

**Basanagouda Vs. the State of Karnataka and Others**

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**Court :** Karnataka Dharwad

**Decided On :** Mar-09-2012

**Judge :** D.V. Shylendra Kumar & B.V. Pinto

**Appeal No. :** W.A. No. 6455 of 2011 (LB-RES)

**Appellant :** Basanagouda

**Respondent :** The State of Karnataka and Others

**Judgement :**

(Prayer: This Writ Appeal Is Filed U/S.4 Of The Karnataka High Courts Act, 1961, Praying To, Set Aside The Order of The Learned Single Judge Passed In Writ Petition No.67432/2011 (LB-RES) Dated: 19/11/2011.)

1. This writ appeal is filed by the appellant who is the petitioner in writ petition No.67432/2011 challenging the order dated 19.11.2011, dismissing his petition. In the writ petition, the petitioner had challenged the order dated 18.10.2011 passed by the Secretary of Panchayat Raj, Rural Development, Panchayat Raj Department, Government of Karnataka in G.O.No.GraPaA 33 GraPanA 2011, Bangalore, by exercising the powers under Sections 48(4) and 48(5) of Karnataka Panchayat Raj Act, 1993 (herein after referred as the Act for brevity). The petitioner has been removed from the post of Adhyaksha or Upadhyaksha of Grama Panchayat, Tadakanahalli and also he has been removed from the membership of the Grama Panchayath.

2. The facts leading to the said order is that one Guddappa Gangappa Nayaka, who is the Panchayath Development Officer has filed a complaint on 12.01.2011 before the Sub-Inspector of Police Rattihalli Police Station alleging that the petitioner had assaulted and abused him. Based on which the police had registered a case against the petitioner in Crime No.9/2011 for offences under Sections 323, 353, 504 and 506 IPC.

3. It appears that the police have subsequently conducted investigation and filed a charge sheet before the Court. However, the said case is pending disposal before the Court. The complainant had filed a report before the concerned authorities that is, before the Panchayath Raj Department through the Chief Executive Officer, Zilla Panchayat, Haveri requesting for taking action against the petitioner. Respondent No.1 based on the complaint, issued a show cause notice to the petitioner and the petitioner has given a reply stating that the complainant was indulging and interfering with the issuance of cheques to the beneficiaries namely houseless persons under certain development programmes. It is submitted by the petitioner that the aforesaid Panchayath Development Officer was unduly delaying the bills pertaining to the construction of house for the houseless persons and therefore, in this connection he was insisting that the Panchayath Development Officer shall clear the bills of the beneficiaries of Gramina Ashraya Housing Scheme without undue delay. He has stated that on the particular day, the issue of cheques to the houseless persons was discussed and in this connection, the Panchayath Development Officer was refusing to pass the bill to the beneficiary despite the request of the petitioner to release the amount.

4. In spite of the reply being given by the petitioner, respondent No.1 has passed the order impugned in this writ, purporting to Act under Sections 48(4) and 48(5) of the Karnataka Panchayath Raj Act, 1993. He has also further stated in his reply that in respect of the police complaint, he has appeared before the police station and even in the police station at the instance of the complainant, who was present in the police station, the petitioner was assaulted and insulted on 22.02.2011, when he had gone to the police station to present the order passed by the Sessions Judge, granting him anticipatory bail in connection with this case. He has also stated that in this connection, there are two cases registered against the

police in Crime Nos.19 and 21 of 2011 on 22.02.2011.

5. Sub-Sections 4 and 5 of Section 48 of Panchayath Raj Act states as follows:-

Section 48 (4) : Every Adhyaksha and Upadhyaksha of Grama Panchayat shall, after an opportunity is afforded for hearing him, [and if necessary after obtaining a report from the Taluk Panchayat and considering the same] be removable from his office as Adhyaksha or Upadhyaksha by the [Government] for being persistently remiss [or guilty of misconduct] in the discharge of his duties and an Adhyaksha or Upadhyaksha so removed who does not cease to be a member under subsection (2) shall not be eligible for reelection as Adhyaksha or Upadhyaksha during the remaining term of office as member of such Grama Panchayat

6. In exercise of powers under Section 48(4) of the Act, the State Government can remove a person holding the office of Adhyaksha or Upadhyaksha of Grama Panchayat after giving an opportunity to the concerned person and hearing him and if necessary after obtaining the report from the Taluk Panchayath and after considering of the same.

7. The basis on which such person is removed from the post of Adhyaksha or Upadhyaksha is that, if the Government is satisfied that the person is persistently remiss or guilty of misconduct in the discharge of his duties.

8. When Adhyaksha or Upadhyaksha, who was so removed from his office can also be removed from his membership of the Grama Panchayath in exercising of powers under Sub-Section 5 of Section 48 of the Act, which reads as under:

Section 48(5): An Adhyaksha or Upadhyaksha removed from his office under subsection (4) may also be removed by the [Government] from membership of the Grama Panchayat.

9. The Secretary who had conducted an enquiry in this regard under Section 48 of the Act had issued notice to the petitioner for preliminary enquiry, the petitioner had appeared before the Secretary on 02.04.2011. Likewise, the Secretary had issued notice to the complainant, the Panchayath Development Officer for appearance and he had appeared before the Secretary on 18.06.2011 and he had

given his version.

10. A further notice had been issued to both of them to appear before the enquiry officer on 12.10.2011, but while the writ petitioner / appellant did not appear, only the Panchayath Development Officer had appeared before the enquiry officer.

11. The writ petitioner had given his explanation indicating that he hails from a respectable background and family; that his father was also the president of the very Grama Panchayath on an earlier occasion and had discharged the functions very efficiently; that he had been elected on popular mandate to the post of Adhyaksha of Grama Panchayath and he was also discharging his duties efficiently and in the interest of the villagers. It was only persons who are inimical towards him and due to political rivalry and at their behest the Panchayath Development Officer has filed a false complaint against the petitioner. He had queried the Panchayath Development Officer about the non-issuance of bill / cheque in favour of the villager Hemavathi Basavanthappa Harijana under Gramina Ashraya Housing scheme, which had been though sanctioned on 09.10.2009, she had not been given the proceeds till that day and was questioning the Panchayath Development Officer, only on these aspect on 12.01.2011, and that he had neither assaulted or threatened the complainant and therefore, he had requested for dropping the proceedings and also indicated that the false complaint has caused him lot of harassment, mental agony and has also tarnished his image but he has not done any illegal act towards the Panchayath Development Officer and there is no question of assaulting or threatening the life of the Panchayath Development Officer. He has also alleged in his written explanation that the Panchayath Development Officer was indulging in forging his signature as Panchayath President in recent times and had signed many panchayath records in his name etc.

12. The enquiring officer however accepted the version of the complainant and purporting to take into consideration all circumstances and material report, the enquiry officer being of the opinion that a prima facie case of abuse of power and misconduct has been established against the petitioner and thought it proper to remove the petitioner not only from his post as President of the Grama

Panchayath but also from the membership, in terms of the order dated 18.10.2011.

13. It was this order, which had been questioned by the petitioner in the writ petition. The learned single Judge who examined the matter, being of the view that the contention raised on behalf of the petitioner by his learned Counsel that the removal under this provision can only be on persistent remiss in the functions of a president and not on the basis of a sporadic incident like this and noticing the argument which had been accepted by this Court on an earlier occasion in a decided case and which was relied upon by the learned Counsel for the petitioner, in the case of Smt.T.Bhagyalakshmi Versus State of Karnataka and Another reported in 1998(1) Kar. L.J. page 731, was not of much avail to support the case of the petitioner, as the earlier judgment had been rendered on the basis of the language of Sub-Section 4 of Section 48 of the Act as it prevailed earlier but the Sub-Section having undergone a change by the amendment as inserted by Act No.29 of 1997, with effect from 20.09.1997 adding the words "or guilty of misconduct" in addition to the earlier phrase "for being persistently remiss in the discharge of his duties" held that the addition makes all the difference; that guilt of misconduct need not be a repeated act but even a single act is good enough to attract this penal provision and therefore, dismissed the writ petition. Being aggrieved by the order of the learned single Judge and the removal from the post of Adhyaksha, the present writ appeal.

14. Perused the appeal and the grounds in support, we have heard Sri Mahesh Wodeyar, learned Additional Government Advocate for the respondent State and also examined the order of the learned single Judge impugned in this writ petition and the provisions of the Act. While the view that the State Government had been conferred a power to remove Adhyaksha or Upadhyaksha, who has been persistently remiss or guilty of the misconduct and therefore, such a person can be removed from the post of Adhyaksha or Upadhyaksha and further removed from the membership also, the power has to be exercised in a proper manner and on relevant considerations.

15. The word guilty of misconduct has a definite connotation in legal parlance and this conduct of a person has to be proved, and by a proper determination.

16. In the instant case, while it is true that there was a complaint registered against the petitioner and he has also been charge sheeted for offences punishable under Sections 323, 353, 504 and 506 IPC, which is not tried at the Criminal Court but this case is still pending trial before the criminal court.

17. Therefore, the question will be as to whether the State Government can hold a person guilty of misconduct at this stage. A determination of guilt is normally by the Court and not by an administrative authority and even before the Court, the accused is presumed to be innocent until proved to be guilty.

18. We do not find even in the impugned order of the State Government any determination to the effect that the writ petitioner was guilty of a particular misconduct. The order itself recites that while the criminal case is still pending and the trial has not yet begun in the criminal case and there is not even a definite finding of misconduct, which can be characterised as guilty of misconduct, is conspicuously absent in the order passed by the State Government. Even the word 'or guilty of misconduct' should be interpreted ejusdem generis with the previous phrases as persistently remiss as both these phrases qualify the conduct in the discharge of duties as Adhyaksha or Upadhyaksha. While persistently remiss in discharge of duties as Adhyaksha or Upadhyaksha can be easily understood as a conduct of total negligence in attending to the responsibilities of the post, the word 'guilty of misconduct' also should be understood in the context of the discharge of duties and not independent of it.

19. Though the petitioner had not appeared before the enquiry officer on the last date of the hearing, it is not an adverse interference that can be drawn due to the absence of the petitioner on the day, but orders has to be passed only on the basis of material available on record and particularly, on the examination of the explanation offered by the person. We do not find any consideration of the explanation offered, except to record the finding that the enquiry officer was satisfied that there is a prima facie case against the petitioner.

20. We are afraid that a finding of this nature cannot be held to be sufficient to take a drastic penal action, such as removing an elected representative from the post of Adhyaksha or Upadhyaksha and also from the membership of Grama Panchayath.

21. We do not find any definite finding at all, even assuming for arguments sake that the word 'guilty or misconduct' can be interpreted as a finding that can be recorded by the enquiry officer even under a proceedings under Section 48 of the Act.

22. In the instant case, we do not find any such finding. These circumstances coupled with the facts and in the background that the petitioner had given an explanation that the complaint was more because of political reasons and at the instance of persons inimical towards him assume significance and cannot be lost sight of. While exercising powers of such drastic nature and penal consequences, it is necessary that the State Government should act with a sense of responsibility, take into consideration all aspects of the matter and arrive at a definite conclusion based on the relevant materials. Mere surmises or a prima facie case cannot form the basis for passing an order of such serious consequences.

23. We are of the view that the learned single Judge has missed this aspect of the matter by being more impressed by the amendment that has been brought about to Sub-Section 4 of the Section 48 of the Act. It is a case of missing the trees for the woods!

24. In the result, we allow this appeal and set aside the order passed by the learned single Judge and quash the order passed by the State Government - Annexure - D by issuing a writ of certiorari.

25. It is hereby ordered that the appellant / writ petitioner is entitled to his post in the panchayath as the President and also as the member, unless he is otherwise not fit to hold the same or if the term of office has already expired.

26. Rule issued and made absolute. Under the peculiar circumstances, the parties are left to bear their respective costs.

