

(2015) 08 KAR CK 0311

In the Karnataka High Court

Case No : Writ Petition No. 32762/2015 (CS-EL/M)

Kalyankumar S. Shettar

APPELLANT

Vs

The State of Co-operative Election Commission and Others

RESPONDENT

Date of Decision : 06-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 329(b)
Karnataka Co-operative Societies Act, 1959 — Section 21, 22, 23, 24, 70
Representation of the People Act, 1951 — Section 100, 101, 118

Citation : (2016) 1 KarLJ 367

Hon'ble Judges : Ravi V. Malimath, J

Bench : Single Bench

Advocate : Jayakumar S. Patil, Senior Advocate for Sandesh T.B., for the Appellant; M. Keshava Reddy, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ravi V. Malimath, J—The case of the petitioner is that respondent No. 3 is a Co-operative Society registered under the Karnataka Co-operative Societies Act (hereinafter referred to as "the Act"). Its committee of management consists of the representatives of Bengaluru, Mysore, Belagavi, Kalaburagi Divisions and also from the District Co-operative Unions. These District Co-operative Unions and District Cooperative Federations elect 14 Directors in all and send their delegates to respondent No. 3 Co-operative Federation, for exercising the vote on their behalf, to elect 14 Directors. As the period of the Board came to an end, respondent No. 2 issued a voters list indicating the name of the Society, its enrollment member and its delegates name. Respondent No. 7 was the delegate of respondent No. 5, who has also filed a nomination paper to contest the post of Director representing respondent No. 5 Union. The election was fixed on 01.08.2015. When the process of election was set in motion, respondent No. 5 issued a meeting notice dated 21.07.2015 to withdraw the delegation of respondent No. 7. Respondent No. 7 therefore filed WP No. 107717/2015 before the Dharwad Bench of the Hon'ble High Court challenging the said meeting

notice. The learned Single Judge declined to stay the meeting. The request to include the name of respondent No. 7 was declined. Thereafter, the returning officer again took up the proceedings.

2. Objections were filed by one B.S. Sultanpuri to the nomination of respondent No. 7 on the ground that he was a defaulter. The returning officer passed an order stating that there was no direction by the Hon'ble High Court to include the name of respondent No. 6 or to exclude the name of respondent No. 7. Once again an Interlocutory Application was filed in the writ petition before the Dharwad Bench seeking for a direction to respondent Nos. 1 to 3 to include the name of respondent No. 7 in the place of respondent No. 6. No relief was granted on the said application. Thereafter on 31.07.2015, respondent No. 6 made a representation to respondent No. 1 to issue directions to respondent No. 2 to 4 to permit respondent No. 6 to cast his vote based on the resolution passed on 29.07.2015 wherein the delegation of respondent No. 7 was withdrawn and respondent No. 6 was nominated in his place. Respondent No. 1 sent a communication to respondent Nos. 2, 3 and 4 to decide the issue of voting rights of respondent No. 6 in view of the change of the delegate in terms of resolution dated 25.07.2015. Respondent No. 4 sought a clarification from respondent No. 2, since there was no direction from the Hon'ble High Court to include respondent No. 6 and in view of ambiguity in the clarification as sought for.

3. Respondent No. 1 passed an order vide Annexure-"K" stating that since the Hon'ble High Court has passed the order according to which only eligible candidates are entitled to participate in the election, since there was a change of delegation by the Bagalkot Union withdrawing the delegation of respondent No. 7 and nominating respondent No. 6 in his place, respondent No. 6 should be included in the voters list and consequently respondent No. 6 shall be permitted to cast his vote in the election to the Committee. On the basis of the said order, fourth respondent conducted the proceedings as to whether to permit respondent No. 6 to vote or not. Since respondent No. 1 had already passed an order to give voting rights to respondent No. 6 instead of respondent No. 7, the Returning Officer passed an order vide Annexure-V holding that there was no direction by the Hon'ble High Court to include the name of respondent No. 6 or to exclude the name of respondent No. 7. The order passed by respondent No. 1 vide Annexure-K and the order passed vide Annexure-L are under challenge herein as well as to declare the entire election proceedings as illegal and to direct respondent No. 1 to hold a re-election of respondent No. 3 Federation.

4. Sri Jayakumar S. Patil, learned Senior Counsel appearing for the petitioner's counsel submits that the impugned order is bad in law and liable to be set aside. The change in the voters list is not permissible. It is only on the date of election that such a change is made. Various other grounds are also pleaded. He prays that the petition be allowed.

5. Sri. R.B. Sathyanarayan Singh, learned Government Advocate defends the impugned order. Sri. M. Keshava Reddy learned Counsel appearing for

respondent No. 1 contends that the writ petition is not maintainable since it is a dispute which has to be adjudicated under Section 70 of the Act. The learned counsel appearing for respondent No. 6 Sri G.R. Gurumath contends that the petition itself is not maintainable in view of the proviso to Section 70A of the Act. Hence, the counsels were heard so far as maintainability of the petition is concerned.

6. Heard learned counsels.

7. The plea of the petitioner is for writ of certiorari to quash Annexure-K, which is the order passed by respondent No. 1 with reference to Sl. No. 21 wherein the name of respondent No. 6 is included in the place of respondent No. 7. Annexure-L is the order passed by respondent No. 4 namely the Returning Officer with regard to the proceedings dated 01.08.2015 including the name of respondent No. 6 in the place of respondent No. 7. It is therefore contended that it is an illegality committed inasmuch as name of respondent No. 6 is included on the date of the election itself. It is further contended that the objection of the respondents on maintainability of the writ petition is misconceived. Also that the proviso to Section-70A of the Act, does not contemplate any dispute with regard to an election. Therefore, the petitioner has no other remedy except to maintain this writ petition.

8. Section-70 of the Act deals with disputes which may be referred to the Registrar for decision. Section-70A of the Act, refers to the Period of limitation including the proviso which reads as under:

Section 70(A):

"(1) No dispute under section 70 shall be entertained unless it is referred to the Registrar within six years from the date of the cause of action:

Provided that a dispute relating to the election of a member, President, Vice President, Managing Director, Honorary Secretary or other officer of the Committee shall be referred to the Registrar within thirty days from the date of declaration of the result of the election.

(2) Notwithstanding anything contained in sub-section (1), the Registrar may entertain a dispute referred after the period specified in sub-section (1) if he is satisfied that the person making the reference had sufficient cause for not making the reference within that period.

(Provided that a dispute relating to the disciplinary action against or service conditions of an employee shall be filed within a period of twelve months from the date of the order relating to such dispute.)"

9. It is contended by the respondents that the dispute in this writ petition is relatable to the Election of a Member, etc. Therefore, the same shall be referred to the Registrar within 30 days from the date of declaration of the result and hence the writ petition is not maintainable.

10(a). The learned Senior Counsel for the petitioner's counsel firstly places reliance on the judgment of the learned Single Judge of this Court reported in (1975) 2 KANT LJ 235 in the case of Channe Gowda & Anr. v. State of Karnataka & Ors., wherein the learned Single Judge while considering the provisions of Sections 100 and 101 of the Representation of the People Act, 1951 as well as the provisions of the Co-Operative Societies Act with reference to the election, held at para.9, as under:

"9. On a perusal of the provisions of Ss. 100 and 101 of the Representation of the People Act, 1951, it becomes clear that the Parliament had only enacted in a statutory form in those provisions, the various grounds on which elections had been set aside by several election Tribunal and Courts prior to their enactment under various laws governing the elections, which were in force in India and in England. It is, therefore, difficult to hold that merely because there are no express provisions similar to Ss. 100 and 101 of the Representative of the People Act, either in the Act or the Rules framed there under, no dispute relating to an election can be entertained and decided under 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 elections under the Act can neither be decided by a Civil Court by reason of S. 118 nor by the Registrar or Arbitrator under S. 70 of the Act, on the ground there are no provisions similar to Ss. 100 and 101 of the Representative 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 to justice. Although there are no statutory provisions corresponding to Ss. 100 and 101 of the Representative 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.

(b). The learned counsel appearing for the petitioner relies on para-9 in support of his case. He further contends that since there are no statutory provisions corresponding to Sections - 100 and 101 of Representation of Peoples Act, setting-out the grounds on which the election of a co-operative society can be set-aside, it is open for 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. Therefore, he pleads that the said judgment is applicable to the case on hand.

(c). In the very same judgment, the Hon"ble Supreme Court held in Para-10 as follows:

"10. In view of the foregoing, I hold that the Tribunal has erred in holding that no dispute relating to election could be entertained under S. 70 of the Act, relying upon the decision of this Court in Hayat Beig's case which was applicable to disputes arising under Karnataka Village Panchayat (Election of chairman and Vice-Chairman) Rules, 1959 only. The Asst. Registrar was also not right in holding that the dispute before him was not maintainable. The impugned decision of the Asst. Registrar is, therefore, set aside. He is directed to dispose in accordance with law. No costs."

Therefore, it is clear that the learned Single Judge held that the dispute relating to election can be entertained under Section-70 of the Act. Therefore, the said judgment will be of no avail to the petitioner's but on the contrary, would support the case of the respondents.

11.(a) He also places reliance on the judgment of Hon"ble Supreme Court reported in Inderjit Barua and Others Vs. Election Commission of India, AIR 1984 SC 1911 : (1984) 2 SCALE 441 : (1985) 1 SCC 21 : (1985) 17 UJ 180 with reference to para.3 which reads are under:

"We are of the view that once the final electoral rolls are published and elections are held on the basis of such electoral rolls, it is not open to anyone to challenge the election from any constituency or constituencies on the ground that the electoral rolls were defective. That is not a ground available for challenging an election under Section 100 of the Representation of People Act, 1951. The finality of the electoral rolls cannot be assailed in a proceeding challenging the validity of an election held on the basis of such electoral rolls vide *Kabul Singh Vs. Kundan Singh and Others*, AIR 1970 SC 340 : (1969) 2 SCC 452 : (1970) 1 SCR 845 Article 329(b)] in our opinion clearly bars any writ petition challenging the impugned elections on the ground that the electoral rolls of 1979 on the basis of which the impugned elections were held were invalid".

(b). A reading of the aforesaid judgment would clearly indicate that the Hon"ble Supreme Court held therein that there is a clear bar to any writ petition challenging the defect in an electoral roll.

12. Further reliance is placed on the judgment of this court in the case of *Mr. J. Robert Vs. Mr. Ram Jethmalani*, (1990) ILR (Kar) 1907 , with reference to para-7, which reads as follows:

"7. Further, there can be no doubt, that as any illegality in the preparation of electoral rolls or inclusion of names in the electoral rolls prepared under the Act cannot be a subject matter of challenge in an election petition, any order of the Registration Officer or of the Chief Electoral Officer in appeal, could be a subject matter of challenge in a petition under Article 226, in view of the decision of this Court in *L. Shivanna Vs. State of Karnataka*, (1988) ILR (Kar) 2121 : (1989) 1 KarLJ 294 .

The learned counsel for the first respondent argued that the appropriate course

for the petitioners was to file an application under Section 22, for the deletion of the name of the first respondent from the electoral roll and not to prefer an appeal under Section 24 of the Act. In our opinion, Section 22 provides for making an application for correction or deletion of name in the electoral roll published in terms of Section 21 of the Act and Rule 22 of the Rules. If the name of the first respondent had been included in the electoral roll so published, then the only course open to the petitioners; if they were aggrieved by such inclusion; was only to file an application under Section 22 of the Act. That is not a remedy against the order of the Registration Officer made under Section 23 of the Act read with Rule 26 of the Rules. The remedy provided against an order made under Section 23 of the Act including the name of a person in the electoral roll is an appeal to a higher authority under Section 24 of the Act. In fact, if instead of filing an appeal an application were to be filed under Section 22 to the Registration Officer himself, he could reject it on the ground that his order under Section 23 had become final, the same not having been appealed against under Section 24 of the Act. Therefore, we find no substance in the argument of the learned counsel for the first respondent that the petitioners should have resorted to the making of an application under Section 22 of the Act to the Electoral Registration Officer himself."

13. The judgment would clearly indicate that in the facts of that case, if the name of the first respondent had been included in the electoral roll, then the only course open to the petitioner was to file an application under Section-22 of the Act. The remedy provided against the order made under Section-23 of the Act, including the name of a person in the electoral roll, is an appeal to a higher authority under Section 24 of the Act. Therefore, the illegality in preparation of an electoral roll is to be remedied by filing an appeal and the order passed in such an appeal could be a subject matter of challenge in a petition under Article-226, while following the judgment of this Court in *L. Shivanna Vs. State of Karnataka*, (1988) ILR (Kar) 2121 : (1989) 1 KarLJ 294 . However, the facts in this case are otherwise. This petition has been filed against the original order itself and there is no appeal filed against the said order which can form the basis of the petition under Article-226. In the absence of not exhausting the remedy under the Act, the petition under Article-226 therefore would not be maintainable.

14. The counsel for the respondent No. 1 on the other hand relies on the judgment of the Hon"ble Supreme Court reported on *Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others*, (2001) 8 AD 84 : AIR 2001 SC 3982 : (2001) 8 JT 287 : (2001) 6 SCALE 585 : (2001) 8 SCC 509 : (2001) AIRSCW 3959 : (2001) 7 Supreme 362 , with reference to para-12, which reads as follows:

"12. In view of our finding that preparation of the electoral roll is being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well

settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellant to challenge the election of returned candidate, if aggrieved, by means of an election petition before the election tribunal."

15. The Hon''ble Supreme Court has clearly enunciated that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. Here too, the case is whether there is a breach of the relevant Act and Rule that is complained of. Notwithstanding the same, the Hon''ble Supreme Court held that even though there is an error in preparation of the electoral roll, the same cannot be questioned before the High Court. Under these circumstances, I am of the considered view that keeping in mind the aforesaid judgments of the Hon''ble Supreme Court and a clear reading of the proviso to Section-70A of the Act, the dispute requires to be referred to the Registrar.

16. On hearing learned counsels, I am of the considered view that the dispute would necessarily stand covered under the proviso to Section-70A of the Act. The dispute that could be referable is narrated therein. The preparation of an electoral roll, the addition, deletion of the name etc are all matters pertaining to a dispute relating to an election of a member etc. The judgments relied upon herein would clearly indicate that any dispute relating to an electoral roll cannot be entertained in a writ petition. Therefore, in terms of the proviso to Section-70(A), the writ petitioner is entitled to get the dispute referred to the Registrar within 30 days from the date of declaration of the results of the election. Therefore, the writ petition under Article-226 and 227 would not be maintainable. Remedy is always available to the petitioner in terms of Section-70(A) of the Act.

Hence the petition is dismissed as not maintainable.

17. Sri. G.R. Gurumath, learned counsel appearing for respondent No. 6, is permitted to file his memo of appearance within six weeks.