

M. Ananda Vs. the State of Karnataka and Others

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Court : Karnataka

Decided On : Mar-14-2014

Judge : A.N. Venugopala Gowda

Appeal No. : Writ Petition No. 12636 of 2014 (LB-ELE)

Appellant : M. Ananda

Respondent : The State of Karnataka and Others

Judgement :

(Prayer: This Writ Petition Is Filed Under Articles 226 And 227 Of The Constitution Of India, Praying To Quash The Decision Of The 2nd Respondent To Conduct Meeting On 15.3.2014, As Per His Office Communication To The 3rd Respondent Dated 4.3.2014 And Issuance Of Notice In Form No.II Dated 4.3.2014 As Per Annexures-D and E Respectively, Etc.)

1. This writ petition has been filed to quash a notice issued in Form-II under Rule 3(2) of the Karnataka Panchayat Raj (Motion of No-Confidence against Adhyaksha and Upadhyaksha) Rules, 1994 (for short 'the Rules') vide Annexure-E given by 2nd respondent “ the Assistant Commissioner, Doddaballapura Sub-Division, Bangalore.

2. Material facts of the case are that the petitioner and the respondent Nos.4 to 23 are the elected members of Konaghatta Village, Kasba Hobli, Doddaballapura Taluk, Bangalore Rural District, a local body constituted under S.5 of the

Karnataka Panchayat Raj Act, 1993 (for short 'the Act'). Respondent No. 18 is the Adhyaksha of the Panchayat. Petitioner and respondent Nos.4 to 6, S, 1.0, 13, 17 and 19 to 22, resolved on 25.02.2014, to move a No-Confidence motion against the respondent No.18 - Adhyaksha of the Panchayat and submitted a written notice of their intention in Form-I on 01.03.2014. The said written notice and the declaration are at Annexures-A, B and C. Upon receipt of written notice in Form-I, respondent No.2 gave notice in Form-II vide Annexure-E and instructed the Panchayat Development Officer - 3rd respondent, vide Annexure-D, to serve the said notice on all elected members of the Panchayat, to attend the meeting to be held at 11.00 a.m., on 15.03.2014. Seeking to quash Annexures-D and E, this writ petition was filed.

3. Sri R. Srinivasa Gowda, learned advocate, contended that the Panchayat has 21 members, out of whom 14 members resolved on 25.02.2014 to move No-Confidence Motion against the Adhyaksha - respondent No.18. He submitted that, subsequently, the whereabouts of respondent Nos.19 and 22 being not known from the date of receiving the notice vide Annexure-E from the respondent No.2 and the son of respondent No.22 having lodged a Police complaint on 11.03.2014 and the Police having registered a case in Crime No.29/2014 vide Annexure-F, as per S.49 of the Act, to pass a resolution on the No-Confidence Motion, the majority of not less than two-thirds of the total number of the members of the Panchayat being necessary, respondent No.18, with an intention to defeat the Motion, having managed to keep respondent Nos.19 and 22 in unlawful custody, the impugned notice is required to be quashed, since, between the date of giving the notice and the date fixed for the meeting, there is only 10 days, which falls short of the period stipulated in Sub-Rule(2) of Rule 3. He contended that the notice being illegal, interference is called for.

4. Sri H.T. Narendra Prasad, learned AGA, on the other hand contended that the petitioner along with others having submitted a requisition vide Annexure-B and the respondent No.2 having performed his statutory duty of issuing the meeting notice vide Annexure-E, which was directed to be served by the PDO of the Panchayat as per communication vide Annexure-D, the petitioner having not suffered any legal injury and respondent No.18 having not approached the Court

for relief, writ petition is liable to be rejected.

5. Perused the writ petition record and considered the rival submissions made by the learned advocates appearing for the parties. The point for consideration is, whether any prejudice has occasioned to the petitioner on account of the giving of the impugned notice?

6. It is trite that, unless a person satisfies the Court that he falls within the category of aggrieved person, he cannot be permitted to meddle in any proceeding of a statutory authority. Only a person, who has suffered or suffers from a legal injury, can challenge the action/order, as the case may be, before a Court of law, as writ petition under Article 226 of the Constitution of India, is maintainable either for the purpose of enforcing the statutory rights or when there is a complaint by a person that there has been a breach of statutory duty on the part of the authority. To maintain the writ petition, there should be judicially enforceable right available for enforcement and that the legal right that can be enforced must ordinarily be the right of the petitioner himself, who complains of infringement of such right and approaches the Court for relief as regards the same. From the ratio of the decisions of the Apex Court, in the cases of SHANTI KUMAR R. CANJI VS. HOME INSURANCE CO. OF NEWYORK, (1974) 2 SCC 387 AND STATE OF RAJASTHAN VS. UNION OF INDIA, (1977) 3 SCC 592, it is clear that the expression 'person aggrieved' does not include a person, who suffers from a psychological or a imaginary injury, and therefore, and must necessarily be one, whose right or interest has been affected or jeopardized.

7. In the instant case, out of 21 members of the Panchayat, 14 members including the petitioner passed resolution vide Annexure-A and presented the requisition vide Annexure-B, before the respondent No.2, to move No- Confidence Motion and thereafter, the respondent No.2 has given notice vide Annexure-E, which was directed to be served by the PDO, who, in turn, has issued Annexure-D.

8. On account of breach of Sub-Rule(2) of Rules 3 in not giving the notice of not less than 15 clear days for the meeting in Form-II, no legal right of the petitioner has been infringed. Learned advocate for the petitioner was unable to show any prejudice having been suffered by the petitioner, who along with other elected

members of the Panchayat presented Annexure-B to respondent No.2. Thus, the petitioner is not an aggrieved person, since, his interest has not been adversely affected or jeopardized. The person aggrieved, if any, in the instant case, could be the respondent No.18, against whom, No-Confidence Motion was presented and sought to be moved in the Panchayat. Thus, the petitioner cannot have any grievance as against Annexures-D and E. The writ petition is misconceived and hence, cannot be entertained.

In the result, there being no ground to issue Rule Nisi, the writ petition is rejected.

Sri H.T. Narendra Prasad, learned AGA is permitted to file memo of appearance within four weeks.

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