

**Kunti Vs. Returning Officer, Nagar Panchayat, Bagbahara and Others**

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**Court :** Chhattisgarh

**Decided On :** Jan-02-2013

**Judge :** N.K. Agarwal

**Appeal No. :** Civil Revision No. 168 of 2012

**Appellant :** Kunti

**Respondent :** Returning Officer, Nagar Panchayat, Bagbahara and Others

**Judgement :**

1. Instant revision petition filed under Section 26(2) of the C.G. Municipalities Act, 1961 (for short the Act of 1961) calls in question the legality and propriety of the order dated 29-09-2012 passed by the Second Additional District Judge, Mahasamund (C.G.) in election petition No. 01/2012.

2. Facts in brief necessary for disposal of this revision are:

(i) The applicant and respondents No.2 to 4 have contested the election of President Nagar Panchayat, Bagbahara, Tahsil Bagbahara, District Mahasamund (C.G.), a post reserved for scheduled tribe (female category). Nomination of applicant - Kunti, w/o Lalit Mahanand was challenged by respondent No.2 - Smt. Janki Mahanand before the Returning Officer on the plea that the applicant is not eligible and is disqualified to contest the election as she is not scheduled tribe by caste and also her age is less than 25 years.

(ii) The objection raised by respondent No.2 was overruled and nomination of the applicant was accepted. The results were declared and in the said election, the applicant was declared to be the winning candidate having secured highest number of votes, i.e. 4378 votes. Respondents No.2, 3 and 4 secured 4259, 222 and 239 votes respectively.

(iii) Election petition was filed by respondent No.2 to declare the election of the applicant as void on the ground that the applicant was not eligible and was disqualified to contest the election as she is not scheduled tribe and her age, on the date of nomination, was less than 25 years and to declare herself as duly elected as she secured next highest number of valid votes.

(iv) The Court below, finding inter alia, the applicants age was less than 25 years and the caste certificate issued by the Tahsildar, Bagbahara on 17.09.2009 was cancelled on the same date and the applicant was not qualified under Section 34 of the Act of 1961 to contest the election of President, Nagar Panchayat, Bagbahara, allowed the election petition filed by respondent No.2 and the election of the applicant was declared as void under Section 21(a) of the Act of 1961. The Court further declared respondent No.2, who has secured next highest number of valid votes, as duly elected under Section 21(b) of the Act of 1961. Hence, this revision.

3. Shri B.P. Gupta and Shri Y.C. Sharma, learned counsel appearing for the applicant, by placing their reliance upon the judgment of Supreme Court in the case of Vishwanatha Reddy v. Konappa Rudrappa Nadgouda and another AIR 1969 SC 604, Gadakh Yashwantrao Kanakrrao v. E. V. alias Balasaheb Vikhe Patil and others (1994) 1 SCC 682 : AIR 1994 SC 678 and judgment of this Court in the case of Manoj Kumar Mangwani v. Jamuna Das Sukhwani and others 2006 (2) C.G.L.J. 343 vehemently argued: where there are more than two candidates in the field for a single seat, and one alone is disqualified, on proof of disqualification of returning candidate, the candidate, who secured the next highest number of valid votes cannot be declared elected and the above part of the order passed by the trial Court is contrary to law. A feeble attempt was also made by Shri B.P. Gupta to challenge the first part of the order whereby the applicants election has

been declared as void.

4. On the other hand, Shri Upendranath Awasthy, learned Sr. Advocate with Shri Ramakant Mishra and Ms. Raksha Awasthy, appearing for respondent No.2 contended: the Court below, after appreciating the evidence available on record, has declared the applicants election as void. The above finding is neither perverse nor contrary to the evidence on record and the same being a finding of fact, cannot be interfered in the revisional jurisdiction under Section 26 (2) of the Act of 1961, which is almost similar to that, provided under Section 115 of the Code of Civil Procedure, 1908 (for short the Code). It was further contended: the Supreme Court in the cases of Vishwanatha Reddy v. Konappa Rudrappa Nadgouda (AOR 1969 SC 604) and Gadakh Yashwantrao Kankarrao v. E.V. and others (AOR 1004 SC 678) (supra), has passed the orders considering the provisions contained in Section 98 and 101 (b) of the Representation of the People Act, 1951 (for short the R.P. Act). This Court has also passed a judgment in the case of Manoj Kumar Mangwani v. Jamuna Das Sukhwani (supra) following the judgments of the Supreme Court in the aforesaid cases. The above provisions are not similar to Section 21 (b) and 24(2)(b) of the Act of 1961. As the scheme of the Act of 1961 is different from the R.P. Act, and therefore, the ratio of law laid down by the Supreme Court and by this Court in the aforesaid cases is not applicable in the facts and circumstances of the present case.

5. I have heard counsel for the parties and perused the record of the Court below including order impugned.

6. Indisputably, the post of President, Nagar Panchayat, Bagbahara was reserved for scheduled tribe (female category). As per Section 34 of the Act of 1961, in order to contest the election of President, a candidate shall not be less than 25 years of age.

7. The respondent No.2 has filed and proved applicants School Leaving Certificate of Government Primary School, Halanbhata (Ex.P.7), copy of marks sheet (Ex.P.8), School Attendance Register (Ex.P.9), copy of School Register (Ex.P.10) by examining District Inspector School Maheshwar Jena (A.W.5), translator Laxmikant Panigrahi, Tarani Sen Pradhan, Incharge Headmaster(A.W.6) and

Teacher Ghanshyam Sobar (A.W.7). According to above documents, the date of birth of the applicant is 16-05-1987 and her age is less than 25 years. On the other hand, the applicant could not prove her date of birth as 16-05-1982 by duly proving the alleged School Leaving Certificate (Ex.P.18), said to be issued by the Government School, Mahulpati rather the Incharge Headmaster of that school, i.e. Tarani Sen Pradhan has refused issuance of above certificate to the applicant. The birth certificate (Ex.D.3C), said to be issued by the Registrar of Births and Deaths, P.H.C. Turekela, Dist. Balangir, based on its registration on 6-3-2010, i.e., a date after the date of election, has been rightly disbelieved by the Court below as there is no mention in the Certificate that the same has been issued on the basis of an order passed by the Magistrate, in terms of Section 13 (3) of the Registration of Births and Deaths Act, 1969.

8. Ramadhar Tandi, the applicants father (N.A. W.1) also admitted that he is the resident of village of Halanbhata and the Halanbhata School is at the distance of 500 meters only from his place of residence.

9. Thus, the Court below, on a proper appreciation of the evidence available on record, has rightly held the age of the applicant as less than 25 years on the date of filing of the nomination. The applicant also could not prove her caste, inasmuch as, the temporary caste certificate dated 17-09-2009 filed by the applicant has already been cancelled by the Tahsildar on the same date, (statement para 5 of Tahsildar Chandresh Sahu, A.W.8).

10. The Court below, in the light of above, having found the applicant as ineligible, has rightly declared her election as void.

11. It is well settled position of law that under Section 115 of the Code (26 (2) of the Act of 1961), the High Court cannot reappreciate the finding and cannot set aside the finding of the Court below by taking a different view of the evidence. The High Court is empowered only to interfere with the findings of the fact if the findings are perverse or there has been a non-appreciation or non-consideration of the material evidence on record by the Courts below. Simply because another view of the evidence may be taken as no ground by the High Court to interfere in its revisional jurisdiction. Interference of this Court is permissible only if it is found

that the findings recorded by the lower Court were perverse or that there had been a non-application of mind, which is not the case here.

12. In view of above, I am of the considered opinion, the Court below has not committed any jurisdictional illegality warranting interference of this Court under its revisional jurisdiction in declaring the applicants election as void.

13. The only question, therefore, remains for consideration of this Court is, in an election petition under the Act of 1961 when contest for election to the post of President, Nagar Panchayat is by more than two candidates for one seat and a candidate, who is disqualified to contest the election is elected - whether the Court can declare a candidate, who has secured next highest valid votes, as elected.

14. The Constitution Bench of the Apex Court in the case of Vishwanatha Reddi v. Konappa Rudrappa Nadgouda (AIR 1969 SC 604) (supra) pointed out the cases falling under Section 101(b) of the R.P. Act, in which, a candidate, who has secured next highest number of valid votes can be declared elected. It was held therein as under:

We are again unable to see any logic in the assumption that votes cast in favour of a person who is regarded by the Returning Officer as validly nominated, but who is in truth disqualified, could still be treated as valid votes, for the purpose of determining whether a fresh election should be held. When there are only two contesting candidates, and one of them is under a statutory disqualification, votes cast in favour of the disqualified candidate may be regarded as thrown away, irrespective of whether the voters who voted for him were aware of the disqualification. This is not to say that where there are more than two candidates in the field for a single seat, and one alone is disqualified, on proof of disqualification all the votes cast in his favour will be discarded and the candidate securing the next highest number of votes will be declared elected. In such a case, question of notice to the voters may assume significance, for the voters may not, if aware of the disqualification have voted for the disqualified candidate.

15. The above ratio of law laid down by the Supreme Court was also relied upon by it in the case of Gadakh Yashwantrao Kankarrao (AIR 1994 SC 678) (supra).

16. This Court, in the case of Manoj Kumar Mangwani (supra) placing its reliance upon the ratio of law laid down by the Supreme Court in the aforesaid cases, has held, where there are more than two candidates and one of them was disqualified, then in such a case, the election can be set aside, but a declaration cannot be granted in favour of the person, who received the next highest votes.

17. The three Judge Bench of Supreme Court, in the case of Prakash Khandre v. Dr. Vijay Kumar Khandre and others (2002) 5 SCC 568 : AIR 2002 SC 2345 observing in para 24: in view of the aforesaid legal position, in our view, the impugned order passed by the High Court declaring the election petitioner as elected on the ground that the votes cast in favour of the elected candidate (appellant) are thrown away was totally erroneous and cannot be justified. As held by the Constitution Bench in Konappa case that some general rule of election law prevailing in the United Kingdom that the votes cast in favour of a person who is found disqualified for election may be regarded as thrown away only if the voters had noticed before the poll the disqualification of the candidate, has no application in our country and has only merit of antiquity. We would observe that the question of sending such notice to all voters appears to us alien to the Act and the Rules. But that question is not required to be dealt with in this matter. As stated earlier, in the present case, for one seat, there were five candidates and it would be impossible to predict or guess in whose favour the voters would have voted if they were aware that the elected candidate was disqualified to contest election or if he was not permitted to contest the election by rejecting his nomination paper on the ground of disqualification to contest the election and what would have been the voting pattern. Therefore, the order passed by the High Court declaring the election petitioner Dr. Vijay Kumar Khandre as elected requires to be set aside, has held in para 14 as under:

14. However, in an election where the elected candidate is declared to be disqualified to contest election and there are more than two candidates contesting election, there is no specific provision under the Act under which the person who has secured the next highest number of votes could be declared as elected. The Act is silent on this point. Further, it cannot be presumed that the votes secured by the disqualified elected candidates would have been wasted or would have been

secured by the next candidate who has secured more votes. If disqualified candidate was not permitted to contest the election then how the voters would have voted in favour of the candidate who has secured more votes than the other remaining candidates would be a question in the realm of speculation and unpredictability. In such a situation, declaring the election of the returned candidate on the ground of his initial disqualification to contest the election by itself would not entitle the election petitioner or any other candidate to be declared elected.

18. In the instant case also, the contestants were more than two and the ratio of law laid down by the Supreme Court and this Court in the cases mentioned herein above, squarely applies to the facts and circumstances of the present case and the part of the order of the Court below, by which, respondent No.2 has been declared elected as she secured next highest votes, is without jurisdiction.

19. In order to appreciate the contention raised by Shri Awasthy that the provisions of the R.P. Act are differently worded and the cases decided by the Supreme Court under the R.P. Act cannot be relied upon while deciding the instant case under the Act of 1961, it would be appropriate to reproduce the relevant provisions of the Act of 1961 and the R.P. Act.





<p>Section 21(b) of the Act of 1961 Relief that may be claimed by the petitioner.-(1) A petitioner may claim</p>	<p>Section 84 of the R.P. Act Relief that may be claimed by the petitioner</p>
<p>(a)</p>	<p>A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.</p>
<p>(b) in addition thereto a further declaration that he himself or any other candidate has been duly elected.</p>	<p>"98. Decision of the High Court. At the conclusion of the trial of an election petition the High Court shall make an order</p>
<p>24. Decision on election petition.- (1) At the conclusion of the trial or an election petition the Judge shall make an order</p>	<p>(a) dismissing the election petition; or</p>
<p>(a) to (c)</p>	<p>(b) declaring the election of all or any of the returned candidates to be void; or</p>
<p>(2) If any person who has filed an election petition has, in addition to call in question the election or nomination of the returned candidate, claimed declaration that he himself or any other candidate has been duly elected or nominated and the Judge is of opinion</p>	<p>(c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.</p>
<p>(a)</p> <p>(b) that but for the votes</p>	<p>101. Grounds for which a candidate other than the returned candidate may be declared to have been elected. If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he</p>

20. A comparative study of provisions contained in Section 21 (b), 24 (2) (b) the Act of 1961 and Section 84, 98 and 101 (b) of the R.P. Act would reveal, the provisions are almost similar and are not so differently worded so as to hold the ratio of law laid down by the Supreme Court and this Court in the aforementioned cases as inapplicable and the contention raised by Shri Upendranath Awasthy in this regard is sans substance.

For the foregoing, in my opinion, the order passed by the Court below declaring respondent No.2 as duly elected is contrary to law and deserves to be set aside.

In view of above, the revision is allowed in part. The part of the order impugned whereby the Court below has declared the election of the applicant as void is upheld whereas the second part of the order whereby the trial Court has declared respondent No.2 as duly elected to the post of President, Nagar Panchayat is quashed and set aside.

No order as to costs.

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