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Court : Karnataka

Decided On : Feb-28-1974

Reported in : AIR1975Kant12; ILR1974KAR946; 1974(2)KarLJ133

Judge : E.S. Venkataramiah, J.

Acts : Karnataka Village Panchayat and Local Boards Act, 1959 - Sections 34

Appeal No. : Writ Petn. No. 686 of 1974

Appellant : Chandrappa

Respondent : The Divisional Commissioner, Gulbarga Division and ors.

Advocate for Pet/Ap. : N. Santosh Hegde, Adv.

Judgement :

ORDER

1. The facts and circumstances of this petition are slightly unusual. Respondent-4 had been elected as Chairman of the Village Panchayat, Anka-soddi, and he was functioning as the Chairman of the said Panchayat until he was removed by an order passed by the Assistant Commissioner, Lingasugur, on 8-5-1972. Against the said order respondent-4 preferred an appeal before the Divisional Commissioner, Gulbarga. The Divisional Commissioner, Gulbarga, by his order dated 21-1-1974 set aside the order of the Assistant Commissioner and directed that respondent-4 should continue as the Chairman of the Village Panchayat.

During the pendency of the appeal before the Divisional Commissioner, the Village Panchayat elected the petitioner as the Chairman. After the order of the Divisional Commissioner was passed, the petitioner has been asked to hand over charge to respondent-4 by the Chief Executive Officer. Taluk Development Board, Lingasugur. Respondent-3 herein. Aggrieved by the said order, the petitioner has filed this Writ Petition.

2. Sri. Santhosh Hegde, learned Counsel for the petitioner, contended that the petitioner who had been validly elected as the Chairman of the Village Panchayat could be removed from that office only in accordance with the provisions of the Karnataka village Panchayat and Local Boards Act. He argued that in the absence of an election petition or any other proceedings under the said Act taken against the petitioner, the petitioner cannot be declared as having ceased to be the Chairman of the Village Panchayat. In other words, it is contended on behalf of the petitioner that notwithstanding the fact that the appeal of respondent-4 has been allowed by the Divisional Commissioner, respondent-4 cannot be permitted to function as the Chairman again in view of the election of the petitioner to the office of the Chairman of the Village Panchayat during the pendency of the appeal. It is no doubt true that there is no express provision in the statute to deal with a situation like the present one. But it appears to me that the acceptance of the argument urged on behalf of the petitioner instead of advancing justice would perpetuate injustice. The Divisional Commissioner who allowed the appeal has found the Order of removal passed against respondent-4 who had been duly elected as Chairman was unsustainable. In view of the said order, it has to be assumed that there was no vacancy at all in the office of the Chairman of the Village Panchayat. In the absence of a vacancy, no other person can be elected to fill that post. That petitioner functioned as Chairman of the Village Panchayat until the order of the Divisional Commissioner was passed, cannot have the effect of taking away the right of respondent-4 to

function as the Chairman during the remaining period allowed by law. I am of the opinion that in this case the Court should uphold the right of Respondent-4 to function as Chairman instead of allowing the petitioner to continue as Chairman after the order of the Divisional Commissioner is passed. I do not think that this is

a fit case in which this Court should interfere with the impugned order in exercise of its jurisdiction under Article 226 of the Constitution of India.

3. The petition, therefore, fails and it is dismissed without notice to respondents.

4. Petition dismissed.

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