
(1984) 02 KAR CK 0011

In the Karnataka High Court

Case No : Writ Petition Nos 13065 and 13066 of 1983

Abdul Raheem and Another

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 10-02-1984

Acts Referred:

Karnataka Municipalities (Election of Councilors) Rules, 1977 — Rule 15 (5)
Karnataka Municipalities Act, 1964 — Section 11, 14 (2)

Citation : AIR 1985 Kar 66 : (1984) 2 KarLJ 172

Hon'ble Judges : M.P. Chandrakantaraj URS, J

Bench : Single Bench

Advocate : S.M. Babu, for the Appellant; B.J. Somayaji, Govt. Pleader, for the Respondent

Judgement

1. These two petitions are presented by two of the candidates who filed their nomination papers to the office of the Councillors of the Town Municipality of Arasikere in accordance with the calendar of events issued by the 2nd respondent Tahsildar and Returning Officer under the provisions of the Karnataka Municipalities Act, 1964 (hereinafter referred to as "the Act").

2. The undisputed facts which are necessary to be stated for disposal of these writ petitions are as follows: The petitioner in the first of the petitions is a voter living in Division No. 1 of the aforementioned Town Municipality while the petitioner in the second of the petitions is a voter residing in the V Division of the same Municipality. Both of them, filed their nominations in response to the calendar of events issued by the Returning Officer, on 5-7-1983. Scrutiny of the nomination papers was taken up by the respondent Returning Officer. on 7-7-1983. The nomination papers of these two petitioners came to be rejected on the ground that their names were not found in the voters' list of the Division in respect of which they had filed their nominations and that they had also not filed with their nominations certified copy of the relevant voters' list of the other Division where their names were found as required by Rs. 15(5) of the Karnataka

Municipalities (Election of Councillors) Rules, 1977 (hereinafter referred to as the Rules"). Aggrieved by such rejection^{6h}, the petitioners have approached this court inter alia contending that the rejection of the nomination papers was wholly without jurisdiction inasmuch as the list prepared in accordance with the provisions of sub-section (2) of S. 14 of the Act was not in conformity with the delimitation of the divisions effected by the Government under the provisions contained in S. 11 of the Act and as a result of which the petitioners names along with the names of others had been interchanged from one Division to another. In the case of the petitioner in the first of the petitions, his name was shown in the third Division while according to the de-limitation in force his name ought to have been shown in the I Division. Similarly the petitioner in the second of the petitions, a resident of Division No. 5, was also shown in Division No. 1, contrary to the de-limitation notification. The actual reason recorded, in the case of both the petitioners for rejecting their nominations is that there has been noncompliance with the requirement of R. 15(5) of the Rules. Normally, that being an improper rejection, should have been agitated in an election petition presented under S. 21 of the Act. But, at the time, the petitions were taken for preliminary hearing, the petitioners having satisfied this court prima facie that the preparation of voters⁷ list was not in accordance with the delimitation effected under S. 11 of the Act, the court issued notice to the respondents and stayed the elections scheduled in respect of Divisions Nos. 1 and 5. The court was persuaded to adopt that course particularly in the light of the admission made by the learned Government Pleader appearing for the respondents that there was indeed a mistake which came to be rectified on 7-7-1983 by the authority referred to in S. 14(2) of the Act and communicated to the Returning Officer on 8-7-1983. Consequently, on 8-7-1983, the Returning Officer made the necessary alteration in the polling stations concerning the two divisions in question along with other polling stations concerning the other divisions.

3. At that stage, in these proceedings, some of the candidates whose nominations had come to be accepted, filed application to intervene and that application has come to be heard along with the main petitions.

4. The contention of the intervening candidates whose nominations came to be accepted was that as there was prima facie material that the nominations of the petitioners was improperly rejected, the court may direct that the nominations be accepted and the calendar of events already issued pursued inasmuch as in the meanwhile the elections to the other three divisions had been completed and what was required was the conduct of the elections for Division Nos. 1 and 5 of the Arsikere town in accordance with such directions as this court may issue.

5. That ought to have been the happy ending of the situation, but for the contention of Sri. S. K. Venkataranga Iyengar, learned counsel for the petitioners that this court ought to declare the entire elections held as void as there had been an alteration of the list of voters after the issue of calendar of events. Elaborating that contention, learned counsel argued that once the list of voters

was published it could not be altered and the election process must continue only in accordance with the list issued prior to the publication of the calendar of events and on the admitted facts of the case, the respondents having secured another corrected list of voters on 7-7-1983, the current list of voters after the issue of the calendar of events was void in law. In support of his argument, he relied upon the decision in the case of Chief Commissioner, Ajmer Vs. Radhey Shyam Dani, . It will be useful to reproduce the passage on which the learned counsel has relied upon, which is as follows(para12):-

"it is of the essence of the elections that proper electoral rolls should be maintained and in order that a proper electoral roll should be maintained it is necessary that after the preparation of the electoral roll opportunity should be given to the parties concerned to scrutinize whether the persons enrolled as electors possessed the requisite qualifications. Opportunity should also be given for the revision of the electoral roll and for the adjudication of claims to be enrolled therein and entertaining objections to such enrolment. Unless this is done, the entire obligation cast upon the authorities holding the elections is not discharged and the elections held on such imperfect electoral rolls would acquire no validity and would be liable to be challenged at the instance of the parties concerned.

6. Admittedly, the above ruling of the Supreme Court is not only binding on me, but its correctness cannot be disputed. The electoral roll referred to in the passage above is relatable to the electoral roll of the Assembly Constituency relevant for the Municipality under the provisions of sub-sec. (1) of S, 14 of the Act. Any change in that electoral roll subsequent to issue of the notification of calendar of events for the election would certainly render the whole of the election void. The reasons are obvious and self-evident. Once the calendar of events has been issued, none other than those who are included in the electoral list can participate in the process of election, the election process having commenced with the issue of notification of the calendar of events.

7. But. in. the instant case I do not think that there has been a change in the electoral roll in so far as the Municipality is concerned. What had happened prior to the issue of calendar of events was that in the list of voters, names had got mixed-up divisionwise resulting in some confusion in regard to the requirement of the compliance of R. 15(5) of the Rules. But none has questioned the correctness of the electoral roll itself. The divisionwise preparation of the electoral roll resulted in error, but that does not, in my opinion, affect the correctness of the electoral roll itself. What was corrected subsequently as communicated to the Returning Officer was the re-adjustment of the names which had been unfortunately found placed in the wrong divisions in the preparation of the divisionwise list. That cannot be equated with the modification or change in the electoral list. I derive some support for the conclusion I have reached from the subsequent decision of the Supreme Court in the case of The State of Karnataka and Others Vs. Gunjahalli Nagappa and Others, . That case

arose out of the decision rendered by this Court and was concerned with the elections held under the Karnataka Municipalities Act with which we are now concerned. It will be useful to extract the passages from the latter decision cited above and they are as follows:

"It is only if the list of voters for the division does not correspond with the Electoral Roll for the territorial area comprised in the division, in the sense that voters shown in the Electoral Roll as residing in the territorial areas of the division are omitted to be included in the list of voters, or voters shown in the Electoral Roll as residing in the territorial area of another division are included in the list of voters, that it can be said that the list of voters is defective and not in accordance with the provisions of the Act.

Where the only defect if at all it could be called a defect which the Returning Officer noticed on physical verification was that the voters shown in the Electoral Roll as residing in the territorial area of one division were in fact residing in another, it was held that it could not be regarded as a defect in the divisionwise lists of voters and it would not stamp them with the vice of not being in conformity with the requirements of the Act. The State Government was, therefore, in any view of the matter, not entitled to make the impugned order cancelling the calendar of events under R. 75 on the ground that the divisional lists of voters were defective and the allocation held on the basis of such lists of voters would not be in accordance with the provisions of the Act. W. P. No. 48 of 1975 D/- 6-2-1975* (Karnataka) Affirmed."

Reported in (1975) 2 Kant LJ 77.

8. The case on hand clearly falls within the ruling of the Supreme Court as enunciated in the second para extracted above. I should not fail to notice that in *The State of Karnataka and Others Vs. Gunjahalli Nagappa and Others*, what really fell for consideration before the Supreme Court was the power of the Government to cancel the calendar of events in purported exercise of power under S. 38 of the Act. This further strengthens my conclusion that the calendar of events need not be cancelled merely because of a minor defect in showing the resident of one territorial division as belonging to another territorial division of the Municipality there being no material defect in the electoral roll itself.

9. Therefore, the proper thing for this Court to do in that circumstance is not to disturb what has already happened, i.e., the acceptance of nominations of candidates in all the divisions and the completion of the election process in respect of three of the divisions. Ends of justice would be served if this Court were to quash the endorsement impugned in these petitions made by the Returning Officer rejecting the nominations of the petitioner and direct him to accept the nominations in the light of the corrected list and continue the calendar of events in so far as those divisions are concerned, namely, divisions 1 and 5, from the point of the acceptance of the petitioners' nomination in accordance with the rules on the dates specified in this order.

10. A decision of the High Court of Bombay in the case of Mahomed Usman Rahimtoola Vs. Labour Appellate Tribunal, Bombay, was cited by Mr. Iyengar to point out the width of the jurisdiction of this Court under Art. 226 to stay ad interim the entire process of the election in the interest of justice. While there cannot be any disagreement with the ruling of the Bombay High Court on the width of power of this Court under Art. 226, the question is whether the facts of the case attract that kind of justice which Mr. Iyengar is now seeking for his clients. One must remember that their grievance was initially against the rejection of their nomination for noncompliance with the relevant rule in not producing the certified copy of the voters' list of the division in which they were shown as residing. Now, that relief if given to them will entitle them to contest the office of the Councilor from that division from which they have sought the election. More than that they are not entitled to. It was never in their contemplation when they approached this Court that the entire election should be quashed. Nor do I see any reason for going through the electoral process all over again merely because two nomination papers came to be rejected due to misprinted voters' list.

11. Another reason is that if a fresh calendar of events is issued, the elected candidates in the other three divisions will be put to great loss having contested and won the elections and they are not parties to these proceedings and an order adverse to them cannot be made in these proceedings without hearing them.

12. Even otherwise, if this Court were to direct a fresh calendar of events for divisions 1 and 5, the effect would be, persons who had not filed nomination papers would also be entitled to file nominations again. That would be impermissible. Therefore, the proper thing to do is to quash the endorsement impugned and declare that the petitioners are eligible to contest from divisions 1 and 5 in accordance with the corrected list which is available to the Returning Officer and direct the Returning Officer to accept the nomination papers along with the others which have already been accepted and thereafter proceed with the election process as commenced, i.e., to give time for the candidates to withdraw from the contest and then publish the list of the candidates who actually contest the elections in the two divisions in question and hold the elections according to the corrected list for divisions 1 and 5 giving time gap from the date of publication of the final list of candidates and the date of election in accordance with the rules as was done in the case of elections held for the other divisions.

13. The Returning Officer shall carry out the directions given above within one week from the date of receipt of this order and fix the relevant dates accordingly and conduct the poll in accordance with the rules.

14. Accordingly, rule will issue to quash the impugned endorsements of the respondent- Returning Officer rejecting the nomination of the petitioners with a direction that their nominations be accepted for the respective divisions in which they have filed their nominations and, unless they withdraw, they shall be

included in the list of candidates contesting in the respective divisions.

The prayer of the petitioners for quashing the entire calendar of events and the elections already held for the other three divisions is denied.

In these circumstances, rule will accordingly issue to the limited extent indicated and be made absolute.

On the question of pending application of those who wanted to, intervene, it is unnecessary to pass any specific order as their counsel has been heard before passing of this order.

15. Petition allowed.