

(2011) 02 KAR CK 0111

In the Karnataka High Court

Case No : Misc Civil No. 3231 of 2011 in Election Petition No 7 of 2008

Mrs. Kavitha Mahesh

APPELLANT

Vs

Chief Election Commissioner, Election Commissioners,
Election Commission of India and Others

RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 14 (3), 151
Representation of the Peoples Act, 1951 — Section 87, 93

Citation : (2011) 02 KAR CK 0111

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Shashikantha C., for R 5, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—MISC. CVL. 3231/2011 filed under Order VII, Rule 14(3) of CPC r/w Section 151 of CPC r/w Sections 87 and 93 of R.P. Act, 1951, is for the purpose of enabling the Petitioner to produce as many as seven documents which are appended to the application and affidavit and which are forming part of the application and affidavit running from page Nos. 8 to 20.

2. In the affidavit of the Petitioner it is mentioned that having regard to the prayer made in the Election Petition and as the Petitioner had to prove her case, who had sought for the commensurate documents/information from the Returning Officer, 151, K.R. Pura Assembly Constituency, being not successful in her effort was compelled to approach the authorities under the Right to Information Act, 2005; that it has some bearing about the manner in which the Petitioner has secured the copies of 14 C Ds which have already been produced before this Court and that the present documents sought to be produced are very material and relevant for the adjudication of the Election Petition, particularly, having great relevance to the C Ds which the Petitioner has produced.

3. Statement of objections has been filed to this application by the Respondents.

It is pointed out that the application in the first instance does not fit into the statutory provision under which it is made, particularly, Sub-rule (3) of Rule 14 of Order VII of Code of Civil Procedure. It is also pointed out that the so called documents seven in number are not necessarily relevant to the source of 14 C Ds, but more by way of some explanation; that the Petitioner has not even given any good or tenable reasons for the production of documents in the affidavit.

4. It is also pointed out by Mr. Shashikanth that in this regard Petitioner had come up with two applications earlier one in Misc. Cvl. 14250/2010 for issue of certain directions to the District Collectors Officer, BBMP, Bangalore, for production of documents mentioned therein, but that application was dismissed as not pressed and Petitioner had filed yet another application seeking for permission of the production of 14 C Ds. and even the said application was ordered in terms of the memo filed by the Petitioner confining the production of C Ds to 4 in number instead of original 14 C Ds. and in that background, the present application is not tenable, particularly, having regard to the orders passed on the earlier two applications.

5. It is also pointed out that the nature of the documents sought to be produced now are not such that they were required to be produced along with the petition and therefore, seeking to produce it through an application filed under Order VII Rule 14(3) of CPC is not possible; that the documents are not so relevant for the purpose of election petition and therefore the application may be rejected.

6. Mr. Shashikanth, learned Counsel for the Respondents has also submitted that the precious time of the Court is unnecessarily utilized by filing such applications, particularly, at this stage: that it should have been done at the time of presenting the election petition itself and a document which should have been filed along with the plaint, is sought to be produced at a belated stage and by making applications, while the Respondents are deprived of proper opportunity particularly, as the documents are sought to be placed before the Court after framing of the issue and during trial, as documents during the recording of evidence and therefore, the application should not be entertained at this stage.

7. The whole object of a trial whether in an Election Petition or in a suit is, to find out the truth as far as possible, so that which version of the Plaintiff and which version of the Defendant can be accepted and in that context as to who can get relief, particularly, as to whether Plaintiff can get relief as to the manner and on the touchstone of the relevant applicable statutory provisions.

8. The basic principle in any trial is that while the Plaintiff who has approached the Court for some relief should be given full scope and opportunity to place such material as the Plaintiff thinks fit i.e., in the fairness of things to prove the case, it should be at the same time in a procedural manner, so that the Defendant gets full opportunity to defend his/her case and the object of CPC is to ensure that the procedure is followed in such a manner so as to fully adhere with the principles of natural justice; that a Defendant who has to defend the suit is not taken by

surprise or shocks and in this exercise while, it may be possible, that material relevant, and material not so relevant may be sought to be made part of evidence but many documents may not even be marked and do not come on record, but that cannot be a ground for refusing the production of a document or to deny an opportunity to place the material before the Court in the form of evidence, as the basic principle is that each party should be given full opportunity to plead and prove his/her case.

9. Even quoting of wrong or inapplicable statutory provisions is not very material, if ultimately the object of providing proper opportunity to the litigant approaching the Court is fulfilled and simultaneously the requirement of adherence to the principles of natural justice, which ensures a proper and full opportunity to the Defendant to defend the case is also complied.

10. At the same time applications being made at all stages and multiplicity of such applications during the stage of trial undoubtedly eats up the valuable time of the Court and such tendency should be discouraged.

11. As I am of the opinion that if the present application is ordered, while the Petitioner is given full or proper opportunity, the Respondents will not be put to any great disadvantage or at any rate principles of natural justice being not violated, but nevertheless application being at this stage, in respect of production of document which could have been achieved much earlier, by making such application, such a tendency should be discouraged and of course subject to the objections raised on behalf of the learned Counsel for the Respondents, that mere production of documents in itself is not an end; that the Respondent has a right to object to the marking of the document depending on the nature of the document and as to whether it could be described as a document at all and with liberty reserved for such purpose in favour of the Respondent, Misc. Cvl. 3231/2011 is ordered on payment of cost of Rs. 2,000/- in favour of the Respondent. Cost to be paid within a week's time.