

(1979) 07 KAR CK 0041
In the Karnataka High Court
Case No : Writ Petition No. 7310 of 1979

M.R. Channarayapa

APPELLANT

Vs

The Tahsildar and Returning Officer, Malur and Another

RESPONDENT

Date of Decision : 16-07-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 27 Rule 4
Karnataka Municipalities (President and Vice-President) Election Rules, 1965 — Rule 6 (3)

Citation : AIR 1980 Kar 72

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Advocate : S.K. Venkaranga Iyenger, for the Appellant; R.N. Byrareddy, General and B.K. Venkatakrishna, for the Respondent

Judgement

1. An otherwise simple case has unnecessarily become complicated calling for determination of an important question that did not arise in the original writ petition itself. In order to appreciate and answer that and other questions, it is necessary to notice the facts in some details

2. In the recent general elections held to the Town Municipal Council of Malur, Kolar District, (hereinafter referred to as "the T. M. C") constituted and functioning under the provision of the Karnataka Municipalities Act of 1964, (Karnataka Act No. 22 of 1963) (hereinafter referred to as "the Act"), the petitioner, respondent No. 2. and 13 others were elected as the councillors of the said. M. C. On 13-6-1979, respondent No. I issued the calendar of events for holding elections to the office of the President of the T. M. C. specifying *the following dates and time for the completion of elections to the said office:

21-6-1979 last date fore receipt of Nominations:

before 3.00 p.m. security of Nomination:

24-6-1979

at 11.00 a.m. Time and date for withdrawal of Nomination:

27-6-1979 Date for poll in the event of a contest.

before 3.00 p.m.

28-6-1979

Before the appointed time and date, the petitioner and respondent No. 2 filed their nominations in the appropriate form prescribed by the Karnataka Municipalities (President and Vice-President) Election Rules, 1965 (hereinafter referred to as "the Rules") framed under, the Act. At the security of nomination papers, respondent No. 2 objected to the acceptance of the nomination of the petitioner on the ground that the name of the father of the candidate and his address had not been furnished. Accepting the objection of respondent No. 2, respondent No. 1 by his order dated 24 " -6-1979 rejected the nomination Paper of the petitioner and the order made" by him reads thus :-

"Gone through the nomination paper and read openly. Shri A. Nagaraju has objected for having not furnished the particulars like father's name and other Particulars; After going through the paper and applying my mind, I made the following decision. In this mainly the name and address are very important. The nomination I do not contain the father's name and other particulars. I decided to reject the nomination in view of Rule 6 (3) W.

Sd/- C. L. Puttaswamiah,

24-6-79 at 11.10"

In this writ petition presented on 26-6-1979, the petitioner has challenged the aforesaid order and sought. for stay of elections scheduled to be held on 28-6- Sometime on the same day, Sri S. X. Venkataranga Iyengar, learned counsel for the petitioner, made a special motion before me to take up the case for preliminary hearing on that very day at 2.30 p. m. On considering the submissions of Shri Venkataranga Iyengar, I directed the case to be listed for preliminary hearing on 27-6-1979 at 10.30 A. M. and therefore the same was listed for , preliminary hearing on 27-6-1979 along with the other cases. On 27-6- the above case was taken up for preliminary hearing in its turn by about 12-15 P. M. or so. After hearing Shri Venkataranga Iyengar, I decided to issue rule nisi and an ex parte order of stay sought by the petitioner. At that stage, Shri B. K. Venkatakrishna, an Advocate for this Court, suo motu enter-appearance for respondent No. 2 and realizing the manifest infirmity in the impugned order, inter alia submitted to allow the petition and enable the petitioner to contest as a candidate in the elections scheduled to be held on 28-6-1979. In the-light of the above I requested G. R. Nataraj, leaned High Court Government Pleader who was present in Court, to take notice for respondent No. 1 and argue the, matter. Accordingly, he took notice for respondent No. 1. I again heard all the learned counsel on all matters and directed the, issue of rule nisi in the cam and stay of elections scheduled to be

held on 28-6-1979. In the order, I directed a copy to be handed over to the learned, counsel for the petitioner to enable him to deliver the same to respondent No. 1 and copy to be delivered to Shri Nataraj forthwith. The hearing and dictation of my order in the presence of the learned counsel for the petitioner, was over by 12:45 p.m. or 12:50 p.m., I requested Shri Nataraj to Appraise the stay order issued to respondent No. 1 on trunk telephone. As directed in the order, the office has delivered copies of stay-order to the "learned counsel for the petitioner". On the same day, without knowing the time of their delivery.

3. The petitioner has urged that the rejection of his nomination paper, by respondent No. 1 is not for a defect of a substantial character and is manifestly illegal in the light of the above, he has sought for quashing the declaration made by respondent No. 1 on 27-4-1979 declaring respondent No. 2 as elected.

4. At the hearing of the case respondent No. 1 has entered appearance through Shri R. N. Byra Reddy, learned Advocate General and has seriously resisted the petition. In his return, respondent No. 1, while supporting his order dated 24-6-1979, has asserted, that he: received a copy of the stay order of this court at 5.40 P. M., but he declared respondent No. 2 who was the Only candidate left in the field as duly elected at 3.10 P.M. He has also urged that in view of the said declaration, the one and the only remedy available to the petitioner is to challenge the same in an Election Petition under the Rules, and that it was not open to the petitioner to Pursue this writ petition before this Court. In a separate return, respondent No. 2 has supported respondent No. 1.

5. Shri Venkataranga Iyengar contended that in view of the notice and the knowledge of the stay order, by the learned High Court Government Pleader as also the counsel for respondent No. 2. Delay in communication of the order of stay if any was of consequence, and the case should be dealt as a pre-election matter and not as a post election matter. In support of his contention, Shri Venkataranga Iyengar relied on the provision of Order 27 of the Code and the ruling of the Supreme Court in *Mulraj Vs. Murti Raghonathji Maharaj*, and the High Court of Patna in *Rajendra Misra Vs. The State of Bihar and Others*,

6. Sriyuths Byra Reddy and Venkatakrishna, while refuting the contention of Shri Venkataranga Iyengar, urged that respondent No. 1 acted legally in declaring the results and that it is not open to this Court to annul the same. In support of his contention, the learned Advocate General also strongly relied on the ruling of the Supreme Court in *Mulraj's case*

7. I propose to examine the rival contentions of the parties with the facts that are not in controversy and they are these: (i) that at the time of consideration and grant of stay, respondent No.1 was represented by the learned High Court Government Pleader and respondent No. 2 by his learned counsel (ii) that an order of stay was made by this Court before respondent No. 1 declared respondent No. 2 who was the only person in the field as duly, elected and (iii)

that according to respondent No. 1, he received the order of stay after he made the declaration under the Rules.

8. The writ Proceedings Rules of 1977 made by this Court, regulating the form and other details of procedure of writ petitions filed under Article 226 of the Constitution, do not regulate the service of notices on the parties. By R. 39 of the Rules, the provisions of the Civil PC. in matters not specifically dealt by the Rules and to the extent they are necessary, are made applicable to proceedings under Article 226 of the Constitution. In matters of procedure, it is permissible to rely on the provisions made in the Code with such modifications as are necessary in the context. I am therefore of the opinion that O. 27 of the C.P.C. is applicable to writ proceedings before this Court. In O. 27 of the C. P. C., we have to read the words "writ petition" wherever the word "suit" occurs.

9. Rule 8B of Order 27 of the C. P. C. defines Government and Government Pleader for purpose of the said, order. Rule 4 of Order 27 directs that a Government Pleader appointed by the Government to be an agent of the Government for purpose of receiving process issued by the Court. Rule 4 authorizes this court to serve notices in a writ petition on a Government Pleader appointed by the Government and by receiving the process, a Government Pleader performs the duty imposed on him by the said Rule. Whether the said practice is followed or not and ordinarily this Court sends the notices directly to the Government or its officers, is not relevant in deciding the correctness of the procedure followed in this case. As already noticed, Shri Nataraj, one of the Government Pleaders appointed by the Government before this Court, rightly took notice for respondent No. 1 and an order of stay was granted" in his presence. By reason of the notice taken by the Government Pleader in law, though not in fact, it has to be held that respondent No. 1 had the knowledge of the order of stay before he made the declaration at 3.10 P. M. In this view, the delay, if any, in the formal communication of the order of stay loses its significance.

10. Learned Advocate General contended that respondent No. 1 was performing a statutory duty under the Act and the Rules and therefore Order 27 of the C. P. C. had no application. By performing his statutory functions imposed by the Act and the Rules, respondent No. 1, does not cease to be a public officer for purpose of O. 27 of the C. P. C. I therefore see no merit in the contention of the learned Advocate General.

11. A Court or an authority that has the knowledge of an order of stay made by a Superior Court, cannot do anything in derogation of such an order has never been in dispute. On the earlier conclusion reached by me, it is this Principle that is applicable to "the present case and not the principle of an uncommunicated order of stay that has been set at rest by the Supreme Court in Mulraj's case.

12. I will also assume that respondent No. 1 had not entered appearance on 27- and had no knowledge of the order of stay made by this Court on that day and

examine whether the writ petition should be thrown out without examining the merits as contended for the respondents.

13. The petitioner made an application for a certified copy of the order made by respondent No. 1 on the very day he made the order. He was supplied with a certified copy of the order on the next day on 25-6-1979. On the very next day i.e., on 26-6-1979, the petitioner presented this writ petition. He had approached this Court well before respondent No. 1 could legally make a declaration and the election could be completed. Any delay in dealing with the case of the petitioner, granting an order of stay and its communication are all attributable primarily as an act of this Court if not the act of Respondent No. 1 and in such circumstances it is the duty of this Court to apply the legal maxim *actus curiae neminem gravabit* - An act of the Court shall prejudice no man. Any failure to apply the said legal maxim and accept the extremely technical contentions of the respondents would defeat the very object, content and efficacy of the high prerogative writs exercisable by a High Court under our Constitution and make justice a mockery. I have therefore no hesitation in rejecting the contention of the respondents and hold that the case of the petitioner requires to be examined on merits. I therefore now proceed to examine the merits of the case.

14. Sri Venkataranga Iyengar next contended that the failure to furnish the name of the father of the petitioner and his address in the nomination paper, was not a defect of a substantial character. In support of his contention, Sri Venkataranga Iyengar relied on the ruling of the 2nd Election Petitions Commission (Punjab) in *S. R. Lewis v. C. E. Gibbon* reported in *Doabia's Indian Election Cases* at page 259 of Vols. I and II.

15. Sub-rule (c) of R. 3 of the Rules enjoins a Returning Officer to reject a nomination paper if it has not been duly completed and such defect or irregularity, is of a "substantial character". The word "substantial character" has not been defined in the Act and the Rules. In the context, the word "substantial character" can only mean essential or an important requirement. By using the word "substantial character", the rule making authority intended that certain details though provided in the form of nomination paper were not essential or important. The provisions in the form require certain particulars to be furnished - have been made to easily identify or locate the name of the candidate and the proposer.

16. The form requires two councillors to propose the name of another Councillor to the office of the President. The number of councillors in any Municipal Council is limited. On failure to furnish in the name of the father of candidate or his address, no one can say that it is difficult to identify or locate the candidate or the proposer. In these circumstances - I have no hesitation in holding that the failure to furnish the name of the father of the petitioner and his address - was not a defect of a substantial character. In *S. R. Lewis's* case, the Election Commission has taken a similar view. I am in respectful agreement with the view taken in *Lewis's* case. In this view, it has to be held that respondent No. 1 in rejecting the nomination of

the petitioner has committed a manifest illegality resulting in substantial injury and failure of justice to the petitioner and his order therefore requires to be quashed and a mandamus issued to him to accept the nomination of the petitioner and proceed with the elections. From the above, it necessarily follows that the declaration made by respondent No. 1 on 27-6-1979 declaring respondent No. 2 as elected also requires to be quashed. I therefore quash the order dated 24-6-1979 of respondent No. 1 rejecting the nomination paper of the petitioner (Exhibit B) and, the declaration made by him on 27-6-1979 declaring respondent No. 2 as elected (vide certified - copy produced by respondent No. 2 along with his memo dated 29-6-1979 and direct respondent No. 1 to accept the nomination paper of the petitioner as a valid nomination paper, include the same in the list of valid nomination papers and hold elections to the office of the President on a date to be fixed by him and complete the same in accordance with law but without issuing a fresh calendar of events.

17. Rule issued is made absolute.

18. In the circumstances of the case, I direct the parties to bear their own costs.

19. Let a copy of this order be communicated to respondent No. 1 within 3 days from this day.

20. Petition allowed.