

(1999) 05 KAR CK 0016

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1284 of 1998

Smt. Gowramma

APPELLANT

Vs

M.P. Moulamma And Others

RESPONDENT

Date of Decision : 28-05-1999

Acts Referred:

Constitution of India, 1950 — Article 243P, 243Q
Karnataka Municipalities Act, 1964 — Section 14, 352

Citation : (2000) 1 KarLJ 268

Hon'ble Judges : Mohammed Anwar, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Sri Jayakumar S. Patil, for the Appellant; Sri B.G. Sridharan and Sri Mahesh, Additional Government, for the Respondent

Judgement

1. The present appeal has been filed u/s 352 of the Karnataka Municipalities Act, 1964 (in short, the "Act") against the order dated 4-3-1998 passed by the Election Tribunal declaring the election of the present appellant as Councillor from Ward No. 3 of the Town Panchayat Committee, Tekkalakota, Bellary Sub-Division, as void.

2. The undisputed facts may be noticed at the threshold. The State Government, pursuant to the powers conferred u/s 13 of the Act, by Gazette Notification No. HUD 313 MLR 95, dated 25-11-1996 (Ex. D. 2), divided the Town Panchayat at Tekkalakota into 19 wards. Annexure-1 to the notification contains the territorial jurisdiction of each of the said wards. Subsequently, the Deputy Commissioner, Bellary, published voters list dated 15-12-1995 (Ex. P. 14), according to which there were 754 voters in Ward No. 3 of the Town Panchayat in question. Thereafter, the Returning Officer published notice of election dated 15-12-1995 (Ex. P. 2) according to which the last date for receipt of nomination was fixed as 22-12-1995 and the poll was to be held on 7-1-1996. This notice was published in terms of Rule 8(3) of the Karnataka Municipalities (Election of Councillors) Rules, 1977 (in short, the "Rules").

3. Pursuant to the above notice of election, the appellant herein and Smt. M.P. Moulamma (1st respondent), Smt. Rasool Bi (6th respondent) and Smt. Khairun Bi (7th respondent) had filed their nominations but the appellant herein was declared as elected having secured highest votes. However, the 1st respondent herein challenged the election of the appellant by presenting petition before the Election Tribunal u/s 21 of the Act inter alia, on the ground that the Returning Officer had altered the voters list after filing of the nomination papers in order to favour the appellant in contravention of the statutory provisions and the law laid down by this Court in this regard, which has materially affected the election of the present appellant. The Tribunal on the basis of the evidence adduced in the present case, accepted the plea of the 1st respondent and declared the election of the appellant as void.

4. The Tahsildar of Shirguppa was appointed as the Returning Officer for election of the Town Panchayat in question. He has been examined as D.W. 2 before the Tribunal. In the cross-examination, he has clearly admitted that,--

"It is true that in Ward No. 3 before the publication of events there were 754 voters in Ward No. 3. By modification of voters list 134 voters from Ward No. 3 removed and diverted to other wards i.e., Ward Nos. 4 and 5. Whereas 127 voters from other wards were included in Ward No. 3 after publication of calendar of events".

5. It is also borne out from the records that the above alterations were made in the voters list on 2-1-1996 i.e., after the last date of filing of nomination papers. The materials brought on record also clearly establish that because of alterations in the voters list, the appellant was materially benefited. Therefore, the questions, which fall for our consideration are.-

(i) Whether the Returning Officer was at all competent to make alterations in the voters list? and,

(ii) Even if he is found to be competent to do so, whether he could have altered the voters list after the last date for making nomination for election in question?

6. The Town Panchayat was constituted keeping in view the Constitution (74th Amendment) Act, 1992 and consequential amendments carried out in the Act by the State Legislature. By the 74th Amendment Parts IX and IX-A were incorporated in the Constitution providing for establishment of Panchayats and Municipalities respectively. Clause (e) of Article 243P of the Constitution has defined "Municipality" to mean "an institution of self-Government constituted under Article 243Q". Clause (a) of Article 243Q inter alia, mandates for constitution of a "Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area. As per this constitutional mandate, necessary amendments were made in the Act. Chapter XV was incorporated for specifying the transitional areas and constitution of Town Panchayats. It was only thereafter the present Town Panchayat was established.

7. Article 243ZA of the Constitution provides for "Elections to the Municipalities". It reads as under:-

"243-ZA. Elections to the Municipalities.-

(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commissioner referred to in Article 243K.

(2) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities".

8. To bring the provisions of the Act in conformity with the Constitutional requirements, Section 14 of the Act was also substituted by the Karnataka Act No. 36 of 1994 with effect from 1-6-1994. Sub-sections (1) and (2) thereof reads thus.-

"14. List of voters.--(1) The list of voters of the municipal council shall be prepared subject to the superintendence, direction and control of the State Election Commission:

Provided that the electoral roll of the Karnataka Legislative Assembly for the time being in force for such part of the municipal area as is included in any ward may be adopted for the purpose of preparation of list of voters of the municipal council for such ward:

Provided further that the list of voters for such ward of the municipal council shall not include any amendment, transposition, inclusion or deletion of entry made after the last date for making nomination for the election to such ward and before completion of such election.

(2) The officer designated by the State Election Commission in this behalf in respect of a municipal area shall maintain a list of voters for each ward of such municipal area".

9. Similarly, Rule 3-A of the Rules as renumbered and amended by the notification dated 28-9-1995 spells out the manner and mode in which the voters list is to be prepared and published by the designated officer. Rule 3-A reads thus.-

"Rule 3-A.--(1) The officer designated under sub-section (2) of Section 14 shall split up the list of voters for each "ward of municipal area" or "Town Panchayat" into one or more parts taking into consideration the area within the "ward" wherein, the voters to be included, in each part reside, so that the voters included in each belong to a named area, street or road within the "ward" and the list of voters of the electoral roll so split up in respect of the several parts of the ward of municipal area will together constitute the list of voters for such ward.

(2) and (3) omitted.

(4) A copy of such list of voters in respect of each "ward" shall be published on the notice board and shall also be kept open for inspection in the office of the Municipal Council".

10. As noticed above, Article 243ZA of the Constitution clearly mandates that the powers concerning preparation of electoral rolls and conduct of all elections to municipality exclusively vests in the State Election Commissioner.

11. Pursuant to the aforesaid powers, the State Election Commission had issued notification dated 17-11-1995, a copy whereof has been placed on record, notifying the Assistant Commissioner, Bellary Sub-Division, Bellary, as the designated officer to prepare and maintain the list of voters on each ward of the present Town Panchayat Area by adopting the relevant part of the electoral roll of the Assembly Constituency 1995.

12. Keeping in view the aforesaid provisions contained in the Constitution of India, the Act, the Rules and the notification issued by the State Election Commission, only the Assistant Commissioner, Bellary Sub-Division, Bellary, was competent to prepare and maintain the list of voters for each of the wards.

13. Rule 4 of the Rules makes provisions for designation or nomination of the Returning Officer for holding election of Councillors of a Municipal Council or Town Panchayat. This provision reads as under:-

"Rule 4.--(1) For every general election of the Councillors of a Municipal Council or Town Panchayat or for an election to fill a casual vacancy the Deputy Commissioner shall designate or nominate one or more Returning Officers who shall be officers of the State Government or of a local authority:

Provided that if more than one Returning Officer is nominated or designated, the Deputy Commissioner shall specify the ward or wards for which each such officer is nominated or designated.

(2) The Deputy Commissioner may in the same manner designate or nominate one or more Assistant Returning Officers who shall be officers of the State Government or of a local authority.

(3) Every Assistant Returning Officer shall if so directed by the Returning Officer, be competent to perform all or any of the functions of the Returning Officer".

In accordance with the above rule, in respect of the Tekkalekota Town Panchayat, the Tahsildar of Shirguppa Taluk was designated as the Returning Officer.

14. From the above legal provisions and delegations made thereunder, it is clear that the Assistant Commissioner of Bellary Sub-Division, Bellary, was the designated officer for preparing, maintaining and publishing the voters list. Whereas the Tahsildar of Shirguppa Taluk was designated merely as the Returning Officer. The powers and functions of the two officers were quite different and distinct and one could not have interfered with other's statutory functions.

15. In the case of *The State of Karnataka and Others Vs. Gunjahalli Nagappa and Others*, , while interpreting Section 14(1) of the Act, it has been held by the Supreme Court that,--

"What is required by this sub-section is that the list of voters of a division should correspond ipsissima verba with the electoral roll for the territorial area included in the division. If there is any mistake in the electoral roll, in that some voters residing in one area or house number are shown as residing in another, it cannot be corrected by the Returning Officer while preparing the list of voters for each division. The Returning Officer has to take the electoral roll for the territorial area of the division as it is with whatever mistakes there may be in it, and that would be the list of voters for the division".

16. For the aforesaid reasons, it has to be held that the Returning Officer had absolutely no authority to interfere with or alter the voters list of Ward No. 3 as has been done by him. Admittedly, the said alteration of the voters list has materially affected the election in question. Therefore, the same stands vitiated in law.

17. Moreover, in Nagappa's case, *supra*, at para 12 it has further been held by the Apex Court that.-

". . . . we may point out that till the election process has commenced by the issue of notice fixing the calendar of events, there is no reason why the designated officer should not be entitled to rectify such defect in the list of voters and bring the list of voters in conformity with the Electoral Roll. But, once the calendar of events is published and the election process has begun, it is extremely doubtful whether any changes can be made in the list of voters for the purpose of setting right any such defect".

18. The said observations of the Supreme Court has been duly taken note of by the Legislature and to maintain fairness in the process of election, the 2nd proviso to sub-section (1) of Section 14 of the Act has been specifically incorporated, which provides that.-

"Provided further that the list of voters for such ward of the municipal council shall not include any amendment, transposition, inclusion or deletion of entry made after the last date for making nomination for the election to such ward and before completion of such election".

19. The object of inclusion of the above proviso is quite manifest. It spells out that no amendment, transposition, inclusion, or deletion of entry made after the last date for making nomination for the election in the voters list should be taken note of for the purpose of election of the Councillors. For this reason alone, the election of the present appellant could not have been sustained.

20. For the reasons aforesaid, the present appeal is dismissed with costs assessed at Rs. 1,100/- payable to the 1st respondent.