
(1988) 11 KAR CK 0040
In the Karnataka High Court
Case No : W.P. No. 17410/1986

K. Maruthi

APPELLANT

Vs

K. Dasappa and Others

RESPONDENT

Date of Decision : 15-11-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Co-operative Societies Act, 1959 — Section 70
Karnataka Co-operative Societies Rules, 1960 — Rule 14

Citation : (1989) 1 KarLJ 130

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-This is a fit case for interference under Article 226 of the Constitution primarily on the basis of the principle that the impugned Endorsement dated 23-9-1986 is vitiated by an error of law apparent on the face of the record.

2. The petitioner is aggrieved since his nomination paper presented on 21-9-1986 to contest for one of the seats in the "large farmers and others constituency" was rejected by the Returning Officer not because the nomination paper was defective or invalid, but because the notice of intention to contest in the election was defective.

3. The only point to be considered is whether penalty an error of law has been committed by the Returning Officer by misconstruing the relevant provision of law and by consequent misapplication of the law.

4. Suffice is to refer to the impugned Endorsement itself. The endorsement is brief and clear enough to point out its own defect. Reasons have been given for rejecting the notice of candidature, but in regard to the rejection of the nomination paper, no defect is pointed out in the nomination paper itself except stating that the notice of candidature is defective and consequently the nomination paper is also rejected. More significant is the admission of the Returning Officer in the impugned endorsement that the nomination paper by

itself is free from infirmity and yet it is rejected because the notice of candidature is defective.

5. Two methods are contemplated for the purpose of contesting in an election like this. One method is by the individual himself or herself giving notice of the intention to contest in the election and the other method is by a third person nominating the willing candidate for contesting in the election. In the instant case, the petitioner had availed himself of both the methods. It cannot be denied that the two methods are not interlinked but they are distinctly different from one another. Therefore, it can be safely said that if the notice is defective, the nomination paper cannot be automatically rejected despite the fact that the nomination paper is free from defect. Conversely it can be said that if the nomination paper is defective, the notice cannot be rejected even if it is free from flaw merely because the nomination paper is defective. But the Returning Officer has proceeded on the wrong premise that the nomination paper deserves to be rejected and has gone to the extent of rejecting it notwithstanding the fact that it is admitted by him that there is no defect in it only because the notice is vitiated by reason of blemishes in it. The reasoning adopted by the Returning Officer is totally prevaricated and misconceived. This is a case of misdirection on the part of the Returning Officer resulting in miscarriage of justice.

6. Forceful contention was advanced on behalf of respondents-3 to 6 by the learned Counsel that this writ petition deserves to be dismissed on the threshold since the petitioner has not exhausted the alternative remedy though efficacious and available under Section 70 of the Karnataka Co-operative Societies Act, 1959, which provides for adequate remedy to the petitioner in a matter of this nature I am afraid this proposition cannot be accepted particularly in the light of the decision of a Division Bench of this Court which was subsequently affirmed by the Supreme Court in the case of Karnataka State Road Transport Corporation v. Karnataka State Transport Authority, AIR 1984 Karnataka 4, wherein it was held:

"Even where an equally efficacious alternative remedy exists, where, however, fundamental rights are affected; where rules of natural justice are violated; or where there is a failure on the part of the authority concerned to confine itself within the bounds of its legitimate jurisdiction or where there is a failure to exercise a jurisdiction vested in it or where there is an error of law apparent on the face of the record, a person aggrieved can invoke the extraordinary jurisdiction of this Court under Art. 226 without reference to any remedy however efficacious it be. The existence of an alternative remedy does not oust the jurisdiction of the High Court under Article 226. The rule that the court does not entertain a petition under Art. 226 when there is an equally efficacious alternative remedy is not a rule of law; but is a principle the courts have evolved for the guidance of their own discretion."

7. In the result, for the reasons stated above, rule is issued and made absolute. The writ petition is allowed and the impugned endorsement is quashed. The election of respondents-3 to 6 from "Large Farmers and others Constituency" is

declared null and void and set aside. The result is that respondent-2 is perforce bound to conduct the election to its Managing Committee for the years 1986-87 to 1988-89 in accordance with the provisions of the Karnataka Co-operative Societies Act, 1959.

8. In the circumstances of the case, there will be no order as to costs.

Writ petition is allowed.