

(1978) 06 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 6423 of 1977

Kallaiah Nagaiah Koradhanyamath	APPELLANT
Vs	
Basappa Tirakappa Buradikatti and Others	RESPONDENT

Date of Decision : 22-06-1978

Acts Referred:

Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 11, 41, 41 (4)
Karnataka Agricultural Produce Marketing (Regulation) Rules, 1968 — Rule 17, 45 (2)

Citation : AIR 1978 Kar 210 : (1978) ILR (Kar) 1307 : (1978) 2 KarLJ 378

Hon'ble Judges : D.M. Chandrashekhar, C.J;N.D. Venkatesh, J

Bench : Division Bench

Advocate : K.A. Swami, for the Appellant; B.G. Sridharan, V.T. Raya Reddy and Jayakumar Patil, for the Respondent

Judgement

Chandhashekhar, C.J.—This petition under Art. 226 of the Constitution has been referred to a Division Bench by Rama Jois, J., as in his opinion there appeared to be conflict between the decision of a Bench of this Court in Hayat Beig v. Munivenkate Gowda (1972 (1) Mys LJ 121) : (AIR 1972 Mys 226) and the decision of a single Judge in Channegowda v. State of Karnataka 1975 (2) Kant LJ 235).

2. This petition is directed against the judgment of the District Judge, Dharwar, in an election petition u/s 41(4) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (hereinafter to be referred to as "the Act"), and Rule 45 (2) of the Rules thereunder (hereinafter referred to as "the Rules").

3. Petitioner and respondent 1 were candidates for an election to the office of the Chairman of the Agricultural Produce Market Committee, Ranibennur. The Returning Officer declared that each of them had secured seven votes, On drawing lots, the petitioner was declared as having been elected. Respondent 1 challenged that election in an election petition before the learned District Judge, who, by the impugned judgment, set aside the result of the election.

4. Though the learned counsel for the petitioner assailed both the grounds on which the learned District Judge set aside the election of the petitioner, it is sufficient for purposes of this petition to deal with only one of them, namely, that respondent No. 11, the Assistant Secretary of Agricultural Produce Market Committee, was not competent to vote.

5. Section 11 of the Act which provides for the constitution of the market Committee other than the first one, states, inter alia, that one of the members of the Committee shall be an officer subordinate to the Chief Marketing Officer, nominated by the Chief Marketing Officer. For the Agricultural Market Committee, Ranibennur, the Chief Marketing Officer had nominated the District Marketing Officer, Dharwar District, as such member. It is common ground that at the time of the election, that District Marketing Officer had been transferred and respondent No. 11, the Assistant Secretary, Agricultural Produce Market Committee, Hubli, was placed in charge of the current duties of the Office of the District Marketing Officer and voted in that election. The learned District Judge has held that since respondent No. 11 was only placed in such charge, he could not have exercised the statutory power of voting which the District Marketing Officer only could exercise and that his vote had materially affected the result of the election and hence rendered the election invalid. The view taken by the learned District Judge is supported by several decisions of this Court and of the Supreme Court. Sri K. A. Swamy, learned counsel for the petitioner, was not able to show that this view of the learned District Judge was incorrect.

6. However, Sri K. A. Swamy contended that since neither the Act nor the Rules provide on what grounds an election to the office of the Chairman of a Market Committee, can be set aside, the learned District Judge could not have set aside the election in spite of his having been empowered u/s 41 of the Act to decide any dispute relating to the validity of such election. In support of his contention Sri K.A. Swamy strongly relied upon the decision of a Division Bench of this Court in Hayat Beig v. Munivenkate Gowda (AIR 1972 Mys 226) (supra). There, an election of the Chairman of a Village Panchayat had been challenged in an election petition before the Munsiff who is constituted as Election Tribunal under Rule 17 of the Karnataka Village Panchayat (Election of Chairman and Vice-Chairman) Rules, 1959. The learned Munsiff set aside that election and his decision was assailed in a writ petition. While quashing his decision, the Division Bench observed thus:

"It appears to us that the Rule making authority has by oversight omitted to frame a Rule stating the grounds on which the election of a returned candidate shall be declared to be void. In the absence of any such Rule, we fail to see how the Munsiff exercising his powers u/s 30(2) read with Rules 17 and 18 of the Rules can try an Election Petition. The Munsiff under the Act exercises his powers not as a Court but as a Tribunal. He has no inherent powers of a Court. Therefore the Munsiff could not have set aside the election of the petitioner."

7. Sri K.A. Swamy, submitted that Sub-section (2) of Section 30 of the Karnataka

Village Panchayats and Local Boards Act and Rule 17 of the Rules thereunder, are in pari materia with Section 41(4) of the Act and Rule 45 (2) of the Rules and that hence, the ratio of that decision would apply with equal force to this case also and that the learned District Judge could not set aside the election petition.

8. As pointed out by Venkataramiah, J. in Channegowda v. State of Karnataka 1975 (2) Kant LJ 235 (supra) the two grounds which persuaded the Division Bench in Hayat Beig's case to quash the decision of the learned Munsiff were:

(i) that an election of a returned candidate could not be set aside in the absence of proof that on account of non-compliance with any law, the result of the election in so far as it concerned the returned candidate, had been materially affected;

(ii) the Munsiff who was functioning as a Tribunal and not as a Court had no inherent powers of a Court and therefore, he could not have set aside the election in the absence of any specific statutory provision which laid down the grounds on which the election could be set aside.

9. When once the Division Bench held in Hayat Beig's case that the result of the election had not been shown to have been materially affected by any non-compliance with any law, there was no need for the Division Bench to go into the question whether the Munsiff, functioning as the Election Tribunal, could set aside an election in the absence of any specific statutory provision laying down the grounds on which an election could be set aside. So, in our opinion, what the Division Bench in Hayat Beig's case has said on this point, is obiter dictum and hence is not binding on us.

10. We are in respectful agreement with the view taken by Venkataramiah, J. in Channe Gowda's case 1975 (2) Kant LJ 235 that even in the absence of any express statutory provision laying down the ground on which an election can be set aside, an Election Tribunal can set aside an election on any of well accepted grounds and one of such grounds is that the disobedience of, or non-compliance with, any statutory provision governing such election, has materially affected the result of such election.

11. In the present case, since there was equality of votes between the petitioner and respondent No. 1, the vote cast by respondent No. 11 is very likely to have materially affected the result of the election though on account of secrecy of ballot it could not be ascertained whether respondent No. 11 voted for petitioner or respondent No. 1. Hence, the learned District Judge was right in holding that voting by respondent No. 11 who was not entitled to vote, had materially affected the result of the election and rendered the election invalid.

12. Moreover, it is well settled that the jurisdiction of this Court under Article 226 of the Constitution, is discretionary and has to be exercised only in aid of justice, Even assuming for the sake of argument that the learned District Judge functioning as Election Tribunal could not set aside that election in the absence of

express statutory provision laying down the grounds on which such election could be set aside, this court need not interfere with the decision of the District Judge setting aside the election when result of election, as declared by the Returning Officer, was obviously illegal. In such circumstances, interfering with the order of the District Judge would only result in allowing an illegal election to stand and it would not be proper exercise of discretion of this Court to interfere with the judgment of the learned District Judge.

13. In the result, the petition fails and the rule issued in this petition is discharged.

In the circumstances of the case parties will bear their own costs.

Order on the oral application for grant of certificate of fitness to appeal to the Supreme Court.

After we dictated the above order in open Court, the learned counsel for the petitioner made an oral application praying for grant of a certificate of fitness to appeal to the Supreme Court. In our opinion, no substantial question of law of general importance which needs to be decided in Supreme Court, can be said to arise out of our order.

Hence, we decline to grant the certificate prayed for.

14. Rule discharged and certificate of fitness refused.