

(2015) 05 KAR CK 0011

In the Karnataka High Court

Case No : Writ Petition Nos. 21573-574/2015 (CS-EL/M)

Lakshman and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 19-05-2015

Acts Referred:

Constitution of India, 1950 — Article 191, 193, 226, 243-ZG, 329(b)
Karnataka Co-operative Societies Act, 1959 — Section 29(C), 31, 70, 70(2)(C)

Citation : (2015) 4 AKR 502 : (2015) 4 KarLJ 668 : (2015) 3 KCCR 2194

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Advocate : Jayakumar S. Patil, Senior Advocate for Devi Prasad Shetty, for the Appellant; R.B. Sathyanarayana Singh, AGA, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopal Gowda, J.—The respondent No. 5 is a Co-Operative Society registered under the Karnataka Co-Operative Societies Act, 1959 (for short "the Act"). To elect eleven Directors to its Managing Committee, calendar of events was published on 25.04.2015 by the respondent No. 4 - Returning Officer. There being contest and election having taken place, the result was declared, under Rule 14 of the Karnataka Co-Operative Societies Rules, 1960 (for short "the Rules"). Amongst others, the petitioners and the respondent Nos. 6 and 7 were declared as elected vide Annexure-B by the Returning Officer. Seeking quashing of the declaration as at Annexure-B, these writ petitions were filed.

2. Sri Jayakumar S. Patil, learned Senior Advocate, contended that the acceptance of the nomination papers of the respondent Nos. 6 and 7 and allowing them to contest to the posts of Directors and the declaration that they are elected as Directors of the 5th respondent being illegal, Annexure-B is liable to be quashed. He submitted that the respondent Nos. 6 and 7 being defaulters to the primary Societies - respondent Nos. 8 and 9, in view of the provisions under S. 29(C) of the Act, they are not even eligible to the contest the election.

He submitted that the respondent Nos. 6 and 7 having deliberately filed false affidavit/s and committed fraud, cannot continue as Directors of the 5th respondent-Society nor can contest for the posts of its Office Bearers. By placing reliance on the decision in the case of K. Venkatachalam Vs. A Swamickan and Another, AIR 1999 SC 1723 : (1999) 3 JT 242 : (1999) 3 SCALE 12 : (1999) 4 SCC 526 : (1999) 2 SCR 857 : (1999) 2 UJ 1064 : (1999) AIRSCW 1353 : (1999) 4 Supreme 333 , he contended that respondent Nos. 6 and 7, suffering from the disqualification, having mis-represented to the Returning Officer and contested the election, declaration of their result vide Annexure-B is liable to be quashed.

3. In Umesh Shivappa Ambi and Others Vs. Angadi Shekara Basappa and Others, AIR 1999 SC 1566 : (1998) 5 JT 347 : (1998) 4 SCC 529 : (1998) AIRSCW 3950 : (1998) 9 Supreme 175 , election to a Co-operative Society was conducted and there being no contest, the election result was declared. As the nomination filed by the respondent was rejected, a writ petition was filed challenging the rejection. Writ Petition having been dismissed on account of the availability of the remedy under S. 70 of the Act and Writ Appeal filed having been allowed and the rejection of the nomination having been held as wrongful and a direction having been issued to issue fresh calendar of events and hold election to the post of Directors of the Society and when the said judgment was challenged, while allowing the appeal, Apex Court has held as follows:

"4. It is now well settled that once an election is over, the aggrieved candidate will have to pursue his remedy in accordance with the provisions of law and this (sic High) Court will not ordinarily interfere with the elections under Article 226 of the Constitution. (See in this connection para 3 in K.K. Shrivastava and Others Vs. Bhupendra Kumar Jain and Others, AIR 1977 SC 1703 : (1977) 2 SCC 494 : (1977) 9 UJ 344 . The Court will not ordinarily interfere where there is an appropriate or equally efficacious remedy available, particularly in relation to election disputes. In the present case, under Section 70(2)(C) of the Karnataka Co-operative Societies Act, 1959 any dispute arising in connection with the election of a President, Vice President, Chairman, Vice-Chairman, Secretary, Treasurer or member of Committee of the Society has to be referred to the Registrar by raising a dispute before him. The Registrar is required to decide this in accordance with law".

4. In Swamickan's case (supra), admittedly, the name of the elected candidate was not in the voters' list and the elected candidate had tried to use similar name in the voters' list, which was admittedly not that of the elected candidate. In the circumstances, there was no necessity of any proof, as the voters' list was an admitted document, which clearly displayed that the name of the legislator was not included in the list. In the said circumstances, it was held that bar of Article 329(b) of the Constitution will not come into play, when the case falls under Articles 191 and 193 and whole of the election process is over (See para 27).

5. In *Jaspal Singh Arora Vs. State of M.P. and Others*, (1998) 9 SCC 594 , election of the petitioner as President of Municipal Council, Sehore was challenged by filing a writ petition, by the defeated candidate at the election. The petition was dismissed on the ground that the statutory remedy of challenging the election by filing election petition was available under the statute and therefore, the writ petition could not be entertained. Another writ petition having been filed by another person for the aforesaid purpose was allowed and the election of the petitioner was set aside. When the same was assailed, Apex Court held as follows:

"3. These appeals must be allowed on a short ground. In view of the mode of challenging the election by an election petition being prescribed by the M.P. Municipalities Act, it is clear that the election could not be called in question except by an election petition as provided under that Act. The bar to interference by courts in electoral matters contained in Article 243-ZG of the Constitution was apparently overlooked by the High Court in allowing the writ petition. Apart from the bar under Article 243-ZG, on settled principles interference under Article 226 of the Constitution for the purpose of setting aside election to a municipality was not called for because of the statutory provision for election petition and also the fact that an earlier writ petition for the same purpose by a defeated candidate had been dismissed by the High Court."

6. After referring to *Umesh Shivappa Ambi's* case and *Harnek Singh Vs. Charanjit Singh and Others*, AIR 2006 SC 52 : (2005) 9 JT 352 : (2006) 142 PLR 709 : (2005) 8 SCALE 441 : (2005) 8 SCC 383 : (2006) 1 UJ 39 : (2005) AIRSCW 5459 : (2005) AIRSCW 1531 : (2005) AIRSCW 1328 : (2005) 7 Supreme 182 : (2005) 2 Supreme 302 , Apex Court in the case of *Avtar Singh Hit Vs. Delhi Sikh Gurdwara Management Committee and Others*, (2006) 9 JT 111 : (2006) 10 SCALE 271 : (2006) 8 SCC 487 : (2006) 7 SCR 316 Supp : (2006) 2 UJ 1375 , has held as follows:

"29. As discussed earlier, the pleadings of the parties show that the dispute raised was purely factual in nature as to whether some confusion had been created regarding the date fixed for holding of the meeting of the Committee for electing the office-bearers of the Executive Board. The dispute could more appropriately be resolved by examination of oral evidence to be led by the parties. The writ petitioner Avtar Singh Hit claimed that on account of the confusion in dates he could not attend the meeting though he was very keen to participate in the meeting and contest for the office of the President of the Executive Board. In view of the nature of the dispute raised, the proper remedy for the petitioner was to file an election petition as provided in Section 31 of the Act where parties could have got opportunity to lead oral evidence. No exceptional or extraordinary circumstances were disclosed which could justify recourse to the extraordinary remedy under Article 226 of the Constitution and for not availing the remedy provided by the statute. We are, therefore, of the opinion that on the facts and circumstances of the present case, the writ

petitions ought not to have been entertained for resolving the dispute relating to election and on this count alone the writ petitions were liable to be dismissed."

7. In view of the above, the ratio of decision in A. Swamickan's case is not applicable to the present case.

8. Election to the 5th respondent having been conducted by the 4th respondent by issuing the calendar of events in accordance with the provisions of the Act and the Rules, since, the Act provides a remedy for settlement of election dispute by filing an election petition under S. 70 of the Act, it is that remedy, which should be availed of and recourse cannot be permitted to be taken to writ jurisdiction under Article 226 of the Constitution of India.

9. These petitions being identical to the case of Umesh Shivappa Ambi (supra), ratio of law therein, extracted at para 3 supra, squarely applies.

For the foregoing reasons, the petitions are rejected, by reserving the liberty to avail statutory remedy, which is both alternative and efficacious.

Sri R.B. Sathyanarayana Singh is permitted to file memo of appearance for respondent Nos. 1, 3 and 4, within a period of four weeks.