

Malappa Vs. The Returning Officer, Chikkaballapur District and Another

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Court : Karnataka

Decided On : Sep-03-2015

Judge : Raghvendra S. Chauhan

Appeal No. : Writ Petition No. 35864 of 2015 (LB-ELE)

Appellant : Malappa

Respondent : The Returning Officer, Chikkaballapur District and Another

Judgement :

(Prayer: This Writ Petition is filed under Articles 226 and 227 of the Constitution of India praying to quash the order dated 10.8.2015 passed in I.A.No.2 at Annexure-A granting temporary injunction restraining the petitioner from functioning as president of Vatadahosahalli Gram Panchayath, passed by Civil Judge (Jr Dvn) JMFC, Gudibande in Misc. Election Petition No.3/2015, and etc.)

1. While challenging the legality of order dated 10.08.2015 passed by the Civil Judge (Jr.Dn.) and JMFC, Gudibande, whereby, the petitioner has been prohibited from exercising his power as the President of Vatadahosahalli Gram Panchayath, the petitioner has raised an interesting question with regard to the interpretation of Rule 14 of the Karnataka Panchayath Raj (Election of Adhyaksha and Upadhyaksha of Gram Panchayath) Rules, 1995 (henceforth referred to as the Rules of 1995').

2. Before dealing with the legal contentions raised with regard to Rule 14 of the Rules of 1995, the factual canvass of this case needs to be unfurled.

The elections for the Gram Panchayath, namely Vatadahosahalli Gram Panchayath, were held on 2.6.2015, under the provisions of the Karnataka Panchayath Raj Act, 1993 ('The Act', for short). The results were declared on 05.06.2015; twenty members were elected to the said Gram Panchayath. Aggrieved by the election of Mrs. Gowramma as member of the Gram Panchayat, one Mrs. Nagalakshamma filed an election petition, namely Misc. Election Petition No.2/2015 before the Civil Judge (Jr.Dn.) and JMFC, Gudibande. Along with the election petition, Mrs. Nagalakshamma also filed an interim application under Order 39, Rules 1 and 2 CPC, for restraining Mrs. Gowramma from discharging her duties as an elected Member of the Gram Panchayath. By order dated 07.07.2015 the said interim application was allowed. Consequently, Mrs. Gowramma was restrained from exercising any of the rights bestowed upon a member till the disposal of election petition.

3. Meanwhile, the Returning Officer fixed the election for the post of President and Vice-President on 08.07.2015. The election was duly held; the petitioner was elected as the President and the respondent no.2, before this court, namely Mrs. Kavitha was elected as the Vice-President. However, as Mrs. Kavitha was aggrieved by the petitioner's election to the post of President, she, too, filed an election petition, namely Misc. Election Petition No.3/2015 challenging the petitioner's election to the post of President. The said election petition was also filed before the Civil Judge (Jr.Dn.) and JMFC., Gudibande. Along with her election petition, she also filed an application under Order 39, Rules 1 and 2 CPC, seeking temporary injunction. By order dated 10.08.2015, the learned Civil Judge (Jr.Dn.) and JMFC., Gudibande allowed the temporary injunction application; the learned Civil Judge has prohibited the petitioner from discharging her statutory functions as the President of the Gram Panchayath. Hence, this petition before this court.

4. Mr. Nanjunda Reddy, the learned Senior Counsel for petitioner, has raised the following contentions before this court:-

Firstly, Section 15 and Section 45 (2) of the Act deal with the filing of election petition. However, while Section 15 of the Act deals with filing of an election petition challenging the election of a Member, Section 45 of the Act, in general, deals with the procedure for election of President and Vice-President, Section 45 (2) of the Act deals specifically deals with any dispute relating to the validity of the election to the post of Adhyaksha or Upadhyaksha ?. Thus, Section 15 and Section 45 (2) of the Act operate in two different fields.

Secondly, under Section 45 (2) of the Act, a dispute relating to the validity of election to the post of President has to be decided by the Prescribed Judicial Officer ?. However, as the Act does not prescribe a Judicial Officer ?, it is the Rules of 1995 that prescribe the Judicial Officer ?.

Thirdly, according to Rule 14 of the Rules of 1995, the election petition challenging the election of President or Vice-President should be filed before the Civil Judge (Sr. Dn.) and not before the Civil Judge (Jr.Dn.). But, in the present case, the election petition had been filed before the Civil Judge (Jr.Dn.). Hence, under Rule 14 of the Rules of 1995, the learned Civil Judge (Jr.Dn.) does not have the jurisdiction to either hear the election petition, or to hear the application for temporary injunction. Therefore, the impugned order dated 10.8.2015, has been passed by a court which does not have the jurisdiction to even hear the election petition. Hence, the impugned order is ultravires the jurisdiction; it is void-ab-initio: thus, it needs to be set aside.

5. On the other hand, Mr. R. Bhadrinath, the learned counsel for respondent no.2, has vehemently raised the following pleas: firstly, Section 15 of the Act deals with all sorts of election petition with regard to both the Members, the President and the Vice-President. For, Section 15 of the Act uses the word 'Seat and Seats'. The post of President would be included in the word 'Seat'. According to Section 15 of the Act an election petition challenging the election to a seat has to be filed before a Civil Judge (Jr.Dn.). Therefore, section 15 of the Act covers an election petition even with regard to the President or the Vice-President. Hence, necessarily, the election petition has to be filed under Section 15 of the Act. According to Section 15 of the Act, an election petition needs to be filed before the Civil Judge (Jr.Dn.). In fact,

the present election petition was filed by respondent no.2 under Section 15 of the Act and was not filed by her under Section 45 (2) of the Act. Hence, it was correctly filed before the Civil Judge (Jr.Dn.).

Secondly, Rule 14 of the Rules of 1995 clearly stipulates that any Member from the date of declaring the result of election under Rule 8, shall file the election petition within fifteen days from the date of declaration of the election result ?. The said petition shall be filed before the Civil Judge (Sr. Dn.).

Thirdly, Rule 8 of the Rules of 1995, merely deals with withdrawal of the candidature; Rule 8(5) of the Rules of 1995, deals only with declaration of result when the election is an uncontested one. Therefore, Rule 14 of the Rules of 1995, which mentions only declaration of the result of election under Rule 8 ?, is confined to the election result which is declared in an uncontested election. Hence, it is only when an uncontested election is challenged that the election petition needs to be filed before the Civil Judge (Sr. Dn.)

Lastly, according to the learned counsel, any election petition challenging the election of President, of course, has to be filed under Section 15 of the Act itself. Thus, it needs to be filed only before the Civil Judge (Jr.Dn.) and not before the Civil Judge (Sr. Dn.). Hence, the impugned order has been passed by the Court having the Jurisdiction vested by law. It is a validly passed order. Thus, it should not be disturbed on the ground of lack of Jurisdiction.

6. In rejoinder, Mr. Nanjunda Reddy, the learned Senior Counsel, has raised certain contentions with regard to interpretation of Rule 14 of the Rules of 1995. After all, according to the learned Senior Counsel, the entire crux of the case before this court is the interpretation of Rule 14 of the Rules of 1995.

7. With regard to the interpretation of Rule 14 of the Rules of 1995, the learned Senior Counsel has raised the following pleas :

Firstly, Rules of 1995 were framed while exercising the powers conferred under Section 45 of the Act.

Secondly, Rule 8 (5) of the Rules of 1995 deals with declaration of election results, as mentioned above, in case where the election is an uncontested one. But, Rule 9 of the Rules of 1995 specifically deals with the counting of votes. After laying down the procedure for counting of votes, it culminates into Sub-Rule 7 of Rule 9. According to Sub- Rule 7 of Rule 9 of Rules of 1995, after counting the votes or after recounting the votes, the Presenting Officer may declare the candidate as duly elected ?. Therefore, the election results are duly declared under Rule 9(7) of the Rules of 1995.

Thirdly, in case, Rule 9 of the Rules of 1995 were not read as covered within the ambit of Rule 14 of the Rules of 1995, it would lead to a rather anomalous situation. For, Rule 14 of the Rules of 1995 does not clarify that in case of a dispute of election of a President, who is duly declared to be elected under Rule 9 (7) of the Rules of 1995, where should such an election petition be filed? Since Section 15 of the Act does not deal with the election dispute of a President, according to the learned Senior Counsel, the said election petition cannot be filed under Section 15 of the Act before a Civil Judge (Jr.Dn.). Moreover, since the Prescribed Officer has not been designated by the Act, the very purpose of promulgating the Rules of 1995, was to prescribe and specify the the Judicial Officer before whom, the election petition challenging the election of President and Vice-President is to be filed. Therefore, considering Section 45 (2) of the Act, considering that the Rules were framed under Section 45 of the Act, further co-jointly reading Rule 14 of the Rules of 1995, with Section 45 of the Act, Rule 9 has to be included, perforce, within Rule 14 of the Rules of 1995.

8. Relying on the case of Tirath Singh “vs- Bachittar Singh and Others [AIR 1955 SC 830] and on the case of Afcons Infrastructure Limited and Another “vs- Cherian Varkey Construction Company Private Limited and Others [(2010) 8 SCC 24], the learned counsel has further pleaded that while interpreting the Rule which would lead to certain absurdity or confusion, and in order to crease out the difficulties which may arise by literally interpreting the Rules, this court has ample power to add the words in order to clarify the intention of the Legislature. Therefore, according to the learned counsel, this court has ample power to add the words Rule 9, as the case may be after the words Rule 8 ?, contained in Rule 14 of the

Rules of 1955. Furthermore, according to the learned Senior Counsel, in case, the rule is not interpreted so, the ramification would be that the absurd situation would continue to exist leading to certain electoral chaos: the literal interpretation of Rule 14 of the Rules of 1995 would deprive the statutory right to the people to challenge the election result of a President or Vice-President.

9. Thus, according to the learned Senior Counsel, Rule 14 of the Rules of 1995 has not been happily worded by the draftsman. For, in case Rule 14 of the Rules of 1995 were to be interpreted on its plain and grammatical meaning as to include Rule 8 but not to include Rule 9, it would lead to absurd and anomalous situations. Therefore, according to the learned Senior Counsel, Rule 14 needs to be interpreted in such a manner as to include the words Rule 9, as the case may be within the said Rule.

10. Supporting the contentions raised by Mr. Nanjunda Reddy, learned Senior Counsel, Mr. K.N. Phanindra, the learned counsel for respondent no.1, the Returning Officer, has further submitted the following pleas before this court :-

Firstly, the Rules of 1995 have to be read in toto and not in piecemeal manner. According to him, in order to interpret Rule 14 of the Rules of 1995 one should also consider the ambit and scope of Rules 15, 16 and 17 of the Rules of 1995.

Rule 15 of the Rules of 1995 bestows certain powers on the Civil Judge (Sr. Dn.) while dealing with a dispute relating to the election of President and Vice-President of a Gram Panchayath.

11. Rule 16 of the Rules of 1995 deals with the grounds on which the election can be declared void. One of the grounds happens to be improper reception of votes'. According to the learned counsel, if Rule 14 of the Rules of 1995, were to be limited only to Rule 8 of the Rules of 1995, it would lead to a very absurd situation. For, in case of an uncontested election, the question of improper reception of votes would not even arise. The improper reception of votes would only emerge in cases where there is a contest between two or more candidates for the post of President or Vice-President. Therefore, Rule 16 is a pointer to the fact that Rule 14 of the Rules of 1995, ought to deal with election result declared under Rule 9 of

the Rules of 1995. Hence, Rule 14 of the Rules of 1995, should have included the words, Rule 9, as the case may be. ?

12. Similarly, Rule 17 deals with the grounds on which a candidate, other than the returned candidate, may be declared as elected. According to the said Rule, any person who has filed an election petition, calling in question the election of a returned candidate, may claim by himself, or any other candidate be elected, to be declared as the elected President or Vice-President on the basis of the fact that he or other person has obtained majority of the valid votes. The very question of obtaining majority of votes ?, of course, would arise only in a contested election. Thus, even Rule 17 of the Rules of 1995 relates to the declaration to be made under Rule 9 of the Rules of 1995. Hence, while drafting Rule 14 of the Rules of 1995, the intention of the Legislature was to include the words Rule 9 ?. But, due to bad draftsmanship, the words Rule 9 has been left out from Rule 14 of the Rules of 1995. Therefore, through the process of interpretation, the said words have to be read into Rule 14 of the Rules of 1995 by this court.

13. Per contra, Mr. Bhadrinath, the learned counsel for respondent no.2, has replied to the rejoinder by raising the following pleas:-

Firstly, Rule 14 of the Rules of 1995 has withstood the test of time. Although, it was promulgated in 1995, till 2015, no one has challenged or sought an interpretation of Rule 14 of the Rules of 1995.

Secondly, Rule 14 of the Rules of 1995 is clear as sunlight. It deals only with challenge to an uncontested result declared under Rule 8 of the Rules of 1995. Since the provision is crystal clear it calls for no further interpretation. In fact, the court ought to follow the golden Rule of interpretation and go by the plain and grammatical meaning of the words.

Thirdly, Rule 16 and 17 as mentioned above, deal with election petition under Section 15 of the Act. For, similar power, as given under Rule 16 of the Rules of 1995, is equally found in Section 15 of the Act. Therefore, there is no need to interpret Rule 14 of the Rules of 1995 in such a clever way so as to include Rule 9 of the Rules of 1995 in the said provision.

Fourthly, relying on the case of Hardeep Singh “vs- State of Punjab (AIR 2014 SC 1400) the learned counsel has vehemently contended that while interpreting the provision of law, this court cannot act either as a political reformer or a wise counsel to the Legislature ?. Therefore, this court does not have the power to add, or amend, or rewrite, or recast, or reframe as this court is devoid of power of legislation. Hence, the Court should avoid amending Rule 14 of the Rules of 1995 through the interpretive process.

14. Heard the learned counsel for parties, and perused the law and the case law submitted before this court.

15. In order to interpret Rule 14 of the Rules of 1995, meaningfully, it is essential that relevant provisions of the Act, namely Section 15 and Section 45 of the Act are first quoted and considered.

16. Section 15 of the Act is as under:

15. Election petition.-(1) No election to fill a seat or seats in a Grama Panchayath shall be called in question except by an election petition presented on one or more of the grounds specified in sub-section (1) of section 19 and section 20 to the [Civil Judge (Junior Division)] within whose territorial jurisdiction the panchayat area concerned or the major portion of the panchayat area concerned is situated by any candidate at such election or by any voter qualified to vote at such election together with a deposit of five hundred rupees as security for costs, within thirty days from, but not earlier than, the date of declaration of the result of the election of the returned candidate or if there are more than one returned candidate at the election, and if the dates of declaration of the results of the their election are different, the last of those dates.

(2) A petitioner shall join as respondent to his petition,-

(a) where the petitioner, in addition to claiming a declaration that the election of all or of any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the

returned candidates; and

(b) any other candidate against whom allegation of any corrupt practice are made in the petition.

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be true copy of the petition.

Explanation.-The expression returned candidate means a candidate who has been declared as duly elected. ?

17. Similarly, Section 45 of the Act is as under:

45. Procedure for election of Adhyaksha and Upadhyaksha on the establishment of Grama Panchayat etc,- [(1) The prescribed officer shall after every general election of members of a Grama Panchayat or on its constitution, reconstitution or establishment under this Act and in any case within one month from the date of publication of names of the elected members under sub-section (8) of section 5, [and immediately before the expiry of term of office of Adhyaksha and Upadhyaksha] and so often as there arises any casual vacancy in the office of the Adhyaksha or Upadhyaksha, call for a meeting of the Grama Panchayat and preside over it, without right to vote, and in such meeting the Adhyaksha or the Upadhyaksha or both, as the case may be, shall be elected.]

(2) Any dispute relating to the validity of election of a Adhyaksha and Upadhyaksha of Grama Panchayat under this Act shall be decided by the prescribed judicial officer having jurisdiction over the panchayat area or the major portion of the panchayat area, whose decision thereon shall be final. ?

18. A bare perusal of the title of these Sections makes it amply clear that while Section 15 deals with election petitions, Section 45 of the Act deals with the procedure for election of Adhyaksha(President) and Upadhyaksha(Vice-President) on the establishment of Gram Panchayath.

19. A bare perusal of Section 15 (1) of the Act further reveals that it places a bar on the right of a person to call in question the election to fill a seat or seats in Gram Panchayath by proclaiming that such an election can be questioned only by election petition; the said election petition has to be filed before the Civil Judge (Jr.Dn.) within whose territorial jurisdiction the Panchayath area concerned or the major portion of the Panchayath area concerned is situated. On the other hand, Section 45 deals with a dispute relating to the validity of election of President or Vice-President of a Gram Panchayath.

20. A mere perusal of language used in both these provisions clearly reveal that while Section 15 deals with Seator Seats in Gram Panchayath, Section 45 deals with any dispute relating to the validity of the election of a Adhyaksha or Upadhyaksha of Gram Panchayath. Hence, a difference does exist between the words seator seat on one hand, and the post of Adhyaksha (President) or Upadhyaksha (Vice-President)', on the other hand.

21. A bare perusal of the provisions of the Act further reveal that only a Member holding a seat in the Gram Panchayath can be elected to the post of President or Vice-President. Thus, a President or Vice-President, once elected, has a dual identity: firstly, he is a member. Secondly, he has been elected to the post of President or Vice-President. Hence, the words used in Section 15 clearly deal with only a member holding a seat or members holding seats'. The word seator seats cannot be interpreted to include the post of Adhyaksha (President) or Upadhyaksha (Vice-President), After all, one becomes the President or Vice-President only when a member is elected to the said post. But once elected to the post of President or Vice-President, his identity is subordinate to his identity as the President or Vice-President. Therefore, the learned counsel for respondent no.2 is not justified in claiming that Section 15 of the Act would deal with even those election petitions which challenge the election of President or Vice-President as the Section deals with a seat', or seats'. In fact, Section 15 of the Act would have to be confined to only those challenges where the election petition has been filed for challenging the election of a member to a seat or of members to seats of a Gram Panchayath.

22. If the interpretation submitted by the learned counsel for respondent no.2 were accepted by this court and if the election petition against the President or Vice-President were, indeed, included in Section 15 of the Act, naturally, it would make Section 45 (2) of the Act redundant. If the intention of the Legislature was to include the election dispute of the post of President, or Vice-President within the ambit of Section 15 of the Act, there was no reason whatsoever for enacting Section 45 (2) of the Act. Needless to say, an interpretation that leads to making a provision of law either redundant, or otiose such an interpretation has to be avoided by this court. Since the interpretation offered by Mr. Bhadrinath, would make Section 45 (2) of the Act redundant, such an interpretation is unacceptable on the very face of it.

23. Section 45 (2) of the Act lays down that the dispute relating to the validity of election of Adhyaksha or Upadhyaksha shall be decided by the Prescribed Judicial Officer ?. However, such a Judicial Officer has not been prescribed by the Act itself. Interestingly, while dealing with the election petition of the Members of Gram Panchayath under Section 15 of the Act, while dealing with the election petition of Members of the Taluk Panchayath under Section 132 of the Act, or of the President and Vice-President of the Taluk Panchayath under Section 138 (4) of the Act, or dealing with the election petition against the Members of Zilla Panchayath under Section 171 of the Act, or against the President and Vice-President of the Zilla Panchayath under proviso to Section 171 (4) of the Act, the judicial officer has been prescribed by the Act itself. But, surprisingly, as far as the election petition dealing with Adhyaksha and Upadhyaksha of a Gram Panchayat is concerned, the word judicial officer has not been prescribed by the Act. Naturally, such an omission which existed in the parental Act could be filled up by the Rules. This seems to be one of the reasons why the Rules of 1995 were enacted so as to prescribe the judicial officer who would entertain an election petition dealing with Adhyaksha and Upadhyaksha. In fact, the very title of Rules of 1995 would indicate that the Rules deal with election of Adhyaksha and Upadhyaksha itself. Most importantly, the Rules themselves claim that they have been enacted under the power conferred under Section 45 of the Act. Thus, obviously, the Rules contain the entire procedure for the election of Adhyaksha and Upadhyaksha. In order to understand the contents of these Rules, one would

have to keep in mind the ambit of Section 45 of the Act, and especially, of Section 45 (2) of the Act.

24. A bare perusal of the Rules of 1995 clearly reveals that the scheme of the Rules is as follows:

Rule 5 deals with the presentation of nomination papers; Rule 7 deals with scrutiny of nomination papers; Rule 8 deals with withdrawal of candidature.

Since Rule 8 of the Rules of 1995 relates to interpretation of Rule 14 of the Rules of 1995, it is reproduced as under:

8. Withdrawal of Candidature.-

(1) Any candidate by giving a written notice signed by candidate immediately after scrutiny of all nominations under Rule 7 to the Prescribed Officer may withdraw his candidature.

(2) The notice may be given by the candidate either personally or through the authorized proposer in writing.

(3) After giving notice of withdrawal of candidature under sub-Rule 1, he shall not be permitted to cancel such notice.

(4) The prescribed Officer shall examine the genuineness of notice of withdrawal and after ascertaining identity of the person who has given notice under Sub-Rule(2) shall read out the names of the persons who have withdrawn nominations to the members present in the meeting.

(5) After the period fixed for withdrawal the nomination, if the nomination of only one candidate is valid and is in the prescribed manner; and if he has not withdrawn his nomination within the time fixed, the Prescribed Officer shall declare such candidate as elected as Adhyaksha or Upa-Adhyaksha immediately as the case may be.

(6) If there are more than one valid nomination papers and who have not withdrawn such nomination paper by the candidates within the prescribed time

limit, then the Prescribed Officer shall proceed to conduct the election as per rules hereunder;

(7) The Prescribed Officer, shall arrange for ballot box used for Election of member, seal and lock in the presence of candidates.

(8) The ballot paper shall be issued in Form-II to each member who desire to voting such member shall mark in the ballot paper by the instrument prescribed against the name of that candidate fold the paper in such a manner the voting mark not visible and insert the Ballot Paper into Box kept for that purpose in the meeting hall.

(9) After receipt of the ballot papers, the member shall go to place where the ballot box (voting compartment) is kept he shall vote to whom he desires put cross (X) mark. The voter shall not put his signature on the Ballot paper or mark anything which tends to identify the voter. If signature or any mark is found identifying the (sic) or if votes cast for more than one candidates names such ballot paper shall be treated as invalid.

(10) (a) If a member has not used the Ballot Paper properly, if he has dealt with inadvertently and may return to the Prescribed Officer and if he is satisfied about the inadvertence of the member, he may obtain another Ballot Paper and the Ballot Paper returned may be endorsed as spoilt/cancelled by the Prescribed Officer.

(b) All the ballot papers which are cancelled under the above clause shall be kept separately in a packet.

(11) (a) If the voter is being illiterate or blind, if it is not possible for him to put cross mark (X) on the ballot paper, the Prescribed Officer shall mark as per desire of voter on Ballot Paper.

(b) The Prescribed Officer shall maintain secrecy as far as Practicable while discharging the duties under this sub-rule.

Rule 9 of the Rules of 1995 deals with Counting of Votes, which reads as under:

9. Counting of votes:-

(1) In the presence of all the members and who desires to cast votes, after poll the Prescribed Officer shall open the Ballot Box and remove the Ballot papers, count them and after scrutinizing the Ballot Papers separate valid voter and in the invalid Ballot Papers in his opinion. All invalid Ballot Papers may endorsed Rejected on the back of Ballot Papers with reason and the valid Ballot Papers are bundled in one pocket.

(2) The Prescribed Officer shall.-

(a) If any mark or marks by which elector may be identified; or

(b) If no vote is cast on it; or

(c) If vote is casted (sic) against the name of more than one candidate; or

(d) The mark of the vote made on it, if it is doubtful to whose favour it is cast.

(e) If the ballot paper is found as spurious Such Ballot Papers shall be rejected.

Provided that a ballot paper shall not be rejected merely on the ground that the mark indicating the vote is indistinct or made more than once, if the intention that votee (sic) is for a Particular Candidate clearly appears.

(3) Before rejecting any ballot paper under Sub-Rule 2 the Prescribed Officer shall allow the candidate reasonable opportunity in respect of the Ballot Paper but shall not allow him to handle any ballot paper.

(4) Each of voter (sic) which is not rejected shall be counting (sic) as valid and after completion of counting votes, then the Prescribed Officer shall make entry in the list of total number of votes secured by each candidate; and particulars shall be announced.

(5) After announcement the Prescribed Officer either suo-moto or by any application by any candidate, recounting of the votes may be done.

Provided further that the Prescribed Officer shall not (sic) compelled to recount of votes for more than once.

(6) The Prescribed Officer after recount as mentioned sub-rule the list of particulars referred to Sub-Rule 4 to the enter necessary amendment and shall announce such amendment.

(7) The Prescribed Officer, after counting votes or after recounting of votes, as case may declare the candidate as duly elected ?, who has secured highest number of valid votes.

(8) After completion of counting of votes, it is found that two or more candidates have secured equal number of votes and by adding one vote by lot the Prescribed Officer in the manner decided by him to the candidate in whose favour lot is drawn, amongst the candidate equal number of votes secured and proceed further to declare that candidate has secured more number of votes has been elected.

(9) The Prescribed Officer, thereafter shall be prepare (sic) election report and certified by him.

Having declared the election results and having declared a member as being elected as Adhyaksha ?, the Rules turn their attention to the filing of election petition, in case an aggrieved person wants to challenge the declaration of the election result.

Rule 14 of the Rules of 1995 is as under:

14. Election Petition.- (1) Any member from the date of declaration, the result of election under Rule-8, within 15 days the validity of the election of Adhyaksha or Upa-Adhyaksha, as the case may be questioned by preferring election petition before the Civil Judge (Senior Division) in whose jurisdiction the Gram Panchayath is situate hereinafter referred to as Civil Judge (Senior Division) by depositing Rupees Two Hundred Fifty Only as security towards as costs.

(2) Even (sic) Election Petition shall be accompanied as many copies thereof those are respondents mentioned in the petition under sub-rule (1) and every such

copy shall be attested under his own signature to be a true copy of Petition.

(3) The Petitioner in addition to claiming of declaration the election of elected candidate be declared as void, either by himself or by any candidate may be claimed as duly elected other than the Petitioner shall join all the candidates as party respondents and the returned candidate, in case no further declaration, all such returned candidates.

(4) Petition under Sub-Rule (1) of the Rules;

(a) shall contain concise statement of material facts in which Petitioner relies.

(b) shall be signed by the Petitioner and verified in the manner laid down in Code of Civil Procedure, 1908 (Central Act No.5/1908)

(5) Any Schedule or Annexure to the Petition should be signed by the Petitioner and shall be verified in the same manner as the Petition

(6) The Petitioner may claim declaration as hereunder:-

(a) The election of the returned candidate be declared as void.

(b) To claim further declaration of Petitioner or any other candidate as duly elected after declaring returned candidate as void. ?

Dealing with the procedure and powers of Civil Judge (Sr. Dn.) Rule 15 is as under:

15. Procedure Before Civil Judge, Senior Division.- If in the opinion of Civil Judge Senior Division after trial, and after hearing the parties to the case, may order.

(a) To be declared the election of the elected candidate as void or

(b) The election of elected candidate be declared as void; and declare Petitioner or any other candidate to be declared as duly elected.

Rule 16 prescribes the grounds on which the election of elected candidate can be declared to be void. Rule 16 of the Rules of 1995, is as under:

16. The Grounds on which the election of elected candidate as void:

The election of returned candidate may be declared void on the ground improper reception of votes or rejection of votes by non-compliance of the Act and these rules which has materially affect result of the election of the returned candidate. ?

Rule 17 deals with the grounds on which the election of elected candidate, other than returned candidate, may be declared void. Rule 17 of the Rules of 1995, is as under:

17. Grounds on which a candidate other than the returned candidate may declared as elected.- Any person who has filed an election petition calling in question the election of the returned candidate may claim by himself, or any other candidate as duly elected, in the opinion of Civil Judge Senior Division that in fact had obtained majority of valid votes, Civil Judge Senior Division shall after declaring the election of returned candidate as void, declare the Petitioner or any other candidate as duly elected.

Provided that, if the petitioner returned candidate, if his election called in question and that his election is otherwise proved to be void he shall not declared elected. ?

25. A bare perusal of these provisions clearly reveal that Rule 8 (5) of the Rules of 1995 deals with a single contingency, namely when the election is uncontested one for the post of Adhyaksha or Upadhyaksha. In such a scenario, the Returning Officer shall declare him to be elected as Adhyaksha or Upadhyaksha. However, Rule 9 of the Rules of 1995, which prescribes an elaborate procedure for counting of votes, culminates into Rule 9 (7) and directs the Prescribed Officer that after counting of the votes or, after re-counting of the votes, to declare the candidate as duly elected who has secured highest number of valid votes ?. Moreover, in case an election petition were to be filed, it can be filed only on certain grounds enumerated in Rule 16 namely, improper reception of votes or rejection of votes or by non-compliance of the acts and these rules which has materially affect he result of the election of the returned candidate'. Obviously, theses grounds of improper reception of votes or rejection of votes would not exist if a sole candidate has been declared as having won the election under Rule 8 (5) of the Rules of 1995. These

grounds will exist only when there is a contested election between two or more persons. It is in such a scenario, that question of improper reception of votes or rejection of votes would arise.

26. Even Rule 17 of the Rules of 1995 deals with the scenario where a contesting candidate or another person claims that he should be declared as the elected Adhyaksha, or Upadhyaksha solely on the ground that he has obtained majority of the valid votes ?. Therefore, Rules 15, 16 and 17 of the Rules of 1995 not only deal with the grounds which may be mentioned in the election petition, not only deal with the prayer that may be sought for in the election petition, but most importantly, also deal with the power of the Civil Judge (Sr. Dn.) in granting the relief.

27. Juxtaposing the provisions of Rules 15, 16 and 17 of the Rules of 1995 along with Rule 14 of the Rules of 1995 clearly reveals that an anomalous situation would arise if Rule 14 of the Rules of 1995 were to be accepted according to its plain and grammatical meaning. For according to the plain the grammatical meaning, Rule 14 of the Rules of 1995 lays down that any member who is aggrieved by the result of the election which has been declared under Rule 8, may file his election petition within 15 days from the date of declaration of election results, challenging the validity of election of Adhyaksha and Upadhyaksha and such an election petition shall be filed only before the Civil Judge (Sr. Dn.). If this were the true scope of Rule 14, then, a very quixotic situation would arise: what is the legal remedy available for a person who wishes to challenge the election result declared under Rule 9 of the Rules of 1995. Obviously, the aggrieved person cannot approach the Civil Judge (Jr.Dn.) under Section 15 of the Act. For, he is legally required to challenge the election to the post of Adhyaksha and Upadhyaksha only under Section 45 (2) of the Act. Yet, Rule 14 of the Rules of 1995 is silent about whether the election result, declared under Rule 9, can be challenged by permitting the aggrieved person to approach the court of Civil Judge (Sr. Dn.) or not? Since the person who has been wronged cannot be left remediless, obviously, Rule 14 of the Rules of 1995 should be interpreted purposefully by this court. Since the plain and grammatical meaning leads to an absurd situation, the contention raised by the learned counsel for respondent no.2

that it does not lead to anomalous situation cannot be accepted by this court. Moreover, merely because Rule 14 of the Rules of 1995 may have stood the test of time, would not make it immune from a legal challenge as to its scope and ambit.

28. Considering the fact that the Rules of 1995 were specifically enacted for dealing with the election of President and Vice-President, considering the fact that Section 45 (2) of the Act bestows a statutory right on an aggrieved person challenging the election of President and Vice-President, considering the fact that the words prescribed judicial officer has not been prescribed by the Act, but is prescribed by Rule 14 of the Rules of 1995, considering the fact that under Rules 16 and 17, lay down the grounds for election petitions. Obviously, in order to crease out the absurdities which would arise from the plain and grammatical reading of Rule 14 of the Rules of 1995, the said Rules needs to be interpreted purposefully.

29. It is true that in the case of Hardeep Singh (supra), the Constitution Bench of the Hon'ble Supreme Court has opined as under:

40. The Court cannot proceed with an assumption that the legislature enacting the statue has committed a mistake and where the language of the statue is plain and unambiguous, the court cannot go behind the language of the statute so as to add or subtract a word playing the role of a political reformer or of a wise counsel to the legislature. The court has to proceed on the footing that the legislature intended what it has said and even if there is some defect in the phraseology etc., it is for others than the court to remedy that defect. The statue requires to be interpreted without doing any violence to the language used therein. The court cannot re-write, recast or reframe the legislation for the reason that it has no power to legislate.

However, further observation made by the Constitution Bench cannot be ignored. In Para 41 of the judgment, the Hon'ble Apex Court has equally opined as under:

41. No word in a statute has to be construed as surplusage, No word can be rendered ineffective or purposeless. Courts are required to carry out the legislative

intent fully and completely. While construing a provision, full effect should be given to the language used therein, giving reference to the context and other provisions of the Statute. By construction a provision should not be reduced to a dead letter or useless lumber ?. An interpretation which renders a provision an otiose should be avoided otherwise it would mean that in enacting such a provision, the legislature was involved in an exercise in futility and the product came as a purposeless piece of legislation and that the provision had been enacted without any purpose and the entire exercise to enact such a provision was most unwarranted besides being uncharitable. ?

Thus, in cases where the plain grammatical or literal interpretation would lead to certain obvious anomalous situation, or would make a provision redundant, or otiose, the courts are called upon to interpret the provision not only meaningfully, but also in a manner so as to crease out the difficulties created by the draftsmen.

30. After all, in the case of Seaford Court Estates Ltd., -vs- Asher [(1949) 2 ALL ENGLAND REPORTER 145] Lord Denning had observed as under:

The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not, provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience (sic) and perfect clarity. In the absence of it, when a defect appears, a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to (sic) remedy, and then he must supplement the written word so as to give force and lifeto the intention of the legislature . A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not

alter the material of which the Act is woven, but he can and should iron out the creases.

The said observation of Lord Denning has been approved by the Hon'ble Supreme Court in the case of *S. Gopal Reddy v. State of A.P.* [(1996) 4 SCC 596].

31. Moreover, in the case of *Reserve Bank of India “ vs- Peerless General Finance and Investment Co. Ltd.* [(1987) 1 SCC 424], the Apex Court has observed as under:

Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

This Para has also been relied upon by the Supreme Court in the case of *S. Gopal Reddy* (supra).

32. In order to infuse both strength and meaning to Rule 14 of the Rules of 1995, in order to get rid of the mischief created by the literal interpretation of Rule 14 of the Rules of 1995, it is imperative for this court to interpret Rule 14 of the Rules of 1995 in a meaningful and purposeful manner. For, in case the draftsmen had considered the inter-relationship of the Act and the Rules of 1995, the scheme of the Rules of 1995, the draftsman himself would have realised that there is gapping

hole in Rule 14 of the Rules of 1995: the legislature while enacting the Rule would have included the words Rule 9, as the case may be within Rule 14 of the Rules of 1995. For, a person aggrieved by the declaration of result under Rule 9 of the Rules of 1995 is left remediless. This lacuna in the Rules would have been filled in by the draftsman by holding that Rule 14 (1) should read as any Member, from the date of declaration, the result of elections under Rule 8, or under Rule 9, as the case may be, within fifteen days, the validity of the election of Adhyaksha or Upadhyaksha, as the case may be, question by preferring election petition before the Civil Judge (Sr. Dn.) in whose jurisdiction the Gram Panchayath is situated hereinafter referred to as Civil Judge (Sr. Dn.) by depositing Rupees Two Hundred and Fifty only as security towards cost ?. By inserting the words Rule 9, as the case may be ?, Rule 14 of the Rules of 1995 suddenly plays a meaningful role in the entire scheme of the Act and Rules. It no longer leaves a gapping doubt as to where an election petition against an Adhyaksha or Upadhyaksha needs to be filed. It no longer leaves a gap between Rule 14 of the Rules of 1995, and the grounds mentioned in Rules 16 and 17 of the Rules of 1995. Most importantly, it harmonizes Rule 16 with Rule 14 of the Rules of 1995. Such an insertion of the words would not only harmonise Rule 14 with Rules 15, 16 and 17 of the Rules of 1995, but would also bring Rules 14 of the Rules of 1995 in tune with Section 45 (2) of the Act. Thus Rule 14 of the Rules of 1995 would necessarily have to be read as mentioned above.

33. Since this court is of the opinion that an election petition challenging the election of Adhyaksha could be filed only before the Civil Judge (Sr. Dn.), as interpreted hereinabove, obviously the election petition filed by respondent no.2 could not have been filed before the Civil Judge (Jr.Dn.), even if the respondent no.2 has mentioned that the petition is filed under Section 15 of the Act. For the reasons stated above, the petition could not have been filed under Section 15 of the Act. Therefore, when Section 15 has been mentioned in the body of the petition, this is reference to a wrong provision of law. While challenging the election of President, the petition could be filed only under Section 45 (2) of the Act. According to the interpretation given above, the said petition could be filed only before the Civil Judge (Sr. Dn.). Hence, the learned Civil Judge (Jr.Dn.) did not have any power to hear the election petition. Therefore, the impugned order

passed by the learned Civil Judge (Jr.Dn.) is ultravires his jurisdiction: it is void-ab-initio. In this view of the matter, this court has no other option, but to set aside the impugned order.

34. Therefore, for the reasons stated above, the petition is hereby allowed. The impugned order dated 10.08.2015 is hereby set aside. Since the learned Civil Judge (Jr.Dn.) does not have jurisdiction to entertain the election petition, he is directed to return the plaint to respondent no.2. The respondent no.2 is free to pursue the legal remedies as provided by law. No order as to costs.

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