

Ramachandra and ors. Vs. the State Election Commission and ors.

Ramachandra and ors. Vs. the State Election Commission and ors.

SooperKanoon Citation : sooperkanoon.com/385110

Court : Karnataka

Decided On : Jun-24-2002

Reported in : 2002(6)KarLJ324

Judge : Chandrashekaraiah, J.

Acts : Karnataka Local Authorities (Prohibition of Defection) Act, 1987 - Sections 3(1) and 4; [Constitution of India](#) - Articles 226 and 227

Appeal No. : Writ Petition Nos. 12238 to 12241 of 2000

Appellant : Ramachandra and ors.

Respondent : The State Election Commission and ors.

Advocate for Def. : K.N. Phanindra, Adv. for Respondent-1

Advocate for Pet/Ap. : P.S. Manjunath, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Chandrashekaraiah, J.

1. The petitioners, who are now disqualified from holding the post of members of the Taluk Panchayat, Bangarpet, have filed these petitions challenging the order of

the State Election Commission, dated 25-3-2000.

2. The facts in these cases are as follows:

The petitioners and others were elected as members of the Taluk Panchayat, Bangarpet. The total number of members of the Taluk Panchayat is 22. Out of 22, 14 persons were elected on Janata Dal ticket, 8 persons were elected on Congress ticket. The Returning Officer issued the calendar of events calling upon the members of the Taluk Panchayat to elect Adhyaksha and Upadhyaksha in the meeting held on 17-12-1998.

3. The case of the complainants before the Election Commission is that the Janata Dal, which is a national political party, called for the meeting of all the members elected on Janata Dal ticket to serve whip/direction. It is not in dispute that one Smt. Lalithamma has been nominated as a candidate for the post of Adhyaksha and one Sri M. Krishnappa has been nominated as a candidate for the post of Upadhyaksha by the political party. In this connection, as seen from the evidence, though the meeting of all the Janata Dal candidates was called for, the petitioners did not attend the said meeting. The further case of the complainants is that even though the petitioners were not present in the meeting called on 17-12-1998, the whip/direction sought to be served thereafter was refused by them. Ultimately, the election to the posts of Adhyaksha and Upadhyaksha was held and the persons belonging to Congress party were declared elected as Adhyaksha and Upadhyaksha. This has made the complainants to file complaint before the State Election Commission to take appropriate action under the provisions of the Karnataka Local Authorities (Prohibition of Defection) Act, 1987 (hereinafter referred to as the 'Act'). Before the State Election Commission, the complainants have examined five witnesses, whereas the respondents, who are the petitioners in these petitions, have examined only one witness.

4. The Election Commission on appreciation of the evidence has framed three issues which read as follows:

'1. Whether the joint whip was issued by the Kolar District Janata Dal President and the General Secretary or not?

2. Whether the respondents refused to receive the whip?

3. Whether the respondents had taken prior permission of the party to vote for a candidate of their choice?'

5. On appreciation of the evidence, the Election Commission has answered the above issues in favour of the complainants and held that the petitioners have incurred disqualification under the Act.

6. The learned Counsel appearing for the petitioners Sri P.S. Manjunath contended that the State Election Commission has committed an error in holding that the petitioners have incurred disqualification without noticing the fact that there was no valid whip and even assuming that there is a whip, there is no service of whip on the petitioners. It is further contended that in view of the law laid down by the Supreme Court in the case of *Kihota Hollohon v. Zachilhu and Ors.*, : [1992]1SCR686 the disobedience of the whip stated to have been issued is to be examined in the context considered by the Supreme Court in the said decision. In reply to this submission, the learned Counsel appearing for the respondent 1-State Election Commission, Sri Phanindra submits that the findings recorded by the Election Commission on appreciation of facts do not call for any interference by this Court under Articles 226 and 227 of the [Constitution of India](#) as the said finding are the finding of facts. It is further contended that from the evidence and also from the pleadings, it is seen that the Janata Dal party called for a meeting in the office of the BDO in order to serve a whip to all the members with a direction to vote in favour of the official candidates. But the petitioners, though served with notices did not attend the said meeting and they also refused to receive the whip, when it is sought to be served on them on the date of election. Therefore, there is no reason for the petitioners to contend that there is no valid whip and even assuming that there is a valid whip, the same has not been served on them.

7. The object of the enactment, as seen from the preamble, reads as follows:

'An Act to prohibit defection by the Councillors of Municipal Corporations (Municipal Councils, Town Panchayats and members of Zilla Panchayats and Taluk Panchayats), from the political parties by which they were set up as

candidates and matters connected therewith.

Whereas, it is expedient to prohibit defection by the Councillors of Municipal Corporations (Municipal Councils and Taluk Panchayats and members of Zilla Panchayats and Taluk Panchayats) from the political parties by which they were set up as candidates and matters connected therewith'.

8. From the reading of the above, it is clear that the object of bringing the above said legislation is to prohibit defection of candidates elected from the political parties by which they were set up as candidates. In the instant case, admittedly, the petitioners were all elected on Janata Dalticket. Once they are elected on Janata Dal ticket, in the normal course, if there is an official candidate, they are expected to vote in favour of the official candidate. From the evidence, it is seen that the Janata Dal has nominated two candidates Smt. Lalithamma and Sri Krishnappa for the posts of Adhyaksha and Upadhyaksha respectively. It is not the case of the petitioners that the above said persons, who contested the election did not belong to Janata Dal party. The case of the petitioners is that since the Janata Dal has not officially declared the above said persons as candidates, any vote exercised in favour of other party candidates cannot be considered as an act contrary to the interest of the Janata Dal party.

9. In the evidence of P.W. 4, it is seen that the Janata Dal party has nominated Smt. Lalithamma and Sri Krishnappa as official candidates for the posts of Adhyaksha and Upadhyaksha. If that is so, the evidence of P.W. 4 before the State Election Commission that there is no official candidate nominated by the political party, cannot be believed or accepted. From the evidence, it is also an admitted fact that the petitioners have all voted in favour of the Congress candidate for the post of Adhyaksha. The object of the enactment as stated earlier is to prohibit defection and to avoid horse riding in order to have stability in the local self-Government.

10. From the evidence of P.Ws. 1 to 4, it is seen that the meeting of the Janata Dal members were called for, in order to issue necessary whip/direction to all the members. The petitioners as seen from the evidence, though served, remained absent. The object of their very absence in the meeting called for clearly indicates

that though they were avoiding to receive the whip to be issued by the political party. Further, P.Ws. 1 to 3 in their evidence have stated that they sought to serve the whip on the petitioners before the election, they refused to receive the whip/direction.

11. The contention of the learned Counsel for the petitioners is that the person, who recorded the refusal of the notice by the petitioners, has not been examined and therefore, the said evidence cannot be relied upon. So far as the non-examination of the member of Taluk Janata Dal is concerned, it is immaterial when these three witnesses i.e., P.Ws. 1 to 3 in one voice have said that when they sought to serve the notice on the petitioners, they refused to receive the same.

12. The learned Counsel appearing for the petitioners Sri Manjunath relied upon the decision of the Supreme Court referred to supra and submits that only in two situations, Section 3 of the Act is to be considered in order to disqualify the persons from continuing as a member of the Taluk Panchayat, that is in the case where there was a change of Government and it is contrary to the policy of the Government. Admittedly, in the instant case, out of 24 members, 14 members are elected on Janata Dal ticket and the petitioners voted in favour of the Congress candidate for the post of Adhyaksha. This has resulted in allowing the rival party to administer. The petitioners are all elected on Janata Dal ticket by the voters. If really, the voters had the knowledge that these petitioners would vote in favour of the Congress candidate for the post of Adhyaksha, they would not have voted in their favour and consequently, they would not have got the opportunity of participating in the election of Adhyaksha and Upadhyaksha. The Supreme Court in the above said case has stated as follows:

'Keeping in view the consequences of the disqualification i.e., termination of the membership of a House; it would be appropriate that the direction or whip which results in such disqualification under Paragraph 2(l)(b) is so worded as to clearly indicate that voting or abstaining from voting contrary to the said direction would result in incurring the disqualification under Paragraph 2(1)(b) of the Tenth Schedule so that the member concerned has foreknowledge of the consequences flowing from his conduct in voting or abstaining from voting contrary to such a

direction'.

13. This enactment came into force on 29-12-1986. Every candidate, who normally participate in the election is aware of the fact in the event if there is any such violation of whip/direction by political party, he would incur disqualification. Ignorance of law is also no excuse. Therefore, if any elected candidate of political party were to vote contrary to the interest of his party, in my opinion, he is unfit to continue as member of a political party.

14. Sri Manjunath also submits that the whip issued by the District Janata Dal is not a whip in the eye of law as he has no authority to issue such a whip and consequently, violation of that whip/direction does not result in disqualifying a person from continuing as a member of the Taluk Panchayat. This Court in the case of H.S. Devaraj and Ors. v. State Election Commissioner Karnataka State, Bangalore and Ors., 2000 (3) Kar. L.J. 229 : ILR 2000 KAR. 1493 has held as follows:

'The Election Commissioner while exercising jurisdiction under Section 4 of the Act acts as a statutory Tribunal for determination of questions of fact and law involved in a dispute touching upon the disqualification of a member. A finding of fact recorded by any such Tribunal cannot in proceedings under Article 226 be assailed except on the ground that the Tribunal has acted on evidence, which was legally inadmissible or has refused to admit evidence that was admissible or has returned a finding, which is not supported by any evidence whatsoever. The present does not, in my opinion, fall in any one of these categories. It is not the case of the petitioners that any evidence had been shut out or that any evidence, which is inadmissible has been taken into consideration. The argument that there is no evidence at all in support of the findings returned by the Tribunal has not impressed me. The oral evidence recorded by the Tribunal and the documents produced by the parties in the course of the enquiry can, in my opinion, reasonably support the findings recorded by the Election Commissioner. So long as there is some evidence, which if believed, can justify the finding under challenge the mere possibility of a contrary finding on a reappraisal of the evidence is not a sufficient ground for this Court to interfere or to substitute the finding of the Tribunal by its

own finding. Decisions of the Apex Court in the cases of Joint Registrar of Co-operative Societies, Madras and Ors. v. P.S. Rajagopal Naidu and Ors., : [1971]1SCR227 and Swarn Singh and Anr. v. State of Punjab and Ors., : AIR 1976 SC232 lend considerable support for that proposition'.

15. From this, it is seen that this Court has accepted the whip issued by the State President as a valid whip. Section 2(vi) defines political party. According to this definition, the political party in relation to a councillor or a member means a political party recognised by the Election Commission of India as a National Party or a State Party in the State of Karnataka. The petitioners have not produced any rules or regulations governing the domestic affairs of the National Party or State Party to show that the President of the State in respect of the Janata Dal Party has no power to issue any such whip/direction. In the absence of such a material, the presumption would be so far as the State is concerned, the President of State Party has power to issue whip/direction. Further, under Section 3(b) of the Act, a person, who has been authorised by a political party has the power to issue whip/direction. The President of the District Janata Dal Party in his evidence has deposed that he has been authorised to issue the whip/direction and accordingly, he has issued the whip/direction. If that is so, in the absence of any material to show that the President of the State Party has no power or authority to issue whip, it cannot be said that there is no whip at all in the eye of law.

16. The State Election Commission, in the instant case, on appreciation has evidence of recorded a specific finding that the petitioners have violated the whip/direction. Since the said finding is based on appreciation of evidence, I find that it is not a case which warrants any interference under Articles 226 and 227 of the [Constitution of India](#). Further, when the petitioners being the members of one political party have admittedly voted against the other rival party, I find it is not a case where this Court can exercise its discretion under Article 226 of the [Constitution of India](#).

Hence, the following order:

(a) Writ petitions are rejected.

(b) Rule is discharged.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com