

(2000) 08 KAR CK 0074
In the Karnataka High Court
Case No : Writ Petition No. 7099 of 1999

H.M. Muninarayana

APPELLANT

Vs

Chief Electoral Officer in Karnataka and Others

RESPONDENT

Date of Decision : 23-08-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 329 (b)
Representation of the Peoples Act, 1951 — Section 100, 13 B, 23

Citation : AIR 2001 Kar 14 : (2000) ILR (Kar) 3319 : (2000) 6 KarLJ 388 :
(2000) 4 KCCR 169 SN

Hon'ble Judges : V.P. Mohan Kumar, J

Bench : Single Bench

Advocate : Sri Shantharaju and Sri D.N. Nanjundareddy, for the Appellant; Smt. Shobha Patil, Government Pleader, Sri A.N. Jayaram, Advocate General, Sri Satyapal Jain, Senior Advocate for Sri C. Shashikanta, for the Respondent

Judgement

1. In K.N. Subba Reddy v Election Commission of India and Others, this Court had occasion to examine the jurisdiction of this Court to invoke its power under Article 226 and subject the election process to judicial review. Therein it was stated as under:

"8. I am of the view that no part of the discussion in the above judgment can lend any support to the extreme contention advanced by the learned Counsel. As a matter of fact, the learned Judges in the above decision after considering various arguments advanced pro and against and after discussing thoroughly the legal consequences observed that, the jurisdiction of the Court at intermediary stage of election is clearly shut out by virtue of Article 329(b). This is what is stated in this behalf in the said judgment.

"We have projected the panorama of administrative law at this length so that the area may not be befogged at the trial before the Election Court and for action in future by the Election Commission. We have held that Article 329(b) is the bar for intermediate legal proceedings calling in question the steps in the deciding

election disputes. We have further held that Article 226 also suffers such eclipse. Before the notification u/s 14 and beyond the declaration under Rule 64 of Conduct of Election Rules, 1961 are not forbidden ground. In between is, provided, the step challenged is taken in furtherance of not to halt or hamper the progress of the election".

To borrow the expression, with great respect, Article 226 stands eclipsed by the imperative words in Article 329(b) of the Constitution. This is further clear from the conclusions arrived at by the Supreme Court in the said judgment".

(The judgment of the Supreme Court referred to therein is Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,).

2. This dictum according to me squarely covers the present dispute as well. The question raised in this writ petition is the entitlement of the 5th respondent being included in the voters' list of Uttarahalli Legislative Assembly constituency in Karnataka State and his right to be elected to the Council of State (Rajya Sabha). A writ of quo warranto is also sought against the 5th respondent to call upon him to show under what authority he holds the seat. The petitioner alleges that the 5th respondent is a permanent resident of and a voter in Hyderabad of Andhra Pradesh. He alleges that he was surprised to note of his being included as a voter in a constituency in Karnataka State on the basis of which he contested to Rajya Sabha and got himself elected. On enquiry he discovered the following details. According to the petitioner, on 28-1-1998 the 5th respondent had sought for inclusion of his name in Uttarahalli Legislative Assembly constituency, Bangalore. On 24-2-1998 it is seen objections were invited to this application and time was given for filing the objection till 9-3-1998. No objections were filed by anybody. On 10-3-1998 the 5th respondent's name was included in the voters list at part 272, Malgalu Village of 89 Uttarahalli Legislative Assembly Constituency. The petitioner alleges that there is an inherent defect in the order, in that, the Electoral Registration Officer appointed u/s 13B of the Representation of the People Act, 1950 (hereinafter referred to as the "1950 Act") for the Uttarahalli Legislative Assembly constituency is the 2nd respondent whereas the power of including the 5th respondent in the voter's list of the said constituency has been exercised by the 3rd respondent. Aggrieved by the inclusion, the petitioner filed an appeal before the 1st respondent who entertained the appeal, though belated and dismissed the same by Annexure-J order on merits. The present writ petition is filed by the petitioner inter alia challenging the order Annexure-J made by the 1st respondent, on various grounds. As also, as stated he has sought for a writ of quo warranto in respect to the 5th respondent holding the seat as a Member of the Rajya Sabha.

3. Mr. Shantharaju, learned Counsel for the petitioner urged several contentions in support of his contentions. According to him the order passed to include the 5th respondent in the voters list of the said constituency is totally without jurisdiction and est and having been issued by an officer who is totally incompetent to deal with the application for such registration/inclusion. The said

order is an ultra vires exercise of the power. He preceded the contention by relying on Annexure-K whereby the 2nd respondent has been nominated to exercise power in respect of that particular constituency. In the instant case, the said power is exercised by the 3rd respondent.

4. To understand this contention we may advert to Section 13B of the Representation of the People Act, 1950. The said section reads thus:

"13-B. Electoral Registration Officers.--(1) The electoral roll for each parliamentary constituency in the State of Jammu and Kashmir or in a union territory not having a Legislative Assembly, each Assembly constituency and each Council constituency shall be prepared and revised by an Electoral Registration Officer who shall be such officer of Government or of a local authority as the Election Commission may, in consultation with the Government of the State in which the constituency is situated, designate or nominate in this behalf".

It means the power to register a voter in a constituency is vested with "an Electoral Registration Officer" who is nominated by the Election Commission in consultation with the Government of the State. It is not a case here that the particular officer who registered the voter is not designated officer in that behalf at all. He is also designated officer who is designated to discharge the function with respect to a different constituency. In other words, there are several Electoral Registration Officers, and each is designated to assigned territory by virtue of Annexure-K notification. The question then would be whether that particular officer having been designated to a different constituency could have exercised the power with respect to an applicant to a different constituency.

5. To appreciate this issue we may here notice an incidental aspect as well. The 5th respondent is residing in Malgalu Village, which in turn comes within the revenue jurisdiction of the Bangalore North Sub-Division. Thus, a resident of Malgalu Village is within the jurisdiction of the 3rd respondent who is the Assistant Commissioner having jurisdiction over the village. But, that village has been delinked and included as part of the Uttarahalli Assembly Legislative constituency for the limited purpose of the Assembly delimitation. As such, while administration-wise, the 5th respondent lived within the jurisdiction of the Assistant Commissioner, Bangalore North Sub-Division, the 3rd respondent herein, with respect to the exercise of power under Electoral Laws is concerned he was under the jurisdiction of the Assistant Commissioner, Bangalore South Sub-Division, the 2nd respondent herein.

6. The learned Counsel for the respondents had made available the records which takes in the copy of application submitted by the 5th respondent for the purpose of registering him as a voter and other papers indicating that the 5th respondent made the application to the appropriate officer to register him as a voter of Uttarahalli Legislative Assembly constituency. It is seen that both the offices that is, the South and the North Sub-Divisions are situate factually in the

same building as well.

7. Now the relevant statutory provision enabling to make an application for the inclusion of the name in an electoral roll is contained in Section 23 of the 1950 Act. It contemplates making of an application of the Electoral Registration Officer to include the name of a person in the voters list. That has been complied with by the 5th respondent in the instant case. Rule 26(1) of the Registration of Electors Rules, 1960 indicate that such an application shall be made in Form 6. Rule 26(2) provides for the manner of presentation. In this case, the 5th respondent avers that it has been presented to the Competent Officer himself. Rule 26(3) contemplates publication of such an application at a conspicuous place in his office together with a notice inviting objection to such an application granting 7 days time in this behalf. The records disclose that this has also been done. The rule does not postulate of any investigation or inquiry by the Electoral Registration Officer at any stage. Admittedly, the petitioner did not object to the application submitted by the 5th respondent. Rule 26(4) is the next stage which indicates as to what should be done if there be no objection. The Electoral Registration Officer may consider the application and if satisfied direct the inclusion of the applicant in the voters list. It does not also postulate any hearing or any detailed investigation. The rule does not also contemplate giving notice of the consideration of the application to the applicant or notice of the objection received from any, if there be any such objection to the applicant. I say so because in similar situation, when a claim is being made for inclusion of the name in the voters list under Rule 12, it specifically provides for inquiry and an adjudication (vide Rule 15). There is a right to object, a discloser of the objection and a hearing if need be. This procedure, is not engrafted in Rule 26. This aspect is being adverted for the limited purpose to bring home that an applicant u/s 23 for inclusion of his name in the voters list has no further role to perform after he makes an application for inclusion of his name as such in the electoral roll.

8. The office puts up the application to the particular officer who has to deal with that application. That is what may be described as the indoor management of the Department. In this case an application had been made by the 5th respondent to the appropriate authority for including his name in the voters list. It is left to the authority concerned to conform to the requirement of law and satisfy whether the applicant could be included in the voters list of the particular Legislative Assembly constituency or not. The applicant cannot do anything more and he has no role to perform. In such a situation it is a case where the disposal of such an application is liable to be protected invoking the doctrine of indoor arrangement. An outsider, who cannot have the knowledge of the intricacies arising out of the notification u/s 13B of the 1950 Act has no reason to believe that the exercise of the power by the 3rd respondent, within whose revenue limits as a matter of fact he lives would be invalid. The rule applied by Lord Hatherly in *Royal British Bank v Turquand*,

"When there are persons conducting the affairs of the company in a manner

which appears to be perfectly consonant with the Articles of Association, those so dealing with them externally are not to be affected by any irregularities which may take place in the internal management of the company".

Doctrine of indoor management should save the action of the 3rd respondent in the instant case. The 5th respondent applied to the jurisdictional Electoral Registration Officer who is an Electoral Registration Officer for inclusion of his name in the electoral roll. Nobody including the petitioner objected. His application remained in the notice board for over 7 days the statutory period. Ultimately, the 3rd respondent, within whose revenue jurisdiction the 5th respondent resided ordered inclusion of his name. The 5th respondent had no occasion to doubt or enquire into the competency of the 3rd respondent to make the order nor did he of his own volition choose the 3rd respondent to deal with his application. As such no illegality can be attached to the said Annexure-E order nor this defect could render the order non est.

9. We will now advert to another aspect of the issue. What exactly, is the challenge of the petitioner? If we analyse the challenge, we find two stages (i) the inclusion of the name of the 5th respondent and (ii) the election of the 5th respondent to Rajya Sabha. The second relief is couched in the form of a writ of quo warranto. But for the grant of this writ, there are two exceptions. The first is delay and laches. In this case, the 5th respondent was elected to the Rajya Sabha as early as in April 1998, and the writ petition has been filed as late as in March 1999. Though that itself may not be an adequate reason to deny the relief but there exists an effective alternative remedy u/s 81 of the Representation of People Act, 1951. Besides that, the relief of quo warranto, solely depends on the establishment of the illegality committed in the inclusion of the name of the 5th respondent in the voters' list of the Uttarahalli Legislative Assembly Constituency. As long as his name stands included, and he is registered as a voter, that voter can validly contest to the Rajya Sabha from the Karnataka State and his election cannot be invalidated on the ground that he is not a voter registered in a Legislative Constituency in Karnataka. Therefore, only when the inclusion of the name of the 5th respondent as a voter in the said constituency is set aside, the 5th respondent suffers any disqualification and then alone the question of granting a writ of quo warranto would arise. As such, the writ QUO warranto has to be denied once. Annexure-J is held to be valid. If so, the main attack is with respect to the proceedings of the Electoral Registration Officer in including the name of the 5th respondent as a Voter of the Uttarahalli Legislative Assembly Constituency.

10. Would not such an enquiry come within the ambit of Section 100 of the Representation of the People Act, 1951? I am of the view that it would if so, the remedy is u/s 81 of the Act and not in a writ proceedings under Article 226 of the Constitution. Therefore, there exists an alternate remedy, which circumstances also disentitles the relief of quo warranto.

11. But, Mr. Shantharaju, learned Counsel has urged this Court should consider

the validity of the said Annexure-J order. Section 13B of the 1950 Act shows that the power to prepare the electoral roll for each constituency is conferred on "an Electoral Registration Officer". The statute does not state that the said power shall be exercised only by the designated Electoral Registration Officer. It only provides that it shall be done by "an Electoral Registration Officer". Therefore, the officer who does the preparation should be an Electoral Registration Officer. It further states, that the Election Commission may, in consultation with the State Government entrust that work to an officer. Therefore, to whomever, the work is entrusted, should be "an Electoral Registration Officer". As noticed earlier, the Electoral Registration Officer, in the matter of exercise of power u/s 23 of the Act, does not undertake any adjudicatory function after hearing even if there be any objection. The reason in this behalf may be twofold. Firstly, no one can complain that he is prima facie prejudiced in any manner by the inclusion of a person in the voters' list, and if such inclusion prejudices him in any manner an effective alternate remedy is provided by way of appeal under Rule 27 read with Rule 23 of the Rules and further a remedy u/s 81 of the Act of 1951 is also made available. The in-built mechanism perhaps, was the reason why no adjudicatory process was contemplated at the time of the inclusion of the name of a voter.

12. Therefore, as can be seen from the instant case, the impugned inclusion of the name of the 5th respondent has been done by "an Electoral Registration Officer" contemplated u/s 13B read with Section 23 of the Act. Secondly, the petitioner had never objected to the inclusion of the name, and as such he is not a person prejudiced by the inclusion. Thirdly, the petitioner has availed of the alternate remedy by way of filing a belated appeal. Lastly, the petitioner has consciously abandoned his remedy u/s 81 of the Representation of the People Act, 1951.

13. In these circumstances one cannot say that the "non est" or stillborn doctrine can be applied in this case to invalidate the inclusion of the name of the 5th respondent in the voters' list. Besides, the petitioner did exercise his right of appeal to the Appellate Authority though belatedly. The Appellate Authority despite the delay examined the appeal and as per Annexure-J order upheld the inclusion of the name. The defect, if any, that is pointed out by the petitioner stands cured by the fact that the competent Appellate Authority examined the validity of the inclusion of the name and he concurred with the decision of the Electoral Registration Officer.

14. Besides, as the objection now raised falls squarely within the ambit of Section 100 of the Representation of the People Act, 1951 and the dispute could have been the subject-matter of election petition u/s 81 of the Act. In the light of blanket prohibition cast by Article 329(b) of the Constitution of India I am of the view that the present proceedings are incompetent. Therefore, this Court cannot invoke its jurisdiction under Article 226 of the Constitution of India.

15. Mr. Shantharaju, learned Counsel for the petitioner then attempted to distinguish the case in hand by relying on the decision of the Supreme Court in

K. Venkatachalam v A. Swamickan and Another. He invited my attention to the following passage:

"Various decisions of this Court which have been referred to by the appellant that jurisdiction of the High Court under Article 226 is barred challenging the election of returned candidate and which we have noted above do not appear to apply to the case of the appellant now before us. Article 226 of the Constitution is couched in widest possible term and unless there is clear bar to jurisdiction of the High Court its powers under Article 226 of the Constitution can be exercised when there is any act which is against any provision of law or violative of constitutional provisions and when recourse cannot be had to the provisions of the Act for the appropriate relief. If circumstances like the present one bar of Article 329(b) will not come into play when case falls under Articles 191 and 193 and whole of the election process is over. Consider the case where the person elected is not a citizen of India. Would the Court allow a foreign citizen to sit and vote in the Legislative Assembly and not exercise jurisdiction under Article 226 of the Constitution?"

16. But, as pointed out by Mr. Satyapal Jain, the learned Senior Advocate appearing for the 5th respondent, that was a case of a total fraud that was being practised on the Constitution, in that the "elected" representative got elected by impersonating a fictitious person and contested the election. A fraud vitiates all acts, however solemn it be. That judgment is no parallel to this case. The following passage therein demonstrated this aspect:

"25. In the present case the appellant was not an elector in the electoral roll of Lalgudi Assembly constituency. He, therefore, could not be elected as a member from that constituency. How could a person who is not an elector from that constituency could represent the constituency? He lacked the basic qualification under clause (c) of Article 173 of the Constitution read with Section 5 of the Act which mandated that a person to be elected from an Assembly constituency has to be elector of that constituency. The appellant in the present case is certainly disqualified for being a member of the Legislative Assembly of Tamil Nadu. His election however, was not challenged by filing an election petition u/s 81 of the Act. Appellant knows he is disqualified. Yet he sits and votes as a member of the Legislative Assembly. He is liable to penalty of five hundred rupees in respect of each day on which he so sits or votes and that penalty is recoverable as debt due to the State. There has not been any adjudication under the Act and there is no other provision of the Constitution as to how penalties so incurred by the appellant has to be recovered as a debt due to the State. Appellant is liable to penalty nevertheless as he knows he is not qualified for membership of the Legislative Assembly and yet he acts contrary to law.

26. The question that arises for consideration is if in such circumstances High Court cannot exercise its jurisdiction under Article 226 of the Constitution declaring that the appellant is not qualified to be member of the Tamil Nadu Legislative Assembly from Lalgudi Assembly constituency. On the finding

recorded by the High Court, it is clear that the appellant in his nomination form impersonated a person known as Venkatachalam s/o Pethu, taking advantage of the fact that such person bears his first name. Appellant would be even criminally liable as he filed his nomination on affidavit impersonating himself. If in such circumstances he is allowed to continue to sit and vote in the Assembly his action would be fraud to the Constitution".

17. Hence, there is an official exercise of power u/s 23 of 1950 Act to include the name of the 5th respondent in the voters list of the Uttarahalli Legislative Assembly constituency. As long as that entry stands, he is an elector of the Legislative Assembly constituency in Karnataka State made mention of in Section 5 of the 1951 Act, He does not suffer any disqualification mentioned in Article 190 of the Constitution of India. Thus, the genesis for the relief for the petitioner being an illegal discharge of a statutory function, which squarely falls within the ambit of Section 100 of the Act, the remedy lies elsewhere. I, therefore, dismiss the writ petition.