

(2000) 09 KAR CK 0064
In the Karnataka High Court
Case No : Writ Petition No. 12022 of 2000

Ranappa and Others

APPELLANT

Vs

Grama Panchayat, Mantur, Bagalkot and Others

RESPONDENT

Date of Decision : 29-09-2000

Acts Referred:

Constitution of India, 1950 — Article 243O
Karnataka Panchayat Raj Act, 1993 — Section 45

Citation : (2000) 8 KarLJ 437

Hon'ble Judges : Tirath Singh Thakur, J

Judgement

1. The short question that falls for consideration is whether the bar contained in Article 243-O of the Constitution against interference with the result of a Panchayat election is attracted even in cases where the validity of the election is affected by a judicial order passed in proceedings not otherwise maintainable. What lends an element of novelty to the controversy is the omission of the Court that passed the order to direct restitution and relegate the parties to the position held by them before the order was made.

2. Respondent-Gram Panchayat comprises twenty-one members all of whom were elected in an election held on 12th of February, 2000. In terms of a notice issued by the Returning Officer, the Members were asked to participate in the Election of the Adyaksha and Upadhyaksha of the Panchayat, scheduled to be held on 24th of March, 2000. Two days before the date fixed for the conduct of elections, Original Suit No. 103 of 2000 was filed by respondents 5 and 6 before the Principal Civil Judge, (Junior Division) Mudhol, seeking a permanent prohibitory injunction restraining eight members of the Panchayat who are petitioners in this writ petition from participating in the proposed election. What is significant is that both the plaintiffs, had been defeated in the election for Membership of the Panchayat from ward Nos. 1 and 2, but, instead of filing an election petition, they had taken recourse to a civil action in which the primary grievance made was that the nomination papers of the defendants, petitioners herein for their respective constituencies ought to have been rejected as they

were not according to the plaintiffs qualified to be chosen as Members of the Panchayat. On an application filed for the issue of a temporary injunction the Civil Judge, passed an ex parte order restraining the defendant writ petitioners from participating in the election to the post of President and Vice-President of the Gram Panchayat. The result was that the petitioners were not permitted to participate in the election to the post of Vice-President held on 24th March, 2000 in which respondent 7, was elected as Vice-President of the Panchayat. Election to the post of President was however deferred since no candidate eligible to be elected to that post was either available or had filed his nomination papers. Petitioners thereafter made an application to the Trial Court seeking vacation of the interim order but having failed to secure any orders on the same, came up with the present writ petition for among others a direction setting aside the interim order passed by the Civil Court and the consequential election of the 7th respondent as Vice-President of the Panchayat.

3. When this matter initially came up for orders on 3rd of April, 2000, while issuing an emergent notice to the respondents, a direction was issued to the Trial Court to hear and dispose of the application filed by the petitioners for vacation of the interim injunction before the 22nd of May, 2000. On the 13th of April, 2000, the matter was once again brought up by the petitioners, for urgent orders of stay of the direction issued by the learned Trial Court. That prayer was based on an apprehension that unless the operation of the order of injunction was suspended the petitioners may be prevented from participating even in the election to the post of President of the Panchayat which was imminent.

4. After hearing learned Counsel for the parties and keeping in view the provisions of the Karnataka Panchayat Raj Act, 1993 and those of Article 243-O of the Constitution, this Court stayed the order issued by the Civil Judge, and permitted the petitioners to participate in the election to the post of President of Panchayat as and when the same was notified. It is not disputed that in consequence of the said order the petitioners were permitted to participate in the election to the post of the President. It is also not in dispute that the Trial Court has by an order dated 15th of April, 2000 dismissed the suit on the ground that the same was not maintainable. In the absence of any challenge to the said order, the same has attained finality.

5. Appearing for the petitioners Mr. Patil strenuously argued that the only question that now remained to be determined was whether the election of Respondent 7, as Vice-President of the Panchayat, could be sustained having regard to the fact that the petitioners who were duly elected as Members of the Panchayat, had been prevented from participating in the said election not because they suffered from any disqualification but because of an order which the Civil Court had unjustifiably and in violation of the provisions of the Constitution and the Panchayat Raj Act, passed against them. He submitted that even when respondent 7, may have mustered the support of nine other members, yet, the right of the petitioners to participate in the same could not

have been taken away in the garb of a judicial order which the Court issuing the same had no competence to pass. Since, the situation leading to the denial of the rights vested in petitioners had arisen entirely on account of an improper use of judicial process, it was unnecessary for the petitioners to seek relief elsewhere. The remedy for the wrong done to the petitioners argued Mr. Patil, lay in approaching this Court under Article 226 read with Article 227 of the Constitution for appropriate orders to prevent miscarriage of justice and the perpetuation of an illegality which was implicit in the continuance of the 7th respondent in office.

6. For the respondents it was argued that while the suit filed before the Court below was not maintainable, in the light of the provisions contained in Article 243-O of the Constitution and those contained in Karnataka Panchayat Raj Act, yet, election to the post of Vice-President of Panchayat could be questioned by the petitioners in an appropriate election petition before the Authority competent to hear the same. It was contended that the bar contained in Article 243-O against interference with the Election to the Panchayat, or any office in the same, would apply to the election of the 7th respondent also and prevent the petitioners from seeking any relief against the said election otherwise than in an election petition. Disputed questions of fact, argued Mr. Shastri, Counsel appearing for some of the respondents, were involved which could be more satisfactorily determined in a proper Election petition than in the present extraordinary writ proceedings.

7. Section 45 of the Karnataka Panchayat Raj Act, 1993, prescribes the procedure for election to Adhyakshas and Upadhyakshas of the Gram Panchayats. Sub-section (2) of the said Section, provides that any dispute relating to the validity of Election of Adhyaksha or Upadhyaksha of a Gram Panchayat, shall be decided by the prescribed Judicial Officer whose decision thereon shall be final. The provision does not however go on to stipulate the grounds on which the validity of any such election can be questioned. It was contended that even when Section 45 does not make any reference to the grounds available to a person aggrieved of any such election, the grounds set out in Section 19 of the Act, should by necessary implication be considered as ground available for a challenge to the validity of any election to the post of Adhyaksha and Upadhyaksha also. It is in my opinion unnecessary to go into the correctness of the said contention for even if the remedy available by way of an election petition under Section 45(2) is available on the grounds set out in Section 19, the question is whether resort to such a remedy is in the facts and circumstances of the present case at all necessary. The prohibition contained in Article 243-O of the Constitution against interference with any election would also apply depending upon whether the circumstances in which the validity of the election is assailed in the present case can be said to be within the comprehension of the said provision. The provision is not in my opinion attracted to cases where the validity of an election is affected not because of any procedural or other illegality committed by those concerned with the conduct of

such election or the parties associated or involved with any such process but by reason of a Judicial order passed by a Court of law. If the illegality attached to an election arises entirely on account of the enforcement of an order of the Court which is either reversed, modified or vacated by the said Court or by a Court superior to it, the illegality must on the principle contained in the maxim *actus curiae neminem gravabit* be removed by the Court itself instead of leaving the party affected by the same to seek his remedy elsewhere. In *Jai Berham v Kedarnath Marwari*, AIR 1922 PC 269, the Privy Council declared that one of the first and highest duties of all Courts is to take care that acts of the Court do no injury to any of the suitors and that the expression "the act of the Court", does not merely mean the act of the primary Court or of any intermediate Court of law but the act of the Court as a whole from the lowest Court which entertains jurisdiction over the matter upto the highest Court which finally disposes of the case. Section 144 of the CPC accordingly provides for restitution to ensure that the injury suffered by a party by virtue of any order passed by the Court is remedied and the party placed in the same position, as was held by it before making of any such order. *Prag Narain v Kamakhia Singh*, (1909)31 All. 551 (PC); *Sohnun v Mast Ram*, AIR 1929 Lah. 657; *S. Chokalingam Asari v N.S. Krishna Iyer*, AIR 1964 Mad. 404; *Jotindra Nath Ghose v Jugal Chandra Santra*, AIR 1966 Cal. 637; *Subhash Chander v Bodh Raj*, AIR 1969 J and K 8, followed by a long line of pronouncements thereafter have unequivocally recognised that provisions of Section 144 of the CPC are not exhaustive and that a Court has inherent power to restore any party which has suffered any injury by virtue of any order passed by it to the position which it would have occupied if the wrong order has not originally been made. In *Binayak Swain v Ramesh Chandra Panigrahi*, AIR 1966 SC 948, the Supreme Court described the doctrine of restitution as under:

"The principle of the doctrine of restitution is that on the reversal of a decree, the law imposes an obligation on the party to the suit who received the benefit of the erroneous decree to make restitution to the other party for what he has lost. This obligation arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been done under the erroneous decree; and the Court is making restitution is bound to restore the parties, so far as they can be restored, to the same position they were in at the time when the Court by its action had displaced them from".

The suit in which the order restrained the plaintiffs from participating in the election of the Vice-President was not maintainable in the light of Article 243-O of the Constitution read with Section 45(2) of the Karnataka Panchayat Raj Act. That is precisely why the action brought by the plaintiffs was dismissed by the Trial Court which dismissal has become final. In the ordinary course therefore the Trial Court could and ought to have passed a further order by which the consequences flowing from the injunction issued by it, were also reversed. No such order was however made either because no prayer to that effect was made or because the person who had benefited from the said order namely respondent

7, elected as Vice-President of the Panchayat was not a party to the said proceedings. Be that as it may, the question is whether or not this Court should intervene in exercise of its jurisdiction under Article 227 of the Constitution to undo the effect of an incompetent order which has culminated in an election not otherwise legally valid. My answer is in the affirmative. Apart from the fact that the validity of the election of respondent 7, has been specifically assailed in these proceedings, I see no reason why an illegality which has its genesis in a judicial order should not be immediately reversed once the order on the basis whereof the same was committed has been vacated. The refusal of the Court to intervene would apart from perpetuating an illegality, amount to saying that even though the illegality arises from an order of the Court its removal should be sought by approaching some other authority. Such a response would be plainly illogical. This Court would therefore be justified in stepping in to correct the aberration and undo the injustice flowing from the same, not only on the principle of restitution but also in discharge of its obligation to keep the sub-ordinate Courts and Tribunals within the limits of their authority. The source of that power lies in Articles 226 and 227 of the Constitution which are wide enough and must in unusual situations like the present be invoked to prevent miscarriage of justice. The decisions of the Supreme Court in *State of Gujarat v Vakhatsinghji Vajesinghji Vaghela (dead) by L.Rs*, AIR 1968 SC 1481 and *Trimbak Gangadhar Telang and Another v Ramchandra Ganesh Bhide and Others*, AIR 1977 SC 1222, lend support to that view.

8. In *Surendra Kumar v State of Punjab*, 1996 Suppl. SCC 210, an almost analogous situation had arisen. The nomination papers of the petitioner in the said case, had been forcibly snatched and torn by one of the respondents. A complaint to the police and to the sub-divisional Magistrate having proved ineffective, the petitioner approached the High Court for an interim order against the conduct of the election. Despite the communication of the said order the poll was conducted and one of the respondents in the case declared elected as Sarpanch. The Supreme Court held that the conduct of the election to the post of Sarpanch was in the light of the order of stay issued by the High Court and its communication to the Returning Officer not in accordance with law. The argument that an election petition could be filed under Rule 14-A of the Punjab Gram Panchayat Election Rules, was repelled not only on the ground that the rules did not envisage an election petition in the circumstances of that the case but also on the ground that the appellant had been unlawfully prevented from contesting the election which rendered the election of the respondent in violation of law. The Court accordingly set aside the election with a direction that the respondent could continue in office till a re-poll was held. What is deducible from the said decision is that if the election is vitiated by an illegality outside the grounds prescribed for the filing of an election petition, the Court can intervene to set aside the same. That precisely is the position in the present case also. Even assuming that Section 45(2) of the Karnataka Panchayat Raj Act, has to be read with Section 19 which prescribes the grounds for challenging the election to

the Panchayat, yet none of the provisions contained in Section 19 envisages an election petition where result of the election is vitiated by an illegality committed pursuant to an order issued by a Civil Court. The Court concerned or one superior to it can in such cases grant appropriate relief to undo the effect of the illegality.

9. In the result, this petition succeeds and is hereby allowed. The election of the 7th respondent, as Vice-President of the Panchayat is set aside with a direction to the Returning Officer, respondent 2, in the petition to conduct a fresh election to the said post expeditiously and not later than two months from the date a copy of this order is served upon him. It is further directed that till the result of the fresh election is declared, the 7th respondent shall be entitled to continue in office as Vice-President of the Panchayat. No costs.