

(2015) 07 KAR CK 0216

In the Karnataka High Court

Case No : Writ Petition Nos. 22061/2015 - 22068/2015 (LB-ELE)

Mallavva and Others

APPELLANT

Vs

Commissioner, Karnataka Election Commission and Others

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 329, 329(b)

Citation : (2015) 07 KAR CK 0216

Hon'ble Judges : H. Billappa, J

Bench : Single Bench

Advocate : P.G. Yatnal and Neeva M. Chimkod, for the Appellant; Syed Habeeb, A.G.A., Advocates for the Respondent

Final Decision : Disposed off

Judgement

H. Billappa, J—In these writ petitions under Articles 226 and 227 of the Constitution of India, the petitioners have called in question the endorsement dated 20.5.2015 issued by the third respondent vide Annexures-"B1" to "B8" and have sought for writ of mandamus directing the third respondent to consider their nominations for the election to Kudari Salawadagi Grama Panchayath.

2. It is stated, notification was issued by the Government to conduct election to Kudari Salawadagi Grama Panchayath on 29.5.2015. The petitioners submitted their nomination papers on 18.5.2015 to the respondent No. 3. It is stated, the respondent No. 3 accepted the nomination papers suggesting that the signatures of the petitioners could be affixed to the assets and liability certificate on the day of scrutiny of nominations. On that day, he would attest the signatures of the petitioners. It is stated, believing the representation, the nomination papers were submitted in time. Further it is stated, the third respondent did not dispute the correctness of the nomination papers when they were filed nor on the date and time fixed by the third respondent for scrutiny. All the nomination papers were endorsed and suggested to be correct. All of a sudden, the third respondent rejected the nomination papers of the petitioners by issuing endorsement dated

20.5.2015 as per Annexures-"B1" to "B8". The reason assigned for rejection of the nomination papers is that self-certificate regarding assets and liability is not signed. Infact, the third respondent himself had prevented the petitioners from affixing their signatures and had deferred the same. It is stated, it is the duty of the third respondent to procure the signatures of the candidates in his presence. The petitioners' nominations have been illegally rejected though no objections were raised by anybody. Therefore, the petitioners have approached this court seeking quashing of endorsements dated 20.5.2015 vide Annexures-"B1" to "B8".

3. On 26.5.2015, this Court has passed the following order;

"Emergent notice.

The nomination papers of the petitioners were rejected only on the ground that the assets and liability statements have not been endorsed by them by affixing their signatures though it has been duly attested by the competent authority. Therefore, the petitioners shall be permitted to contest the election to be held on 29.5.2015 and their names shall be shown in the ballot papers for the elections to be held on 29.5.2015."

4. Pursuant to the interim order, the petitioners have participated in the election. It is stated, the petitioners 1 to 3 have been elected, petitioner 6 to 8 have been declared elected unopposed and the petitioners 4 and 5 have lost the election.

5. In the course of proceedings, the respondents 4 to 9 have come on record as parties to the writ petitions.

6. The third respondent has filed statement of objections. It is denied that the third respondent accepted the nomination papers on 18.5.2015 suggesting the petitioners that their signatures could be affixed on assets and liability form on the day of scrutiny of the nomination. It is also denied that the third respondent prevented the petitioners from affixing their signatures on the declaration and assets form and that he had deferred the same. It is denied that the third respondent is duty bound to procure the signature of the candidates in his presence. It is stated, the third respondent simply received the nomination papers and the documents accompanying the nomination papers submitted by the candidates during the period from 11.5.2015 to 18.5.2015. It is stated, it is not the duty of the third respondent to verify the correctness of the nomination papers or accompanying papers at the timing of filing nominations. The question of third respondent preventing the petitioners from signing the declaration form or suggesting them to sign on the declaration form on the date of scrutiny does not arise. It is stated, by oversight, the third respondent has signed on the declaration of assets and liability of one Abdul Gani K. Kachapur, but he did not sign on the declaration form of the petitioners. It is stated, the declaration relates to important particulars like pendency of criminal cases, conviction in criminal cases, assets and liabilities. Since the declaration was not signed by the petitioners, the third respondent had no other way except to reject the

nomination papers of the petitioners. Therefore, the third respondent has rejected the nomination papers of the petitioners on 19.5.2015. Thereafter, on 21.5.2015, at about 3.15 p.m., the respondents 4 to 6 were elected unopposed. It was published on the Panchayath Notice Board along with the names of the candidates who remained in the fray for different constituencies.

7. It is stated, on 27.5.2015 at 5.00 p.m., the third respondent was given xerox copy of the fax message sent by Smt. Savithramma, High Court Government Pleader, addressed to the respondents 1 to 3 with an endorsement of the respondent No. 2 - Deputy Commissioner, Vijayapura, on the said fax message to print ballot papers along with the endorsement of the Tahsildar to take suitable steps. The third respondent had no other way except to print the names of the petitioners 1 to 5 in the ballot papers. Further it is stated, as the third respondent was under confusion as to what to do about the petitioners 6, 7 and 8, he declared them as elected unopposed on 27.5.2015 as there were no candidates against them. Thereafter, he realised that there was no such order either by this Court or by the Government Advocate or by the Deputy Commissioner to accept the nomination papers of the petitioners or to declare them elected as unopposed. The declaration is under bona fide confusion.

8. Subsequently, the third respondent has filed additional statement of objections contending that immediately after publication of Form No. 10, he also declared the election of the respondents 4 to 6 and seven other candidates as elected unopposed in Form No. 17 as per Rule 29(2), (3) of the Karnataka Panchayath Raj Rules and as per Item 6.2 of the guidelines issued by the Karnataka Election Commission to the Returning Officers. The copies of Form Nos. 10 and 17 are produced as Annexures-"R2" and "R3". It is stated, the contention of the petitioners that the third respondent signed the declaration of assets and liability submitted by the petitioners is wrong. When the petitioners had applied for true copies of their declaration, the third respondent while issuing the true copies has signed on the place mentioned "Signature of Verifying Officer and Seal". In the original declaration submitted by the petitioners along with their nomination, the third respondent has not signed. The question of third respondent signing on the original declarations does not arise as the petitioners themselves have not signed on the same. The copies of the original declarations are produced as Annexures-"R4" to "R10". Thereafter, on 6.7.2015, additional affidavit along with list of candidates who were elected as unopposed has been produced.

9. The respondents 4 to 9 have filed their statement of objections contending that the petitioners have suppressed the material fact that the respondents 4 to 6 were elected as unopposed by the declaration of the respondent No. 3 on 21.5.2015 to the effect that the respondents 4 to 6 are declared elected as unopposed in view of the rejection of the nominations of the petitioners 1 to 3. The election insofar as those seats was concerned, it was already concluded. The petitioners suppressing the said fact, have filed writ petitions by making false allegations against the Returning Officer and without impleading the respondents

4 to 9 as parties to the writ petitions and they have obtained interim order.

10. It is stated, the respondent No. 7 Smt. Nirmala and petitioner No. 6 Smt. Mahadevi had filed their nominations to the membership of the respondent No. 3 Panchayath reserved for BC(A) Woman in Ward No. 5. The nomination of the respondent No. 7 was rejected on the silly ground that serial number of the proposer mentioned in the nomination does not tally with the serial number mentioned in the voter list. So also the nomination of the petitioner No. 6 was rejected on the ground that she has not signed on the declaration of the assets and liabilities. As a result of that, there were no candidates in the fray and re-election should have been held. Therefore, the respondent No. 7 thought that she will have one more opportunity to file her nomination in the event re-election is held. But to her surprise, the petitioner No. 6 without disclosing the said fact and without impleading the respondents 4 to 9 had obtained interim order. It is stated, there was no election for the said seat as there were no candidates. In view of the interim order, the respondent No. 3 has declared the petitioner No. 6 as elected unopposed by his declaration dated 27.5.2015.

11. It is stated, the respondent No. 8 is seeking modification of the interim order insofar as petitioners 7 and 8 are concerned as they have been declared elected unopposed from Ward No. 7 reserved for GM and ST category though their nominations were rejected earlier. It is stated, the respondent No. 9 is one of the contestants from ward No. 3. The petitioner No. 5 without impleading the respondents 4 to 9 and by making false allegations against the Returning Officer has obtained interim order affecting the rights of the respondents 4 to 9. Therefore, the respondents 4 to 9 have prayed to dismiss the writ petitions.

12. The Petitioners have filed objections to the additional statement of objections filed by the third respondent contending that third respondent has forged documents and manipulated the same. Form No. 17 was never issued to the alleged unopposed elected candidates before 26.5.2015. The Petitioners have obtained certified copies of Form No. 17 on 23.6.2015 and came to know that Form No. 17 have been issued on 5.6.2015. It is stated annexure "R3" is forged. The form No. 10 filed by the respondents 4 to 10 and Form No. 10 filed by the third respondent bear different dates. The 3rd respondent has manipulated the documents.

13. The petitioners have filed a memo dated 6.7.2015 along with additional documents. They have produced copy of the application requesting to issue Form No. 17 and endorsement dated 4.7.2015 issued by the Deputy Commissioner, Vijayapur District and the copies of Form No. 17 in respect of some of the candidates who are declared as elected unopposed.

14. On behalf of the petitioners earlier, it was contended that the rejection of nomination was improper and contrary to rules and the writ petitions can be entertained. Now, the learned Counsel for the petitioners Smt. Neeva M. Chimkod submits that they do not press the submission made earlier. Now, the

petitioners contend that they are duly elected and they are not the aggrieved parties. It is for the aggrieved parties to approach the Election Court and challenge the election. This Court by its order dated 26.5.2015 has permitted the petitioners to contest the election. Accordingly, the petitioners have contested the election and they are duly elected. If the respondents are aggrieved, it is for them to approach the Election Court. In support of her submission, she placed reliance on the decision of the Hon'ble Supreme Court in the case of Election Commission of India Through Secretary Vs. Ashok Kumar and Others, AIR 2000 SC 2979 : (2000) 9 JT 529 : (2000) 6 SCALE 182 : (2000) 8 SCC 216 : (2000) 3 SCR 34 Supp : (2001) 1 UJ 1 : (2000) AIRSCW 3274 : (2000) 6 Supreme 76 and unreported decision of this Court in W.P. No. 44458/2012 and connected matters.

15. As against this, the learned AGA appearing for the respondents 1 to 3 submitted that the writ petitions are not maintainable. The interim order has been obtained by suppressing the material facts. By the time the interim order was granted, the respondents 4 to 6 were already declared as elected unopposed. The petitioners have approached the Court by making false allegations against the Returning Officer. Therefore, the writ petitions may be dismissed.

16. The learned counsel for the respondents 4 to 9 submitted that the writ petitions are not maintainable. The remedy for the petitioners is to approach the Election Court. Further he submitted that even assuming that the writ petitions can be entertained, the nomination of the petitioners have been rightly rejected. By the time the interim order was granted, the respondents 4 to 6 were already declared as elected unopposed. Apart from this, the respondent No. 7 is deprived of from participating in the election. In support of his submission, he placed reliance on the decision of the Hon'ble Supreme Court reported in Manda Jaganath Vs. K.S. Rathnam and Others, AIR 2004 SC 3600 : (2004) 5 JT 8 : (2004) 4 SCALE 600 : (2004) 7 SCC 492 : (2004) 1 SCR 204 Supp : (2004) AIRSCW 3499 : (2004) 3 Supreme 460 .

17. I have carefully considered the submissions made by the learned counsel for the parties.

18. It is relevant to note, the petitioners have filed their nominations on 18.5.2015 to contest the election for Kudari Salawadagi Gram Panchayat. The signatures of the petitioners were not affixed on the Assets and Liability declaration. The petitioners contend that the respondent No. 3 suggested them that their signatures could be affixed on the date of scrutiny of the nomination papers. Believing the words of the respondent No. 3, the nomination papers were submitted. Thereafter, the respondent No. 3 has rejected the nomination papers on the ground that the self-certificate regarding the Assets and Liability is not signed. Thereafter, the petitioners have approached this Court on 25.05.2015 and obtained interim order on 26.05.2015. Pursuant to the interim order, the petitioners have contested the election. The petitioners 1 to 3 are elected, petitioners 6 to 8 are declared as elected unopposed and petitioners 4 and 5

have lost the election.

19. When the petitioners approached this Court, they have not impleaded the respondents 4 to 9 as parties to the proceedings. The respondents 4 to 6 contend that after rejection of the nomination of the petitioners 1 to 3, they were declared as elected unopposed by the respondent No. 3 on 21.05.2015. The respondent No. 3 in his statement of objections has stated that the respondents 4 to 6 were declared as elected unopposed on 21.05.2015 itself and thereafter the list of the candidates was sent to the Tahsildar who in turn has informed the Deputy Commissioner.

20. The petitioners have seriously disputed the fact that the respondents 4 to 6 were declared as elected unopposed by the time interim order was passed. It is contended that the documents are created. It is clear, this is a serious dispute with regard to election of the petitioners and respondents 4 to 6. It cannot be considered in the writ petition.

21. The petitioners initially contended that their nominations have been rejected improperly and the writ petition can be entertained. Now, the petitioners contend that the petitioners 1 to 3 and petitioners 6 to 8 are duly elected and they are not aggrieved parties. It is for the aggrieved parties to approach the Election Court. The learned counsel for the petitioners placed reliance on the decision of the Supreme Court in the case of Election Commission of India Through Secretary Vs. Ashok Kumar and Others, AIR 2000 SC 2979 : (2000) 9 JT 529 : (2000) 6 SCALE 182 : (2000) 8 SCC 216 : (2000) 3 SCR 34 Supp : (2001) 1 UJ 1 : (2000) AIRSCW 3274 : (2000) 6 Supreme 76 and also unreported decision of this Court in W.P. Nos. 44458/2012 and connected matters disposed of on 03.12.2012.

22. In so far as the decision in W.P. No. 44458/2012 and connected matters is concerned, it relates to reservation and allocation of seats for the posts of Adhyaksha and Upadhyaksha and has no reliance to the facts of the present case. In Election Commission of India Through Secretary Vs. Ashok Kumar and Others, AIR 2000 SC 2979 : (2000) 9 JT 529 : (2000) 6 SCALE 182 : (2000) 8 SCC 216 : (2000) 3 SCR 34 Supp : (2001) 1 UJ 1 : (2000) AIRSCW 3274 : (2000) 6 Supreme 76, the Hon'ble Supreme Court has held that the non obstante clause with which Article 329 opens, pushes out Article 226 where the dispute takes the form of calling in question an election. The election includes all steps and the entire proceedings commencing from the date of notification of election till the date of declaration of results.

23. The learned counsel for the respondents 4 to 6 and also the learned Additional Government Advocate submitted that the remedy for the petitioners is to approach the Election Court. The learned counsel for the respondents 4 to 6 has placed reliance on the decision of the Hon'ble Supreme Court in the case of Manda Jaganath Vs. K.S. Rathnam and Others, AIR 2004 SC 3600 : (2004) 5 JT 8 : (2004) 4 SCALE 600 : (2004) 7 SCC 492 : (2004) 1 SCR 204 Supp : (2004)

AIRSCW 3499 : (2004) 3 Supreme 460 , wherein it has been observed as follows at paragraph Nos. 12, 13, 14 and 15:

"12. In our opinion, whether the Returning Officer is justified in rejecting this Form B submitted by the first respondent herein or not, is not a matter for the High Court to decide in the exercise of its writ jurisdiction. This issue should be agitated by an aggrieved party in an election petition only.

13. It is to be seen that under Article 329(b) of the Constitution of India there is a specific prohibition against any challenge to an election either to the Houses of Parliament or to the Houses of Legislature of the State except by an election petition presented to such authority and in such manner as may be provided for in a law made by the appropriate legislature. Parliament has by enacting the Representation of the People Act, 1951 provided for such a forum for questioning such elections hence, under Article 329(b) no forum other than such forum constituted under the RP Act can entertain a complaint against any election.

14. The word "election" has been judicially defined by various authorities of this Court to mean any and every act taken by the competent authority after the publication of the election notification.

15. In Ponnuswami this Court held: (AIR p. 68 para 9)

The law of elections in India does not contemplate that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution (the ordinary jurisdiction of the courts having been expressly excluded), and another after they have been completed by means of an election petition."

24. It is clear, the remedy for the parties is to approach the Election Court. The question is, who has to approach the Election Court. The petitioners have approached this Court challenging the rejection of their nominations. There is no adjudication as to whether the rejection of the nominations of the petitioners is proper or improper. By virtue of the interim order, the petitioners have participated in the election. The petitioner 1 to 3 are elected, petitioners 6 to 8 are declared as elected unopposed and petitioners 4 and 5 have lost the election. While obtaining the interim order, the petitioners have not brought to the notice of the court certain facts. The respondents contend that they were not impleaded as parties and by the time interim order was passed, the respondents 4 to 6 were already declared as elected unopposed for the seats for which the petitioners 1 to 3 contend that they are duly elected. However, the petitioners 6 to 8 have been declared as elected unopposed. The nomination of the petitioners have been rejected. It has to be considered in an election petition. Therefore, it is for the petitioners to approach the Election Court. It does not mean that the other aggrieved parties cannot approach the Election Court. They can also approach Election Court, if it is permissible in law.

25. Now the question is, in the circumstances of the case, till the election petitions are decided, what should be the directions. Insofar as the petitioners 1 to 3 are concerned, it is stated, the respondents 4 to 6 were declared as elected unopposed. Therefore, the respondents 4 to 6 can be allowed to continue as members subject to the result of the election petition that needs to be filed by the petitioners 1 to 3.

26. In so far as the petitioners 6 to 8 are concerned, no doubt their nominations have been rejected. But, they have been elected unopposed. Therefore, they can be allowed to continue as members subject to their approaching the Election Court and subject to the result of the Election Petition.

27. In view of the interim order passed by this court, the petitioners have participated in the election. The petitioners 1 to 3 are elected and petitioners 6 to 8 have been declared as elected unopposed. The matter was pending before this Court. Therefore the petitioners or aggrieved persons have not approached the Election Court. Therefore, it is necessary to permit the petitioners 1 to 3 and petitioners 6 to 8 to approach the Election Court without reference to the limitation. So also the respondent No. 7 or any other aggrieved person who is party to these writ petitions can approach the Election Court without reference to the limitation.

In the above circumstances, the writ petitions are disposed of as follows:

- i. The respondents 4 to 6 can continue as members of Kudari Salawadagi Gram Panchayat subject to the result of the Election Petition which needs to be filed by the petitioners 1 to 3.
- ii. The petitioners 6 to 8 can continue as members of Kudari Salawadagi Gram Panchayat subject to the result of the Election Petition which needs to be filed by them.
- iii. The petitioners 1 to 3 and petitioners 6 to 8 shall file their Election Petitions within 20 days from today. If the Election Petitions are filed within 20 days from today, the Election Court shall receive the same and decide the matter on merits without reference to the limitation.
- iv. The respondent No. 7 or any other aggrieved person who is party to these writ petitions can also file Election Petition within 20 days from today. If the Election Petition is filed within 20 days from today, the Election Court shall receive the same and decide it on merits without reference to the limitation.
- v. In so far as petitioners 4 and 5 are concerned, it was submitted that they have lost the election and their claim does not survive for consideration.
- vi. Keeping in view of the circumstances of the case and the statutory provisions the Election Court shall decide the matter at the earliest.
- vii. The Stay granted on 6.7.2015 stands vacated.