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Court : Karnataka

Decided On : Mar-05-2015

Judge : The Honourabel Mr. Justice H.G. Ramesh

Appeal No. : Writ Petition No. 9190 of 2015 (CS-Res)

Appellant : Keshava Gowda

Respondent : State of Karnataka Represented By Its Chief Secretary, Bangalore and Others

Judgement :

(Prayer: WP filed under Articles 226 and 227 of the Constitution of India praying to quash the calendar of events issued by R-6 proposing to hold the election to the managing committee of R-5 society on 8.3.2015 at dakshina kannada zilla panchayath model higher primary school, guthigaru post, sulya taluk in terms of the notice dated 20.02.2015 vide Annexure-e etc.)

H.G. Ramesh, J. (Oral):

1. Petitioner wants this Court to interfere in the election process relating to election of the Board of respondent rio.5-Society. In this writ petition, the petitioner is seeking quashing of the election notice dated 20.02.2015 issued by the Returning Officer in Form-XII under Rule 14(3) of the Karnataka Co-operative Societies

Rules, 1960. The election is scheduled on 8th March 2015 which is only three days ahead.

2. Learned counsel appearing for the petitioner, in support of his submission that this Court can interfere in election matters in exercise of the writ jurisdiction under Articles 226 and 227 of the Constitution of India, relied on two judgments of the Supreme Court in Election Commission of India v. Ashok Kumar [(2000)8 SCC 216] and in Pundlik v. State of Maharashtra [(2005)7 SCC 181].

3. On the facts of this case, both the aforesaid judgments are of no assistance to the petitioner. In one of the aforesaid judgments (Election Commission of India v. Ashok Kumar [(2000)8 SCC 216]) rendered by a three judge bench, it is stated that the High Court, in exercise of writ jurisdiction, shall not obstruct the 'election process'. The term 'election process' is interpreted to mean all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result. It is relevant to refer to the following observations made by the Supreme Court in Ashok Kumar's case [(2000)8 SCC 216]:

"12. The issue arising for decision in these appeals is the jurisdiction of the High Court to entertain petitions under Article 226 of the Constitution of India and to issue interim directions after commencement of the electoral process.

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32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove-

(1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which Questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

(2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well- settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.

(5) The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilize the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material." (Underlining supplied)

4. It is also relevant to refer to the following observations made by a Full Bench of this Court in *Nanjundaswamy vs. A.R.C.S* (I.L.R. 1992 KAR 9/9) relating to exercise of writ jurisdiction in election disputes where alternative remedy of an election petition is available under the Karnataka Co-operative Societies Act, 1959:

"9. The law, in our view, has been laid down by the Supreme Court in Muthusami's case. The Supreme Court accepted the view set out by a Full Bench of the Madhya Pradesh High Court, which said this: "The law therefore is that there is no constitutional bar to the exercise of writ jurisdiction in respect of elections to Local Bodies, such as, Municipalities, Panchayats and the like, but, the High Courts in exercise of their discretion should decline to invoke the writ jurisdiction in an election dispute provided the alternative remedy of an election petition was available."

10. The remedy of an election petition is the remedy that is normally available in election disputes. The principle of law is that once the election process is begun it should not be interfered with. The alternative remedy of an election petition is clearly available to the Writ petitioner under Section 70 of the Act." (Underlining supplied)

5. The principle of law is that, after commencement of the election process, it shall not be interfered with in exercise of writ jurisdiction under Articles 226 and 227 of the Constitution of India, if the interference will have the effect of interrupting, obstructing, stalling or protracting the election process. In such a case, invoking of judicial remedy has to be postponed till completion of the election process.

6. Coming to the present case, any interference by this Court in the election process at this stage will have the effect of postponing the election. Hence, I decline to entertain the writ petition with liberty to the petitioner to avail of the statutory remedy of an election petition, in accordance with law.

Petition dismissed.

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