

(2001) 05 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No"s. 18903 of 2001 and 19087 of 2001 (LB/RES)

Talikote Subhash

APPELLANT

Vs

The Returning Officer, Panchayat Town, Hungund, Bagalkot
District and another

RESPONDENT

Date of Decision : 29-05-2001

Acts Referred:

Karnataka Municipalities (Election of Councilors) Rules, 1977 — Rule 29 (2)

Citation : (2001) 5 KarLJ 438

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Smt. Suman Hegde, High Court Government Pleader, Sri C.H. Jadhav and Sri S.M. Patil, for the Appellant;

Judgement

The Court

1. The petitioner in the first petition has challenged the order of rejection of his nomination paper issued by the Returning Officer, respondent herein and sought for issuance of a writ of certiorari to quash the impugned order at Annexure-D, dated 19-4-2001 urging various legal contentions.

2. In the connected W.P. No. 19087 of 2001, the petitioner has prayed for issuance of a writ of certiorari to quash the impugned order passed by the first respondent dated 20-4-2001, vide Annexure-A and further sought for issuance of such other relief, urging various legal contentions.

3. The necessary brief facts of both the petitioners to consider the rival contentions are stated hereunder:

The Returning Officer, the first respondent herein has published the calendar of events as per Annexure-R2 in the statement of counter filed by the first petitioner dated 11-4-2001 for conducting election to the Hungund Pattan Panchayath. As per the calendar of events the submission of nomination papers was dated 19-4-2001. The nomination papers of the first petitioner was rejected

by the Returning Officer for the reasons mentioned in the impugned order at Annexure-D. According to the learned Counsel for the petitioner, Mr. Jadhav, is that the said rejection of nomination of the petitioner is in contravention of Rule 15 of the Karnataka Municipalities (Election of Councillors) Rules, 1977 (in short, the Rules").

4. Aggrieved by the said order, the petitioner has approached this Court seeking for issuance of a writ of certiorari urging various legal contentions. This Court, without noticing the relevant Rule 29 of the Rules referred to above granted the interim order on 27-4-2001 which reads thus:

"Government Advocate takes notice for the respondent.

Stay of Annexure-D. The respondent is directed to permit the petitioner to participate in the elections scheduled on 3-5-2001 to Ward No. 15 of Hungund Town Panchayath and not to announce the result of the election till the disposal of the petition".

5. In W.P. No. 18903 of 2001 the applicant petitioner in the connected writ petition has filed an application in I.A. No. 1 seeking permission of this Court to implead himself as party respondent in the said writ petition for the reasons mentioned in the said application. This Court vide its order dated 24-5-2001 allowed the said application and he was permitted to come on record as respondent 3. The petitioner in the connected W.P. No. 19087 of 2001 has prayed for issuance of a writ of certiorari for quashing the impugned order at Annexure-A. With reference to the interim order passed by this Court on 27-4-2001 in exercise of its power in the first writ petition, the Returning Officer under the Rules directed to conduct the elections to elect the member of the panchayat despite the declaration of results of Ward No. 15 was declared by him on 21-4-2001 as provided under Rule 29(2) of the Rules in Form 13-A as there was only one valid nomination paper of the petitioner in the connected petition.

6. The learned Counsel Mr. S.M. Patil appearing for the petitioner in W.P. No. 19087 of 2001 contended that the Returning Officer has no power or competence to change his order once he has declared the results of the petitioner under the Rules and the impugned order challenged in the said petition is without jurisdiction as the same is in contravention of the Rules and further the petitioner in the first petition has suppressed the relevant material facts by not bringing to the notice of this Court the declaration of the results of the petitioner in Form 13-A under Rule 29 of the Rules and he got the interim order in the first writ petition. Pursuant to the said order, the impugned order at Annexure-A in the connected writ petition is passed by the Returning Officer which is in contravention of election Rules referred to above. Therefore, he has prayed for quashing of the impugned order in this writ petition and submitted that the petitioner in the first writ petition is not entitled for the reliefs as prayed in his petition as the election results of the petitioner in the connected petition was declared under sub-rule (2) of Rule 29 of the Rules in Form 13-A on 21-4-2001.

Further, it is contended that the relief as prayed in the petitioner if granted it would amount to quashing the declaration of the results of the election of the petitioner in the connected petition in Form 13-A which relief is not prayed, even if it was prayed the same cannot be quashed in the writ petition as he has got an effective alternative remedy of filing election petition before the forum provided under the provisions of the Act,

7. The learned High Court Government Pleader, Smt. Suman Hedge has produced the record pertaining to this case. I have perused the declaration of results made by the Returning Officer in respect of petitioner, Sri Shanthayya in the connected writ petition. As per the calendar of events at Item No. "C" the last date for withdrawal of nomination papers was on 21-4-2001. It is an undisputed fact that the nomination of petitioner in the first petition Sri Talikoti Subhash Mahanthappa was rejected on 19-4-2001. The Returning Officer in exercise of his power under Rule 29(2) of the Rules as there were two nomination papers in respect of Ward No. 15, the nomination of the first petitioner was rejected, thereafter there was only one nomination paper of the petitioner in the connected petition and therefore the Returning Officer has declared the results of the petitioner in the connected writ petition.

8. Under Rule 29(2) of the Rules, the Returning Officer had statutory obligation to declare the results of a candidate to be duly elected in Form 13-A forthwith for the reasons provided under the said Rule. The declaration of the results of the petitioner in the connected petition was rightly declared by the Returning Officer. This relevant and important aspect of the matter has not been brought to the notice of this Court by the petitioner in the first petition at the time of granting interim order. This Court is required to examine in these petitions whether, the interim order was granted in the first petition, not noticing the relevant Rule namely 29(2) of the Rules and the fact of declaration of election results was made by the Returning Officer, the conduct of election to the 15th Ward by the Returning Officer takes away a valid legal right accrued in favour of the petitioner in the connected writ petition. To consider and answer the above said short legal question in these petitions, it is necessary for this Court to extract Rule 29(1) and (2) of the Rules:

"29. Procedure in contested and uncontested elections.--(1) In the case of election for a division where a seat is not reserved for Scheduled Castes or women-

(a) if the number of contesting candidates is more than the number of seats to be filled, a poll shall be taken;

(b) if the number of contesting candidates is equal to the number of seats to be filled, the Returning Officer shall forthwith declare all such candidates to be duly elected to fill those seats;

(c) if the number of contesting candidates is less than the number of seats to be filled, the Returning Officer shall forthwith declare all such candidates to be

elected.

2. In the case of election for a division where seats are reserved for Scheduled Castes or women as the case may be-

(a) if the number of contesting candidates for the reserved seat or seats is equal to or less than the number of reserved seats to be filled, the Returning Officer shall forthwith declare all such candidates to be elected, and where the number of contesting candidates for the non-reserved seats also is equal to or less than the number of seats to be filled the Returning Officer shall forthwith declare all such candidates to be elected to such seats; and where the number of contesting candidates for the non-reserved seats is more than the number of seats to be filled, a poll shall be taken for election to fill such non-reserved seats in such division;

(b) if the number of contesting candidates for the reserved seat or seats is more than the number of seats to be filled, but the total number of candidates standing for the election in the division is equal to or less than the number of seats to be filled the Returning Officer shall first select, by lot to be chosen to fill those seats and then declare the candidates so selected to be duly, elected to fill the reserved seats, and thereafter declare the remaining candidates to be duly, elected to fill the non-reserved seats;

(c) if the number of contesting candidates qualified to be chosen to fill the reserved seats exceeds the number of such seats and the total number of the candidates standing for election in the division, also exceeds the total number of seats to be filled a poll shall be taken".

The said rules have been scrupulously followed by the Returning Officer in the instant case as Rule 29(2) of the Rules was aptly applicable to the facts of this case. The Form 13-A was already issued by the Returning Officer on 21-4-2001, therefore this Court would not have passed the interim order if the above said relevant fact were to be brought to the notice of this Court. Pursuant to the interim order granted and the impugned order in the connected petition was passed by the Returning Officer in this case, it will not take away the right of the petitioner in the connected writ petition for the reason that the Returning Officer under the rules should not have passed the impugned order in the connected petition.

9. This Court having regard to the facts narrated above and in view of Supreme Court judgment in *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, (the law laid down by the Apex Court at paragraph 82), this Court cannot quash the rejection of nomination paper of the petitioner in the first petition for the reason that the Returning Officer has already declared the result of the petitioner in Form 13-A, under Rule 29(2) of the Rules in the connected writ petition and also for another reason the relief as prayed in the first petition cannot be granted as the petitioner has not sought for quashing the same by issuing a writ of certiorari and such relief also cannot be granted by this Court as the results of

the election was declared and right was accrued in favour of the petitioner in the connected petition, and the petitioner in the first writ petition has got the alternative remedy of filing election petition under the provisions of the Act. This Court also need not exercise its power in favour of the petitioner in the first petition as the rejection of his nomination paper is legal and valid is required to be answered by the fact-finding authority after consideration of relevant material evidence. Therefore, this Court cannot grant the relief as prayed for in the first petition. Therefore, W.P. No. 18903 of 2001 must fail.

10. Subsequent to passing of the interim order passed by this Court the impugned order at Annexure-A in the connected writ petition was passed by the Returning Officer, the conduct of election by the Returning Officer is totally impermissible in law under the Rules and under the calendar of events. Therefore, this Court after noticing the relevant Rule 29(2) of the Rules and the declaration of results of the petitioner in the connected writ petition, the conduct of election to the Town Panchayath in question of Ward No. 15 is not in conformity with law though the conduct of election was made by the Returning Officer is in pursuant to the interim order of this Court without considering the relevant Rule, the said interim order is subject to the final result of the petition. The petitioner in the first petition is not entitled for the relief for the reasons recorded above. Therefore, this Court has to ignore the subsequent event of conduct of election to the Ward No. 15 in pursuant to the interim order obtained by the petitioner in the first writ petition by suppressing relevant material fact of declaration of election results of the petitioner in the connected writ petition.

11. For the reasons stated supra, the Returning Officer has obeyed the interim order passed by this Court and conducted the election otherwise, he would have faced the contempt of Court. The conduct of election in pursuant to the interim direction of this Court would not acquire a right by the petitioner in the first petition for grant of the reliefs as prayed by him. Therefore, the order of rejection of nomination paper of the petitioner in the first petition cannot be quashed by this Court in the first petition.

12. For the reasons stated supra, the order passed by the Returning Officer pursuant to the interim order passed in the connected writ petition is liable to be quashed for the reason that he had declared the result of the election of Ward No. 15 of petitioner therein. Once the declaration has been made by the Returning Officer unless the same is quashed by the competent Court in an appropriate proceedings, the conduct of election is totally impermissible under the Rules even though elections were conducted pursuant to the interim order. That will not enure to the benefit of the petitioner in the first petition for the reasons recorded in the earlier paragraphs of the order this Court has declined to grant the relief. Therefore, the petitioner in the connected writ petition must succeed. Accordingly, I pass the following order:

Writ Petition No. 18903 of 2001 is rejected. Writ Petition No. 19087 of 2001 is allowed. Rule issued and made absolute. Impugned order at Annexure-A, dated

28-4-2001 is hereby quashed. Further, liberty is given to the petitioner in W.P. No. 18903 of 2001 to challenge the proceedings of the Returning Officer including the declaration of results made by him in favour of the petitioner in the connected writ petition in accordance with the provisions of the Act and the rules, if he is so advised.