

Revanasiddappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Oct-19-1992

Reported in : ILR1992KAR3469; 1992(4)KarLJ466

Judge : K.A. Swami, Ag. C.J. and ;N.D.V. Bhat, J.

Acts : [Karnataka Municipalities Act, 1964](#) - Sections 42(11) and 80(5)

Appeal No. : W.A. No. 2016 of 1992

Appellant : Revanasiddappa

Respondent : State of Karnataka

Advocate for Def. : Mahantesh S. Hosmath, Adv. for R-6

Advocate for Pet/Ap. : S. Vijayashankar, Sr. Counsel and ;I.G. Gachichinamath, Adv.

Disposition : Appeal rejected

Judgement :

K.A. Swami, Ag. C.J.

1. This Appeal is preferred against the order dated 22.9.1992 passed in Writ Petition No. 18932 of 1992. The learned Single Judge has rejected the Writ Petition. Hence, the petitioners have come up in Appeal.

2. In the Writ Petition, the petitioners sought for quashing the notice dated 18.6.1992 produced as Annexure-C in the Writ Petition issued by responderit-3. They also sought for a declaration that the resolution dated 19.6.1990 passed by the City Municipal Council, Bijapur, produced as Annexure-A in the Writ Petition, is null and void. The notice (Annexure-C) related to holding of elections to the Office of the President and the Vice-president of the City Municipal Council, Bijapur. Annexure- A, the resolution of the City Municipal Council, related to its consent for limiting the term of the President and the Vice- President for a period of two years from the date of assumption of the office. The learned Single Judge has rejected the Writ Petition holding that there was a resolution passed by the City Municipal Council, Bijapur, in its Meeting held on 19.6.1990 consenting for limiting the term of the President and the Vice- President of the City Municipal Council, for a period of two years from the date of assumption of office and that there was nothing wrong with the calendar of events issued by respondent-3 for holding election to the office of the President and the Vice-President of the City Municipal Council, Bijapur. The learned Single Judge has also rejected the contention of the appellants-petitioners that the resolution could not have been passed without issuing the agenda, and therefore, the resolution was null and void.

3. Before us, the learned Senior Advocate, Sri S. Vijayashankar put forth the following contentions.

The first contention is that without the inclusion of the subject in the agenda of the meeting, the City Municipal Council could not have taken up an important subject like consenting to limit the term of office of the President and the Vice-President for a period of two years from the date of assumption of office and as such, the resolution passed by the City Municipal Council, Bijapur, on 19.6.1990 is null and void. The second contention is that there was no resolution as such passed by the City Municipal Council consenting to limit the term of office of the President and the Vice-President of the City Municipal Council and the Resolution No. 73 dated 19.6.1990 is only a subsequent insertion in the proceedings of the City Municipal Council, Bijapur, held on 19.6.1990.

4. We may point out that if the second contention is to be considered, it would be necessary to look into the records. But the learned Counsel for the appellants submitted that this Court may proceed on the basis that there was a Resolution passed on 19.6.1990 consenting to limit the term of office of the President and the Vice-President, City Municipal Council, Bijapur, but the said Resolution was passed without there being such a subject in the agenda of the meeting. The contention that no such resolution could have been passed without including the subject in the agenda of the meeting, cannot at all be accepted. No provision is pointed out to us which restrained the City Municipal Council from taking up a subject which is not included in the agenda and passing a resolution. As long as there is a resolution passed by the City Municipal Council, the fact that the subject matter of the resolution was not included in the agenda of the meeting issued earlier to the meeting, cannot, by itself, be sufficient to hold that the resolution is null and void. It is not the agenda which determines the authority of the Municipal Council to pass a resolution. It is the scope of power of the Municipal Council which determines the validity or otherwise of the resolution passed by it. Section 42(11) of the [Karnataka Municipalities Act, 1964](#) (hereinafter referred to as the Act) specifically empowers the Municipal Council for consenting to limit the term of the office of the President and the Vice- President, It specifically states that the term of office of every President and every Vice-President shall, save as provided in the Act, cease on the expiry of the term of office as councillor. The term of office of the Councillor is five years. If Sub-section (11) of Section 42 of the Act has stood without the proviso, the contention would have had no answer, but the Proviso thereto specifically provides that the Government may, with the consent of the Municipal Council concerned, direct that the term of office of the President and the Vice-President of the City Municipal Council be limited to two years and that elections therefore be held every second year. Proviso to Sub-section (11) of Section 42 of the Act specifically empowers the State Government to limit the term of the office of the President and the Vice-President of the City Municipal Council provided the concerned Council consents to it. Here is a case where there is a Resolution passed by the City Municipal Council giving consent for limiting the term of office of the President and the Vice-President and the State Government has issued an order limiting the term of office of the President and the Vice-

President of the City Municipal Council, Bijapur. Therefore, it is not possible to hold that the City Municipal Council, Bijapur had no authority or competence to pass Resolution No. 73 dated 19.6.1990. The fact that such a resolution was passed without there being a subject included in the agenda, cannot be held to affect the authority of the Municipal Council. It is not the agenda that determines the jurisdiction of the Municipal Council to pass a resolution. It is the authority as conferred on it by the Act, and the Rules framed thereunder which determines the competency of the City Municipal Council, to pass a resolution.

4.1. The learned Counsel for the appellants placed reliance on a Decision of this Court, in J.S. BASAVARAJU v. PRESIDENT, T.M.C. DODDABALLAPUR AND ANR., W.P. No. 18757 of 1983 DD 6-3-1984: 1984(2) KLJ. Sh.N. Item No. 10 No doubt, in that Decision, Proviso to Sub-section (11) of Section 42 of the Act, was considered but the circumstances under which the said question was considered, were quite different. In that Decision whether the Municipal Council has a power to pass a resolution without there being a subject included in the agenda has not been considered. Hence, we are of the view that the said Decision has no bearing on the case on hand.

4.2. The defect that is pointed out by the learned Counsel for the appellants that the resolution is passed without the inclusion of the subject in the agenda, is not such which goes to the very root of the matter. Such a defect can even be deemed to have been cured by reason of the provisions contained in Sub-section (5) of Section 80 of the Act, which says that no act done or proceedings taken under the Act, shall be questioned on the ground merely of any defect or irregularity not affecting the merits of the case. Therefore, we are of the view that the resolution passed by the City Municipal Council, Bijapur on 19.6.1990 consenting to limit the term of office of the President and the Vice-President of the City Municipal Council, Bijapur to two years, cannot be held to be null and void.

5. For the reasons stated hereinabove, the Appeal is rejected.