

Durgappa And Anr Vs. The State Of Karnataka And Ors

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Court : Karnataka Kalaburagi

Decided On : Jul-03-2023

Judge : Suraj Govindaraj

Appeal No. : WP 201759/2023

Appellant : Durgappa And Anr

Respondent : The State Of Karnataka And Ors

Judgement :

- 1 - NC:

2023. KHC-K:4822 WP No.201759 of 2023 IN THE HIGH COURT OF KARNATAKA R KALABURAGI BENCH DATED THIS THE3D DAY OF JULY, 2023 BEFORE THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ WRIT PETITION No.201759 OF2023(LB-ELE) BETWEEN:

1. DURGAPPA S/O CHOWDAPPA AGE:

38. YEARS, OCC: PRESIDENT OF BAPPUR GRAM PANCHAYAT TQ. MASKI, DIST. RAICHUR R/O GADDARTAGI VILLAGE TQ. MASKI, DIST. RAICHUR-584101 2. SHARANAMMA W/O REDDEPPA AGE:

38. YEARS, OCC: PRESIDENT OF TIDIGOL GRAM PANCHAYAT TQ. SINDHANUR, DIST. RAICHUR R/O TIDIGOL VILLAGE TQ. MASKI, DIST.

RAICHUR-584101 PETITIONERS (BY SRI.CHAITANYAKUMAR CHANDRIKI, ADVOCATE) AND:

1. THE STATE OF KARNATAKA REPRESENTED BY ITS PRINCIPAL SECRETARY, DEPARTMENT OF RURAL DEVELOPMENT AND PANCHAYAT RAJ, VIDHAN SOUDHA BENGALURU-560001 2. THE STATE OF KARNATAKA REPRESENTED BY ITS SECRETARY STATE ELECTION COMMISSION KARNATAKA, 2ND AND 3RD FLOOR, NO.16, BALLARI ROAD, SADASHIVANAGARA BENGALURU-560080 - 2 - NC:

2023. KHC-K:4822 WP No.201759 of 2023 3. THE DISTRICT ELECTION OFFICER AND THE DEPUTY COMMISSIONER, RAICHUR AT RAICHUR-584101 4. THE CHIEF EXECUTIVE OFFICER ZILLA PANCHAYAT, RAICHUR AT RAICHUR-584101 5. THE EXECUTIVE OFFICER TALUK PANCHAYAT, MASKI DIST. RAICHUR-584101 6. THE EXECUTIVE OFFICER TALUK PANCHAYAT, SINDHANUR DIST. RAICHUR-584101 7. THE TAHSILDAR MASKI TALUK DIST. RAICHUR-584124 8. THE TAHSILDAR SINDHANUR TALUK DIST. RAICHUR-584124 9. THE PANCHAYAT DEVELOPMENT OFFICER BAPPUR GRAM PANCHAYAT TQ. MASKI, DIST. RAICHUR-584124 10. THE PANCHAYATH DEVELOPMENT OFFICER THIDGOL GRAM PANCHAYAT TQ. SINDHANUR, DIST. RAICHUR-584124 RESPONDENTS (BY SMT. MAYA T.R., HCGP FOR R1, 3, 7 & 8; SRI.AMRESH S.ROJA, ADVOCATE FOR R2; SRI.GOURISH S. KHASHAMPUR, ADVOCATE FOR R4 TO 6 9 &

10) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED LIST DATED NIL ISSUED BY THE RESPONDENT NO.3 AS AT ANNEXURES-A AND A1 RESPECTIVELY, SO FOR AS BAPPUR GRAM PANCHAYAT, TQ. MASKI, DIST. RAICHUR AND TIDIGOL GRAM PANCHAYAT, TQ. SINDHANUR, DIST. RAICHUR ARE CONCERNED AND ETC.-. 3 - NC:

2023. KHC-K:4822 WP No.201759 of 2023 THIS PETITION COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1 Learned High Court Government Pleader accepts notice for respondent Nos.1, 3, 7 and 8. Sri.Amresh S.Roja, learned counsel accepts notice for respondent No.2. Sri.Gourish S.Khashampur, learned counsel accepts notice for respondent Nos.4, 5, 6, 9 and 10.

2. The petitioners are before this Court seeking for the following reliefs: a. Issue a writ in the nature of certiorari thereby quashing the impugned list dated nil issued by the respondent No.3 as at Annexures-A and A1 respectively, so far as Bappur Gram Panchayat, Tq. Maski, Dist. Raichur and Tidigol Gram Panchayat, Tq. Sindhanur, Dist. Raichur are concerned, in the interest of justice and equity. b. Issue a writ in the nature of mandamus thereby directing the respondents to consider the representations dated 26.06.2023 given by the petitioners as at Annexures-G and G1 respectively. c. Pass any other order or direction as this Honble Court deems fit in view of the facts - 4 - NC:

2023. KHC-K:4822 WP No.201759 of 2023 and circumstances of the case, in the interest of justice and equity.

3. The first petitioner claims to be President of Bappur Gram Panchayat and the second petitioner claims to be President of Tidigol Gram Panchayat. The petitioners were elected to the respective Gram Panchayats in the elections conducted in the year 2020 and the certificate of election came to be issued on 30.12.2020.

4. The petitioners claim that though elections happened in the year 2020, on account of certain disputes as regards the inclusion of certain villages, the first meeting of the Gram Panchayat could not be held and it is only pursuant to the orders passed by this Court in W.P.No.200192/2021 that the first petitioner was elected on 02.09.2021 and the second petitioner was elected on 25.03.2022 as Presidents of the respective Gram Panchayats. Now aggrieved by the notification of the reservation for 2020 (second term) the petitioners are before this Court contending that - 5 - NC:

2023. KHC-K:4822 WP No.201759 of 2023 the period of 30 months have not lapsed from they being elected and as such, it is contended that the elections are

to be postponed until the period of thirty months is completed for both petitioner Nos.1 and 2 from the respective dates of their elections. In this regard, the petitioners also submitted representations on 26.06.2023 at Annexures-G and G1 which have not been considered. In is in that background that Sri.Chaitanyakumar Chandriki, learned counsel for the petitioners submits that the petition is required to be allowed.

5. Learned High Court Government Pleader would however submit that it is on account of the internal conflicts that there was delay in conducting the first meeting. The term of office of the elected members of the Gram Panchayat being definite, the said term is split into two, being the first term and the second term for which different reservations are made available and as such, common elections being held - 6 - NC:

2023. KHC-K:4822 WP No.201759 of 2023 throughout the State, irrespective of period of 30 months having expired or not, the said election would have to be held. On these grounds, she submits that the petitioners cannot claim the benefit of their late elections to the posts of President.

6. Sri.Gourish S.Khashampur, learned counsel for respondent Nos.4 to 6, 9 and 10 also makes similar submission and submits that since the term of the office is coming to an end, notification has been issued in pursuance of which elections would be held.

7. Heard Sri.Chaitanyakumar Chandriki, learned counsel for the petitioners, Smt. Maya T.R., learned High Court Government Pleader for respondent Nos.1, 3, 7 and 8, Sri.Amresh S.Roja, learned counsel for respondent No.2 and Sri.Gourish S.Khashampur, learned counsel for respondent Nos.4 to 6, 9 and 10. Perused the papers.-. 7 - NC:

2023. KHC-K:4822 WP No.201759 of 2023 8. Learned counsel for the petitioners by referring to Section 46 of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 (for short, hereinafter referred to as the Act) submits that the term of the office of every Adhyaksha and every Upadhyaksha shall be for a period of 30 months. As such, his submission is that there being a guarantee for 30 months, no

elections can be held prior to expiry of 30 months. Section 46 of the Act is reproduced hereunder for easy reference:

"46. Term of office and conditions of service of Adhyaksha and Upadhyaksha.- [(1) The term of office of every Adhyaksha and every Upadhyaksha of the Grama Panchayat shall, save as otherwise provided in this Act, be [thirty months]. from the date of his election or till he ceases to be a member Grama Panchayat, whichever is earlier:]. [Provided that the term of office of Adhyaksha and Upadhyaksha of the Gram Panchayat who are in office on the date of commencement of the Karnataka Panchayat Raj (Amendment) Ordinance, 2002 shall be thirty-three months from the date of their election and the term of office of Adhyaksha and Upadhyaksha of Gram Panchayat to be elected immediately before the expiry of the said period shall be remaining period of twenty- seven months, provided that in either case in the - 8 - NC:

2023. KHC-K:4822 WP No.201759 of 2023 meantime they do not cease to be members of the Gram Panchayat.]. (2) Salary and other conditions of service of Adhyaksha, [Upadhyaksha and Chairman Standing Committee]. shall be as prescribed.

9. A perusal of the above provision would indicate that the term of office of every Adhyaksha and every Upadhyaksha of the Gram Panchayat shall save as otherwise provided in the Act be 30 months from the date of election or till he ceases to be a member of the Gram Panchayat whichever is earlier.

10. What is relevant to be observed in terms of Section 46 of the Act is the phrase "save as otherwise provided in this Act". In terms of the Act, the period of a Gram Panchayat member is 5 years and in terms of Section 46 of the Act, every Gram Panchayat within one month from the date of publication of names of elected members or immediately before the expiry of the term of Adhyaksha and Upadhyaksha, chose two members as Adhyaksha and Upadhyaksha subject to various criteria and conditions laid down - 9 - NC:

2023. KHC-K:4822 WP No.201759 of 2023 therein. Thus, a normal presumption under Section 44 of the Act is that elections have to be held within a period of one

month and that the term of office of Adhyaksha and Upadhyaksha shall be 30 months thereafter. This 30 months is split up figure of 5 years term into two parts namely, the first term and second term.

11. In my considered opinion, the election to the post of Adhyaksha or Upadhyaksha in the first meeting would not be of much relevance insofar as the term of 30 months is concerned, since the said 30 months would have to be considered from the date of election results being declared. It is only a requirement under Section 44 of the Act that the elections to the post be held. The period of 30 months being calculated from the date of result of the election, the delay if any, in holding the first meeting would not add any period to a term of office of such elected Adhyaksha or Upadhyaksha. Thus, - 10 - NC:

2023. KHC-K:4822 WP No.201759 of 2023 the claim made by the petitioners in this particular case that they were elected on 02.09.2021 and 25.03.2022 respectively and as such, they need to be provided period of 30 months thereafter is unsustainable. The period of 30 months would have to be calculated from 30.12.2020 when they were elected and the said period having come to an end, the term of office also comes to an end and the next set of Adhyaksha and Upadhyaksha who take on office, their term would come to an end within 30 months thereafter thus on the expiry of 5 years.

12. In that view of the matter, I do not find any merits in the above petition. The petition stands dismissed. Sd/- JUDGE NB List No.:

1. SI No.:

4.

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