

(2004) 02 KAR CK 0051
In the Karnataka High Court
Case No : Writ Petition No. 45836 of 2003

B. Shivanna

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 21-02-2004

Acts Referred:

Karnataka Panchayat Raj (Election of Adhyaksha and Upadhyaksha of Zilla Panchayat) Rules, 1994 — Rule 9 (2) (a)
Karnataka Panchayat Raj Act, 1993 — Section 45 (2)

Citation : (2004) ILR (Kar) 1712 : (2004) 4 KarLJ 77 : (2004) 3 KCCR 284 SN

Hon'ble Judges : K. Bhakthavatsala, J

Bench : Single Bench

Advocate : Jayakumar S. Patil, for S.N. Goodwala, for the Appellant; H.B. Narayan, HCGP for R-1 and 2 and Harish, for S.K. Venkatareddy, for R3, for the Respondent

Judgement

Bhakthavatsala, J.—The petitioner has challenged order and decree dated 15.10.2003 of Election Tribunal passed in E.P. No. 1/2002 (Annexure-C and D) on the file of Civil Judge (Jr. Division), Kunigal.

2. Respondent Nos. 1 and 2 are represented by Sri H.B. Narayan, learned Government Pleader. Respondent No. 3 is represented by Sri S.K. Venkata Reddy.

3. Heard arguments for final disposal.

4. The brief facts of the case leading to the filing of the Writ Petition may be stated as under:-

The respondent No. 3 (election Petitioner) herein filed Election Petition No. 1/2002 on the file of Civil Judge (Jr. Division), Kunigal, contending that after first term of Office of Adhyaksha and Upadhyaksha came to an end, the 1st Respondent - Deputy Commissioner, by order dated 26-11-2002, appointed the 2nd Respondent as Prescribed Officer to hold election for the Office of Adhyaksha and Upadhyaksha of Nademavinapura Grama Panchayat. The Prescribed Officer

fixed election on 9.12.2002, but the election was not held due to demise of Nagappa, Ex-Minister of Karnataka State. Therefore, election was re-scheduled to be held on 13.12.2002. In that election, the Petitioner and the Respondent No. 3 remained as candidates for the post of Adhyaksha. Likewise, two candidates remained for the post of Upadhyaksha. All the 13 members of the Gram Panchayat participated in the election and voting was completed. According to the Election petitioner, the Prescribed Officer declared the election petitioner as a returned candidate for the post of Adhyaksha of the Gram Panchayat, as he had secured 7 votes as against the rival candidate, B. Shivanna, who had secured 6 votes. The candidate B. Shivanna, raised objection alleging that there were some special marks on the ballot papers used in the election. The Prescribed Officer proceeded to recount the votes and held that the election Petitioner had secured only 5 votes after rejecting two votes, and the candidate B. Shivanna had secured 6 votes and therefore declared the candidate Sri B Shivanna as returned candidate for the post of Adhyaksha of the Gram Panchayat. Feeling aggrieved of the election declared by the Prescribed Officer, Election Petition was filed u/s 45(2) of the Karnataka Panchayat Raj Act, 1993 (in short, "the Act") urging the following grounds:-

(a) that after the prescribed Officer declared the election Petitioner as returned candidate, he had no right to go for recounting of votes.

(b) that it was impossible for any one to come to a conclusion that the marks found on the ballot papers were sufficient to identify the member/voter, who voted.

(c) that if it is accepted for the sake of argument, 3 ballot papers used for voting in favour of the Petitioner, and 2 ballot papers used for voting in favour of Sri B Shivanna, the election petitioner and candidate Sri B. Shivanna, each secured 4 votes, and therefore the Prescribed Officer should have declared result by lottery.

Therefore, prayed for declaration to declare that the election of the candidate B. Shivanna is void and the petitioner be declared as elected for the post of Adhyaksha of Gram Panchayat.

The Prescribed Officer filed his objection contending that after voting process was over, ballot papers were bifurcated candidate-wise and counted the ballot papers. The election Petitioner got 7 votes and B Shivanna got 6 votes. B Shivanna raised an objection stating that some of the votes polled in favour of election petitioner bear some marks. Therefore, the Prescribed Officer decided to recount the entire polled votes in the election in favour of the election petitioner and B Shivanna. At the time of recounting of votes in favour of election petitioner, he noticed one ballot paper had XX777 mark and another ballot paper with XTSR mark. Therefore, he declared those two votes as invalid as per Rule 9(2)(a) of KPR (Election of Adhyaksha and Upadhyaksha of Gram Panchayat) Rules, 1995, (in short "State Election Rules") and declared that B Shivanna had secured 6 votes as against the election petitioner, who had secured 5 votes. Since the

Prescribed Officer declared B Shivanna, as elected as Adhyaksha, the Election Petitioner protested the same and galata took place between the candidates and the election Petitioner snatched away 7 ballot papers polled in his favour from the Prescribed Officer and torn. The Prescribed Officer collected all the torn ballot papers and kept safely and also lodged a Complaint with the Police. It is also contended that the Prescribed Officer had conducted the election of Adhyaksha and Upadhyaksha as per the State Election Rules, It is urged that the grounds urged in the Election Petition are concocted, baseless, frivolous etc. and therefore the election Petition be dismissed with exemplary costs.

Sri B Shivanna, Respondent No. 3 in the election Petition, also filed statement of objection contending that he was declared elected as per the State Election Rules, and prayed for dismissal of the election Petition.

In view of the pleadings on record, the Election Tribunal framed the followed issues:-

- (1) Whether the Petitioner proves prescribed Officer without any jurisdiction has proceeded to recount the votes and rejected two ballot papers without any reason?
- (2) Whether the Petitioner proves that electing 3rd Respondent as void?
- (3) Whether the Petitioner is entitled for the relief of declaration sought for?
- (4) What order?

In support of the case of the election Petitioner, he got himself examined as PW-1 besides examining one Muniraju as P.W-2 and got marked Exs. P1 to P14. In rebuttal, B Shivanna, and the Prescribed Officer got themselves examined R.W.-1 and R.W.-2 besides examining one Venkatesh as R.W.-3 and got marked Exs. R-1 to R-13.

The learned Judge heard arguments. After perusing evidence and material on record, answered issue No. 1 partly in the affirmative, issue No. 2 in the affirmative, issue No. 3 in the negative and ultimately allowed the Petition partly declaring the election of returned candidate as void. The prayer of the election Petitioner to declare the election Petitioner as elected Adhyaksha of the Panchayat was rejected. This is impugned in this Writ Petition by B Shivanna on the following grounds:-

- (a) that the entire approach of the Election Tribunal and the procedure adopted by the Election Tribunal was totally illegal, arbitrary and opposed to all canons of election law.
- (b) that the Election Tribunal has called for records of the election proceedings and the ballot papers, which were in sealed cover and without an order for recounting of the votes, the Court below allowed opening of the cover containing ballot papers and marked the ballot papers as Exhibits.

(c) that the Election Tribunal failed to note that under Rule 9(2)(a) provides that the ballot papers, which has markings likely to disclose the identity of the voter is liable to be rejected.

(d) that the Election Tribunal is wrong in holding that the ballot papers, which had + mark also was invalid.

(e) that the Court below failed to declare the result having recounted the votes.

(f) that the Court below found fault with the Prescribed Officer, who has stated that he had instructed the voter to put X mark or + mark.

(g) that the Election Tribunal failed to see that if the ballot papers bearing mark other than X mark were to be rejected, B. Shivanna had secured more votes than the Election petitioner.

5. During the course of argument, Sri Jayakumar S. Patil, learned Senior Counsel for the Petitioner cited the following decisions:

(i) Suresh Prasad Yadav Vs. Jai Prakash Mishra and Others,

(ii) Beliram Bhalaik Vs. Jai Beharilal Khachi and Another,

(iii) P.K.K. Shamsudeen Vs. K.A.M. Mappillai Mohindeen and Others,

It is also contended that the Prescribed Officer has followed the procedure and rejected the invalid votes polled in favour of the election Petitioner and came to a conclusion that B. Shivanna had secured more votes than the election Petitioner, and declared B Shivanna elected. Therefore, the impugned order at Annexure -C is liable to be quashed.

6. On the other hand, Sri S.K. Venkata Reddy, appearing for the election Petitioner, contended that there is no need for the election Petitioner to tear the ballot papers polled in favour of the election Petitioner. It is also submitted that the Prescribed Officer has adopted an erroneous procedure contrary to the State Election Rules. For example, the Prescribed Officer has made an endorsement on the back side of the invalid ballot papers of the election Petitioner, but no such endorsement is made on the invalid votes polled in favour of B. Shivanna. Sri Venkata Reddy further submitted that out of 7 votes polled in favour of the election Petitioner, 4 votes are absolutely valid. With reference to the votes polled in favour of B. Shivanna, 2 votes are liable to be rejected out of 6 votes. Therefore, it was contended that the election Petitioner and B Shivanna have secured 4 votes each, and the Prescribed Officer should have declared election result by lottery, but he has not done so. Hence, the Prescribe Officer may be directed to declare election result by lottery and accordingly the Writ Petition may be disposed of.

7. Perused the records of Election Tribunal as well as the Prescribed Officer. The seven ballot papers pertaining to the Election Petitioner were taken out and reconstructed. The re-constructed ballot papers holds good for the purpose of

verifying the marks made thereon and validity of those votes.

8. At the very outset, it must be mentioned that the Election Tribunal though decreed the Election Petition partly declaring that the election of the returned candidate B. Shivanna was void, has not given any further directions to the Prescribed Officer as to what he has to do. The Election Petitioner has not filed Writ Petition as against the order of the Election Tribunal.

9. The contention of the learned Counsel for the Petitioner that the Election Tribunal totally erred in opening the ballot papers without passing an order in that regard and marking the ballot papers as Exhibits was erroneous, holds no water at this juncture. Therefore, the decisions cited by Sri Jayakumar S. Patil are of no avail. The case of the Election petitioner is that the prescribed officer has violated the State Election Rules from the Stage of counting of votes. Therefore, the Election Tribunal had right to see the ballot papers so as to come to a right conclusion. The contention that opening of the ballot papers and marking the same affect secrecy of the ballot holds no water as the special marks appearing on ballot papers cannot be identified other than the voter, who made it.

10. It is crystal clear from the records that the Prescribed Officer has not followed the State Election Rules, particularly Rule 9. The Election Rules framed by the State is on the lines of the Central Conduct of Election Rules, 1961 framed under the Representation of People Act, 1950 (in short, "the Central Election Rules"). The State Election Rules permit the voter to mark x as against the candidate using a pen; whereas Rule 39 of the Central Election Rules provide that the Elector shall mark on the ballot paper with the instrument supplied for the purpose. As per the State Election Rules, the Prescribed Officer shall endorse on every ballot, which he rejects. But, in the instant case, in respect of votes polled in favour of B. Shivanna, the Prescribed Officer has not made any endorsement as to the validity of the disputed 2 ballot papers. The State Election Rules do not provide for marking + mark. The Election Tribunal is justified in holding that the Prescribed Officer has not followed the procedure as laid down in the State Election Rules, and declaring election of the returned candidate as void. I see no good ground to interfere with such a finding.

11. In the interest of effective and speedy disposal of Election Petitions and to avoid unnecessary litigation, it is advisable to amend the Karnataka Panchayat Raj (Election of Adhyaksha and Upadhyaksha of Gram Panchayat) Rules, 1995 suitably so as to mark on the ballot paper only with an instrument provide for, and to try an Election Petition by a Civil Judge (Senior Division) instead of Civil Judge (Jr. Division).

12. Hence, I pass the following order:-

The Writ Petition is disposed of directing the Prescribed Officer to reject the invalid votes in accordance with the State of Election Rules and declare the result to the Office of the President of Nademavinapura Gram Panchayat, within 7 days

from the date of receipt of this order.

Send a copy of this order to the Secretary to Government of Karnataka, Parliamentary Affairs, for needful action.

No costs.

The learned High Court Government Pleader is permitted to file memo of appearance within three weeks.