

IN THE HIGH COURT OF KARNATAKA, BENGALURU

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO. 8497 OF 2020 (LB-RES) DATED : 28-08-2019

C.L. SATISH BABU AND OTHERS vs. THE STATE OF KARNATAKA, BY PRINCIPLE SECRETARY, DEPT OF RURAL DEVELOPMENT AND PANCHAYATH RAJ, BANGALORE.

ORDER

Petitioners being the Ex - Members of the respondent

- Grama Panchayat are invoking the writ jurisdiction of this Court for laying a challenge to the Communication dated 17.06.2020 addressed by the Principal Secretary of Panchayat Raj Department, informing all the Deputy Commissioners of the Districts to appoint the Administrators to the Grama Panchayats if the tenures of their elected bodies have expired.

2. The vernacular text of the said

Communicationa copy whereof is at Annexure-B to the writ petition is as under:

ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ಸಂ.ಗ್ರಾೞಪ 378 ಗ್ರಾಪಂೞ 2020 (ಭಾ -1)

ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಸಚಿವಾಲಯ,

ಬಹುಮಹಡಿ ಕಟ್ಟಡ,

ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 17/6/2020.

ಇವರಿಂದ:

ಸರ್ಕಾರದ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿ (ಪಂ.ರಾಜ್),

ಗ್ರಾಮೀಣಾಭಿವೃದ್ಧಿ ಮತ್ತು ಪಂಚಾಯತ್ ರಾಜ್ ಇಲಾಖೆ.

ಇವರಿಗೆ:

ಎಲ್ಲಾ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳು,
ಮಾನ್ಯರೇ,

ವಿಷಯ: ಗ್ರಾಮ ಪಂಚಾಯತಿಗಳಿಗೆ ಆಡಳಿತಾಧಿಕಾರಿಯನ್ನು ನೇಮಿಸುವ ಬಗ್ಗೆ.
ಉಲ್ಲೇಖ: ಸಚಿವ ಸಂಪುಟದ ವಿಷಯ ಸಂ.ಸಿ:271/2020 ನಿರ್ಣಯ, ದಿನಾಂಕ: 11.6.2020.

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ರಾಜ್ಯದ ಬಹುತೇಕ ಗ್ರಾಮ ಪಂಚಾಯತಿಗಳ 5 ವರ್ಷಗಳ ಅವಧಿಯು ಜೂನ್ 2020 ರಿಂದ ಪ್ರಾರಂಭವಾಗಿ ವಿವಿಧ ದಿನಾಂಕಗಳಂದು ಪೂರ್ಣಗೊಳ್ಳುತ್ತದೆ. ಗ್ರಾಮ ಪಂಚಾಯತಿಗಳ ಸಾರ್ವತ್ರಿಕ ಚುನಾವಣೆಗಳು ನಡೆಯದಿರುವ ಕಾರಣ, 5 ವರ್ಷದ ಅವಧಿಯನ್ನು ಮುಗಿಸಿದ ನಂತರ ಕರ್ನಾಟಕ ಗ್ರಾಮ ಸ್ವರಾಜ್ ಮತ್ತು ಪಂಚಾಯತ್ ರಾಜ್ ಅಧಿನಿಯಮ, 1993 ರ ಪ್ರಕರಣದ 8 (1) (ಬಿ) (ii) ರಡಿ ಕಲಂ 321 ನ್ನು ಜೊತೆಯಾಗಿ ಆಡಳಿತಾಧಿಕಾರಿಗಳನ್ನು ನೇಮಿಸಲು ಜಿಲ್ಲಾಧಿಕಾರಿಗಳಿಗೆ ತಿಳಿಸಲು ಸರ್ಕಾರವು ನಿರ್ಧರಿಸಿರುತ್ತದೆ.

ಅದರನ್ವಯ, ಕರ್ನಾಟಕ ಗ್ರಾಮ ಸ್ವರಾಜ್ ಮತ್ತು ಪಂಚಾಯತ್ ರಾಜ್ ಅಧಿನಿಯಮ, 1993 ರ ಪ್ರಕರಣ 41 ಮತ್ತು 42 ರಂತೆ ಅವಧಿ ಪೂರ್ಣಗೊಂಡಿರುವ D ಗ್ರಾಮ ಪಂಚಾಯತಿಗಳಿಗೆ ಆಡಳಿತಾಧಿಕಾರಿಯನ್ನು ನೇಮಿಸಲು ಕ್ರಮ ಕೈಗೊಳ್ಳುವಂತೆ ಈ ಮೂಲಕ ತಮಗೆ ಸೂಚಿಸಿದೆ.

ತಮ್ಮ ವಿಶ್ವಾಸಿ,

(ಉಮಾ ಮಹದೇವನ್)

ಸರ್ಕಾರದ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿ (ಪಂ.ರಾಜ್),
ಗ್ರಾಮೀಣಾಭಿವೃದ್ಧಿ ಮತ್ತು ಪಂ.ರಾಜ್ ಇಲಾಖೆ".

3. Learned AGA on request having accepted notice for the Respondent Nos. 1 & 3, notice to others having been dispensed with, vehemently opposes the petition making submission in justification of

the impugned Communication.

4. Having heard the learned counsel for the parties and having perused the petition papers, this Court declines to grant indulgence in the matter because:

a) petitioners were elected as the Members and later a few of them as the Office bearers of the Grama Panchayat concerned for the tenure of five years fixed under Section 41 of the Act which reads as under:

“Term of office:- The members of a Grama Panchayat shall, save as otherwise provided in this Act, hold office for a term of five years.”

this Section is enacted in terms of the mandate of Article 243-E of the Constitution of India which has the following text:

“243E.(1) Every panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.”

the language of Article 243-E and of Section 41 leaves no manner of doubt that in any circumstance, the tenure of elected body of the Grama Panchayats cannot be longer than five years; this becomes apparent by the expression “*and no longer*” employed in the said Article; it is rudimentary principle of Law of Writ that no writ can be issued in violation of law; the prayer of the petitioners to continue the tenure of the elected body beyond five years i.e., till a new body is constituted by

electoral process, militates against the constitutional prohibition;

b) the tenure of five years is constitutionally
**prescribed policy *...for all the Panchayats in the Country*
**..... the voters exercising their right to vote under Section 9 of the*
Act had given the mandate only for a period of five years; if this Court
grants the prayer of the petitioners, that would be a gross violation
of popular
mandate; in the absence of statutory enablement, this

**Corrected and Deleted Vide Chamber Order Dated 17.07.2020*

Court cannot issue a writ for elongating the statutory tenure of an
elected body, save by outwitting the voters and derogating the
constitutional interdiction; a contra view would be an invitation for a
misadventure which the law does not sanction;

c) the contention of the petitioners that the Government has no
competence to direct the Deputy Commissioners to make
appointment of Administrators to the concerned Grama Panchayats is
attractive at the first blush; however, a deeper scrutiny shows its
fallacy; true it is, that Section 8 of the Act vests the said power
exclusively in the Deputy Commissioner and therefore, others cannot
arrogate it to themselves; the impugned Communication...cannot *

be

construed as an *order* directing the Deputy Commissioners to make

*Deleted Vide Chamber Order Dated 17.07.2020

appointment; its very language shows that it only *informs* the Deputy Commissioners, and does not *instruct*; its intent is to draw the attention of the Deputy Commissioners to the provisions of Section 8 which employs the expression "*If the Deputy Commissioner is satisfied...*"; therefore, the impugned Communication can be treated only as an info and nothing more; the Communication refers to Sections 8 & 321 of the Act does not make much difference to this view;

d) the legislative intent of Section 8 of the Act is as clear as Gangetic Waters; the impugned Communication needs to be construed only as an input for decision making by the Deputy Commissioner in terms of Section 8 of the Act, since it is he in whom is vested the power, may be coupled with duty, to take the decision, the object being to fill the vacuum caused by the exit of the elected body after the expiry of its statutory tenure; this becomes clear by the text & context of Section 8 and more particularly sub-Section 4 thereof which deems the Administrator to be the duly constituted Grama Panchayat; the sub-Section reads as under:

"The Administrative Committee or Administrator shall be deemed to be a duly constituted Grama Panchayat for the purpose of this Act, notwithstanding anything contained in the foregoing

provisions:”

e) there is no substance in the vehement submission of the learned counsel for the petitioners that during the period of COVID -19 Pandemic, the Administrators will not be in a position to effectively function as the Grama Panchayats and that they would not be in a position to meet the popular aspirations; it is not for this Court to have its say in the matter when the text of the law is, as already mentioned, is specific & intelligible; there is no challenge to the said provision of law either; if there is any grievance as to the functioning of the Administrators, the legal avenues for seeking redressal avail to the aggrieved cannot be much disputed; and,

f) there is some force in the argument of the learned counsel for the petitioners that the tenure of appointment of the Administrator should not exceed the statutory limit of six months, the Panchayats having been constituted on the principles of Democracy and Local Self Government; but there is no reason to assume that the tenure of the Administrators shall be extended beyond the statutory ceiling; it may not be correct to assume that no steps will be taken for conducting the elections soon after the difficulty generated by the COVID-9 Pandemic subsides; after all, the Democracy being one of the Basic Features of the Constitution vide *INDIRA NEHRU GANDHI Vs. SHRI RAJ NARAIN*, 1976 (2) SCR 347, the periodic holding of elections to these local bodies, is imperative.

In the above circumstances, this writ petition being devoid of merits is liable to be rejected and accordingly, it is, the costs having been made easy.