

**Siddalingappa Vs. State of Karnataka**

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**Court :** Karnataka

**Decided On :** Feb-05-1993

**Reported in :** ILR1993KAR868; 1992(4)KarLJ728

**Judge :** Shivaprakash, J.

**Acts :** [Karnataka Municipal Corporations Act, 1976](#) - Sections 82, 82(1), 85 and 86; Karnataka Municipal Corporation Rules, 1977 - Rule 26; Karnataka Municipal Corporation (Amendment) Rules, 1987

**Appeal No. :** W.P. No. 19348 of 1992

**Appellant :** Siddalingappa

**Respondent :** State of Karnataka

**Advocate for Def. :** Somayaji, HCGP for R-1, ;S. Vijayashankar, Sr. Counsel and ;K.L. Manjunath, Adv. for R-2 and ;H.B. Datar, Sr. Counsel and ;S. Mahesh, Adv. for R-3

**Advocate for Pet/Ap. :** U.L. Narayana Rao, Sr. Counsel and ;M.B. Prabhakar, Adv.

**Disposition :** Writ petition allowed

**Judgement :**

ORDER

## **Shivaprakash, J.**

1. In this Writ Petition, the petitioner questions the legality of the order dated 27th June 1992 (Annexure-B) passed by the first respondent in terms of which the third respondent is posted as Deputy Commissioner (Revenue) in the second respondent - Corporation in the place of the petitioner who was holding the said post as on the date when the said order was made. He also seeks a direction to the second respondent to continue him in the post of Deputy Commissioner (Revenue). The circumstances of the case under which the aforesaid order was made by the Government is as follows.

2. The petitioner was appointed to the post of Deputy Commissioner in the second respondent Corporation on 1.7.1990 and regularised with effect from 1.1.1991. A copy of the appointment order dated 8.1.1991 is produced as Annexure-A. It could be seen therefrom that the petitioner who was Revenue Officer (South) was promoted, on the recommendation of the Departmental Promotion Committee, on officiating basis in the vacancy caused consequent upon the retirement of Sri A. Shankerappa. In the said order of appointment it is indicated that in anticipation of approval the appointment is made effective from 1.1.1991. From the averments in the Petition, it appears that the impugned order dated 27.6.1992 (Annexure-B) was served on the petitioner on 29.6.1992.

3. In the Statement of Objections filed on behalf of the State Government, it is stated that the Government is the appointing authority to appoint Deputy Commissioners in the establishment of the Corporation of the City of Bangalore in terms of Section 82 of the [Karnataka Municipal Corporations Act, 1976](#) (hereinafter referred to as 'the Act'). It is also stated that in terms of Rule 26 of the Karnataka Municipal Corporation Rules, 1977, the post of the Deputy Commissioner in the Corporation has to be filled up by the Government and, therefore, appointment of the petitioner made by the Commissioner of the second respondent - Corporation by order dated 8.1.1991 effective from 1.1.1991 was required to be approved by the State Government. It is further stated that the first respondent in its letter dated 27.6.1992 informed the Commissioner of the second respondent-Corporation that the Government being the appointing authority for the

post of Deputy Commissioner, the case of the petitioner for appointment to the post of Deputy Commissioner ought to have been recommended by the Departmental Promotion Committee of the Government and not the Departmental Promotion Committee of the Corporation as has been done. Therefore, it is stated that the appointment of the petitioner as Deputy Commissioner (Revenue) could not be approved by the Government and it is in that context the Government by notification issued the impugned order dated 27.6.1992, appointing the third respondent who was the Municipal Commissioner of Belgaum City Corporation in place of the petitioner. It is stated that the third respondent assumed charge of the office of the Deputy Commissioner (Revenue) on 29.6.1992.

4. It is necessary to refer to the relevant provisions of the [Karnataka Municipal Corporations Act, 1976](#) (hereinafter referred to as 'the Act') and the Rules framed thereunder which would bear on the questions at issue in this petition.

5. The provisions of Section 82 of the Act is reproduced below; 'Section 82 Appointment of Engineer, Health Officer etc.-

(1) The Government shall appoint for every corporation such officers of the State Civil Services as it considers suitable to be the Engineer, Health Officer, Revenue Officer, Chief Account Officers and Council Secretary for the efficient functioning of the corporation and such officers shall be heads of their respective departments in the corporation and they shall be subordinate to the Commissioner. The Government may also appoint one or more Deputy Commissioners and Assistant Commissioners who shall exercise such powers and discharge such functions as may be specified in the rules. They shall be subordinate to the Commissioner.

(2) The Government shall, in consultation with the Mayor, appoint an officer not below the rank of an Assistant Commissioner to be the Council Secretary. The officer appointed shall be on deputation ordinarily for a period of three years and if the corporation by two thirds majority of its members so desire he shall be withdrawn earlier and another person appointed. It shall be the duty of the Council Secretary to attend every meeting of the corporation and the standing committees and he shall perform such other duties as are imposed on him by or under this Act.

(3) The officers appointed under Sub-section (1) shall be whole-time officers of the corporation and shall not undertake any work unconnected with their offices.

(4) Every officer of the Government appointed under Sub-section (1) and (2) shall be paid by the corporation such salary as may be determined by the Government from time to time which shall be met out of the corporation fund and shall be entitled to leave and other privileges in accordance with the rules and regulations applicable to the Government service to which he belongs and in force for the time being, and the corporation shall make such contribution towards his leave allowances, pension and provident fund as may be payable under such rules and regulations by him or on his behalf.'

6. Section 83 of the Act provides for appointment to certain posts under the Corporation to be made from Karnataka Municipal Administrative Services. Section 84 provides for appointment to the other posts on the Corporation establishment. It reads as hereunder:

'Section 84 Appointment to the other posts on the Corporation establishment.-

(1) Subject to the provision of Sections 85 and 86 appointment to posts on the corporation establishment other than borne on the cadre of the Karnataka Municipal Administrative Service, and the posts referred to in Section 82 shall be made by the Commissioner in accordance with this Act, the rules and the regulations framed thereunder.

(2) If any officer appointed under Sub-section (1) is a Government servant, he shall be entitled to leave and other privileges in accordance with the rules and regulations applicable to the Government service to which he belongs and in force for the time being and the corporation shall make such contribution towards his salary, leave allowances, pension and provident fund as may be payable under such rules and regulations by him or on his behalf.'

7. Rule 26 of the Karnataka Municipal Corporation Rules, 1977 (hereinafter referred to as 'the Rules') reads as hereunder:

'Rule 26 Appointment of officers of the Corporation. In each of the Corporation the posts mentioned in column (2) of the Table below shall be filled by Government by appointment of Officers of the cadre specified in the corresponding entries, in column (3) thereof and the number of such posts in each corporation shall be specified in the corresponding entries in column (4) thereof.'

8. The relevant part of the Table as it was before the amendment and as it is after amendment effected by the Karnataka Municipal Corporation (Amendment) Rules, 1987, which must be deemed to have come into effect from 31.7.1984, is reproduced below:

TABLE:

BEFOREAMENDMENT:

Sl. No

Posts.

Method of appointment of officers.

No. of posts

1

2

3

4

2)

Deputy Commissioner

By deputation of an officer from the IAS Cadre

1

By deputation of an officer(Sr. scale) from the KAS cadre in the cadre of KAS (Sr.Scale).

1

Administrative Officer(Re-designated as Deputy Commissioner).

By deputation of a K.M.A.S. Officer(Municipal Commissioners Grade-I).

1

AFTERAMENDMENT:

Sl. No.

Posts.

Method of appointment of officers,

No.of posts

1

2

3

4

2)

Deputy Commissioner.

By deputation of an officer fromthe IAS Cadre

1

By deputation of an officer (Sr.Scale)from the cadre in the cadre of KAS (Sr. scale).

Deputy Commissioner.

By promotion from the cadre of Revenue Officers of Bangalore City Corporation.

9. Sri U.L. Narayana Rao, learned Senior Counsel appearing for the petitioner submitted that the appointment of the petitioner by the second respondent by order dated 8.1.1991, Annexure-A, is strictly in accordance with the provisions of Section 84 of the Act read with Rule 26 of the Rules extracted above. He submitted that the petitioner was the senior most Revenue Officer when he was regularly promoted to the post of Deputy Commissioner by order dated 8.1.1991. The mere fact in the said order of promotion, it was indicated that in anticipation of approval by the State Government, the promotion of the petitioner to the post of Deputy Commissioner has been made, does not detract the regularity of the promotion given to the petitioner since it was made in conformity with the provisions of Section 84 of the Act and Rule 26 of the Rules. He urged that under the aforesaid provisions no approval as such by the State Government to the promotion of petitioner is legally necessary. The learned Counsel, therefore, contended that dislodging of the petitioner from the post of Deputy Commissioner and appointing the third respondent in his place, under the impugned order, is bad in law and the same cannot be sustained.

10. In the Statement of Objections filed on behalf of the first respondent, it is asserted that the Government is the appointing authority to appoint Deputy Commissioner of the Corporation under Section 82 of the Act and that under Rule 26 of the Rules the post of Deputy Commissioner 'shall be filled by Government'. The appointment of the petitioner as Deputy Commissioner (Revenue) with effect from 1.1.1991 by the second respondent was subject to approval by the Government and the Government by its letter dated 27.6.1992 informed the Commissioner of the Corporation that the Government being the appointing authority for the post of Deputy Commissioner, the case of the petitioner for promotion as Deputy Commissioner will have to be considered by the

Departmental Promotion Committee constituted by the Government and hence the Government has rejected the proposal to 'ratify the action taken by the Corporation to appoint the petitioner' and passed the impugned order 'transferring Sri N. Balakrishna, Municipal Commissioner, and posted as Deputy Commissioner (Revenue) in Bangalore City Corporation in place of the petitioner with immediate effect'.

11. The third respondent along with his Statement of Objections has produced photo-copy of letter dated 27.6.1992, marked as Annexure-R.1, addressed to the Commissioner, Bangalore City Corporation by the first respondent. The said letter, to which no reference is made in the impugned order, is marked 'Confidential' and the same is reproduced below:

'Government of Karnataka

Karnataka Government Secretariat,

M.S. Building,

Bangalore, dated 27th June 1992.

No. HUD 172 MNU 84.

From 'CONFIDENTIAL' The Secretary to Government, Housing & Urban Dev. Department. To The Commissioner, Bangalore City Corporation, Bangalore. Sir, Sub: Promotion of Sri Siddalingappa, Revenue Officer Deputy Commissioner (Revenue) in Bangalore City Corporation - reg. Ref: 1) Your office letter No. B12(1) PR 829/84-85 dated 22.12.84 and 4.12.86; 2) Your office letter No. B12 (1G) Pr.102/ 91-92 dated 3.1.92. With reference to the above, I am directed to state that as per Section 82(1) of K.M.C. Act, 1976, Government is the appointing authority to fill up of the post of Deputy Commissioner in Bangalore City Corporation. In this case, the Commissioner, Bangalore City Corporation has issued the promotion orders pending approval of the Government. The name of Sri Siddalingappa, Revenue Officer for promotion was cleared by a departmental promotion committee constituted by the Bangalore City Corporation itself. Government being the appointing authority for the post of Deputy Commissioner the case of Sri

Siddalingappa, Revenue Officer for promotion as Deputy Commissioner will have to be considered by the Departmental Promotion Committee constituted by the Government.

Your proposal to ratify the action taken, is rejected and the promotion orders issued by the Commissioner, Bangalore City Corporation, in respect of Sri Siddalingappa, Revenue Officer as Deputy Commissioner, Bangalore City Corporation is, therefore, hereby set aside.'

12. From the Statement of Objections and the aforesaid letter dated 27.6.1992, it is obvious that the first respondent justifies the impugned order only on the basis of the provisions of Section 82(1) of the Act.

13. Section 82(1) of the Act enjoins that the Government shall appoint for every Corporation such officers of the State Civil Services, (underlining mine), as it considers suitable to be the Engineer, Health Officer, Revenue Officer, Chief Account Officers and Council Secretary for the efficient functioning of the Corporation and that such officers shall be heads of their respective departments in the Corporation and they shall be subordinate to the Commissioner. The provisions of this Section are clear, that it only provides for appointment of officers of State Civil Services for certain posts in the Corporation. Therefore, the appointment of petitioner, who is not an officer belonging to the State Civil Services, to the post of Deputy Commissioner cannot be related to the provisions of Section 82(1) of the Act, as is sought to be done by the first respondent.

14. Section 84 of the Act provides for appointment to the other posts, other than the posts referred to in Section 82 of the Act, subject to the provisions of Sections 85 and 86 of the Act. Sections 85 and 86 speak of special appointments.

15. In the instant case, the petitioner was appointed to the post of Deputy Commissioner (Revenue) by the Commissioner, Bangalore City Corporation by order dated 8.1.1991 pursuant to recommendation of the Departmental Promotion Committee of the Corporation. The said post was previously designated as Administrative Officer, which was redesignated as Deputy Commissioner, as is evident from the table attached to Rule 26 of the Rules, reproduced above. After

the amendment, the said post is designated as Deputy Commissioner and the method of recruitment is changed. Instead of by deputation of a K.M.A.S. officer of the rank of Municipal Commissioner Grade II or by promotion from immediate lower cadre, it is only by promotion from the cadre of Revenue Officers of Bangalore City Corporation. Therefore, it follows that the appointment of the petitioner as Deputy Commissioner (Revenue) by the Commissioner is in terms of the provisions of Section 84 of the Act and the approval of the Government for the said appointment is not required under the aforesaid provisions.

16. The impugned order dated 27.6.1992, Annexure-B, read with the letter dated 27.6.1992 of the first respondent addressed to the Commissioner, Bangalore City Corporation, marked as R-1 in the Statement of Objections filed by the respondent-3, proceeds, as already noticed, under the misconception that the post of Deputy Commissioner which was held by the petitioner was a post referable to Section 82(1) of the Act.

17. The anomalous position is, whereas Section 84 of the Act enjoins that appointment to the other posts on the Corporation establishment, other than the posts referred to in Section 82 of the Act, shall be made by the Commissioner, Rule 26 of the Rules provides that the posts mentioned in column (2) of the table reproduced above shall be filled by Government by appointment of officers of the cadre specified in the corresponding entries in column (3) thereof.

18. The learned Counsel for the petitioner urged that Rule 26 being a subordinate legislation made by the Government in exercise of its powers under Section 421 of the Act, the mandatory provisions of Section 84 of the Act overrides the provisions of Rule 26 of the Rules to the extent of its inconsistency insofar as the appointment to the post of Deputy Commissioner by promotion from the cadre of Revenue Officers of Bangalore City Corporation.

19. It could be seen from the Table (after amendment) that there are 3 posts of Deputy Commissioners in the Corporations, One post has to be filled up by deputation of an officer from the I.A.S. cadre; one post by deputation of an officer (senior scale) from the cadre K.A.S., and one post of Deputy Commissioner by promotion from the cadre of Revenue Officers of the second respondent

Corporation. It is the latter post to which the petitioner was regularly promoted on 1.1,1991. This post of Deputy Commissioner to which appointment has to be made by promotion from the cadre of Revenue Officers, falls in the category of posts under Section 84 of the Act. Whereas, the other two posts of Deputy Commissioners to be filled up by deputation fall under the category of posts under Section 82 of the Act.

20. During the course of hearing an application, I.A.III, is filed to raise additional grounds and seek additional relief. The additional relief is for a declaration that 'Rule 26 of Karnataka Municipal Corporation Rules, 1977 (excluding the Table below Rule 26) is ultra vires of Section 82, now Section 84 of the Karnataka Municipal Corporation Act, 1976, and also violative of Articles 14 and 16 of the Constitution of India.'

21. Sri H.B. Datar, learned Senior Counsel appearing for the third respondent and Sri S. Vijayashankar, learned Senior Counsel appearing for the second respondent and Sri Somayaji, learned High Court Government Pleader, urged that the provisions of Rule 26 of the Rules being clear all appointments either by deputation or by promotion, have to be made only by the Government and not by the Commissioner.

22. in SHARAT CHANDRA LINGAPPA KOSHTI v. STATE OF KARNATAKA, : ILR 1991 KAR862 a Division Bench of this Court, while considering the provisions of Rule 26 of the Rules and the entries in the Table thereunder has held that as regards the post of Executive Engineer in Hubli - Dharwad Municipal Corporation appointment has to be made by promotion from the cadre of Assistant Engineers and the Table, read with Rule 26 of the Rules, clearly indicates that the Government is the promoting authority.

23. On the basis of the aforesaid Decision it was contended that the legal position is settled that even in matters of promotion from the lower ranks in the Corporation service, it is the Government which has to make the appointment. In the said Decision the Division Bench has observed that the 'learned Counsel for the appellant, however, submitted that Rule 26 of the Rules even after the validation cannot prevail over Sections 82 and 84 of the Act. It is unnecessary to go into that

question since the validity of the Rule has not been challenged in the Writ Petition.'

24. Rule 26 being a piece of subordinate legislation any provision in the said Rule which is contrary to the provisions of Sections 82 and 84 of the Act will have to be struck down, since subordinate legislation must yield to plenary legislation as the Supreme Court has ruled in. I.E. NEWSPAPERS (BOMBAY) P. LTD. v. UNION OF INDIA, : [1986]159ITR856(SC) as pointed out by the learned Counsel for the petitioner.

25. The petitioner who was regularly appointed to the post of Deputy Commissioner under the impugned order, read with the letter dated 27.6.1992, Annexure R.1, stands demoted to the post of Revenue Officer after more than 18 months. The impugned order is illegal.

26. For the aforesaid reasons, to the extent Rule 26 provides for appointment by the Government to the post of Deputy Commissioner by promotion from the cadre of Revenue Officer in the establishment of the second respondent is struck down as it is contrary to the provisions of Sections 82 and 84 of the Act, and the impugned order No.HUD 121 MNU 92 dated 27.6.1992 (Annexure-B) is quashed. The petitioner will continue to hold the post of Deputy Commissioner in the establishment of the Bangalore City Corporation with all the consequential benefits.

Writ Petition allowed. Rule made absolute.

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