

(1992) 07 KAR CK 0025
In the Karnataka High Court
Case No : Writ Petition No. 19289 of 1991

Tukkanasa

APPELLANT

Vs

Deputy Commissioner, Dharwad and Another

RESPONDENT

Date of Decision : 08-07-1992

Acts Referred:

Karnataka Local Authorities (Prohibition of Defection) Act, 1987 — Section 4(2)

Citation : (1992) 4 KarLJ 441

Hon'ble Judges : P. K. Shyamsundar, J

Judgement

1. The subject-matter of this writ petition is an inter-party quarrel which in ordinary course should not have been brought up in a writ petition under Article 226 of the Constitution. But nonetheless the controversy having arisen, I am to record my views thereon.

2. Albeit the arguments on both sides at the Bar having proceeded on a wider basis, what really clinches the issue is that which touches the question of competence or the jurisdiction of the Deputy Commissioner, the designated authority in whom is confided the power to decide apropos the disqualification of a member or a councillor on grounds of defection.

3. This case has an interesting background. The petitioner Rayabagi and one Mr. Ashok Bagamar who is a non-party to this writ petition filed their nominations for the presidential election. Both of them were elected to the Municipal Council of Gajendragad town in Dharwad District under the banner of the Janata Dal. After the elections were held to constitute the Municipal Council and were "concluded on 24-4-1990, one amongst them had to be elected as President of the Municipal Council under the statute and for that purpose an election was scheduled to be held on 29-5-1990. On that day, both Rayabagi and the petitioner and Ashok Bagamar the non-party, threw themselves into the fray, offered themselves as candidates at that election. Admittedly, both of them having been elected under the banner of the Janata Dal, both of them had necessarily been treated as candidates of the Janata Dal, but locked however in contesting each other. But it

is claimed that Ashok Bagmar was actually the official candidate of the party for contesting the office of the presidentship and to that effect a whip had also been issued to all the members of the Janata Dal in the Council.

4. The complaint against the petitioner is that, notwithstanding the whip and in defiance of the same, he contested election at which he finally vanquished Ashok Bagmar the official candidate, a feat he was able to perform with the help of other political parties. Some two months later, during which period the petitioner had been installed in the Presidential "gaddi", one Sajjanaar said to be the General Secretary of the Janata Dal of Dharwad district filed a complaint before the Deputy Commissioner, Dharwad who is one of the party respondents herein, purporting to be a complaint under Section 4 of the Karnataka Local Authorities (Prohibition of Defection) Act, 1987, being Act 20 of 1987 (hereinafter referred to as the Act). This complaint was as mentioned earlier made directly to the Deputy Commissioner who is undoubtedly the designated authority to decide such a complaint as enjoined by Section 4(2) and (3).

5. The Deputy Commissioner after due enquiry upheld the contention that the petitioner Rayabagi had in defiance of the whip contested the office of the Presidentship and had therefore suffered a disqualification resulting in being dismembered from the council itself. The challenge in this writ petition is regards the unseating of Rayabagi and is directed against the order of the Deputy Commissioner made under Section 4(2) and (3) of the Act.

6. Amongst the other grounds urged, there is some substance in one particular contention urged on behalf of the petitioner by Sri B.V. Acharya, learned senior counsel regarding the competence or authority of the Deputy Commissioner in deciding the complaint made to him under Section 4 of the Act. Counsel says that the complaint based on the ground of defection had to be made by the prescribed categories of people such as a member of the council or of a political party to the Chief Executive Officer of the concerned local authority, who on receipt of such a complaint is mandatorily enjoined to refer the same to the decision of the Deputy Commissioner within 24 hours of receiving it and the Deputy Commissioner in turn should decide the controversy and dispose it off within 7 days of receipt of the reference. The taint of defection allegedly attaching to the petitioner is the one enumerated in clause (b) of Section 3 of the Act which reads:

"3. (b) If he votes or abstains from voting in any meeting if the Municipal Corporation, Municipal Council, Zilla Parishad or Mandal Panchayat contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been conducted by such political party, person or authority within fifteen days from the date of voting or such abstention:"

If the above be the disqualification affecting the person concerned, an order

affirmatively declaring the person concerned, to be afflicted by such disqualification has got to be made under Section 4 by the Deputy Commissioner. Reference may be made to the relevant portions of Section 4 necessary for the purpose herein.

"4. Decision on the question as to disqualification on the ground of defection:-
(1) A complaint that a member or a councillor has become subject to the disqualification under Section 3 may be made by a member, Councillor or a political party to the Chief Executive Officer of the concerned local authority,"

"4(2) Where a complaint under sub-section (1) is received by the Chief Executive Officer of the concerned local authority, he shall within twenty-four hours from the receipt of such complaint, refer the same for decision to,-"

"4(2)(iii) in the case of a city or Town Municipal Council, to the Deputy Commissioner."

"who shall decide the question within seven days after the receipt by him of the reference and his decision shall be final."

7. This is a case in which there is no reference of the complaint as such to the Deputy Commissioner by the Chief Executive Officer under Section 4(2) because the complaint was not made to the Chief Executive Officer at all although that step is enjoined under Section 4(1). Herein, the complaint having been made directly to the Deputy Commissioner, the question arises whether the Deputy Commissioner was competent to receive such a complaint and thereafter to dispose it off. The law says, the complaint of any disqualification on the ground of defection has to be made in the first instance to the Chief Executive Officer of the concerned local authority and thereafter, the Chief Executive Officer had in turn to refer the same to the Deputy Commissioner within a particular time and the Deputy Commissioner on receipt of such a reference had also to dispose off the complaint within a particular time frame. But the complaint herein has been entertained and disposed off in contravention of Section 4 with particular reference to the procedure laid down by Section 4 for receipt and disposal of a complaint, is it tenable, is the question.

8. It is an established principle of law that when power is given to a public authority to perform a certain Act which lays down the manner or mode of performing it, it has got to be performed or done only after adhering to the prescribed modalities or not done at all. I am satisfied that in the case on hand there can possibly be no argument against it. The impugned order of the Deputy Commissioner cannot be sustained. Herein, the Deputy Commissioner could not have directly entertained a complaint made under Section 4 of the Act and thereafter proceeded to dispose it off in the absence of a reference of the complaint by the Chief Executive Officer under Section 4(2) of the Act. On this short ground this writ petition has to necessarily succeed, but then, my attention is drawn to a Bench decision of this court in *Dharmappa Sabanna Madar and Another v Chief Secretary, Zilla Parishad, Bijapur and Another*, 1991(3) Kar. L.J.

163 (DB): ILR 1991 Kar. 3723 (DB). In that case, the question that I have so far considered and decided herein not having arisen at all the said decision I am afraid has no application.

9. For the reasons mentioned above, this writ petition succeeds and is allowed.

10. Rule issued and affirmed.

11. The impugned order of the Deputy Commissioner shall stand quashed. But, I make it clear, if any of the enumerated persons referred to under Section 4 are still keen on pursuing this matter, it would even now be open to such a person or person to make a fresh complaint under Section 4 to the designated authority and pursue the matter thereafter to its logical end. The disposal of this writ petition I make it clear will not be a bar for adopting such process.

12. I am also to notice that the Act does not prescribed any period of limitation for making a complaint under Section 4 of the Act.

13. No costs.

14. Since the writ petition itself is disposed off, finally there is no need to implead the applicant in I.A. No. 2 so as to allow the acting Vice-President who seeks to join the fray. The applications are therefore rejected.