

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF DECEMBER, 2016

PRESENT

THE HON' BLE MR. JUSTICE ARAVIND KUMAR

AND

THE HON' BLE MRS JUSTICE S.SUJATHA

WA NO.5384 OF 2016 (GM – RES)

BETWEEN:

1. SRI. RAGHAVENDRA
S/O SRI. CHANDRASHEKAR CHINNIKATTI
AGED ABOUT 42 YEARS
OCCUPATION:BUSINESS
R/AT VAGEESH NAGAR, 7TH CROSS
NEAR KANAKADAS SCHOOL
RANEBENNUR – 581 115
HAVERI DISTRICT.
2. SRI. VEERAPPA
S/O SRI. MAHADEVAPPA MAKANUR
AGE:38 YEARS,
OCCUPATION:BUSINESS
2ND CROSS, ISHWARNAGAR
RANEBENNUR – 581 115
HAVERI DISTRICT.

... APPELLANTS

(BY SRI.G.S. BHAT, ADVOCATE)

AND:

1. THE DEPUTY COMMISSIONER
HAVERI – 581 115.
2. SRI. PUTTAPPA
S/O GUDDAPPA MARIYAPPANAVAR
AGED 45 YEARS
OCCUPATION:BUSINESS

RESIDING AT
MRUTYUNJAYA NAGAR
1ST CROSS, NEAR LPG GODOWN
RANEBENNUR – 581 115
HAVERI DISTRICT.

... RESPONDENTS

(BY SRI. E.S. INDIRESH, AGA FOR R1)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION 108017/2016 DATED 08/12/2016.

THIS APPEAL COMING ON FOR PRELIMINARY HEARING THIS DAY, **ARAVIND KUMAR J.**, DELIVERED THE FOLLOWING:

JUDGMENT

Though matter is listed for preliminary hearing, by consent of learned counsel appearing for both the parties, matter is taken up for final disposal.

2. This intra-Court appeal is directed against the order dated 08.12.2016 passed by the learned Single Judge in W.P.No.108017/2016 whereunder writ petition filed by the appellants calling in question order dated 16.09.2016 – Annexure-J passed by first respondent – Deputy Commissioner adjourning the matter for arguments on main application and listing

the same to 23.09.2016, came to be confirmed by dismissing the writ petition.

3. Appellants and respondents came to be elected as Councilors of the City Municipal Committee, Ranebennur in the elections held during the year 2013. Second respondent herein filed a petition on 10.05.2016 – Annexure-A under Sections 3(i)(a) and 3(i)(b) and Section 4 of the Karnataka Local Authorities (Prohibition and Defection) Act, 1987 (for short ‘Act’) before the Chief Executive Officer –Commissioner, City Municipal Council, Ranebennur against appellants herein alleging that appellants had violated the whip issued by the political party. Said complaint/petition was referred to Deputy Commissioner – first respondent herein on 12.05.2016 and it was registered as CMC Election/07/2016-17. Additional Deputy Commissioner made a note on 23.05.2016 to the effect that complaint had to be submitted within 24 hours from the receipt of such complaint, but same had been submitted to the Deputy Commissioner’s Office on 12.05.2016. On

service of notice of said complaint, appellants herein appeared and filed detailed statement of objections on 11.08.2016 to the main petition. Two interlocutory applications came to be filed seeking rejection of the complaint on the ground that Chief Executive Officer, Ranebennur had not forwarded the complaint within 24 hours to the Deputy Commissioner as required under Section 4(2) of the Act and such complaint is not maintainable and also seeking production of original document of service of whip. The grievance of the appellants before the learned Single Judge was that complaint filed by respondent No.2 was itself not maintainable and the order/endorsement made by the Tahsildar as well as Addl. Deputy Commissioner on 22.05.2016 and 23.05.2016 respectively itself indicated that complaint is not maintainable and this issue had not been adjudicated by the first respondent - Deputy Commissioner. It was also contended that interlocutory applications which were filed by them for hearing the issue regarding maintainability of the complaint as well as seeking production of document had not at all been

considered and without considering these applications, first respondent – adjudicating authority ought not to have directed the appellants herein to address arguments on main application/petition by order dated 16.09.2016 and as such assailing the same, writ petition came to be filed.

4. Learned single Judge after considering the rival contentions by order dated 08.12.2016 has dismissed the petition on the ground that Section 4(2) of the Act mandates that when an application is filed under Karnataka Local Authorities (Prohibition and Defection) Act, 1987, seeking disqualification same has to be disposed of within 30 days and though six months have elapsed, no final decision had been taken and as such directed the Deputy Commissioner to comply with the mandate of law.

5. Learned Government Advocate has supported the order under challenge.

6. Having heard the learned counsel appearing for both sides and on perusal of the records we find that there is no error committed by the learned single Judge or there has been any miscarriage in the administration of justice, inasmuch as, the contentions which are now raised by the appellants are undisputedly pleaded in the statement of objections filed to the main petition or application before first respondent. In view of sub-Section (2) of Section 4 of the Act clearly indicating that when an application alleging anti-defection has been filed or alleging that there has been violation of the whip issued by a political party, same is required to be disposed of within a period of 30 days, same cannot be breached. On account of successive applications having been filed by the appellants, matter could not reach finality before the first respondent. It is because of this precise reason, learned single Judge has directed the first respondent-Deputy Commissioner, Haveri, to dispose of the petition/complaint as per mandate of Section 4(2) of the Act.

7. It is needless to state that first respondent – Authority while adjudicating the complaint, would take note of not only the contention raised by the petitioners in their statement of objections but also note made by the Tahsildar as well as Addl. Deputy Commissioner on 22.05.2016 and 23.05.2016 - Annexure-J respectively and dispose of the petition/complaint on merits and in accordance with law.

Subject to above observation, writ appeal stands ***rejected.***

**Sd/-
JUDGE**

**Sd/-
JUDGE**

NM