

(1990) 12 KAR CK 0002
In the Karnataka High Court
Case No : W.A. No. 2443 of 1990

B. Gurumallappa

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 21-12-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Co-operative Societies Act, 1959 — Section 70, 87
Representation of the Peoples Act, 1951 — Section 100, 101

Citation : (1991) ILR (Kar) 577 : (1991) 4 KarLJ 356

Hon'ble Judges : S. Mohan, C.J;M. Ramakrishna, J

Bench : Division Bench

Advocate : T.R. Subbanna, for the Appellant; Chandrasekharaiah, for R-8, 9, 11, 17, 22 and 24, for the Respondent

Final Decision : Allowed

Judgement

Ramakrishna, J.—Since the facts and circumstances arising in this Appeal are not in dispute, we need not refer to the same.

2. Two contentions have been urged in support of this Appeal. Firstly, the election that has taken place pursuant to the Calendar of Events issued in the year 1984 is illegal as three persons viz., (1) Patel Lingappa - A Class Member, (2) K.M. Puttaswamy and (3) Karigowda - 3 Class members, having filed their nominations pursuant to the said Calendar of Events, died subsequently. Therefore, the Election Officer ought to have issued fresh Calendar of Events giving opportunity to those intending to file nominations afresh as required by law. Secondly, the view taken by the learned single Judge that when there was a provision for filing an election petition challenging the correctness of the election in question, this Court in exercise of the powers under Article 226 of the Constitution cannot interfere with such an election, was incorrect and cannot be sustained.

3. Dealing with the first contention, even though there is no provision in the

Karnataka Co-operative Societies Act, 1959 ("the Act" for short) corresponding to Sections 100 and 101 of the Representation of the People Act 1951 setting out the grounds on which an election to a Co-operative Society can be set aside, in view of the ruling this Court in CHANNE GOWDA v. STATE OF KARNATAKA 1975 (2) KarLJ 235 it is open to the Registrar or the Arbitrator to rely as far as possible upon the large volume of judicial precedents under the election law and to decide the disputes relating to election on the basis of justice, equity and good conscience.

4. As to the second contention, learned Counsel for the appellants urged that there is a provision under the Act to file an election petition; but it is not an efficacious remedy. Secondly, it would allow the illegal body to continue in the Office until such election petition is disposed of which would take enormous time in the usual course. Since the remedy under the Act is not an efficacious remedy, this Court can exercise power under Article 226 of the Constitution to set aside injustice and to remedy the situation. Learned Counsel relied upon a decision in RE BARNES CORPORATION, EX PARTE HUTTER 1933 1 KB 668.

5. Dealing with the first contention, it is true that there is no provision under the Act corresponding to Sections 100 and 101 of the Representation of the People Act, 1951 (the Act of 1951 for short) setting out the grounds on which an election can be set aside. However, this Court in Channegowda's case held as follows:-

"It is, therefore, difficult to hold that merely because there are no express provisions similar to Sections 100 and 101 of the Representation of the People Act, either in the Act or the Rules framed thereunder, no dispute relating to an election can be entertained and decided u/s 70 of the Act. If the principle enunciated by the Division Bench in HAYAT BEIG'S case is extended to disputes under the Act, the result would be that the disputes regarding election under the Act can neither be decided by a Civil Court by reason of Section 118 nor by the Registrar or Arbitrator u/s 70 of the Act, on the ground there are no provisions similar to Sections 100 and 101 of the Representation of the People Act, 1951. I do not think that the legislature ever intended that such a result should follow. It is the basic principle of administration of justice that wherever there is an injury there should be a remedy and where there is a remedy, it should not be lightly thrown away. It is the duty of the Court or the Tribunal to mould the relief suitably so that there may be no failure of justice. Although there are no statutory provisions corresponding to Sections 100 and 101 of the Representation of the People Act, 1951 setting out the grounds on which the election to a Co-operative Society can be set aside, it is open to the Registrar or the Arbitrator to rely as far as possible upon the large volume of judicial precedents under the election law and to decide the disputes relating to election on the basis of principles of justice, equity and good conscience. But, while doing so, he should steer clear of principles which are contrary to or not warranted by the Act."

6. In the light of the above ruling, we have to hold that there is force in the contention of Sri Subbaana, learned Counsel for the appellants. Accepting the said contention, we hold that the action taken by the Election Officer to hold the election in question on the basis of the Calendar of Events issued in the year 1984 - though the above 3 candidates who had filed their nominations pursuant to the said Calendar of Events died subsequently - is a nullity.

7. Dealing with the next contention, the learned Single Judge no doubt has held that in the light of the specific provisions for filing an election petition as provided under Sub-section (4) of Section 70 of the Act, the Writ Petition under Article 226 of the Constitution cannot be sustained. In this context, learned Counsel for appellants drew our attention to the ruling of the Kings Bench in Barnes case wherein, Their Lordships have observed as follows:

"as there had been no lawful election and the offices of aldermen were unfilled, the proper remedy was not a quo warranto, or an election petition u/s 87 of the Act, but a Mandamus u/s 225 to hold an election of aldermen, and that the Writ should be preemptory, notwithstanding any inconvenience that might be caused by the displacement of persons who were then acting as aldermen."

8. In the light of the above ruling, we have to hold that even though there is a provision for filing an election petition, since it is not an efficacious remedy, a Writ in the nature of Mandamus can be issued to hold fresh election on the lines referred to above.

9. In the result, we make the following:

ORDER

The election that has taken place to the Society In question is set aside. A Writ in the nature of Mandamus shall issue to hold elections to the constituencies of the aforesaid candidates who have been dead by issuing fresh Calendar of Events and the elections shall take place accordingly on or before 31-3-1991. The other constituencies will continue to function. Therefore, the other Members can continue to function as such Members of the Committee. Writ Appeal is allowed to the limited extent. No costs.