

(1971) 06 KAR CK 0003

Mysore High Court

Case No: Writ Petition No. 4406 of 1969

Hayath Beig

APPELLANT

Vs

Munivenkate Gowda and Others

RESPONDENT

Date of Decision: June 18, 1971

Acts Referred:

- Mysore Village Panchayat (Election of the Chairman and the Vice-Chairman) Rules, 1959 - Rule 12, 17, 5
- Representation of the Peoples Act, 1951 - Section 100, 101, 80 A

Citation: AIR 1972 Kar 226

Hon'ble Judges: K. Jagannatha Shetty, J; G.K. Govinda Bhat, J

Bench: Division Bench

Advocate: S.K. Venkataranga Iyengar, for the Appellant; P. Subba Rao, for the Respondent

Final Decision: Allowed

Judgement

Govinda Bhat, J.

This writ petition is directed against the order of the Munsiff at Kolar made in Election Misc. No. 68 of 1068 dated 31-7-1969 by which the election of the petitioner as Chairman of the village panchayat of Chainasandra in Chintamni Taluk of Kolar District was set aside on the ground that Ms nomination paper was presented by himself and not by his proposer as required by Rule 5 of the Mysore Village Panchayat (Election of Chairman and Vice Chairman) Rules 1959, hereinafter called the "Rules".

2. For the election held on 18-6-1968 for the office of the Chairman of the village panchayat the petitioner and the first respondent were the contesting candidates. At the time of scrutiny of the nomination papers, the 1st respondent raised an objection to the nomination of the petitioner that his nomination paper was not presented by the proposer as required by Rule 5. The said objection was overruled by the 2nd respondent and the nomination was accepted. The petitioner having

secured more votes than the 1st respondent he was declared duly elected as chairman of the panchayat. Thereupon, the 1st respondent filed Election Petition No. 68 of 1969 before the Munsiff. Kolar who upheld the objection that Rule 5 had not been complied with and therefore he set aside the election and directed fresh election. Aggrieved by the said order, the petitioner has approached this court for relief under Arts. 226 and 227 of the Constitution of India. Sri S. K. Venkataranga Iyengar, the learned counsel for the petitioner sought out leave to raise a new ground not raised in the affidavit filed in support of the writ petition. Since the question raised is a pure question of law we granted him the leave prayed for. We also adjourned the matter to enable the counsel for the respondents to make their submissions and then the case was heard.

3. The new ground urged by Sri S. K. Venkataranga Iyengar is that there is no provision either in the Act or the Rules stating the grounds on which the election of the Chairman or the Vice-Chairman of a village panchayat can be set aside in an election petition and that in absence of such a provision, the Munsiff could not have set aside the election of the petitioner on the ground of non-compliance with the provisions of R. 5.

4. Section 30 (2) of the Mysore Village Panchayats and Local Boards Act, 1959 hereinafter referred to as the "Act" provides that any dispute relating to the validity of the election of a Chairman or Vice-Chairman under Sub-section (1) of Section 27 shall be decided by the prescribed judicial officer and that the decision of the prescribed judicial officer thereon shall be final. Rule 17 of the Rules provides that any member of the panchayat may challenge the validity of the election of the Chairman or Vice-Chairman, as the case may be within seven days from the date of publication of the result of election under Rule 12 by filing an election petition together with a deposit of Rs. 100/- as security for costs before the Munsiff within whose territorial jurisdiction the village panchayat is situated.

5. Rule 18 provides that upon receipt of such a petition, 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. In conducting such enquiry the Munsiff shall follow the provisions of the Code of Civil Procedure. 1908, as far as possible.

6. The Act and the Rules are altogether silent as regards the grounds on which the election of a Chairman or Vice-Chairman can be set aside. The question is whether in the absence of such a provision, the Munsiff can set aside the election on the ground of non-compliance with the provisions of Rule 5.

7. In India there is no common law relating to elections and election petitions in respect of elections to the Parliament and State Legislatures. The Parliament has enacted the Representation of the People Act 1951. Section 80A of the said Act provides for trying election petitions by the High Court. Sections 100 and 101 state

the grounds for declaring an election to be void. If the High Court is of the opinion that on the date of the election, a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the constitution or under the Representation of the People Act, or that any corrupt practice has been committed by a returned candidate or by any other person with the consent of a returned candidate, or that any nomination has been improperly rejected, the High Court shall declare the election of the returned candidate to be void. Further, if the High Court is of the opinion that the result of the election, in so far as it concerns a returned candidate, has been materially affected by the improper acceptance of any nomination, etc., or by any non-compliance with the provisions of the Constitution or the Representation of the people Act or of any Rules or orders made thereunder, the High Court shall declare the election of the returned candidate to be void. It is thus seen that under the Representation of the People Act, for setting aside the election of a returned candidate on the ground of non-compliance with the provisions of the Constitution or the Representation of the People Act, or any rules made thereunder, it has to be established that the result of the election in so far as it concerns the returned candidate has been materially affected.

8. With regard to the election of the President and Vice-President of India, the Parliament has enacted "The Presidential and Vice-Presidential Election Act", 1952. u/s 14 of the said Act. an election petition challenging the election of the President or the Vice-President has to be filed in the Supreme Court. It also provides that an election petition calling in question an election may be presented on one or more of the grounds specified in Sub-section (1) of Section 18 of the said Act.

9. Sections 18 and 19 specify the grounds for declaring the election of a returned candidate to be void. Under the said provisions the election of a returned candidate can be set aside on the ground of any non-compliance with the provisions of the Constitution or the Representation of the People Act or Rules made thereunder only if the result of the election has been materially affected.

10. In regard to the election of the President and Vice-President of Municipalities in Mysore, the State has enacted the Mysore Municipalities (President and Vice-President Election) Rules, 1955, Rule 15 of the said Rules provides that the validity of the election of the President or Vice-President may be called in question by a petition presented to the District Judge having jurisdiction over the area within which the election has been or should have been held. Rule 17 of the said Rules states the grounds for declaring the election of the returned candidate to be void. The said Rule states that if the District Judge is of the opinion that the result of the election has been materially affected by the improper rejection or refusal of a vote or by any non-compliance with provisions of the Act or of any of the Rules, the District Judge shall declare the election of the returned candidate to be void.

11. In regard to election to Village Panchayats in Mysore State, the Act by Section 13 has provided that the validity of an election to a village panchayat may be

questioned by an election petition filed before a Munsiff within whose territorial jurisdiction the village panchayat is situate. Sub-section (3) of Section 13 of the Act states the grounds on which the Munsiff shall declare the election of a returned candidate to be void. Sub-section (31 of Section 13 makes a distinction between a case of improper rejection of a nomination and improper acceptance of a nomination. Where it is established that any nomination has been improperly rejected, the Munsiff shall declare the election of the returned candidate as void but where it is established that any nomination has been improperly accepted or where there has been any non-compliance with the provisions of the Act or rules made thereunder, it has to be further established that the result of the election in so far as it concerns a returned candidate has been materially affected. These provisions are, however, not made applicable for the trial of the petitions challenging the election of the Chairman or Vice-Chairman of a panchayat.

12. Thus, it is seen, that in all statutes and statutory Rules relating to lections and the trial of election petitions, the pattern of the law is the same. The election of a returned candidate can be set aside on the ground of improper acceptance or non-compliance with any of the provisions of any law, only if it is further established that the result of the election in so far as it concerns the returned candidate has been materially affected. Assuming that the basic principles governing the determination of validity of elections laid down in Section 13 (3) can be extended to the determination of the validity of election of the Chairman or Vice-Chairman of a village panchayat, the first respondent can succeed only if the Munsiff is of the opinion that the result of the election in so far as it concerns the returned candidate has been materially affected. In the instant case, the ground urged is one of non-compliance with the provisions of Rule 5 of the Rules under which the nomination paper was to be represented by the proposer of the candidate. The ground made out can also be regarded as a case of improper acceptance of a nomination. The Munsiff has not come to the conclusion that the election of the petitioner has been materially affected by the improper acceptances of nomination or by non-compliance of the provisions of Rule 5. The fact that the candidate himself presented his nomination and not his propose in our opinion, cannot materially affect the result of the election of the returned candidate.

13. It was urged by Sri P. Subba Rao, learned counsel for the first respondent that since Section 30 (2) of the Act read with Rule 17 provides that any dispute relating to the validity of the election of a Chairman or Vice-Chairman shall be decided by the Munsiff, he has got the jurisdiction and power to declare an election void if it is established that any of the relevant Rules have not been followed. If Mr. Subba Rao's contention is accepted, the Munsiff has to declare the election of a returned candidate void for non-compliance with the provisions of a Rule like Rule 5. while he has no power to declare the election void if corrupt practice is established or if certain fundamental ballot papers etc. are violated. Such a situation could not have been contemplated by the framers of the Act, Under the Act, the Government has

the power to make Rules and thereunder provide the grounds for declaring the election of the returned candidate void. It! appears to us that the Rule making authority has by oversight omitted to frame a Rule stating the grounds on which the election of a returned candidate shall be declared to be void. In the absence of any such Rule, we fail to see how the Munsiff exercising his powers u/s 30 (2) read with Rules 17 and 18 of the Rules can try an election petition. The Munsiff under the Act exercises his Powers not as a court but as a tribunal. He has no inherent powers of a court. Therefore the Munsiff could not have set aside the election of the petitioner.

14. For the reasons stated above, we allow this writ petition and quash the order of the Munsiff made in Election. Misc. No. 68 of 1968. No costs.

15. We direct that a copy of this order be sent to Government.