

(1999) 12 KAR CK 0003

In the Karnataka High Court

Case No : Civil Revision Petition No. 3542 of 1997

Appayya Maniyani

APPELLANT

Vs

B.S. Kulal and Others

RESPONDENT

Date of Decision : 16-12-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Karnataka Municipalities Act, 1964 — Section 2 (9), 21, 21 (4), 23, 39

Citation : (2000) 3 KCCR 1748

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : K.M. Nataraj, for the Appellant; Sachindra Karanth, for Respondent 1, for the Respondent

Judgement

Hari Nath Tilhari, J.—This petition is directed against the order dated 20.9.1997 passed by the Election Tribunal (Civil Judge, Senior Division, Puttur), Dakshina Kannada, rejecting I.A.II filed by the present revision petitioner with a prayer to the effect that the petition lacks material particulars and as such, it should be rejected. The Election Petition in this case has been filed u/s 21 of the Karnataka Municipalities Act, 1964. Section 21 provides a right to a candidate for the office of Councillor as well as to voter of the division concerned to file any Election Petition challenging the election of returned candidate. Sub-section (1) provides that no election of a Councillor shall be called in question except by an election petition presented to the Election Tribunal within fifteen days from the date of the declaration of the result of the election. Section 21(4) provides that,

Section 21(4).-An election petition-

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall with sufficient particulars, set forth the ground or grounds on which the election is called in question; and

(c) shall be signed by the Petitioner and verified in the manner laid down in the CPC 1908, for the verification of pleadings.

Section 23 of the Karnataka Municipalities Act, 1964, indicates the grounds on which the elections may be challenged and if the Election Tribunal is of opinion that the grounds mentioned in Section 23 are established, then it is empowered to declare the election of the returned candidate to be void.

2. The Election Petition in this case has been filed only on the ground specified by Clause 23(d)(iii) i.e., improper acceptance or refusal of any vote or reception of any vote which is void. The returned candidate i.e., the present revision Petitioner filed the application I.A.II for striking out the pleadings as well as for rejection of election petition for want of particulars. It was stated that the Election Petition, vide paragraph 5(1), (2), (3) and (4), lacks any material points and particulars. Vide paragraph 5, as mentioned earlier, the ground alleged is about the illegal rejection of validly cast votes in favour of the election Petitioner. As per Petitioner's case counting of invalid votes as valid in favour of the returned candidate has been done. It has been stated that rejection of ten votes as invalid is not correct. It has also been stated by rejection of ten votes as invalid, there has been a wrong decision by the Respondent No. 3 in rejecting the votes polled in favour of the election Petitioner and that the 3rd Respondent rejected that some votes polled in favour of the Petitioner wrongly. The Petitioner has alleged that the election has been vitiated by acceptance of some votes cast in favour of 1st Respondent and 2nd Respondent in the election and refusal of votes cast in favour of the Petitioner as invalid. As regards paragraph 5(2) whatever particulars at that time could be given with respect to declaration that rejection of 10 votes as invalid was not a correct decision. The Petitioner very clearly says that out of those ten votes, the votes that have been rejected as invalid and particularly those polled in favour of the Petitioner, the decision was wrong. Atleast particulars about ten votes which were alleged to be invalidly rejected as invalid votes should have been given. No doubt in paragraph 5(1) and 5(3) the allegations were some what vague that even number is not given that how many other valid votes polled in favour of the Petitioner were declared to be invalid erroneously or illegally by the returning officer nor the number has been given how many invalid votes of the returned candidate were accepted as valid votes. But paragraph 5(2) is very clear that as many as ten votes, have been illegally declared invalid which were cast in favour of the Petitioner, that can very easily be examined. The Tribunal has rejected the application taking the view that "it appears that the Petitioner herein has not furnished the material facts and particulars of the votes polled as valid or as invalid votes and alleged to have held incorrectly by the Returning Officer and is basing on the gathered information and on the same, it appears that more particulars and facts, if any, to be furnished, the same becomes a part of evidence which cannot be pleaded at this stage". It is further observed that most of the facts and particulars involved in the relied on rulings on behalf of Respondent No. 1 in support of I.A.II, the facts thereon are not applicable to the present facts of this case and

taking this view, the Court opined that it is premature stage to strike down paragraph 5(1) to (4) (wrongly mentioned in IA.II as para 6(1) to (4) of the election petition) or rejecting the entire petition and with these observations, the Court rejected the petition. This order has been passed by the Civil Judge acting as an Election Tribunal.

3. The Election Tribunal in the Karnataka Municipalities Act has been defined by Section 2(9) as under:

Section 2(9).-Election Tribunal means in respect of any area any judicial officer appointed by notification by the Government to be Election Tribunal in respect of such area and where no such judicial officer is appointed, the Civil Judge having jurisdiction over the area within which the election has been or should have been held.

4. The language of Section 21 of the Act is very imperative and mandatory that election cannot be challenged except by election petition filed before the Election Tribunal and the Election Tribunal has been conferred power to declare election null and void. Further Section 39 of the Karnataka Municipalities Act clearly barred the jurisdiction of the Civil Court to entertain any suit or matter relating to election. Section 39 reads as under:

Section 39. Bar on suits relating to elections, etc.-No suit shall be entertained by a Civil Court in respect of any matter relating to the election, appointment or removal of a Councillor, president or vice-president, unless such suit is authorised by the provisions of this Act or any rule made under this Act.

5. There is a clear-cut bar against Civil Court entertaining any suit or proceeding in the matter of election or appointment or removal of Councillor. The exception is only when there is any specific provision permitting filing of suit is pointed out. This being the position, the Civil Court or Civil Judge, whether Senior Division or Junior Division, could not entertain any proceeding or suit in the matter of election or removal or appointment of Councillor, President or Vice-President of the Municipality. So, jurisdiction of the Civil Court to entertain suit is barred. The power to entertain election petition is conferred on the Election Tribunal and a specific mode of challenging election has been prescribed by Section 21 i.e., by filing an election petition before the Election Tribunal. Looking to the scheme of the Act, in particular Sections 2(9), 21 and 39, the preliminary objection that has been raised about the maintainability of the revision petition by the Respondent appears to be substantive when Civil Judge is acting as Election Tribunal and deemed to be Election Tribunal and not as Civil Court. I do not say that he is acting as *persona designata* or Civil Court. What I mean to observe that he is acting as an Election Tribunal and not as civil Court.

6. A revision u/s 115 of CPC is maintainable only against a judgment or order amounting to case decided and delivered by a Civil Court as a Civil Court. The learned Counsel for the Petitioner invited my attention to a Division Bench decision of this Court in the case of Chandrashekarappa Vs. Basavannappa and

others, where the sole question for consideration before the Court was whether the Vacation District Judge was competent to entertain the election petition as Election Tribunal u/s 21 of the Act or whether Civil Judge referred to in Section 2(9) of the Act functions as an Election Tribunal as a persona designata and not as a Court of Civil Judge and the Bench opined that in discharge of functions as Election Tribunal, the Civil Judge is not working as persona designata, but in the capacity of Civil Judge. But it has not been stated that he is not acting as an Election Tribunal. So this decision is of no assistance to the Petitioner. The Civil Judge is no doubt a civil judicial authority. But he has to act and perform the functions of an Election Tribunal and when he acts as an Election Tribunal then, when he passes an order, it cannot be said that such an order has been passed by the Civil Court or Civil Judge in his capacity as Civil Court. If it is taken that he is acting as a Civil Court, then it would be something quite contrary to the letter and spirit of Section 39 of the Karnataka Municipalities Act which debar Civil Court from entertaining any suit or proceeding in relation to matters of election petition. The intention of the Legislature is that even if the Civil Judge has to deal with election petition, he has to act as a Tribunal and when it is deemed to be a Tribunal, then order passed by the Election Tribunal cannot be termed to be order passed by the Civil Court and no revision, as such, is maintainable. In relation to the Karnataka Private Educational Institution Act dealing with the Educational Appellate Tribunal, this Court in the case of *The Hungund Taluka Banjara Vidyavardhaka Sangha v. Rachappa Chanamallappa Chittawadagi* in Civil Revision Petition Nos. 2431 of 1993 connected with 2494 of 1993 decided on 29.5.1998 as well as dealing with the Motor Accident Claims Tribunal in motor accident claims in the case of *The Oriental Insurance Co. Limited v. Thibbegowda and Ors.* in Civil Revision Petition Nos. 1015 of 1998 connected with 1016 of 1998 connected with 1017 of 1998 decided on 16.6.1998, where Civil Judge or District Judge acts as a Tribunal, this Court has opined that the Civil Judge or District Judge acting as a Tribunal is to be deemed and taken to be Tribunal and not acting as a Civil Court. The same principle applies to the Election Tribunal.

7. In this view of the matter, as the Election Tribunal by itself is not a Civil Court, revision petition itself is not entertained. But no doubt, this Court has under Article 227 powers i.e., supervisory jurisdiction and keeping in view the principles of law laid down in *Baby Vs. Travancore Devaswom Board and Others*, , this Court has still powers under Article 227 of the Constitution of India to quash the orders passed by the Tribunals if the findings of fact had been arrived at by non-consideration of the relevant and material documents the consideration of which could have led to an opposite conclusion and interference if appears to be necessary in the interest of justice, the powers under Article 227 can be exercisable. Taking that view, I heard the Petitioner's Counsel on merits of this writ petition.

8. It has been alleged that the particulars about the ballot papers which has been illegally rejected and improperly rejected and which according to the Petitioner were cast in election Petitioner's favour and ballot papers which were improperly

cast in favour of the Respondent in the Election Petition i.e., the present revision Petitioner, the number of ballot papers, their particulars have not been given nor even their total number of such ballot papers have been indicated that so many validly cast votes have been illegally rejected which were cast in favour of the Petitioner i.e., the Petitioner in the election petition who is the Respondent in the revision petition and ballot papers which were improperly cast in favour of the present revision Petitioner i.e., the returned candidate. No doubt about ten ballot papers are concerned, it has been asserted that out of ten ballot papers which have been held invalid among them some of the validly cast votes in favour of the election Petitioner i.e., the present Respondent have been invalidly rejected. No doubt, that ten ballot papers can be examined because those ballot papers which were declared to be invalid must be kept separately. What is their exact number, the Petitioner is no doubt has not given. The other ballot papers which are cast invalidly and those which according to the Petitioner which were validly cast in favour of the election Petitioner i.e., the present Respondent and those which have been illegally rejected, their number has not been given. Atleast their number should have been given. Even the Petitioner has not been able to ascertain the number of each such ballot paper. On that aspect, there may be some lack of particulars. The learned Counsel for the revision Petitioner laid much emphasis that no particulars of each ballot paper has been given and atleast their numbers should have been given. I am unable to accept. Secrecy of ballot should be maintained. Therefore, it may not have been possible for the Petitioner who is the present Respondent before the Court to ascertain and give their exact number. When I so observe, I find support for my view from the decision of their Lordships in the case of Arun Kumar Bose v. Mohd. Furkan Ansari and Ors. reported in AIR 1983 SC 3011 that, failure to give the number of each ballot paper cannot be said to be non-supply of material particulars. Apart from that, earlier also this view has been expressed by a Full Bench of Assam High Court in the case of Begum Mafida Ahmed v. Rajendra Nath Barua and Anr. reported in AIR 1965 G&N 62 and similar view has been expressed by the Rajasthan High Court in the case of Brij Sunder Sharma Vs. Shri Ram Dutt and Others, whereunder the Division Bench of the Rajasthan High Court has observed that positive averments made in paragraph No. 9 that about 100 ballot papers marked in favour of the Respondent were improperly rejected by the Returning Officer, that some invalid ballot papers were counted for the Petitioner and that some ballot papers marked for the Respondent were counted for the Petitioner. Their Lordships took the view that the averments made in paragraph No. 9 could not be said to be vague.

9. Thus considered in my opinion, though the Petitioner is not required to give the particular number of each ballot paper which he says to be either invalidly counted in favour of the returned candidate or which he says that is valid votes cast in favour of the election Petitioner has been illegally rejected, but no doubt, he must give a specific number that how many ballot papers cast in favour of the election Petitioner were illegally rejected by giving atleast approximate

information.

10. Thus considered in my opinion, so far as the order rejecting the application cannot be said to have been made illegally or without jurisdiction. But the Petitioner should give approximate number of invalidly cast votes counted in favour of the returned candidate and validly cast votes in favour of the petitioner which have been illegally declared null and void. The election Tribunal shall allow the petitioner to supply the above facts.

Subject to and with these observations, the writ petition is disposed of maintaining the order impugned.