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HC-KAR

NC: 2026:KHC-D:16759
WP No. 109276 of 2025

CNR: KAHC020252042025

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 8TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE T.M.NADAF

WRIT PETITION NO.109276 OF 2025 (LB-ELE)

BETWEEN:

1. RAVINDRAPPA S/O. UJJAPPA MUDIYAPPANAVAR,
   AGE. 62 YEARS, OCC. BUSINESS,
   R/O. SHIVA PETROL BUNK NEAR RATTIHATTI,
   DIST. HAVERI-581116.

2. SHIVAKUMAR S/O. DEVENDRAPPA UPPAR,
   AGE. 48 YEARS, OCC. BUSINESS,
   R/O. KOTE RASTE, UPPAR ONI, RATTIHALLI,
   DIST HAVERI-581116.

...PETITIONERS

(BY SRI. JAYANT RAMACHANDRA ITAGI, ADVOCATE)

AND:

1. THE DEPUTY COMMISSIONER,
   DISTRICT ADMINISTRATIVE COMPLEX,
   DEVAGIRI ROAD, DEVAGIRI, DIST. HAVERI-581 110.

2. SANJEEV @ SANJEEVKUMAR
   S/O. MUDIGOWDA PATIL @ NIRALGI,
   AGE. 56 YEARS, OCC. BUSINESS,
   R/O. BASAVESHWAR NAGAR, "B" BLOCK,
   16TH CROSS, DIST. HAVERI-581 110.

...RESPONDENTS

(BY SMT. SUNITHA J.SEQUEIRA, AGA FOR R1;
SRI. SHIVARAJ P.MUDHOL, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE 1) A WRIT OF CERTIORARI QUASHING THE IMPUGNED ORDER DATED 01.12.2025 BEARING NO.CHUNAVANE/VAHI:2025-2026 PASSED BY RESPONDENT NO.1/ DEPUTY COMMISSIONER, HAVERI VIDE ANNEXURE-A DISQUALIFYING THE PETITIONERS NO.1 AND 2, IN THE INTEREST OF JUSTICE AND EQUITY. 2) A WRIT OF MANDAMUS,

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THAT THE IMPUGNED ORDER DATED 01/12/2025 BEARING NO.CHUNAVANE/VAHI:2025-2026 DISQUALIFYING THE PETITIONERS NO.1 AND 2 VIDE ANNEXURE-A IS ILLEGAL, NON-EXISTENT/NON EST AND INVALID, THEREBY DIRECTING THE RESPONDENT NO.1/DEPUTY COMMISSIONER, HAVERI TO RE-INSTATE THE PETITIONERS NO.1 AND 2 PRESIDENT AND VICE-PRESIDENT OF RATTIHALLI PATTANA PANCHAYAT AND RESTORE THE STATUS OF RATTIHALLI PATTANA PANCHAYAT TO ITS ORIGINAL POSITION PRIOR TO 01/12/2025. 3) A WRIT OF MANDAMUS, DIRECTIONS, WRIT OR ANY ORDERS TO THE RESPONDENT NO.1 TO 4 AS THIS HON'BLE COURT DEEMS FIT IN THE FACTS AND CIRCUMSTANCES OF THE CASE AS STATED ABOVE, WITH COSTS IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE T.M.NADAF

ORAL ORDER

This Writ Petition is filed seeking following reliefs:

1) *A writ of Certiorari quashing the impugned order dated 01.12.2025 bearing No.Chunavane/Vahi:2025-2026 passed by respondent no.1/ Deputy Commissioner, Haveri vide Annexure-A disqualifying the Petitioner Nos.1 and 2, in the interest of justice and equity.*

2) *A writ of Mandamus, that the impugned order dated 01/12/2025 bearing No.Chunavane/Vahi:2025-2026 disqualifying the Petitioner Nos.1 and 2 vide Annexure-A is illegal, non-existent/non-est and invalid, thereby directing respondent no.1/Deputy*

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Commissioner, Haveri to re-instate the petitioner Nos.1 and 2 President and Vice-president of Rattihalli Pattana Panchayat and restore the status of Rattihalli Pattana Panchayat to its original position prior to 01/12/2025.

3) *A writ of Mandamus, directions, writ or any orders to Respondent Nos.1 to 4 as this Hon'ble Court deems fit in the facts and circumstances of the case as stated above, with costs in the interest of justice and equity.*

2. Heard, Sri.Jayant Ramachandra Itagi, learned counsel appearing for the petitioners, Smt.Sunitha J.Sequeira, learned Addl. Government Advocate appearing for respondent No.1 and Sri.Shivaraj P.Mudhol, learned counsel appearing for respondent No.2.

3. The facts that are not in dispute are as under:

3.1 In an election scheduled on 17.08.2025, the petitioners were elected as Members of Rattihalli Pattan Panchayat.

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3.2 In terms of the election, the petitioners were issued Certificate for having been elected as successful candidates by Certificate dated 20th August, 2025.

3.3 It is also reflecting from the documents that petitioner No.1 contested the election under the symbol of political party (Congress) and petitioner No.2 Independently.

3.4 For the purpose of electing Adhyaksha and Upadhyaksha for Rattihalli Pattan Panchayat, election was scheduled on 30.09.2025, as per the provisions of Karnataka Gram Swaraj and Panchayat Raj Act, 1993[1].

4. Though it was contended that, petitioner No.2 subsequently joined Congress party, however the respondent has not produced any document to that effect to show that, petitioner No.2 joined the Congress party, except producing the paper publication, which cannot be

[1] Hereinafter referred to as, 'the Act of 1993'

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considered as a document of petitioner No.2 joining the said party.

5. Be that as it may, the issue involved in this case is that, a Whip has been issued by the concerned person, who is authorized to issue Whip on both the petitioners on 27.09.2025, in respect of election scheduled on 30.09.2025, is valid in law and any act against the said Whip would amount to disqualification from the membership within the meaning of the Karnataka Local Authorities (Prohibition of Defection) Act, 1987.

6. The law on issuance of Whip to be considered as valid in law is no more res-integra with the authoritative pronouncement of Judgment by the Co-ordinate Bench of this Court in the case of ***SMT.SAVITA AND OTHERS VS. THE DISTRICT PRESIDENT, BJP AND OTHERS***[2].

[2] W.P.No.104407/2021, disposed of on 16.12.2022

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7. The coordinate Bench of this Court in ***SAVITA*** supra, following the Judgment of the Hon'ble Supreme Court in the case of ***VISHAKA AND OTHERS VS. STATE OF RAJASTHAN***[3], laid down guidelines. The relevant paragraphs of the order run from Paragraph No.62 till end, which read as under:

> *"62. Consequently, it will have to be held that the order of disqualification passed by the Deputy Commissioner is unsustainable for lack of proof of the direction being communicated or served to the petitioners and the impugned order is accordingly quashed.*
>
> *63. Before parting with the case, it would be necessary to state that, as noticed above, the State has not framed Rules under the 1987 Act and this has contributed to several kinds of litigation and has resulted in which the provisions of the 1987 Act have not been enforced fully and effectively thereby defeating the very purpose of maintaining integrity in public life.*
>
> *64. Thus, until the State frames Rules under the 1987 Act, the following procedure shall be followed in the matter of communicating the direction of the Political party to its elected members.*

[3] (1997) 6 SCC 241

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65. The political party or the person authorized by it to issue a direction shall submit a copy of the direction that it has issued to all its members to act in a particular manner to the authority which is competent to convene the meeting, at least 5 days before the meeting is convened.

66. The authority shall thereafter communicate this direction to the members in the same manner as provided for notifying the members of the meeting convened.

67. The elected members, would thus, have the option of seeking for permission to act contrary to the direction and thus not be subjected to disqualification under the Act.

68. If the direction of the political party is not communicated to the authority empowered to convene the meeting of the elected body, no proceedings for disqualification shall be initiated against the elected members.

69. If the direction of the political party is communicated to the authority empowered to convene the meeting, it shall be the duty of that authority to ensure that the direction of the political party is communicated to the elected member within 5 days preceding the meeting and if notices are served in the same manner relating to the convening of the meeting, such service would be deemed service.

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70. It shall also be open for the political parties to effect service by RPAD or Courier of by email to the elected members giving them at least 5 days to seek for permission to vote contrary to the direction.

71. These guidelines shall be in force till statutory rules are framed by the State under the 1987 Act.

72. A copy of this order be sent to the Chief Secretary who shall ensure that appropriate directions are issued to all concerned to abide by this procedure until statutory rules have been framed.

73. Writ petition is accordingly allowed."

8. The petitioners were declared disqualified from the Membership of Rattihalli Pattan Panchayat by means of order passed by the Deputy Commissioner cum District Election Officer, Haveri, for violation of the provisions of Karnataka Local Authorities (Prohibition of Defection) Act, 1987, on the complaint of respondent No.2.

9. The only point which is to be considered by this Court is, in terms of the law laid down by the Coordinate Bench of this Court in ***SAVITA*** supra is that, 'Whether the

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Whip is served at least five days prior to the date of election'?

10. The answer is obviously in the Negative. The reason being, the order of Whip at Annexures-R3 and R4 clearly indicate that they are issued on 27.09.2025 in respect of an election scheduled to be held on 30.09.2025.

11. This Court at the first instance, while granting interim order, heard learned counsel appearing for both the parties and passed the following order:

> *"**ORAL ORDER***
>
> *I.A.No.1/2025 is allowed.*
>
> *Production of typed copy of Annexure-E dispensed with.*
>
> *Heard the learned counsel appearing for the petitioners, learned counsel appearing for respondent No.2 and learned Additional Advocate General appearing for respondent No.1.*
>
> *Learned counsel for the petitioners submits that admittedly the whip is alleged to have been served on the petitioners on 27.09.2025. The election was supposed to be held on 30.09.2025. Thus, he would refer to the judgment of the Co-ordinate Bench of this*

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Court in Smt.Savita and others v. the District President, Bharati Janata Party and others , wherein it is held that the whip has to be served at least 5 days before the date of the election. Even according to the respondents, the whip is not served before 5 days from the date of election. Apart from that the petitioners also contend that their signature is forged and the whip is not served. Petitioner No.1 contends that petitioner No.1 has not joined the Congress Party.

This being the position, the Court is of the view a prima facie case is made out to stay the operation of the order as it appears that the alleged service of whip is in violation of the guidelines laid down by this Court in the case of Smt.Savita supra.

Accordingly, the operation of the impugned order is stayed till next state.

The respondents are permitted to file application for modification/vacation of the interim order along with the statement of objection.

Secure records from the Office of the Deputy Commissioner.

List on 12.01.2026."

12. A perusal of the order passed by the Deputy Commissioner shows that, he has not at all considered the Judgment of the Coordinate Bench of this Court in

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SAVITA supra, in respect of issuance of Whip, which is required to be issued at least five days prior to the date of election scheduled. In that view of the matter, the order passed by the Deputy Commissioner falls short to the guidelines issued by the Coordinate Bench of this Court in ***SAVITA*** supra. In view thereof, the Writ Petition is ***allowed***. The order passed by the Deputy Commissioner Cum District Election Officer, Haveri is set-aside.

13. Needless to say that the petitioners shall continue as Members in terms of the interim order granted earlier.

14. At this stage, Sri.Shivaraj P.Mudhol, learned counsel brought to the notice of the Court, the order passed by the Coordinate Bench of this Court in ***SRI.SURESH AND OTHERS VS. THE STATE OF KARNATAKA AND OTHERS***[4], wherein the Coordinate

[4] W.P.No.105239/2021, disposed of on 21.04.2022

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Bench of this Court considering the importance of the matter and the issue involved, passed the following order:

> *"44. The petition stands dismissed.*
>
> *45. The Apex Court in **Kihoto Hollohan**'s case has succinctly explained the concept of defection and the impact thereof on the democracy of the India. It is therefore required that suitable rules are required to be framed for the implementation of the Act at the earliest. The Act having first published first published in the Karnataka Gazette on 5th May, 1987, amended in the year 1995, 2010 and 2013, it is rather shocking that no rules have been framed in respect of the said Act.*
>
> *46. Smt.Vidyavathi K. learned Additional Advocate General on enquiry submitted that an endeavor would be made to formulate rules expeditiously without committing on the time.*
>
> *47. These being the important matters, it is required of the State to bestow its attention for formulation of the rules. This Court hopes and believes that the State shall formulate the rules within a period of 6 months from the date of this order.*
>
> *48. In the event of the same not being capable of being formulated by the State, the*

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State can approach this Court for suitable extension."

15. Though this order is passed on 21.04.2022, till this date, the State Government has not formulated the Rules. In that view of the matter, the Coordinate Bench of this Court in ***SAVITA*** supra issued guidelines.

16. It is also germane to note here that, learned AGA in the case of ***SURESH*** supra, has submitted that an endeavor would be made to formulate Rules expeditiously without committing on the time. However, till this date, no action has been contemplated. It is high time for State Government to formulate Rules in that regard, in view of the law laid down by the Hon'ble Supreme Court in ***VISHAKA*** and by the Coordinate Bench of this Court in ***SURESH*** and ***SAVITA*** supra.

17. The Registry is directed to send a copy of this order to the Chief Secretary to take all endeavors to frame the Rules exercising power under Section 9 of the

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Karnataka Local Authorities (Prohibition of Defection) Act, 1987, as expeditiously as possible, within a period of six months from the date of communication and file compliance report before this Court, immediately after expiry of six months, in terms of Judgments supra.

Sd/-
(T.M.NADAF)
JUDGE

TKN
CT: UMD
List No.: 1 Sl No.: 28