not contemplate actual service of the letter sent by registered post on the addressee. The requirement of the Rules is complied with as soon as the person with a legal duty despatches the notice by registered post to the address of the person to whom it has to be delivered and the giving is complete. He placed reliance upon section 27 of the Karnataka General Clauses Act, 1899, which reads thus:

"Where any Mysore Act made after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter

containing the document, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post."

The above provision does not assist the 1st respondent's case, in view of the elucidation of law by the Supreme Court of India in the decision cited above. In section 27 of the Act, the expressions "serve" "give" or "send" are used to convey the same meaning. In sub-rule (5) of Rules 3 the word used is "sent" and it must be understood to include the word "give." The decision of the Supreme Court quoted above has interpreted the meaning of the word "giving". "Giving" means, the letter sent by post must be offered to the person but not accepted by him or he refused to accept it. The endorsement quoted above clearly shows that, it was not offered to the petitioner for delivery nor was it refused by him. Therefore, there is non-compliance with the provisions of sub-rule (5) of Rule 3 of the Rules in the light of the enunciation of the principle of law by the Supreme Court. Therefore, as rightly contended by Sri Venkataranga Iyengar, there is noncompliance of sub-rule (5) of Rule 3 of the Rules. Therefore, the impugned notification, Ext. B, is liable to be quashed

5. Accordingly, the impugned notification, Ext. B, is quashed. The first respondent is directed to publish fresh calendar of events for the election to the post of President and Vice President after complying with the mandatory provisions of sub-rule (5) of Rule 3 of the Rules. Rule is made absolute. The writ petition is allowed, No costs.