

**(2016) 09 KAR CK 0006**

**KARNATAKA HIGH COURT (DHARWAD BENCH)**

**Case No:** Writ Petition No. 112406 of 2014 (LB-RES).

Smt. Mahadevi Ashok Paranjape  
- Petitioner @HASH State of  
Karnataka and Others

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** Sept. 1, 2016

**Acts Referred:**

- Constitution of India, 1950 - Article 14
- Karnataka Local Authorities (Prohibition of Defection) Act, 1987 - Section 4(2)(iii)

**Citation:** (2016) AIR(Karnataka) 180 : (2017) 1 AirKarR 395

**Hon'ble Judges:** P.S. Dinesh Kumar, J.

**Bench:** Single Bench

**Advocate:** Jagadish Patil, Advocate, for the Petitioner; Smt. K. Vidyavath, Addl. Govt. Advocate, for the Respondent Nos. 1 and 2; Shivakumar S. Badawadgi, Advocate, for the Respondent No. 3

**Final Decision:** Disposed Off

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### **Judgement**

@JUDGMENTTAG-ORDER

**Mr. P.S. Dinesh Kumar, J.** - Heard.

2. Petitioner is a member of Athani Town Municipal Council. She was elected from National Congress Party. It appears, she violated the whip issued by her party and cast her vote in favour of a candidate belonging to another political party. The Block President of her party complained this aspect to the 2nd respondent. The 2nd respondent based on the material supplied to him by the complainant, without affording an opportunity of personal hearing to the petitioner, has passed the impugned order as per Annexure-G and disqualified her from membership of the Council. The said order is under challenge in this writ petition.

3. Assailing the legality and correctness of the impugned order, learned counsel for the petitioner Sri Jagadish Patil submits that the order is hit by the settled dictum of law as the same is passed in gross violation of principles of natural justice. The 2nd respondent has not given an opportunity to the petitioner to present her case before passing such harsh order disqualifying the petitioner from the Council. Thus, the learned counsel submits that the impugned order is unsustainable in law and accordingly prays for quashing the same.

4. Per contra, learned Addl. Government Advocate appearing for respondent Nos. 1 and 2 supporting the impugned order submits that petitioner cannot complain about personal hearing at this stage as she did not ask for one. She however submits that the 2nd respondent has examined the material on record and passed the impugned order. Similar is the submission of learned counsel for the 3rd respondent Sri Shivakumar S. Badawadgi. In addition, he vehemently contends that there is no error in the order passed by the Deputy Commissioner and prays that the writ petition be dismissed.

5. I have given my careful consideration to the submission of the learned counsel on both sides and perused the material on record.

6. In the statement of objections, the respondent-State have contended that an opportunity of personal hearing was not afforded to the petitioner because petitioner did not request for the same.

7. It is settled in law that an order meeting a citizen with civil consequence shall not be passed without issuing notice and affording a reasonable opportunity of hearing. Strict compliance of doctrine of audi alteram partem is the sine qua non of every civilised society.

8. It is not in dispute that the petitioner was not given an opportunity of personal hearing. The resultant effect of the impugned order is that she has been disqualified as a Member of the Council. Town Municipal Council is an elected civic body and an Elected Member cannot be deprived of her position in a democratic setup by disqualifying her without affording an opportunity to place her defence in the manner known to law.

9. I may respectfully recall and recollect following two passages of the Constitution Bench judgment of the Hon"ble Supreme Court authored by His Lordship Hon"ble Mr. Justice V.R. Krishna Iyer (as he then was) in the case of **Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others, reported in (1978) 1 SCC 405 : (AIR 1978 SC 851)**, which read as under:

43. Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law" excludes it, applies when people are affected by acts of authority. It is the hone of

healthy Government, recognised from earliest times and not a mystic testament of Judge-made law. Indeed, from the legendary days of Adam - and of Kautilya's Arthashastra - the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these depths for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case-law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system.

48. Once we understand the soul of the rule as fair play in action - and it is so - we must hold that it extends to both the fields. After all, administrative power in a democratic setup is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation: nothing more - but nothing less. The "exceptions" to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case. Textbook excerpts and ratios from rulings can be heaped, but they all converge to the same point that *audi alteram partem* is the justice of the law, without, of course, making law lifeless absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation.

(Emphasis supplied)

10. In the premise, the order as per Annexure-G passed without affording an opportunity of hearing to the petitioner is unsustainable in law and liable to be quashed.

11. In the result,

(i) the impugned order dated 2.11/12.2014, Annexure-G passed by the Deputy Commissioner, is quashed;

(ii) Rule is issued and made absolute;

(iii) The matter is remitted back to the 2nd respondent-Deputy Commissioner to afford an opportunity of hearing to the petitioner and dispose of the same as early as possible and in any event, within an outer limit of two months from the date of receipt of a copy of this order;

(iv) Petitioner is directed to appear before the Deputy Commissioner on 13.9.2016 and receive further instructions.

12. Petition is disposed of in the above terms.

13. No costs.

14. In view of disposal of the petition, I.A. No. 1/2016 filed for impleading also stands disposed of.