

(2014) 03 KAR CK 0112

In the Karnataka High Court

Case No : Writ Appeal Nos. 3519 and 3520 of 2009 (GM-RES)

The State Election Commission

APPELLANT

Vs

C.P. Yogeshwar

RESPONDENT

Date of Decision : 21-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468(2)(a)
Representation of the People Act, 1951 — Section 125-A

Citation : (2014) 4 KarLJ 384

Hon'ble Judges : Ravi V. Malimath, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : Krishna S. Dixit for Dodwad S.R, Advocate for the Appellant; D.S. Ramachandra Reddy and R. Tharesha, Advocate for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—The legality and correctness of the order passed by the learned Single Judge in W.P. No. 4972 of 2007, dated 15-7-2009 is called in question in this appeal. The respondent filed a petition before the learned Single Judge challenging the notice issued by the appellant vide Annexure-B to the writ petition, dated 2-1-2007, and a further notice vide Annexure-D, dated 26-2-2007 and also to issue a writ of prohibition prohibiting the respondents from proceeding with the case registered against him vide Annexure-D.

2. The facts leading to this appeal as made out before the learned Single Judge is as hereunder:

The petitioner had contested the Karnataka State Assembly Election from Channapatna constituency in the general election held in the year 2004. In accordance with the Election Rules, he had declared his assets and liability in terms of Annexure-A. Based on a complaint lodged by the third respondent, one Ravindra Beliyur, the Assistant Commissioner, Ramnagara who was the then Returning Officer called upon the petitioner to furnish certain information and documents vide letter dated 2-1-2007. The petitioner sent a reply on 15-2-2007

vide Annexure-C to the writ petition. Thereafter, again a notice came to be issued by the Returning Officer vide Annexure-D. Challenging the legality and correctness of the same, a writ petition came to be filed.

3. The grounds urged by the petitioner to challenge the notice issued by the petitioner are that there was no necessity for the writ petitioner to send a reply to the notice got issued by the Assistant Commissioner and still he sent a reply. After considering the reply again one more notice has been sent without any power. Therefore, he contended that the action initiated by the Assistant Commissioner (Returning Officer) as bad in law and liable to be quashed.

4. The writ petition was contested by the Election Commission contending that the Returning Officer has not become functus officio in declaring the results of the election and he will be under the control of the Election Commission and he is required to work on the directions to be issued from time to time by the Election Commission of India.

5. According to the Election Commission, the reply sent to the first notice by the petitioner was not sufficient to take action against the writ petitioner. Therefore, the second notice was issued. The learned Single Judge having heard the Counsel for the parties came to the conclusion that if the reply furnished by the petitioner earlier was not satisfactory, it was for the Returning Officer to take action in accordance with Law. But he cannot issue one more notice calling upon the writ petitioner to answer the same. Holding that the Returning Officer has no power to call upon the writ petitioner to send a reply after reply, he quashed the proceedings. Challenging the legality and correctness of the same, the present appeal is filed.

6. Having heard the Counsel for the parties, we are of the opinion that no error is committed by the learned Single Judge in allowing the writ petition for the following reasons:

Admittedly, the first respondent/writ petitioner was required to file a declaration on an affidavit declaring his assets and liabilities before contesting the election and thus an affidavit was filed by him while submitting his nomination. According to the appellant, an offence is committed which is cognizable offence and as per Section 125-A of the Representation of the People Act, 1951 (hereinafter referred to as "Act"), the maximum punishment for the alleged offence is conviction for six months or fine or both. u/s 468(2)(a) of the Criminal Procedure Code, 1973, if the offence punishable is not more than six months, cognizance shall be taken within one year from the date of lodging of the complaint of the alleged offence. If this is the legal position, if the elections were held in the year 2004, a declaration in the form of an affidavit declaring the assets and liability of the first respondent in this appeal is furnished by him in the month of March 2004, if at all any false affidavit is filed, considering the provisions of Section 468(2)(a) of the Cr.P.C. cognizance has to be taken within one year. The declaration was submitted in the year 2004 and the same was published on the same day and

the same was published by the Returning Officer on the notice board and also widely published in all newspapers and made known to the general public about the assets and liabilities declared by the first respondent at the time of filing the nomination. Therefore, there was no difficulty for any person to lodge a complaint pursuant to the notice of the Returning Officer, if the first respondent has failed to furnish correct and proper information within regard to the assets and liabilities.

7. In the instant case, a complaint is lodged by the second respondent herein on 23-9-2006. When the complaint is lodged by him on 23-9-2006, the Election Commission was required to take action by filing a complaint within the time stipulated u/s 468-A. But the notice has been got issued to the respondent 1 vide Annexure-C, dated 15-2-2007 calling upon him to send a reply. If the complaint lodged by the second respondent was true, there was no necessity for the Election Commission to call upon the first respondent to send its reply. Still the first respondent has submitted his reply vide Annexure-C, dated 15-2-2007. Thereafter, one more notice has been issued vide Annexure-D.

8. According to Sri Krishna S. Dixit, the learned Counsel appearing for the appellant, in Annexure-C the first respondent has admitted the mistake committed by him in not disclosing certain correct figures in regard to the loan borrowed by him from M/s. Mega City Developers. At the first instance there was no need or necessity for the Election Commission to call upon the respondent to give a reply and to satisfy to the effect that the affidavit or the declaration submitted by him is proper and correct. Based on the affidavit, he could have lodged a complaint and that to when the first respondent has admitted that certain mistakes were crept in the affidavit/declaration submitted by him, there was no impediment for the Election Commission to take cognizance and lodge a complaint subject to Section 468(2)(a) of Cr.P.C. Instead of doing so, the Returning Officer has issued one more notice. By that time in view of Section 468(2)(a) of Cr.P.C. the appellant cannot lodge a complaint by taking cognizance before the Competent Court u/s 125-A of the Representation of the People Act, 1951. Accordingly, we are of the view that there is no necessity for us to interfere with the findings of the learned Single Judge. We are of the view that there is no merit in this writ appeal. On account of lapse of time, the appellant herein cannot take cognizance of the alleged offence said to have been committed by the first respondent. With the above observation the writ appeal is dismissed. All contentions are left open.