
(2015) 04 KAR CK 0138

In the Karnataka High Court

Case No : W.A. Nos. 100333-337/2015 and 100338/2015 (CS-EL/M)

Andanappa and Others

APPELLANT

Vs

The Karnataka State Co-Operative Election Commission and
Others

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 04 KAR CK 0138

Hon'ble Judges : B.S. Patil, J;P.S. Dinesh Kumar, J

Bench : Division Bench

Advocate : Mrutyunjay Tata Bangi, for the Appellant; Hemantkumar L. Havaragi,
Advocates for the Respondent

Final Decision : Dismissed

Judgement

P.S. Dinesh Kumar, J.—Appellants are unsuccessful petitioners before the learned Single Judge who has dismissed their petition for a writ of certiorari to quash the order passed by the 1st respondent dated 20.02.2015 and for a further direction to respondents to hold fresh election to the Managing Committee of Shri Gavisiddeshwar Urban Cooperative Bank Niyamith, Koppal.

2. For the sake of convenience parties are referred as per their status in the writ petition.

3. Briefly stated the facts of the case are,

Petitioners claim to be eligible Members of Shri Gavisiddeshwar Urban Co-operative Bank Niyamith, Koppal (hereinafter referred to as "bank" for short) to contest for the post of a Managing Committee of the Bank. Calendar of events was published on 30.01.2015, prescribing date of filing of nominations as 06.02.2015 and the date of election as 14.02.2015. Elections were held in Kuvempu Primary and Secondary School, Koppal. Polling was peaceful. However, there was some commotion at the time of counting of votes. When the counting

of second ballot box was completed, it was observed by Returning Officer that 16 ballot papers were missing and therefore, counting was stopped and the remaining boxes were not opened. On 15.02.2015, the Returning Officer informed about the missing ballot papers to the 1st respondent and sought further directions. One of the candidates requested the 3rd respondent, the Returning Officer to hold fresh elections by submitting a representation dated 16.02.2015 which did not evoke any response and on the other hand, the Secretary of the Karnataka State Co-operative Election Commission (1st respondent) passed an order dated 20.02.2015, directing the 3rd respondent to conduct re-poll in respect of booth No. 2. The 3rd respondent appears to have lodged a police complaint, complaining about the theft and destruction of ballot papers. The candidates also desired to register a complaint with the Police and as the Police did not entertain, a private complaint has been lodged in the Court of JMFC, Koppal which is pending consideration.

4. The petitioners aggrieved by order dated 20.02.2015 passed by 1st respondent, directing the 3rd respondent to hold elections in respect of booth No. 2, filed a writ petition before the learned Single Judge contending inter alia that the impugned order is passed by the Secretary of the 1st respondent/Commission and not the Commission itself. Therefore, the direction contained therein to the Returning Officer to hold fresh elections is not sustainable in law; the impugned order is passed invoking Rule 14I of the Karnataka Cooperative Societies Rules 1960 and the said Rule can be invoked only after declaring the entire election as void, but in the instant case, the direction issued by the impugned order to hold fresh poll is only in respect of booth No. 2 when the entire election is vitiated being ultra vires the Rules and liable to be quashed. Further, there is violation of principles of natural justice, inasmuch as, the candidates who objected to any unilateral decision by the 1st respondent were not heard before passing the impugned order. On these among other grounds, the appellants prayed before the learned Single Judge to quash the impugned order and for a further direction to conduct fresh elections to the Managing Committee.

5. The learned Single Judge by a detailed order and referring to the relevant Rules and the judgment of the Apex Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, AIR 1978 SC 851 : (1978) 1 SCC 405 : (1978) 2 SCR 272 , dismissed the writ petition and directed the respondents to count the ballot papers and to declare the results of the elections in accordance with law. Feeling aggrieved by the order of the learned Single Judge, the appellants have preferred this appeal.

6. We have heard Shri Mrutyunjaya Tata Bangi, learned counsel for appellants and Shriyuths Hemanthkumar L. Havaragi for respondents 1 and 3, C.S. Patil for respondents 2 and 4 and B. Sharanabasawa for private respondents.

7. Learned counsel for the appellants mainly contend that Rule 14I could not be invoked in cases where any irregularity, is found while counting and the proper

and relevant Rule which ought to have been invoked, in such contingencies is Rule 14J. Amplifying his submission, he submits that Rule 14I deals with voting and not counting. He submits that both, Rule 14I as well as 14J are suffixed with a proviso which mandates that before invoking either provision a report is required to be obtained from the Police or Tahasildar. In case of Rule 14I, the report or certificate by the Police or the Tahasildar, as the case may be, should testify that the polling cannot be continued or counting of votes is impossible. In the case of Rule 14J, the report or certificate, should be to the effect that the result of the poll cannot be ascertained due to "booth capturing" at the Polling Station or place. He submits that the impugned order discloses that the respondents have invoked Rule 14I while issuing the impugned order and a perusal of the said order does not disclose that the mandatory provision of obtaining a report or certificate either by the Police or Tahasildar stating that the polling could not be continued or counting of votes was rendered impossible has not been complied with. He next submits that once the counting has begun, Rule 14I could not have been invoked at all, in the light of specific provision in Rule 14J.

8. Learned counsel for the appellants further submits that compliance with the principles of natural justice is built in all statutes in the country. He submits that admittedly the candidates are the affected parties and they ought to have been heard before any order is passed.

9. Per contra, learned counsel appearing for the Election Commission and learned AGA support the order of learned Single Judge and prays for dismissal of appeal.

10. Learned counsel for the private respondents 5 to 15 submits that there is full compliance with the mandate of law to obtain a report from the Police or the Tahasildar in the instant case, as a complaint was filed before the Police by the Returning Officer. In response to the contention of appellant that there was no personal hearing given to the candidates, learned counsel submits that the statute does not contain any specific provision and prays for dismissal of the appeal.

11. In the backdrop of the facts narrated herein above and the submissions of the learned counsel, following questions arise for our consideration:

"(i) Whether provision of Rule viz., Rule 14I or Rule 14J is correctly invoked and if not, does the same vitiate the issuance of impugned order?

(ii) Whether the statute requires grant of personal hearing to the appellants?"

12. The undisputed factual matrices in these cases are that polling was peaceful and at the time of counting, there was some commotion which resulted in loss of 16 ballot papers. Election Commission has directed re-poll for booth No. 2. To a query by the Court, learned counsel for the parties submitted that in each ballot a voter has to vote for 13 candidates under various categories and that there are in all 20178 voters and for the sake of convenience, they have been distributed

in 5 booths. It is noticed that Rule 14I refers to fresh poll in case of destruction of ballot boxes and a situation where a ballot/s used at the polling station are unlawfully taken out of the custody of the Presiding Officer. 14J refers to adjournment of poll or countermanding of election on the ground of booth capturing. It is useful to extract both the provisions which read as follows:

"14I-Fresh poll in the case of destruction, etc., of ballot boxes.-

(1) If at any election,

(i) any ballot box used at a polling station or at a place fixed for the poll is unlawfully taken out of the custody of the Presiding Officer or the Returning Officer, or is accidentally or intentionally destroyed or lost, or is damaged or tampered with, to such an extent, that the result of the poll at that polling station or place cannot be ascertained; or

(ii) any such error or irregularity in procedure as is likely to vitiate the poll is committed at a polling station or at a place fixed for the poll; the Returning Officer shall forthwith report the matter to the Cooperative Election Commission.

Provided that a report or certificate shall be obtained from the police or Tahsildar to the effect that the polling cannot be continued or counting of votes is rendered impossible.

(2) Thereupon the Co-operative Election Commission shall, after taking all material circumstances into account, either-

(i) declare the poll at that polling station or place to be void, appoint a day, and fix the hours, for taking a fresh poll at that polling station or place and notify the day so appointed and the hours so fixed on the notice board of the returning officer or the assistant returning officer if any, and on the notice board of the society, or

(ii) if satisfied that the result of a fresh poll at that polling station or place will not, in any way, affect the result of the election or that the error or irregularity in procedure is not material, issue such directions to the Returning Officer as it may deem proper for the further conduct and completion of the election.

(3) The provisions of these rules shall apply to every such fresh poll as they apply to the original poll.

14J- Adjournment of poll or countermanding of election on the ground of booth capturing.

(1) If at any election,-

(i) booth capturing has taken place at a polling station or at a place fixed for the poll (hereinafter in this clause referred to as a place) in such a manner that the result of the poll at that polling station or place cannot be ascertained; or

(ii) booth capturing takes place in any place for counting of votes in such a

manner that the result of the counting at that place cannot be ascertained, the returning officer shall forthwith report the matter to the Co-operative Election Commission.

Provided that a report or certificate shall be obtained from the police or Tahsildar to the effect that the result of the poll cannot be ascertained due to booth capturing which has taken place at that polling station or place.

(2) The Co-operative Election Commission shall, on the receipt of a report from the returning officer under sub-rule (1) and after taking all material circumstances into account, either,-

(i) declare that the poll at that polling station or place be void, appoint a day, and fix the hours, for taking fresh poll at that polling station or place and notify the date so appointed and hours so fixed on the notice board of the returning officer or the assistant returning officer if any, and on the notice board of the society; or

(ii) if satisfied that in view of the large number of polling stations or places involved in booth capturing, the result of the election is likely to be affected, or that booth capturing had affected counting of votes in such a manner as to affect the result of the election, countermand the election.

Explanation; In this rule, the term "booth capturing" includes, among other things, all or any of the following activities, namely:-

(a) seizure of a polling station or a place fixed for the poll by any person or persons, making polling authorities surrender the ballot papers and doing of any other act which affects the orderly conduct of elections;

(b) taking possession of a polling station or a place fixed for the poll by any person or persons and allowing only his or their own supporters to exercise their right to vote and prevent others from free exercise of their right to vote;

(c) Coercing or intimidating or threatening directly or indirectly any member by any person or persons and preventing him from going to the polling station or a place fixed for the poll to cast his vote;

(d) seizure of a place for counting of votes by any person or persons, making the counting authorities surrender the ballot papers or voting machines and the doing of anything which affects the orderly counting of votes."

(emphasis supplied by us)

13. It is the case of the appellants that at the time of counting, as a result of commotion, 16 ballot papers were found missing. Remedy in such contingency is traceable to explanation (d) to Rule 14J. This provision may be invoked for adjournment of poll or countermanding of election on the ground of booth capturing. Once this Rule is invoked, the Election Commission after taking all material circumstances into account, may declare the poll at that polling station

be void and appoint a day for fresh poll. Further, if the Election Commission is satisfied that booth capturing has occurred in large number of polling stations, it may order for countermanding the election.

14. Perusal of the order passed by the Commission reveals that after referring to the incident of loss of 16 ballot papers and the complaint filed by the Returning Officer and other circumstances, Commission has ordered re-poll in booth No. 2. The appellants are right in contending that the facts of the case attracted invocation of Rule 14J, inasmuch as explanation (d) to Rule 14J refers to "booth capturing". However, the Election Commission has directed for re-polling in booth No. 2 which is traceable to Rule 14I. It is trite law that, substance must be gathered by the text of the subject and not by the provision of law invoked in a particular situation.

15. We therefore hold that the ground urged on behalf of appellants that a wrong provision of law has been invoked by the Election Commission is liable to be rejected and accordingly rejected.

16. Adverting to the contention that the candidates were not heard and the same is in violation of principles of natural justice, we are of the considered view that a careful scanning of the Rules not indicate that a personal hearing is contemplated before invoking either Rule 14I or Rule 14J. Hence, in the absence of express provision, which the legislature in its wisdom has not included, the same cannot be read into. While canvassing their contention that compliance with principles of natural justice by affording an opportunity of hearing is in built, the appellants have relied upon the judgment of the Apex Court in the case of Mohinder Singh Gill *supra*. After having gone through the judgment in its entirety, we are of the opinion that the postulate enunciated in paragraph 75 of the said judgment pressed into service by the appellants is not applicable to the facts of this case.

17. In the given set of facts, if the hyper technical argument on behalf of the appellants with regard to invoking a wrong provision of law, is accepted and the impugned order is held bad in law, the consequences which may flow there from will compel the respondents to reconsider the issue all over again. Insofar as the compliance with regard to obtaining a report or certificate by the Police or Tahasildar is concerned, the same is not possible at this point of time. Election being heart and soul in a democratic system, it is essential to keep the process on going and in the facts and circumstances of this case, it is most desirable in the interest of the Institution as also that of candidates to complete the process of election which will result in bringing the elected body in place as early as possible. Article 226 being a discretionary relief, we refrain to exercise the same in this case and thereby confirm the order of learned Single Judge. In our considered view, best interest of all concerned will be served by directing the respondents to count the ballots polled and declare the results. It is submitted at the bar that re-polling has been held in booth No. 2 and counting of ballots polled in booth No. 1 is complete. Counting is not undertaken for booth No. 2 as per the interim order dated 27.02.2015.

18. We therefore direct that the ballots polled in booths 2, 3, 4 and 5 be counted and results declared to enable the co-operative institution to get the Managing Committee at the earliest. We make it clear that so far as booth No. 2 is concerned, ballots of re-poll only shall be counted.

In the circumstances, for the reasons stated herein above, the appeals fail and stand dismissed.

Ordered accordingly. No costs.