
(2015) 11 KAR CK 0096

Karnataka High Court (Gulbarga Bench)

Case No: Writ Appeal Nos. 200200-200207/2015 (LB-ELE)

Mallavva and Others

APPELLANT

Vs

Commissioner,
Karnataka Election
Commission and
Others

RESPONDENT

Date of Decision: Nov. 30, 2015

Citation: (2015) 11 KAR CK 0096

Hon'ble Judges: A.S. Bopanna and G. Narendra, JJ.

Bench: Division Bench

Advocate: P.G. Yatnal and I.S. Chimmalagi, Advocates, for the Appellant

Final Decision: Disposed Off

Judgement

A.S. Bopanna, J.

The appellants are before this Court assailing the order of the learned Single Judge dated 16.7.2015 passed in W.P.

Nos. 22061-68/2015.

2. The petitioners were before the learned Single Judge in the writ petitions assailing the endorsement dated 20.05.2015 at Annexures-B1 to B8 to

the petition whereby the nomination papers had been rejected. The election in question was for the membership of Kudari Salawadagi Gram

Panchayat which was to be held on 29.05.2015. The learned Single Judge by the interim order granted on 26.05.2015 though did not interfere

with the election process, on notifying the respondents, had directed that the nominations of the petitioners also be accepted. In that view, the

nominations of the petitioners which had not been accepted at the first instance were accepted and the election process was completed on

29.05.2015.

3. In the ultimate analysis of the election results, it was seen that petitioners No. 1 to 3 were elected after contest. The petitioners No. 6 to 8 were

declared as elected unopposed while petitioners No. 4 and 5 had lost in the elections. It is subsequent to the completion of the election process,

the writ petitions had arisen for consideration before the learned Single Judge. In that circumstance, while taking note of the rival contentions and

also keeping in view the provisions contained in the Karnataka Panchayat Raj Act and Rules, the pivotal question that arose for consideration

before the learned Single Judge was with regard to the maintainability of the petitions assailing the rejection of the nomination papers by the

Returning Officer on commencement of election process by issue of calendar of events.

4. In order to consider that aspect of the matter, the learned Single Judge has taken note of the decisions referred to in that regard more

particularly in the case of Election Commission of India Through Secretary Vs. Ashok Kumar and Others, and the case of N.P. Ponnuswami Vs.

Returning Officer, Namakkal Constituency and Others, . Having considered the said decisions, the conclusion reached by the learned Single Judge

was that a writ petition assailing the process of election including the rejection of the nomination would not be maintainable. However, taking into

consideration the developments that had taken place during the pendency of the petitions, in view of the interim order granted, certain of the

petitioners having been elected in the process after contest and the others being elected unopposed, insofar as the persons who are elected

unopposed, the learned Single Judge did not find it necessary to disturb the election as even otherwise their continuance would not prejudice any

other party. In any event, when the conclusion was that the parties were to get the matter adjudicated before the Election Tribunal, the learned

Single Judge was conscious that in the said circumstance, the posts in the Gram Panchayat should not remain vacant. It is in that light having taken

note of the manner in which the parties had contested and the election had taken place and also taking into consideration the appropriate person

who is required to assail such action, had passed the following directions:

In the above circumstances, the writ petitions are disposed of as follows:

i. The respondents 4 to 6 can continue as members of Kudari Salawadagi Gram Panchayat subject to the result of the Election Petition which

needs to be filed by the petitioners 1 to 3.

ii. The petitioners 6 to 8 can continue as members of Kudari Salawadagi Gram Panchayat subject to the result of the Election Petition which needs

to be filed by them.

iii. The petitioners 1 to 3 and petitioners 6 to 8 shall file their Election Petitions within 20 days from today. If the Election Petitions are filed within

20 days from today, the Election Court shall receive the same and decide the matter on merits without reference to the limitation.

iv. The respondent No. 7 or any other aggrieved person who is party to these writ petitions can also file Election Petition within 20 days from

today. If the Election Petition is filed within 20 days from today, the Election Court shall receive the same and decide it on merits without reference

to the limitation.

v. In so far as petitioners 4 and 5 are concerned, it was submitted that they have lost the election and their claim does not survive for consideration.

vi. Keeping in view of the circumstances of the case and the statutory provisions the Election Court shall decide the matter at the earliest.

vii. The Stay granted on 6.7.2015 stands vacated.

5. Though the learned counsel for the appellants would strenuously contend that the conclusion reached by the learned Single Judge is not just and

proper inasmuch as the petitioners No. 1 to 3 who were elected could not have been left in the lurch and they ought not to have been directed to

approach the Tribunal in the election petition, having already noticed the fact that the learned Single Judge was considering the matter in a situation

where the election had taken place and the consideration of the petitioners to be a part of the election process, was done in view of the interim

order granted by this Court and had participated in the election process, it appears that an appropriate decision is taken. The learned Single Judge

had applied himself to this aspect of the matter and through the direction issued has clearly indicated which of the petitioners would continue to act

as members of the Grama Panchayat and in respect of them, who has to challenge the election of the candidate who is declared as elected. In the

said circumstance, when the petitioners No. 1 to 3 were granted the liberty of taking part in the election process through an interim order passed in

the writ petitions which on the ultimate analysis was found to be not maintainable and when the conclusion is also that such election disputes can

only be decided in an election petition, we see no error committed by the learned Single Judge in the said process. Therefore, the order dated

16.07.2015 passed by the learned Single Judge does not call for interference.

6. At best, all that is necessary to be clarified in these appeals is that based on the declaration of the results and there being elected candidates as

per such declaration of results, it is only the unelected candidates, if any who are to assail the same would require to approach the Election Tribunal

and if such petitions are filed, the Election Tribunal would consider the same in accordance with law. In that regard, all contentions of the parties on

the merits of the acceptance or otherwise of the nomination papers is also left open to be urged before the Election Tribunal.

7. Since the learned Single Judge at the point of disposing of the petitions had granted 20 days time to such of those parties approaching the

Election Tribunal to file the election petition and since the appellants were before this Court assailing the said order of the learned Single Judge, we

extend the said period of 20 days to such of those parties approaching the Election Tribunal by 20 days from the date of receipt of a copy of this

order.

In terms of the above, these appeals stand disposed of.