

Ramappa and ors. Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Oct-12-2004

Reported in : AIR2005Kant105; 2005(1)KarLJ70

Judge : D.V. Shylendra Kumar, J.

Acts : [Karnataka Municipalities Act, 1964](#) - Sections 308, 308(2) and 308(4);
[Constitution of India](#) - Articles 226 and 227

Appeal No. : Writ Petition Nos. 29801, 30024 to 30041, 31874 to 31876, 32675 and 32676 of 2001

Appellant : Ramappa and ors.

Respondent : State of Karnataka and ors.

Advocate for Def. : H.B. Narayan, High Court Government Pleader for common Respondents 1, 2 and 4 and ;S. Mahesh, Adv. for common Respondent 3

Advocate for Pet/Ap. : Subash, B. Adi, Adv. in W.P. Nos. 29801, 30024 to 30041, 32675 and 32676 of 2001 and ;S.S. Patil, Adv. and ;Patil and Patil in W.P. Nos. 31874 to 31876 of 2001

Disposition : Petition allowed

Judgement :

ORDER

D.V. Shylendra Kumar, J.

1. In all these writ petitions the persons who are former Councillor's of Ranebennur City Municipality, some of whom might continue to be so, have challenged the order dated 18-7-2001 passed by the Deputy Commissioner, Haveri District, Haveri, as per Annexure-A under the provisions of Sub-section (2) of Section 308 of the [Karnataka Municipalities Act, 1964](#) (for short, 'the Act') determining and fastening the liability of Rs. 61,242/- on each of the petitioner as the sum payable by the petitioners for their negligent act while acting as Councillors and for having caused loss of a sum of Rs. 12,24,843/- to the Municipality.

2. These writ petitions are filed challenging this order and a direction for recovery of the amount, inter alia contending that the order is not in consonance with the provisions of the Act; that no proper opportunity had been given; that the Deputy Commissioner has not taken into consideration the explanation that has been offered by the petitioners; that the petitioners had not acted either negligently or had misconducted to render themselves liable for compensating the Municipality in terms of the provisions of Section 308 of the Act and such other grounds. Rule has been issued, notices have been issued to the respondents. The first respondent-State of Karnataka, 2nd respondent-the Deputy Commissioner, Haveri, and 4th respondent-the Tahsildar, Ranebennur, are represented by Sri Narayan, High Court Government Pleader, Sri Mahesh appears for the 3rd respondent-City Municipal Council, Ranebennur. Statement of Objections have been filed on behalf of the respondents.

3. I have heard Sri Kiran Kumar, Advocate for Sri S.S. Patil and Sri Subash B. Adi, learned Counsels for the petitioners, Sri Narayan, learned High Court Government Pleader for respondents 1, 2 and 4. Sri Mahesh, learned Counsel for respondent 3.

4. The main contention urged in the writ petitions is want of opportunity before passing the impugned order. The background to the impugned order is that the City Municipal Council had passed the resolution dated 30-6-1993 to construct a shopping complex in the Lal Bahadur Shastri Park in Ranebennur to the contractors in whose favour the contract has been awarded for construction of

what is known as temporary shops in and around the Lal Bahadur Shastri Park located inside the town under the Control of the Municipality.

5. The award of the contract pursuant to this resolution itself was the subject-matter of litigation in several writ petitions before the Court. One such writ petition was at the instance of the Contractors in W.P. No. 3919 of 1994 and another W.P. No. 7348 of 1994 by citizens of Ranebennur questioning such construction being put up in the park to the detriment of the interest of the citizens of the town.

6. While W.P. No. 3919 of 1994 filed by the contractor ultimately came to be withdrawn. W.P. No. 7348 of 1994 was allowed by this Court in terms of the order dated 4-12-1998 inter alia holding that the resolution passed by the Municipality was grossly in violation of the provisions of the Karnataka Parks, Play-fields and Open Spaces (Preservation and Regulation) Act, 1985, and mandamus was issued to the Municipality to remove the structures which had come up by then and constructed by the Contractors at the instance of the Municipality and to reconstruct the compound to the park as it existed earlier.

7. However, it appears in the meanwhile, pursuant to the another resolution the contractors had been paid an amount of Rs. 12,24,843/- for such construction and in view of the direction to remove the construction and the amount had been paid by the Municipality on such construction the expenditure became a waste. It is in that context of such loss incurred by the Municipality the Deputy Commissioner had taken action Under Section 308 of the Act and it is in such proceedings the impugned order, Annexure-A came to be passed. The liability as inducted earlier was fixed on each of the petitioners and they had been called upon to pay the amount.

8. A perusal of the impugned order at Annexure-A, dated 18-7-2001 reveals that the order had come to be passed in the context of certain directions by the Government referred to as reference No. 1 and in view of the provisions of Section 308 of the KMC Act.

Section 308 of the KMC Act reads as under:

'308. Liability of Councillors for loss, waste or misapplication.--(1) Every Councillor of a town Municipal Council shall be personally liable for the loss, waste or misapplication of any money or other property of the Municipal Council to which he has been a party, or which has been caused or facilitated by his misconduct or gross neglect of his duty as a Councillor.

(2) If, after giving the Councillor or Councillors concerned sufficient opportunity for showing cause to the contrary the Deputy Commissioner is satisfied that the loss, waste or misapplication of any money or other property of the Municipal Council is a direct consequence of misconduct or gross neglect on his or their part, the Deputy Commissioner shall by order in writing direct such Councillor or Councillors to pay to the Municipal Council before a fixed date, the amount required to reimburse it for such loss, waste or misapplication.

(3) If the amount is not so paid, the Deputy Commissioner shall recover it as an arrear of land revenue and credit it to the Municipal fund.

(4) An appeal shall lie from the decision of the Deputy Commissioner under Sub-section (2) to the Government'.

9. The order is one which requires to be passed by the Deputy Commissioner on being satisfied that the Councillors of Town Municipal Council has acted in the manner attracting the provisions of the Sub-section (1) of Section 308. If so, the Deputy Commissioner is required to give the Councillors sufficient opportunity of showing cause as to why such loss should not be recovered by them. On consideration of the same, if the Deputy Commissioner is satisfied that the loss is to be recovered from the Municipality he may pass an order to that effect.

10. Though, no doubt, show-cause notice had been issued to the Councillors in terms of show-cause notice dated 18-6-2001 copy at Annexure-J and the petitioners also appear to have filed their explanation in terms of their reply dated 29-6-2001, as per copy produced as Annexure-K. But, unfortunately the impugned order does not even refer to the show-cause notice nor the explanation offered by the petitioners.

11. If the liability has to be fastened it is only reasonable to expect the Deputy Commissioner to apprise such Councillors of the reason for proposing the recovery of loss and consider their explanation to it, apply his mind and then pass appropriate orders.

12. I find this aspect is not only absent in the order passed by the Deputy Commissioner, but also the order does not even refer to the explanation offered by the Councillors. It may be true that the background does support strongly for fixing the liability on the petitioners, but even that has to be done in a proper manner and in accordance with the procedure prescribed Under Section 308 of the Act itself.

13. Moreover, the impugned endorsement refers to certain directions issued by the Government in terms of the direction dated 23-3-2001. It is to be borne in mind that the Deputy Commissioner when takes action Under Section 308, he functions as a Statutory functionary under this provision virtually as a quasi-judicial authority as he is determining the liability on the part of the Councillors like the petitioners and as such his decision cannot be as per any directions issued by the Government or any other person or an higher authority. In fact an appeal lies to the Government under Sub-section (4) of Section 308 as against the very order passed by the Deputy Commissioner. These aspects are to be borne in mind by the Deputy Commissioner while passing any order under the provisions of Sub-section (2) of Section 308.

14. In the circumstances, as the impugned order dated 18-7-2001 does not reflect proper consideration of the explanation offered by the petitioners nor due application of mind to the explanation offered by the petitioners before passing the impugned order the same cannot be sustained in law. It is hereby quashed.

15. However, the matter is remitted to the Deputy Commissioner for passing appropriate orders in terms of the provisions of Section 308 for recovery of any loss that the Municipality might have incurred in the circumstances of the case if it is so found, subject to reserving such opportunity these writ petitions are allowed.

Rule made absolute.

16. The Deputy Commissioner shall after giving an opportunity of hearing to the petitioners by fixing a date for such purpose conclude the proceedings within six months from the date of receipt of a copy of this order.

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