

Jaya Moolya Vs. the Assistant Commissioner and anr.

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Court : Karnataka

Decided On : Jul-31-2002

Reported in : ILR2002KAR4992; 2002(6)KarLJ205

Judge : A.V. Srinivasa Reddy, J.

Acts : [Karnataka Panchayat Raj Act, 1993](#) - Sections 13(1) and 13(2); [Constitution of India](#) - Articles 226 and 227

Appeal No. : Writ Petition No. 20260 of 2002

Appellant : Jaya Moolya

Respondent : The Assistant Commissioner and anr.

Advocate for Def. : H.B. Mahesh, High Court Government Pleader for Respondent-1

Advocate for Pet/Ap. : Prasanna V.R., Adv.

Disposition : Petition dismissed

Judgement :

ORDER

A.V. Srinivasa Reddy, J.

1. The petitioner, aggrieved by the order dated 26-3-2002 (Annexure-A), passed by the 1st respondent-Assistant Commissioner is before this Court seeking a writ of certiorari for quashing the said order dated 26-3-2002 (Annexure-A) and for a writ of mandamus directing the respondents to continue the petitioner as a member of the 2nd respondent-Gram Panchayat.

2. Heard the learned Counsel for the petitioner as well as Mr. H.B. Mahesh, the learned Government Pleader for the 1st respondent.

3. Pursuant to the direction issued by this Court, the 1st respondent-Assistant Commissioner is also present in person along with the original records. The issue involved in this writ petition is whether the seat of an elected member will become vacant if he is absent for more than three consecutive ordinary meetings of the Gram Panchayat without the leave of the Gram Panchayat. In the present case, admittedly, three ordinary meetings were held on 9-10-2001, 20-11-2001 and 24-12-2001 and the petitioner did not attend the said ordinary meetings. The 1st respondent has issued a notice dated 14-3-2002 (Annexure-D) directing the petitioner to show cause as to why his membership should not be cancelled. With reference to the said show-cause notice dated 14-3-2002, the petitioner has sent a reply dated 23-3-2002. In the said reply, at paragraph 3, the petitioner has stated that he did not attend the ordinary meetings dated 9-10-2001 and 20-11-2001. However, he had attended the meeting held on 29-11-2001 despite his ill-health. Further, he has also stated that he could not attend the meetings held on 24-12-2001 and 16-2-2002 as his health condition had further deteriorated. He has also enclosed a Medical Certificate to that effect.

4. The 1st respondent, on consideration of the objections received from the petitioner has passed the impugned order. In the impugned order, the 1st respondent has taken note of the objections sent by the petitioner. After taking notice of the objections raised by the petitioner, the 1st respondent has held that, despite sufficient opportunity given, the petitioner did not give satisfactory reason for his absence. In view of that, the 1st respondent has proceeded to pass the impugned order under Sub-section (2) of Section 13 of the [Karnataka Panchayat Raj Act, 1993](#) ('Act', for short).

5. In the background of the above said facts, the question that arises for my consideration is as to whether the petitioner has complied with the conditions under Clause (c) of Sub-section (1) of Section 13 which reads as follows:

' 13(1) If a member of a Gram Panchayat.--

(a) xxx xxx

(b) xxx xxx

(c) absents himself for more than three consecutive ordinary meetings of the Gram Panchayat without the leave of the Gram Panchayat or is absent from the Panchayat area for more than four consecutive months;

his seat shall be deemed to be or to have become, as the case may be, vacant.

(2) If any question arises as to whether a person is, or has become subject to disqualification under Sub-section (1), the Assistant Commissioner may either suo motu or on a report made to him and after giving an opportunity to the person concerned of being heard, decide the question'.

6. In terms of Sub-section (2) of Section 13 of the Act, the 1st respondent did issue a show-cause notice for which the petitioner has sent his reply as per Annexure-B, dated 23-3-2002. In his reply to the show-cause notice, the petitioner has explained the reasons for his absence enclosing a doctor certificate. Further, he has not sought for any personal hearing in the matter by the 1st respondent. As already stated, admittedly, the petitioner was absent on 9-10-2001, 20-11-2001, 24-12-2001 and 16-2-2002. The meetings held on the above dates were all ordinary meetings. The petitioner claims that he had attended a meeting held on 29-11-2001. From the records, it is seen that the said meeting was a 'special meeting'. Therefore, his presence in the 'special meeting' would not retrieve the petitioner from the disqualification that he had incurred by not being present in the meetings held on 9-10-2001, 20-11-2001, 24-12-2001 and 16-2-2002. Even assuming that the petitioner was not feeling well, nothing prevented the petitioner from informing and taking leave from Gram Panchayat as contemplated under Clause (c) of Sub-section (1) of Section 13 of the Act. Admittedly, the petitioner

has not sought any permission for not attending the ordinary meetings held on the above said dates. Therefore, the absence of the petitioner on those dates is without leave of the Gram Panchayat.

7. In view of the said facts and circumstances of this case, there is no merit in the writ petition and accordingly, the writ petition is dismissed.

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