

High Court of Karnataka
Daily Orders of the Case Number : WP 24739/2012 for the date of order 08/01/2013

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Honble Justice N.KUMAR AND B.V.NAGARATHNA
08/01/2013

Order in WP 24739/2012

NKJ & BVNJ:

8.1.2013 W.P.Nos. 24739-40/2012
46523/2012, 30450/2012,
46601/2012

By the Constitution 74th amendment, Part IXA was inserted in the Constitution of India which came into effect from 1.6.1993. By this Constitution amendment what is sought to be achieved is decentralization and devolution of power. Article 243S deals with Constitution and composition of Wards Committees, etc., It reads as under : -

. 243S. Constitution and composition of wards Committees, etc.

(1) There shall be constituted Wards Committees, consisting of one or more Wards, within the territorial area of a Municipality having a population of three lakhs or more.

(2) The Legislature of a State may, by law, make provision with respect to

- (a) the composition and the territorial area of a Wards Committee;
- (b) the manner in which the seats in a Wards Committee shall be filled

(3) A member of a Municipality representing a ward within the territorial area of the Wards Committee shall be a member of that Committee

(4) Where a Wards Committee consists of

- (a) one ward, the member representing that ward in the Municipality; or
- (b) two or more wards, one of the members representing such wards in the Municipality elected by the members of the Wards Committee, shall be the Chairperson of that Committee

(5) Nothing in this article shall be deemed to prevent the Legislature of a State from making any provision for the Constitution of Committees in addition to the Wards Committees

2. Giving effect to the said Constitutional mandate, by Act No. 35/1994, the Karnataka Legislature inserted by way of amendment, Section 13A in the Karnataka Municipal Corporations Act, 1976 (for short hereinafter referred to as the Act) providing for Wards Committee. The said provision reads as under : -

13-A. Wards Committee.-

(1) Where the population of a city is three lakhs or more there shall be constituted Wards Committee consisting of one or more wards within the territorial area of the Corporation.

(2) Each Wards Committee shall consist of.-

(a) the Councillors of the Corporation representing the wards in the Corporation; and

(b) not more than five persons having knowledge and experience in municipal administration, nominated by the Government:

Provided that a person shall not be qualified for being nominated and for being a member of the Wards Committee, if under the provision of this Act or any other law for the time being in force, he is not qualified for being elected as and for being a councillor;

(c) not more than two members nominated by the Government from such non-Government organizations and community based organizations working within the area of the Wards Committee, as the Government may specify in this behalf.

(3) The term of office of the members of the Wards Committees shall be co-extensive with the term of office of the Councillors of the Corporation.

(4) Where a Wards Committee consists of two or more wards, one of the members of the Wards Committee representing a ward in the Corporation shall be elected to be the Chairman of the Wards Committee in such manner as may be prescribed.

(5) The Chairman of the Wards Committee shall vacate the office as soon as he ceases to be a Councillor.

(6) In the event of the office of the Chairman falling vacant before the expiry of its term, the Wards Committee shall elect a new Chairman;

Provided that a Chairman so elected shall hold office so long only as the Chairman in whose place he is elected would have held the office if such vacancy had not occurred.

(7) The functions and duties of a Wards Committee and the procedure to be adopted by a Wards Committee for the transaction of its business shall be such as may be prescribed.

3. A reading of the aforesaid provision makes it clear that, it is obligatory on the part of the State to constitute Wards Committee within the territorial area of the Corporation. The Councilors of the area representing the wards is a member of such Wards Committee. However, the Government is vested with the power to appoint nominees not more than 5 persons having knowledge and experience in Municipal Administration in such Wards Committee. Similarly, not more than 2 members nominated by the Government from such non-Government organizations and community based organizations working within the area of the Wards Committee shall be nominated. The functions and duties of the Wards Committee and the procedure to be adopted by a Wards Committee for the transaction of its business have to be prescribed under the Act. It is unfortunate that even after three years of the constitution of the present Corporation, the Government has not taken any steps to nominate the persons as aforesaid. It is a clear case of total inaction. Probably that is the reason why the Bangalore city is suffering. This problem of garbage is because of the inaction on the part of the Government. If persons with experience in Municipal Administration and persons having similar experience and who are working in non-Governmental organizations and community based organizations were made members of this Wards Committee, probably they could have sorted out this problem and avoided the Bangalore city getting the name of garbage city. Whatever order this Court passes in public interest to sort out the problem of this menace of garbage, unless at the ground level those orders are implemented, proper, prompt, honest step is taken, it is not possible to solve this problem. Therefore, it is of utmost importance that Wards Committee should be constituted at the earliest so that the Councilors who would be the members of such Wards could be held personally liable for any future mismanagement of this garbage clearance. By virtue of such elected office he would be the Chairman of the Wards Committee. It is alleged that not only in this case, in the connected matter which this Court is hearing where there is a challenge to the tender notification, the persons who are at present working as contractors for over a period are all nominees of the Corporators. Similarly, the persons who have bagged the

recent contracts are also the nominees of the Corporators. Even in cases where the Corporation is carrying out its cleaning operations, where private contracts are entered into, they are also the nominees of the Corporators. So, the Corporators' hand is seen in every transaction, but they are not made accountable because no Wards Committee is constituted. It is relevant to point out at this stage, Section 26 of the Act which deals with general disqualification for becoming a Councilor. Sub-Clause (k) of Sub-section (1) of Section 26 of the Act says that, a person shall be disqualified for being chosen as and for being a Councilor if, save as hereinafter provided, he has, directly or indirectly, by himself or his partner, any share of interest in any work done by order of the Corporation, or in any contract or employment with or under, or by or on behalf of the Corporation. Similarly, Section 80 of the Act categorically provides that, Councilors have to refrain from taking part in discussion and voting on questions in which they have pecuniary interest. It provides that, no Councilor shall vote on or take part in the discussion of, any question coming up for consideration at a meeting of the Corporation or any Standing Committee, if the question is one in which apart from its general application to the public he has any direct or indirect pecuniary interest by himself, or his partner.

4. Therefore, the legislature has consciously made this provision obviously of its experience of how these elected members interfere in the running of the Corporation and would have conflict of interest. Therefore, it is of utmost importance to bring it to the notice of the elected representatives that their action as aforesaid would not only lead to their not able to vote but it may disqualify them from contesting the future election. If the Corporators truly act as representatives of the people, take part actively and honestly in the work of the committee, keep their ward clean, not only they will command respect from the people of that ward they can be assured success in the next elections also. At the same time if they indulge in acts as aforesaid, the people would take care of them. All this is not possible because of the non-constitution of the Wards Committee. Though the Parliament amended by inserting the provision, the provision is in the book, it is not implemented in its true spirit and thus the Constitutional mandate is successfully negated by the State for almost two decades. Probably that is the reason why the Court is also finding it difficult to make any further progress in this public interest petition in granting real relief to the public who are eagerly waiting and looking at this Court. Therefore, the first thing to be done is, the Wards Committee is to be constituted.

5. The learned Government Advocate submits that, as there was no request from the Corporation, the Government has not nominated the members. If any such request were to be made, certainly the Government would immediately make such nomination. Section 13A do not contemplate any such request from the Corporation to nominate the members. It provides for the constitution of the committee. By virtue of

the elected representatives of Wards, the Councilor would be the member of the committee and he also would be the Chairman of the said committee. Other members as stipulated in the aforesaid provision are to be nominated by the Government. The moment the Government nominates them, the committee comes into existence and they have to perform their duties as contemplated under the Act. Therefore, he submits if 15 days time is granted, this nomination process would be completed and the Wards committee can commence their work earnestly in terms of the Act and the Rules.

6. Call this case on 21.1.2013 to report compliance in so far as nomination of the members of the Wards Committees to all the 198 Wards of Bruhat Bangalore Mahanagara Palike.

7. The petitioner in W.P. Nos. 24739-40/2012 has filed an IA enclosing the extract of the report by the Comptroller and Auditor General for the year 2010-2011. Dealing with the road and drain works in Bruhat Bangalore Mahanagara Palike it is stated that, the planning process was undertaken without any proper need-assessment or taking into account the road history. There was no sanctity in the approval of programme of works due to execution of large number of works over and above the budgeted works. There were irregularities in accounting of deposits, mis-utilisation of deposits and irregular discounting of bills, etc., Operational controls were not in place and the tendering process was vitiated, tenders were manipulated, estimates were tampered with and funds were siphoned off. Works were executed to benefit the contractors resulting in doubtful, wasteful, irregular and avoidable works. Monitoring and internal control mechanism were absent at all levels. Unfortunately, the counsel for the petitioner has not produced the entire report. He has produced only few pages. It is not possible to get comprehensive idea of what is said in the said report. In fact, in the end the recommendation is made stating as under : -

- (a) Accountability needs to be fixed on the authorities responsible for vitiating the tendering system.
- (b) Pre-audit should strictly be enforced to curtail manipulations in estimates and execution.
- (c) Accountability mechanism needs to be strengthened to avoid issue of work orders before entering into agreements with the contractors.
- (d) Recovery should be effected from officials responsible for faulty works execution.
- (e) Monitoring at all levels needs to be strengthened.

8. If the aforesaid facts are true, then it is not surprising that this garbage problem is

one such problem arisen out of such mis-management. Therefore, the Corporation is directed to place on record the said entire report as well as what action has been taken as per the recommendations in the said report.

9. This Court by order dated 6.11.2012 directed the Karnataka Compost Development Corporation to file a status report within one week from the date of the order. Sri Devdas, learned AGA, was directed to take notice on behalf of the said Corporation. Managing Director of the said Corporation was directed to be personally present in the Court on the next date of hearing. On 22.11.2012 referring to the letter of the said Corporation dated 17.11.2012 wherein they had mentioned that, out of 9,65,363 tonnes of garbage received, the said Corporation has processed 8,00,000 tonnes leaving a balance of 1,65,000 tonnes, the processing of which, is in progress at the rate of 200 tonnes per day. Further, it is recorded in the said order that despite this accumulation, it has expressed its willingness to accept 75 to 100 tonnes per day of segregated wet waste on certain conditions mentioned in the said letter. Therefore, this Court expressed the hope that BBMP would respond to their letter with the urgency that it deserves. Further it was also observed that, the State Government would respond to the requirements of the Karnataka Compost Development Corporation Limited as expressed in their letter. Thereafter, we have not heard anything in the matter. In this context it is necessary to direct the Managing Director of the said Corporation to be present in Court on the next date of hearing, i.e., 21.1.2013 to report to the Court what action has been taken, how the Government has responded to the request as well as the Bangalore City Corporation.

10. In the status report filed by the Corporation it is stated that, the Additional Commissioner (Bommanahalli), Chief Conservator of Forest along with Chief Engineer (Lakes) have inspected the Subramanyapura lake on 18.12.2012 and have reported that there is no dumping of garbage. The Bangalore Development Authority has been requested to put adequate security to prevent debris dumping in the tank bed in future. The petitioner in W.P. No. 46523/2012 files a memo along with a photograph. In the memo it is stated that there is dumping of construction material and garbage in the Raja Kaluve leading to the tank. When the said fact was brought to the notice of the Chief Engineer, Raja Kaluve, he assured that he would investigate the matter and appropriate action would be taken. In spite of the assurance, the said activity is continuing even to this day and in the interim period 3 to 4 acres of the lake, Raja Kaluve and abutting Gomala land appears to have been encroached by the illegal dumping of garbage, construction debris and covering the same with soil.

11. The Commissioner of the Corporation who is present before the Court fairly submitted that, in view of the aforesaid allegations, he would immediately visit the spot and take appropriate action. He submitted if Raja Kaluve is filled with garbage or construction debris, action would be taken to immediately clear the garbage and

construction material and also appropriate action will be taken against all concerned if they have misled the Corporation or submitted any false report. He assured the Court that he would submit the report after visiting the spot.

Call on 21.1.2013.

Copy of this order shall be handed to all the concerned counsels/parties.

(N. KUMAR)
JUDGE

(B V NAGARATHNA)
JUDGE