

(1980) 09 KAR CK 0041
In the Karnataka High Court
Case No : WP 6781/80

Town Mun. Council Kengeri

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 02-09-1980

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 315

Citation : (1980) 2 KarLJ 450

Hon'ble Judges : N. D. Venkatesh, J

Judgement

1. In this petition filed under Act. 226 of the Constitution of India the notification dated 26-4-80 bearing No. HUD 58 TML so (Annexure-A) issued by the State Government (respondent-1) is challenged.

2. The petitioner claims to be the President of the Town Municipal Council, Kengeri.

3. Keageri in Bangalore District was a Village Panchayat. That local area ceased to be a village by virtue of a notification issued under S. 3 of the Karnataka Village Panchayats and Local Boards Act, 1959, and was declared to be a Municipality under Sec. 3 of the Karnataka Municipalities Act, 1964 (the Act) in the year 1973 (vide, State Govt. Notification No. MMA 4 TML 72 dated 7-9-1973) To this Municipal Council an Administrator has been appointed by the State Government under S. 315(1)(a) of the Act and this appointment has to last for a period of six months with effect from 28-4-1980 or till the Municipal Council is reconstituted whichever is earlier. The petitioner seeks a writ of Certiorari quashing this notification (annexure-A).

4. The learned Counsel for the petitioner argued that this notification was illegal, was without the authority of law and was beyond the powers of the State Government. He submitted that the State Government could not have invoked S. 315 of the Act in issuing this notification. That provision, according to the learned Counsel for the petitioner, does not confer any powers on the State Government to appoint an Administrator to a Municipal Council newly formed or constituted

under S. 3 of the Act. He submitted that in law, the members of the Municipal Council were entitled to continue in office until the date immediately preceding the date of the first meeting of the new Municipal Council which Council was required to be constituted by holding elections therefor in accordance with law. In this connection the learned Counsel, apart from taking me through the relevant provisions of the Act, also placed reliance on an unreported decision of this Court in Vishwanath Akhandappa Gopi v. The State of Karnataka, Since reported at (1980) 2 Kar.L.J. 398. According to him the present case was on all fours with that case.

5. On the other hand, the learned Government Advocate, while supporting the impugned notification submitted that the same was in accordance with law, and argued that Viswanath's case (*supra*) had been arrived at sub silentio, 2nd therefore, had no binding force. Even otherwise, according to him, that decision required reconsideration.

6. The impugned notification purports to replace the Municipal Council, Which, in law, is termed as an "interim Municipal Council". This interim Municipal Council of Kengeri came into being, as provided under S. 357 of the Act, as a consequence of the notification issued under S. 3 of the Karnataka Village Panchayats and Local Boards Act converting that village Kengeri into a Municipal Council and declaring the same as such under S. 3 of the Act. S. 357 (a) and (b), by virtue of which the interim Municipal Council came into being, reads as follows:

"357. Effect of conversion of Panchayat Into Municipality-When any local area ceases to be a village by virtue of a notification under section 3 of the Karnataka Village Panchayats and Local Boards Act, 1959, and is declared to be a Municipality under section 3 of this Act (hereinafter in this section referred to as the municipality) with effect from the day on which such local area is declared to be a municipality (hereinafter in this section referred to as the said date), the following consequences shall ensue, namely:

(a) the panchayat of such local area (hereinafter referred to as the panchayat) shall cease to exist or to function:

(b) there shall be constituted for the municipality an interim municipal council consisting of persons vacating office as members of the village panchayat, and the chairman and Vice-Chairman of the village panchayat shall, respectively, be deemed to be the president and vice-president of the interim municipal council."

The other Clauses are not relevant for our purpose.

7. It is S. 351 of the Act which provides for the term of office of the members of the interim Municipal Council and their powers. That section reads as follows:

"358. Term of Office of Members of Interim Municipal Council and their powers.

(1) The Government shall, within a period not exceeding one year from the date on which the interim municipal council had been constituted take steps in accordance with section 11 for the purpose of determining; the number of

councillors of, and for holding elections for, a new municipal council.

(2) The councillors of the interim municipal council shall hold office until the date immediately preceding the date of the first meeting of the new municipal council.

(3) Any vacancy in the office of the interim municipal council shall be filled as soon as conveniently may be by appointment by the Government.

(4) All arrears of rates, taxes and fees, vesting in the interim municipal council shall, notwithstanding that such rates and fees cannot be levied under this Act, be recoverable in the same manner as tax recoverable under Chapter VII.

(5) In other respects the provisions of this Act shall mutatis mutandis apply to the interim municipal council and its councillors."

8. Now, the mandate of sub-section (1) of S. 358 is that within a period not exceeding one year from the date on which the interim Municipal Council is constituted, the Government should take steps to hold elections to constitute a new Municipal Council as provided in S. 11 of the Act. It is an admitted fact that even though this interim municipal council was constituted in the year 1973, no steps have been taken to constitute a new council.

9. The argument advanced by the learned Government Advocate was that S. 315 of the Act was available to the Government to replace this council by an Administrator. S. 315 (1) enumerates four events and the happening of any one of them would give rise to the appointment of an administrator. Those four events are enumerated at Clauses (a) to (d) of S. 315 (1) of the Act which read as follows:

"315. Power to appoint Administrator in certain cases.-(1)Whenever- (a) any general election to a municipal council under this Act or any proceedings consequent thereon have been stayed by an order of a competent court or authority, or (b) the election of all the councillors or more than two-thirds of the whole number of councillors of the municipal council has been declared by a competent court or authority to be void, or (c) the term or the extended term of office of the councillors of the municipal council has expired and the new municipal council has not been constituted in accordance with the provisions of this Act, or (d) all the councillors or more than two-thirds of the whole number of councillors of the municipal council have resigned, the State Government shall by notification in the official Gazette, appoint an administrator for such period as may be specified in the notification and may, by like notification curtail or extend either prospectively or retrospectively the period of such appointment."

10. It is admitted that the events enumerated at Clauses (b) (c) and (d) are not attracted to this case, But, according to the learned Government Advocate this case falls within the ambit of Clause (a) of sub-section (1) of S. 315. Elaborating this submission what was argued by him was that a general election to constitute a new Council to this Municipality was not held in view of the Karnataka Municipalities (Postponement of Elections) Act, 1975 (Karnataka Act No. 34 of

1975) and such a postponement of the election to constitute a Council is also covered by Cl. (a) of sub-sec. (1) of S. 315. Karnataka Act No. 34 of 1975 was enacted during the period when the proclamation of emergency issued by the President of India on the 26th of June, 1975 under Art 352 of the Constitution of India, was in operation. Since it was felt that it was not desirable, to hold elections during the period of the continuance of the emergency, elections to the municipal councils that fell due by then came to be postponed. That Act replaced an Ordinance issued for that purpose earlier and that Act was given a retrospective effect bringing the same into force with effect from 10th of July, 1975. The said Act came to be repealed with effect from 14th day of March, 1979 by Karnataka Act No. 21 of 1979. S. 3 of the Karnataka Act No. 34 of 1975 provided for the postponement of the general election or elections to fill any casual vacancy in any municipal council during the continuance of the operation of the proclamation of the emergency. S. 4 of that Act provided that, notwithstanding anything contained in the Karnataka Municipalities Act, 1964, (the Act referred to above) if it were to appear for the State Government that a Municipal Council was, by reason of an absence of a quorum or for any other reason unable to exercise the powers and perform or discharge the duties and functions conferred or imposed on it by or under the Act or any other law for the time being in force, it could have appointed an administrator. Now, as stated above, this Act i.e., Act. No. 34/75 had been repealed more than a year earlier to the issuance of the impugned notification. Even if that Act had not been repealed and were to be in force on the date of the impugned notification, postponement of elections to a municipal council under the provisions of that Act could not have been availed of to appoint as administrator under Cl. (a) of sub-sec. (1) of S. 315 of the Act. This Clause can be invoked only when a general election to a municipal council or any proceeding consequent thereon is stayed by an order of a competent court or by an order of a competent authority. The learned Govt. Advocate wants me to construe Cl. (a) in a different way. According to him the postponement of elections, by virtue of the provisions of Karnataka Act No. 34/75, amounted to the staying of the election of this municipal council by an authority, and if so understood that event, he feels, did give rise to the appointment of an administrator under Cl. (a) of S. 315 (1). Perhaps, according to him, the words "by an order of a competent" following the word "stayed" in Cl. (a) sub-sec. (1) of Sec. 215 qualify only the word "Court" and not the word "authority". Such a construction cannot be placed on this Clause. Karnataka Act No. 34/75 cannot be construed as an order of a competent authority staying the election of this Council. Thus, looked at from any angle the Government could not have invoked Cl. (a) of sub-sec. (1) Sec. 315 to appoint an administrator in the instant case.

11. It was, while making his submissions on this aspect of the case, the learned Government Advocate argued that the unreported decision of this Court in Viswanath's case (supra) had been arrived at sub silentio, and, therefore, the ratio of that decision does not apply to this case. As observed in Salmond on

Jurisprudence (12th Edn). "a decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind". In Viswanath's case the Town Panchayat of Jewargi came to be constituted as a municipality in 1974, and, as in this case, an interim municipal council came into being as provided in Cl. (b) of S. 357 of the Act. By a notification issued on 16-11-1979 replacing that interim municipal council the State Government, purporting to exercise its powers under Sub-sec. (1) of S. 315 of the Act, appointed the Tahsildar of the Taluk as an administrator and that notification was challenged in this Court as being illegal and void. This Court struck down that notification holding that the same was without the authority of law. It is true that in that case this Court did not consider the implication of the postponement of the election by virtue of the provisions of the Karnataka Act No. 34 of 1975 while examining the scope of Cl.(a) of sub-sec.(1) of S. 315 of the Act. The learned Judge did not consider the same because the learned Counsel supporting the notification impugned therein had not raised this question at all, and I should say, rightly so. As already stated by me, postponement of the elections by Karnataka Act No. 34 of 1975, even if that Act had been in force on the date of the impugned notification, could not have been availed of by the State Government to appoint an administrator under Cl. (a) of sub-sec. (1) of Section 315. Therefore, that question of law was not a question or point involved in the decision of that case. In the circumstances, that question cannot be said to have been not perceived by the learned Judge or not present to his mind. In this view of the matter Viswanath's case (supra) is not a decision passed sub silentio. I am in respectful agreement with the views expressed by the learned Judge in that case. For the reasons mentioned above the notification impugned in the instant case is one issued by the State Government without any authority of law. It is, therefore, illegal and void.

12. Hence, the petition is allowed: the rule issued is made absolute and the impugned notification, Annexure-A is hereby quashed.

No costs.