

High Court of Karnataka

Daily Orders of the Case Number: WP 24739/2012 for the date of order 21/01/2013

Honble Justice N.KUMAR AND

B.V.NAGARATHNA

21/01/2013

Order in WP 24739/2012

NKJ & BVNJ:

21.1.2013

W.P.Nos.24739-740/12 c/w

W.P.Nos.46601/12, 30450/12 and 46523/12

The BBMP has filed the action taken report.

In pursuance of the orders passed by this Court on 10.1.2013 a meeting of the BBMP council was convened on 15.1.2013. They have taken a decision to constitute ward committees. It appears they had some doubts about the constitution inasmuch as in the Rule framed by the Government no provision is made for reservation to backward communities. Therefore, they want the Government to have relook regarding the constitution of ward committees. Insofar as the appointment of Secretaries to the ward committees is

concerned an order dated 15.1.2013 is passed by the Commissioner of Corporation appointing Secretaries to 198 wards, a copy of which is enclosed to the said report. The Commissioner who is present before the Court submitted though in the resolution they expressed reservation and sought government clarification in fact majority of the Corporators have submitted list of persons to be nominated for ward committees. The remaining are likely to give their names in the next couple of days. However sometime is required for him to verify the antecedents of these persons and submits that fifteen days time may be granted and by the next date of hearing they will produce the list of persons who are nominated to each of these 198 wards. When the Commissioner submitted that he has to verify the antecedents, the learned counsel appearing for the petitioners brought to our notice Section 13-H of the Karnataka Municipal Corporations (Amend.) Act, 2011, in particular Sub-Section(3) which provides that any person disqualified from being elected as a Councillor shall not be nominated as member of the Ward

Committee. Therefore, qualification is also prescribed in law for being appointed as a member of the ward committee and as such qualification being the same as prescribed for the Councillor. The qualifications and disqualifications for Councillor are found in Sections 25 and 26 of the Karnataka Municipal Corporations Act, 1976. Dealing with qualification of a candidate to contest to the post of councilor, sub-section(1) of Section 25 says no person shall be qualified for election as a Councillor unless his name is included in the electoral roll of any ward of the City and in respect of any seats reserved for the Scheduled Castes or the [Scheduled Tribes, Backward Classes or Women] such person is a member of any such [Caste, Tribe or Classes] or is a Woman as the case may be. Therefore, it is clear that unless a persons name is included in the electoral roll of any ward, he cannot be appointed a Member of the Ward Committee. Sub-section (2) of Section 25 speaks about the disqualifications. It states that no person who is disqualified from being a member of the State Legislature, no servant of the Corporation and no whole

time servant of the State Government or Central Government shall be qualified for election or for holding office as a Councillor. The same disqualifications by virtue of Sub-Section (3) of Section 13-H applies to the members of ward committee also. In addition Section 26 deals with general disqualification for becoming a Councillor, which reads as under:-

26. General disqualification for becoming a councillor.- (1) A person shall be disqualified for being chosen as and for being a councillor,-

(a) if he has been sentenced by a criminal court to imprisonment for an offence punishable with imprisonment for a term exceeding six months, provided that (1) the offence is one which involves moral turpitude and (2) such sentence has not been reversed or quashed or the offence not pardoned; or

(b) if he is convicted of an offence under the provisions of the Untouchability offences Act, 1955 (Central Act 22 of 1955) or the

**Prevention of Food Adulteration Act, 1954
(Central Act 37 of 1954);**

(c) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule to the Constitution of India, or under any local or other authority subject to the control of any of the said Governments other than such offices as are declared by rules made under this Act not to disqualify the holder; or

(d) if he has been dismissed from service under a local authority or from Government service; or

(e) if, having been a legal practitioner, he has been dismissed or suspended from practice by order of a competent authority, the disqualification in the latter case being operative during the period of such suspension; or

(f) if he is a deaf, mute; or

(g) is he is of unsound mind and stands so

declared by a competent court; or

**(h) if he is an undischarged insolvent;
or 1977: KAR. ACT 14] Municipal
Corporations 357**

**(i) if he is not a citizen of India or has
voluntarily acquired the citizenship of a
foreign State, or is under any
acknowledgment of allegiance or adherence
to a foreign State; or**

**1(j) if he is so disqualified by any law for
the time being in force for the purposes of
election to the State Legislature: Provided
that no person shall be disqualified on the
ground that he is less than twenty five years
if he has attained the age of twenty one
years.1 1. Substituted by Act 35 of 1994
w.e.f.1.6.1994.**

**(k) if, save as hereinafter provided, he has,
directly or indirectly, by himself or his
partner, any share or 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; or**

(l) if he is employed as paid legal practitioner on behalf of the Corporation or accepts employment as legal practitioner against the Corporation; or

(m) if he is a licensed suryor or plumber of water supply contract of the corporation or is a partner of a firm of which any such licensed person is a partner; or

(n) if he fails to pay arrears of any kind due by him, otherwise than as an agent, receiver, trustee or an executor, to the Corporation within three months after a notice in this behalf has been served upon him; or

(o) if he has in proceedings questioning the validity or regularity of an election been found to have been guilty of,-

(i) any corrupt practice, or

(ii) any offence punishable under section 171E or section 171F of the Indian Penal Code, or any offence punishable under section 40 or section 52 or clause (a) of sub-section (2) of section 53 of this Act,

unless a period of six years has elapsed since the date of the finding or the disqualification

**has been removed by order by the
Government:**

**Provided that,- (a) a person shall not be
deemed to have incurred any
disqualification under clause (c) by reason
only of receiving,-**

**(i) any pension, orMunicipal Corporations
1977: KAR. ACT 14] 358 (ii) any allowance
or facility approved by the Government for
serving as president or vice-president or as
councillor;**

**(b) the disqualification in clauses (a) and (d)
shall cease to operate after the expiry of four
years from the date of such sentence,
dismissal or removal or earlier by an order
of the Government;**

**(c) a person shall not be deemed to have
incurred disqualification under clause (k) by
reason of his,-**

**(i) having any share or interest in any lease,
sale or purchase of any immovable property
or in any agreement for the same, or**

(ii) having a share or interest in any joint stock company otherwise than as managing director or agent or in any literary association registered under the Societies Registration Act or in any co-operative society which shall contract with or be employed by or on behalf of the Corporation, or

(iii) having a share or interest in any newspaper in which any advertisement relating to the affairs of the Corporation may be inserted, or

(iv) holding a debenture or being otherwise interested in any loan raised by or on behalf of the Corporation, or

(v) having a share or interest in the occasional sale of any article in which he regularly trades, to the Corporation to a value not exceeding in any official year fifty rupees or such higher amount not exceeding five hundred rupees as may be prescribed, or

(vi) having a share or interest in the

occasional letting out on hire to the Corporation or in the hiring from the Corporation, of any article for an amount not exceeding in any official year fifty rupees or such higher amount not exceeding five hundred rupees as may be prescribed.

1[(1A) A person shall be disqualified for being a Councillor if he is so disqualified under the Karnataka Local Authorities (Prohibition of Defection) Act, 1987.]11. Inserted by Act 20 of 1987 w.e.f.29.12.1986.

1[(1B) A person shall be disqualified for being chosen as and for being a Councillor if he is disqualified under section 26C.

Provided that the disqualification under this sub-section shall cease to operate after the expiry of three years from the date of the order made under section 26C]

(2) If any councillor during the term for which he has been elected,- (a) becomes subject to any disqualification specified in sub-section (1), or (b) votes or takes part as a councillor in the discussions of any

matter,-

(i) in which he has, directly, or indirectly, by himself or his partner, any such share or interest as is described in sub-clause (i), (ii), (iii) or (v) of clause (c) of the provisio to sub-section (1) whatever may be the value of such share or interest, or

(ii) in which he is professionally interested on behalf of a principal or other person, or

(iii) in which he is engaged at the time in any proceeding against the Corporation; or

(c) absents himself from the meetings of the Corporation during three consecutive months except with the leave of the Corporation: Provided that no such leave shall be granted in case of absence from the meetings of the Corporation during a period exceeding six consecutive months:

Provided further that when an application is made by a councillor to the Corporation for leave to absent himself and the corporation fails to inform the applicant of its decision on the application within a period of one

month from the date of the application, the leave applied for shall be deemed to have been granted by the Corporation, the 1[Regional Commissioner]1 may, either suo motu or on a report made to him, after such enquiry as he deems fit, by order, decide, whether the seat of the person concerned has become vacant or not. As far as may be, such order shall be made within thirty days from the date of receipt of the report or where action is taken suo motu, within thirty days from the initiation thereof.

(3) Any person aggrieved by the decision of the 1[Regional Commissioner]1 under sub-section (2) may, within a period of thirty days from the date of such decision, appeal to the Government and the orders passed by the Government on such appeal shall be final:

Provided that no order shall be passed under sub-sections (2) and (3) against any councillor without giving him a reasonable opportunity of being heard.

Therefore, though the Corporators have submitted a list of members to be nominated to the Ward Committees there is a statutory obligation to find out that those persons are not suffering from any disqualifications as prescribed in law. It is only when they are not disqualified and found to be qualified they could be appointed, which requires scrutiny. The Commissioner who is present before the Court seeks for 15 days time to scrutinize the list submitted by the Corporators and make appointments. He requests for 15 days time is granted for the aforesaid purpose. The Commissioner shall take proper care to see that persons who are disqualified are not appointed lest wrong message is sent to the public in this regard.

In the report submitted, it is stated that steps have been taken to commission plants for segregation and processing of waste generated every day and some time schedule is given. It is in this background as there is no unanimity in the figures given regarding the generation of waste in the Corporation limits and as it is a very important factor on the basis of which appropriate directions

could be issued which will also have financial implications, it is appropriate that the actual waste generated in each ward has to be measured. The material on record only gives a rough estimate and not the actual measurement of waste. The Commissioner, who is present before the Court submits it is not possible to measure the waste in each ward. After collection of wastes from each ward it is transported to the filling stations. At that stage, before it is unloaded from the lorry they will put a mechanism in place where the entire waste is weighed and measurement is recorded and to make sure that there is no pilferage or any allegations are made against the officials of the Corporation a person from the Karnataka Compost Development Corporation Limited(for short KCDC) could be deputed and a person from the NGOs also could be a part of the scheme which weighs and measures the waste which is transported to the filling stations before it is unloaded. We find that the said suggestion is just and appropriate. Therefore the Corporation shall take steps to get the waste collected from each ward after it is transported to the

filling stations and before it is unloaded is weighed, measured and the said measurement is recorded. The said measurement shall be done every day for a period of one month. In the end of the day after these measurements are taken, in token of correctness of the said measurements not only the Corporation officials shall affix their signature, an official from the KCBC and the NGOs in whose presence the measurements have been done also shall affix their signatures. The statement containing their original signatures after being collected for 30 days shall be submitted to the Court in a proper tabular column so that we can find out what is the quantify of waste generated in each ward. The Commissioner further submitted that these waste collection and dumping could be classified into three categories, namely, (1)the wards where the maximum waste is collected, (2)where average collection takes place and (3) below average collection takes place, so that for future action that Data will be helpful. Therefore, the Corporation is at liberty to categorise the waste collection, generation and

transportation for measurement and submit the report accordingly.

This measurement shall start from 1st of February 2013 and let them do it for 30 days and submit a report. The petitioners who are party-in-person shall submit the names of the persons who will be at the site at the time of measurement with proper instructions to them about this Courts order.

If the waste transported is separated, dry waste or the wet waste, separate measurement shall be done. If the waste transported is mixed waste, that also shall be measured together. It is made clear that in order to get the complete picture of the total waste generated this measurement shall be done in respect of both bulk generators and household waste.

Insofar as the steps taken to restore the Subramanyapura Lake is concerned, in the report they have set out the action taken by them so far. However, the Commissioner who is present before the Court brought to

our notice that the land in which this lake is situated is categorized as a gomal land which roughly measures 18 ½ acres. Though there exists a lake, it is not officially notified. Now steps are taken to get it notified. In fact before the Court, the Tahsildar of the area where this lake is present is also present before the Court. Similarly, the officials from the BDA and engineers from the Corporation are also present. The said lake is encroached. There are slum dwellers. Therefore in co-ordination with the Slum Clearance Board steps have been taken to put up constructions for the slum dwellers and in a couple of months the construction would be over and would be ready for occupation. Substantial number of slum dwellers would be shiftged and thus slums would be demolished. Steps are also taken for removal of encroachments. In fact the Tahsildar has already issued notices and the matters are heard and what remains is passing of the orders, which will be done in a couple of days. The BDA with whom the possession of the property lies has earmarked Rs.85 lakhs for the said purpose. Steps have been taken to remove the debris.

In fact after removal of the debris and shifting of slum dwellers, the entire lake would be fenced after conducting a survey in accordance with law and certain amount of money is already provided for that purpose.

Insofar as Rajakaluves, which are completely blocked, the responsibility to restore lies with the Corporation and they have initiated appropriate action for restoration of the rajakaluves. He further submitted as on today sewerage is let into the lake. Therefore now the BWSSB is also associated. They would find out the source from where sewerage is coming and take steps to divert the sewerage reaching the tank. In view of the aforesaid steps taken by the Corporation and other agencies we are satisfied that by giving sometime this problem could be solved satisfactorily. Accordingly, time sought for is granted with a direction to place on record the further action taken after a period of one month.

**The Managing Director Karnataka
Compost Development Corporation Limited**

is present in terms of the order passed on the earlier occasion. They have also submitted a Status report as on 19.01.2013 seeking certain assistance from the Bruhat Bengaluru Mahanagara Palike to perform their functions. The Commissioner of Bruhat Bengaluru Mahanagara Palike who is before the Court submits there is an extent of 15 acres of land adjoining the Karnataka Compost Development Corporation Limited existing plant which will be handed over to them for establishment of one more plant and they will also ensure whatever assistance they want for running the said plant. In the report, it is stated there exists 1.6 tonnes of garbage yet to be processed by them. If the aforesaid facilities are made available apart from processing the existing garbage, they may also receive 75 to 100 metric tonnes of garbage every day from Corporation for processing. In fact, the Commissioner pointed out they have also identified one more land at Chikkanagamangala which will also be handed over to Karnataka Compost Development Corporation Limited for establishment of one more compost

plant, so that they can start processing the fresh garbage after its commissioning. As both of them have agreed to work in unison, the Corporation shall consider the request made by the Karnataka Compost Development Corporation Limited and take immediate steps so that the processing of not only the existing garbage but also the garbage to be collected in future is processed without any problem at the earliest. They shall file the action taken report within a month from today.

The office shall hand over copies of this order to all the parties concerned forthwith.

Call on 04.02.2013 to report about the constitution of the Committee and its functioning.

(N.KUMAR)

JUDGE

(B.V.NAGARATHNA)

JUDGE

***alb/sh.**

[Back](#)

DISCLAIMER: The contents of this site are only for information purpose. Users are advised not to rely only on such information for any purpose. Neither the High Court of Karnataka nor the National Informatics Centre , Ministry of Information Technology, Government of India is responsible for any consequences by use of such information.