

(1989) 08 KAR CK 0007
In the Karnataka High Court
Case No : W.P. Nos. 14255 to 14259/1989

Y.M. Basappa

APPELLANT

Vs

Chief Secretary, Hassan Zilla Parishad and Another

RESPONDENT

Date of Decision : 16-08-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 5
Karnataka Local Authorities (Prohibition of Defection) Act, 1987 — Section 4

Citation : (1989) 3 KarLJ 565

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

Judgement

Chandrakantharaj Urs, J.-These batch of petitions are filed by members of Yelechagahalli Mandal Panchayat in Holenarasipur Taluk of Hassan District. The question is the legality and correctness of the decision rendered by the then Chief Secretary, Zilla Parishad, Hassan, in proceedings under Section 4 of the Karnataka Local Authorities (Prohibition of Defection) Act, 1987.

2. The complaint was lodged by one Doddegowda who claimed to be the President of the Zilla Samithi of Janatha Party in Hassan District. In the complaint he alleged that petitioners had all resigned from the Janatha Party and joined the Congress-I and therefore they incurred disqualification under Section 3 of the aforementioned Act. That complaint was forwarded by the Secretary of the Mandal Panchayat to the Chief Secretary, Zilla Parishad. Chief Secretary issued notice to the petitioners treating them as respondents and the said Doddegowda as the complainant. Petitioners entered appearance through counsel, took some time to file their written objections. Ultimately on 24-7-1989, they filed their objections. After that, the case was posted for arguments. Again adjournment was granted. The case was taken up for hearing on 3-8-1989. Both sides produced documents and copies were exchanged between the lawyers of such documents. Thereafterwards arguments were advanced. Ultimately, the respondent-Chief Secretary of the Zilla Parishad came to the conclusion that the petitioners not having denied that they have joined another political party in their objection statement, they had admitted to have left the Janatha Party. On that

basis having regard to sub-section (2) of Section (3) of the Prohibition of Defection Act, has disqualified the petitioners on the ground that they have joined the political party after having contested the election on the symbol of another political party. Therefore the present petition.

3. Learned Senior Counsel Mr. H.B. Datar appearing for the caveators wanted time to file his written objections to the petition before the Court proceeded further. But the learned counsel for the petitioners insisted upon the matter being argued today as there was great urgency and he has submitted his arguments. His arguments are:

i) that there has been violation of the rules of natural justice.

ii) no evidence was recorded.

iii) there was no proof that the petitioners had resigned from the Janatha Party and joined the Congress-I Party.

Because no oral evidence was led in by the complainant in that behalf, I do not think any of the above contentions should be upheld. The order made is at Annexure A. It is a lengthy order which almost records each and every detail of what transpired on each date of hearing. Both sides were represented by counsel which presupposes that the petitioners had notice of the proceedings. Therefore, there is no denial of opportunity or violation of rules of natural justice. Admittedly the petitioners filed their written objections through the counsel. At no point of time did petitioners ask to cross-examine the complainant-Doddegowda who had made the complaint. Nor did they choose to examine themselves in support of whatever their case was in the written statement or objections filed by them.

4. Once the petitioner are represented by counsel and were guided by his advice, it will not be open to them now to contend that the first respondent erred in not recording evidence. It is seen from the order of 3-8-1989, the lawyers presented documents in support of their respective cases and exchanged copies thereof and submitted arguments on that basis. There is no special procedure-prescribed by the rules or the Act for the Chief Secretary or the other authorities to follow in proceedings under Section 4 of the Prohibition of Defection Act. As held by me in other cases, the procedure under Section 4 of the Defection Act, rules of natural justice must satisfy the judicial conscience. I have already narrated the procedure followed in the instant case. Therefore, if the petitioners did not choose to cross-examine or call upon the first respondent to subject himself to their cross-examination, the fault is not with the counsel who gave them the advice and conducted the case before the Chief Secretary.

5. For the very same reason, if they did not examine themselves they are to be blamed. Both the counsel were content with mere exchange of documents in support of their respective cases as adequate. It cannot be said that there was any violation of the rules and natural justice. Ultimately the conclusion reached

by the Chief Secretary is on the basis of the pleadings in the case. He accepts the case of the complainant that they have resigned from the Janatha Party and joined Congress-I because it has not been denied by the petitioners in their written statement. It is the non-traverse which has led to the conclusion that they have admitted that they resigned from the Janatha Party. There is a detailed discussion about the institution of Janatha Party and its dissolution and the formation of Janatha Dal. I do not think I should make any reference to it because if the conclusion reached is based on non-traverse or non-denial of the charge levelled against them in the objection statement, then the principle underlying Rule 5 of Order 8 of C.P.C. is attracted and therefore on the facts of the cases I am compelled to sustain the impugned order and reject these writ petitions. Accordingly writ petitions are dismissed.

Certified copy of this order shall be supplied as soon as an application is made on urgent basis.

Writ petitions dismissed.