

(1979) 02 KAR CK 0031
In the Karnataka High Court
Case No : Writ Petition No. 10050 of 1978

T.K. Abdul Sattar

APPELLANT

Vs

The Court of Munsiff, Kolar and Others

RESPONDENT

Date of Decision : 02-02-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Mysore Village Panchayats and Local Boards Act, 1959 — Section 13 (1), 13 (2), 13 (3)

Citation : AIR 1979 Kar 208 : (1979) ILR (Kar) 1008 : (1979) 1 KarLJ 240

Hon'ble Judges : R.S. Mahendra, J;K. Jagannatha Shetty, J;K. Bhimiah, J

Bench : Full Bench

Judgement

Jagannatha Shetty, J.—A Division Bench of this court while doubting the correctness of the decision in Ningappa Rangappa Sonnavalkar v. The Munsiff Gokak (1968) 2 Mys LJ 620 has referred the following question to a Full Bench for opinion:-

"Whether in an election petition filed by a candidate at an election to a Village Panchayat under the Karnataka Village Panchayats and Local Boards Act, 1959, a recount of votes can be granted by the Munsiff without a preliminary inquiry in which he is prima facie satisfied that in order to decide a dispute between the parties, inspection of ballot papers and recount thereof are necessary?"

2. Shortly stated, the facts are these:

In the election held on 8th July, 1978 to the Tayalur Group Panchayat, the petitioner and four others were declared elected. Mumtaz Ahmed-respondent-3- was one of the defeated candidates. He challenged the election of the petitioner before the Munsiff at Kolar under S. 13 of the Karnataka Village Panchayats and Local Boards Act, 1959 called shortly "the Act" on the ground, among others that there was no proper counting of votes of votes by the Election Officer. The case was set down for enquiry on 25th August, 1978. But on 14th August 1978 respondent-3 filed an application to advance the case from 25th to 16th August, with a request to get all the votes for scrutiny and computation. The case was

accordingly called on 16th August 1978 but was adjourned to 18th August 1978. On 18th, the learned Munsiff after hearing the parties, accepted the request of respondent-3 and directed the production of ballot box by 21st August, 1978. The ballot box was accordingly produced before him.

On 21st August, 1978, the learned Munsiff scrutinised and recounted the votes in the presence of advocates and the parties. In the recounting, it was found that petitioner and respondent-3 secured equal number of votes. Thereupon, lots were drawn in which respondent-3 was found to be lucky and declared elected.

The petitioner challenges the validity of the proceedings taken by the learned Munsiff in this writ petition under Article 226 of the Constitution.

3. This narrative shows that the proceedings before the Munsiff involved a high degree of improvisation. The person who challenged the election of the successful candidate, did not produce even a prima facie evidence to show that there was irregularity in the counting of votes made by the Election Officer. There was not even an affidavit from him in support of the allegations in his petition. He asked the Munsiff to scrutinise and compute the votes recorded in favour of the respective parties. The Munsiff readily accepted the request and ordered a recount.

We are not finding fault with the Munsiff. He could not have done any better as he was bound by the decision of this Court in N. R. Sonnavalkar's case (1968) 2 Mys LJ 620 to which we will refer in detail a moment later.

4. For a proper consideration of the question presented before us, a closer scrutiny of the relevant provisions of the Act is necessary. S. 13 provides for determination of the validity of election. Sub-section (1) of S. 13 states that any candidate who stood for election, or any person qualified to vote at that election, may apply to the Munsiff within 15 days after the declaration of the result of the election for the determination of the validity of the election. Sub-section (2) states that the Munsiff shall, after such enquiry as he deems necessary, pass an order confirming or amending the declared result of the election, or setting aside the election. Sub-section (3) is subject to the provisions of sub-section (2). Clause (A) of sub-section (3) specifies the grounds upon which the Munsiff could declare any election to be void. Clause (B) has a material bearing on the question before us, and for immediate reference, the same is set out hereunder:-

"(B) if in any case to which clause (A) does not apply, the validity of an election is in dispute between two or more candidates, the Munsiff shall, after a scrutiny and computation of the votes recorded in favour of each such candidate, declare the candidate who is found to have the greatest number of valid votes in his favour to have been duly elected:--

Provided that, for the purposes of such computation, no vote shall be reckoned as valid if the Munsiff finds that it was given by an unqualified person or any corrupt practice was committed by any person, known or unknown, in giving or

obtaining it:--

While dealing with the scope of the above provisions, Somnath Iyer, J., speaking for the Bench in N. R. Sonnavalkar's case (1968) 2 Mys LJ 620 said:--

"Clause (B) does not say that the scrutiny and computation which it enjoins should be made only in a case where a person challenging the election produces prima facie proof that such scrutiny and computation is necessary. The decisions rendered under the provisions of the Representation of the People Act and the rules made thereunder on which Mr. Mariappa depended, and which contain express provisions that the election petition should contain particulars with respect to the grounds on which the election is challenged, can have, therefore, no application to a case like the one before us which is governed by the clear provisions of S. 13(3)(B) of the Act which do not insist on the production of any such particulars....."

It is clear from the above enunciation that a candidate who challenges the validity of an election upon the ground specified under clause (B) is not required to produce any proof to satisfy the Munsiff that the counting of votes made by the Election Officer was not proper or has affected the result declared by him. The Munsiff must blindly act upon the allegations in the election petition and promptly order scrutiny and recount even if the allegations are vague and unbelievable. That is also the contention urged before us by Sri H. R. Venkataramaniah, learned counsel for Respondent-3. He urged that the Act and the Rules do not confer power on the Election Officer to recount the votes and such a power has been expressly conferred on the Munsiff under clause (B) and for the exercise of that power, the law does not require him to make any enquiry before ordering recount of votes.

5. We will first examine, whether clause (B) of sub-section (3) does not envisage an enquiry to be held by the Munsiff before ordering scrutiny and computation of votes. Sub-section (2) provides that there shall be an enquiry by the Munsiff before confirming or amending the declared result of the election or setting aside the election. Sub-section (3) begins with the words "Subject to the provisions of sub-section (2)." It therefore follows that any action under sub-section (3), whether under clause (A) or under clause (B) should be preceded by an enquiry contemplated under sub-section (2). Our view finds support from the observation of this court in Gourawwa v. Shivagouda (1969) 2 Mys LJ 510 in which it has been said:-

"..... The words "subject of the provisions of sub-section (2)" occurring in sub-section (3) only meant that the exercise of the power under that sub-section either under Part A or under Part B should be preceded by the enquiry directed by sub-section (2)."

6. Learned counsel, however, sought to draw a distinction between clause (A) and clause (B) sub-section (3) to lend support to his contention. According to him, if the election petition is under clause (A), then the Munsiff is required to

hold an enquiry for the purpose of forming an opinion on the allegations made in the petition since clause (A) provides that the Munsiff has to form an opinion on the grounds specified therein. But under clause (B) no such opinion need be formed by the Munsiff when a request is made by aggrieved party for scrutiny and counting of votes and no enquiry, therefore, is called for at that stage. He also urged that the enquiry contemplated under sub-section (2) is called for only after the ballot boxes are opened and not before. We think that the difference sought to be made out appears to be tenuous. Clause (B) may not expressly state that the Munsiff should form an opinion as to the justifiability for ordering recount. But it does not also state that he could so order for the mere asking for it. Why should then, the Munsiff be asked to abdicate his judicial power and discretion. We see no good reason to construe clause (B) in the manner suggested by learned counsel.

7. Quite apart from that, if the above contention is accepted, it would run counter to the norms governing the proceedings before the judicial or quasi-judicial authorities. The Munsiff by S. 13, has been constituted as a Tribunal to determine the dispute of election. He has legal authority to determine questions affecting the result of the election. If he has legal authority determine questions affecting the rights of persons, the law requires him to act judicially and for that purpose, the duty to act judicially need not be expressly provided for. It is always implied and in-built in the legal power to determine questions affecting the rights of persons. The power and the duty go hand in hand. Lord Reid in *Ridge v. Baldwin* 1964 AC 40 observed that wherever there is a power to determine what the rights of an individual should be, there is also a duty to act judicially need not be super-added. It seems to us, therefore, the Munsiff is required to exercise his powers in accordance with the well accepted norms governing the judicial proceedings, and not on hybrid legal process of his own innovation or at the party's whims and fancies.

8. The principles governing the like proceedings have been stated by the Supreme Court in *Shri Jitendra Bahadur Singh Vs. Shri Kirshna Behari and Others*, as follows:-

"(1) That the petition for setting aside the election must contain an adequate statement of the material facts on which the petitioner relies in support of his case and (2) the tribunal must be prima facie satisfied that in order to decide the dispute and to do complete justice between the parties, inspection of the ballot papers is necessary."

It was further observed at para 12:-

"..... A judge can be satisfied only on the basis of proof and not on the basis of mere allegations..... Every judicial order must be based on reasons and those reasons must be disclosed in the order itself."

9. Mr. Venkataramaniam, however contended that the above observations are not applicable to the case on hand since the Supreme Court was dealing with a case

arising under the Representation of the People Act. We do not think that we can accept that submission. The Supreme Court was no doubt considering a case arising under the Representation of the People Act, but the observations made therein are of universal application and in our opinion, should govern all cases where the validity of an election is in dispute before any Court or Tribunal with a prayer for scrutiny and computation of ballot papers. The Munsiff, therefore, cannot by-pass the legal responsibility to act judicially. He cannot act on the basis of mere allegations in the petition. He must prima facie satisfy himself about the need for scrutiny and recount on the basis of proof produced by the parties.

We, therefore, overrule the decision in Ningappa Rangappa Sonnavalkar's case (1968) 2 Mys LJ 620.

10. In the result, our opinion to the question referred is as follows:-

That the Munsiff cannot order recount of votes without a preliminary enquiry and without being prima facie satisfied on proof that such scrutiny and recount of votes are necessary to decide a dispute between the parties.

11. In the circumstances of the case, we make no order as to costs.

12. Answered accordingly.