

(1983) 07 KAR CK 0017
In the Karnataka High Court
Case No : W.P. 13521/83

Venkataramanappa S.M.

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 26-07-1983

Acts Referred:

Karnataka Village Panchayat and Local Boards Act, 1959 — Section 8

Citation : (1983) 2 KarLJ 307

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. This petition is by the Chairman of the Suggondanahally Village Group Panchayat in Malur Taluk of Kolar Dist. He has challenged the legali and correctness of the notfin. issued by the Deputy Commissioner, Kolar, who is the 2nd respondent herein. That notification is dated 23.6.1983 and it is a notification issued in purported exercise of his power under S. 8 of the Karnataka Village Panchayats & Local Boards Act, 1959 hereinafter referred to as "the Act"). What occasioned the 2nd respondent to exercise that power was the fact that the first respondent State of Karnataka in its Notifin. No. RDC 8 VEL 83 Part III dt. 16.5.1983 had postponed the date of poll in respect of the Village Panchayats whose term was due to expire during the months of May, June, July and August 1983, for a period of six months or till the elections were held, whichever was earlier: In exercise of that power under S. 8 of the Act, an Administrator has been appointed to the Suggondanahally Village Group Panchayat, the term of office of the members of which will come to an end on 27.7.1983. The period for which the Administrator is appointed is for a period of six months with effect from the dates specified in the schedule to the notification or till the elections to the village panchayat are held, whichever is earlier.

2. The grounds of attack are two fold. Sri. S.K. Venkataranga Iyengar, pointed out that there is no power under S. 8 of the Act available to the Deputy Commissioner to appoint an Administrator until the term of the members of the panchayat actually expires. Elaborating his contention he submitted that the power to appoint an Administrator accrues to the Deputy Commissioner only

after the expiry of the term actually and before such expiry of the term, the Deputy Commissioner cannot in anticipation make an order appointing the Administrator because no election can possibly be held before the expiry of that date, whether such conclusion is reached by him by virtue of the notification of the Government or an account of other facts. Secondly, he has contended that the term of office of the Chairman of the panchayat has been fixed by Ss. 28 and 29 of the Act. S. 29 of the Act provides for the Chairman to discharge his duties till his successor is elected and therefore, there is no scope for the appointment of an Administrator under S. 8 of the Act. If elections are postponed, it is the argument, then the chairman shall continue to hold the office till the elections are held and his successor is elected.

3. I am unable to accede to both the contentions on a careful examination of the relevant provisions. My reasons are as follows:

S. 8 of the Act reads as follows:

"Appointment of an administrative Committee or Administrator on failure to elect members of Panchayat-(1) If the Deputy Commissioner is satisfied that a Panchayat of a Village immediately after the establishment of such Panchayat cannot be constituted by reason of any difficulty in holding an election of the members of the Panchayat or failure to elect such members of the Panchayat or for any other sufficient reason whatsoever or if at any general election to a Panchayat no member is elected, if the term of the outgoing members of the Panchayat has expired and it has not been possible to complete the general election to the Panchayat before the expiry of the term, or if all the members have resigned or their seats have become vacant, the Deputy Commissioner shall by notification either- (i) appoint an Administrative Committee consisting of persons qualified to be elected, the number of such persons being equal to the number of members determined under sub-section (1) of Section 5; or (ii) appoint an Administrator."

4. It is obvious from the language of the section that many contingencies are contemplated in which event the Deputy Commissioner can exercise his power to appoint an Administrator. For the purpose of this case it will be useful to read "if the Deputy Commissioner is satisfied that the term of the out-going members of the Panchayat has expired and it has not been possible to complete the general election to the Panchayat before the expiry of the term, the Deputy Commissioner shall by notification either appoint (i) an Administrative Committee or (ii) appoint an Administrator".

5. It is not disputed that the term of the office of the members of the Panchayat in question expires on 27.7.1983. It is also not disputed, as evidenced by the notification No. RDC 8 VEL 83 Part III dated 16.5.1983 produced by the petitioner today in Court, that the Government having regard to the amendment made by Act No. 11/1983 reducing the voting age to 18 years and having regard to the time consumed in preparing the fresh valid voters list on the basis of

enumeration, have directed the postponement of the poll by six months in exercise of the power conferred on it by sub-sec. (3) of S. 7 of the Act. On a plain reading of that sub-section of S. 7 of the Act, it is clear that the Legislature has conferred power on the Government to issue directions for cancellation and modification of the calendar of events or postponement of the poll. Therefore the opinion formed by the 2nd respondent Deputy Commissioner that it is not possible to hold the poll before the expiry of the term, in terms of S. 8 of the Act is not unfounded. It is founded on the notification of the Government to which I have already adverted.

6. In this contest, Mr. Venkataranga Iyengar argued that postponement of the poll must be considered as extension of the term of the members of the village panchayat under S. 24 of the Act. S. 24 of the Act specifically provides for the term of office of the village panchayat. Proviso to that section empowers the State Government by issuance of notification to extend the term for a period of not exceeding six years in the aggregate. In other words, power to issue notification under S. 24 of the Act is a specific power conferred on the Government for extending the term of office and it should be so exercised explicitly and never by implication. On the other hand, the notification of the Government postponing the polls expressly claims that the power is exercised under sub-sec. (3) of S. 7 of the Act, which is a power conferred for postponing the poll among other things. Therefore, there is no merit in the argument that by implication it must be held that the term of office of the members of the panchayat has stood extended by the said notification. On the other hand, this argument appears to be an after thought as, in the beginning that the term of office would expire on 27.7.1983 was not disputed.

7. The other argument of the learned counsel for the petitioner that in anticipation, the Deputy Commissioner cannot issue the notification under S. 8 of the Act, should be straight-away rejected. If the term of the office is fixed by statute and it is not extended by the authority empowered to extend it, then the term expires automatically on the lapse of time. If the Deputy Commissioner is satisfied that that lapse of time occurs on 27.7.1983, and that is not disputed, then all that he has to examine is to whether the election is possible to be held or has been held before the expiry of that date. If it is not possible to hold the election or it has not been held by announcement of calendar of events, then he, automatically gets power to appoint an Administrator under S. 8 of the Act. But stress has been laid by the learned counsel on the grammatical tense of the terms used in S. 8 of the Act and the emphasis is on "it has not been possible to complete the general election to the panchayat before the expiry of the term." By reason of the Government notification, no general election could take place till the new voters list is prepared and therefore, it is implicit it is not possible to hold elections before 27.7.1983. If that is satisfied, then it would be incorrect to say that the Deputy Commissioner will get power only after the expiry of the term and not before that because the relevant provisions of the Act provide for issuance of calendar of events, calling nominations from qualified persons,

scrutiny of nominations, poll and declarations of the results. That is not possible on the date of the impugned notification with reference to 27.7.1983 which is the date on which the term expires. Therefore, I do not see any infirmity on that ground in the impugned notification.

8. The next argument that the Chairman is allowed to continue in office having regard to the provisions made under S. 29 of the Act, is also not tenable. S. 28 of the Act provides for The term of office of the Vice-Chairman and the Chairman, which is co-extensive with the term of the panchayat. In other words, if the panchayat ceases, the Chairmanship and the Vice-Chairmanship also cease. If the panchayat does not end its term, the Chairman and the Vice-Chairman continue along with the panchayat. Acombined reading of Ss. 28 and 29 of the Act leads me to construe that S. 29 is provided as a machinery to cover the period of interregnum between one election to the panchayat and another election in normal circumstances. If that is not so it would be totally misreading of the intendment of that section.

9. I therefore reject the second argument also and hold that the impugned notification is within the proper exercise of the power exercised by the Deputy Commissioner and well within his jurisdiction.

10. Therefore, the petition is rejected without issuing rule.