

Sri M D Kumar Vs. The State of Karnataka

Sri M D Kumar Vs. The State of Karnataka

SooperKanoon Citation : sooperkanoon.com/1196188

Court : Karnataka

Decided On : Nov-22-2018

Judge : S.Sunil Dutt Yadav

Appeal No. : WP 49336/2018

Appellant : Sri M D Kumar

Respondent : The State of Karnataka

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE22D DAY OF NOVEMBER 2018 BEFORE THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV WRIT PETITION Nos.49336-49337/2018 (APMC)

BETWEEN :

1. Sri M.D. Kumar, S/o Deveregowda alias Marigowda, Aged about 42 years, President Channapatna APMC, Malurpatna, Kudlur Post, Malur Hobli, Channapatna Taluk, Ramnagar District 562 160.

2. Sri V.V. Poornima, D/o UB Vishveshwaraya, Aged about 40 years, Vice President Channapatna APMC, Vandaraguppe, Silk Farm Post, Channapatna Taluk, Ramnagar District 562 160.

... Petitioner

s (By Sri Varun Jayakumar Patil, Advocate) And:

1. The State of Karnataka, Department of APMC, Vidhana Soudha, Bangalore 560 001, Represented by its Principal Secretary. 2 The Director, Agricultural Produce Marketing Committee, No.16, 11th Raj Bhavan Road, P.B. No.5309, Bangalore 01. The Deputy Commissioner, Ramnagar District, Ramnagar 562 160. The Tahsildar/Returning Officer, Channapatna Taluk, Ramnagar District 562 160. The Channapatna Taluk, Agricultural Produce Marketing Committee, Channapatna Taluk, Ramnagar District 562 160. Represented by its Managing Director.

... RESPONDENTS

2.

3. 4.

5. (By Sri Udaya Holla, Advocate General a/w Sri A.S.Ponnanna, Additional Advocate General, Sri Chandrashekaraiah, HCGP for R-1 to R-4 R5 Notice held sufficient v/o dt.20.11.2018) These Writ Petitions are filed under Articles 226 & 227 of Constitution of India, praying to direct the R-4 to conduct the election from the stage at which it was interfered and also direct the R-4 not to change the electoral roll for the elections to the post of President and Vice President of respondent No.5 APMC and etc. These Writ Petitions having been heard and reserved on 20.11.2018 and coming on for pronouncement of order, this day, the Court, made the following:

3. The petitioners, who were Chairman and Vice

ORDER

Chairman¹ of respondent No.5 Agricultural Produce Marketing Committee (for short APMC) and who had been elected for a period of 20 months as provided under Section 42(1) of the Karnataka Agricultural Produce Marketing (Regulation and Development) Act, 1966 (the Act for brevity) have filed these petitions seeking issuance of writ of mandamus direction to the Returning Officer to conduct the election to the said posts of Chairman and Vice Chairman from the stage at which it was adjourned and have sought for a further direction to the Returning officer not

to change the electoral rolls for the election to be held.

2. The petitioners state that as per the Notification dated 12.10.2018 (Annexure-B), the Deputy 1 Though

... Petitioner

s are referred to as President and Vice President in the petitions, petitioners are hereby referred to as Chairman and Vice Chairman, as the Karnataka Agricultural Produce Marketing (Regulation and Development) Act, 1966 refers to the said posts as Chairman and Vice Chairman. 4 Commissioner had appointed the Tahsildar as the Returning Officer to conduct the election, who in turn got issued a notice to the Members fixing the date of election as 29.10.2018 at 12.00 p.m. Copy of the meeting notice is produced as Annexure-C to the petitions. The said notice also contains a calendar of events which reveals that the whole process starting from stage of filing nominations including scrutiny, withdrawal and voting by show of hands would be completed by 3 o clock on the same day. However, on 29.10.2018 the respondent No.4 - Returning Officer, by an endorsement has postponed the said elections citing reason of his ill-health.

3. In the meanwhile, the respondents have produced fresh notice dated 15.11.2018 along with a memo, convening a meeting and such notice has been issued to the Members, fixing the date as 27.11.2018 for election of Chairman and Vice Chairman to the 5 APMC Committee. A copy of the Notification dated 13.11.2018 whereby three Members have been nominated in exercise of power Section 11(1)(ix) of the Act has been produced by the respondents.

4. Heard both sides. Sri Varun Jayakumar Patil, learned counsel has advanced arguments on behalf of the petitioners, whereas Sri Udaya Holla, learned Advocate General and Sri A.S.Ponnanna, learned Additional Advocate General have advanced arguments on behalf of the respondent Nos.1 to 4.

5. The primary contention of the petitioners is that the meeting that was scheduled on 29.10.2018 to elect the Chairman and Vice Chairman of the Committee having been adjourned, the electoral roll as on 29.10.2018 ought to remain unaltered, even with respect to the meeting re-scheduled on 27.11.2018. The petitioners

contend that any alteration of the 6 electoral rolls is contrary to the law laid down. It is contended that the adjournment of the election ought not to be impacted by subsequent intervening circumstances. Specifically, the petitioners state that except the 12 elected Members, who were eligible to cast their votes as on 29.10.2018, no other voter ought to be permitted to vote and contend that the Members nominated on 13.11.2018 in exercise of the power conferred under Section 11(3) of the Act also cannot be permitted to vote.

6. The petitioners term the adjournment of the meeting on 29.10.2018 as being suspicious and that the Returning Officer had no power in law to have adjourned the meeting. It is further contended that though the meeting was adjourned, the election process when resumed ought to resume from the stage it was interrupted.

7 7. The respondents, on the other hand, contend that the postponement of the elections from 29.10.2018 not having been challenged, the present directions sought for as regards maintenance of status quo of the electoral rolls as on 29.10.2018 cannot be insisted upon nor is any such right recognized in law.

8. Sri Udaya Holla, learned Advocate General appearing for the respondent Nos.1 to 4 states that the electoral list consisting of members as stipulated in Section 11 of the Act would be entitled to vote unless there is any cut-off date so as to freeze the electoral list as on 29.10.2018, which was the stipulated date for the election. It is also contended that there is no provision in law to restrict the rights of the Members to exercise their right to vote at the adjourned meeting as there is no restriction as regards the inclusion of Members into the electoral list. 8 9. Supplementing the arguments of learned Advocate General, Sri A.S.Ponnanna, learned Additional Advocate General submits that the whole election process would be concluded on a single day and hence, the contention of the petitioners that the election process should be resumed from the stage at which it was postponed is not a legally tenable argument. It is contended that what was postponed from 29.10.2018 to 27.11.2018 was the whole election process itself and no part of the election process was completed on 29.10.2018.

10. Judgments relied upon by the petitioners in support of their contentions are discussed and dealt with as hereinbelow:-

"(i) The State of Karnataka and Others v. Gunjahalli Nagappa and Others reported in (1976) 1 SCC204- 9 The petitioners rely on the observations made in para-11, which runs as follows:-

"11. xxxxx It would indeed be a strange and anomalous position if there were two or more different lists of voters at different stages of the same election. Sub-section (1) of Section 14 does not contemplate a list of voters which keeps on changing from time to time during the election process. It deems the electoral roll for the territorial area of the division in force at the relevant time to be the list of voters for the division for the purpose of the Act, that is for the purpose of election which is the whole process culminating in a candidate being declared elected and not merely polling. The same list of voters is, therefore, to prevail for all stages in the election. xxxxxxxxxx The above observations are peculiar to the facts of that case and are based on an interpretation of Section 14(1) of the Karnataka Municipalities Act, 1964 in which finality has been provided to the list of voters. Section 10 14(1) of the Karnataka Municipalities Act, 1964 which then existed, which has been referred to by the Apex Court as extracted in the judgment is reproduced:-

"The electoral roll of the Mysore Legislative Assembly for the time being in force for such part of the constituency of the Assembly as is included in a division of a municipality shall, for the purpose of this Act, be deemed to be the list of voters for such division. (emphasis supplied) There is no such stipulation as regards finality to be attributed to the electoral roll at any stage of the election process in any of the provisions of the Karnataka Agricultural Produce Marketing (Regulation and Development) Act, 1966. The Court further observes that:-

"11. xxxxxxxx The list of voters must, therefore, a fortiori remain the same throughout the process of election. There cannot be one list of voters for determining the eligibility to stand 11 as a candidate and another for determining the eligibility to vote, at the same election. That would not only be irrational, but would also introduce confusion and uncertainty in the election process. Candidates would not know at the time when they file their nominations as to what is the strength and composition of the electorate in the division in which they are

contesting the election xxxxxxxx In the present case, there is no uncertainty as regards the electoral rolls as envisaged above, as filing of nominations is yet to start and what had been postponed from 29.10.2018 to 27.11.2018 is the whole election process itself. It is on 27.11.2018 that the nominations, scrutiny and voting is to take place and the eligibility of the voters to vote ought to be considered as on the date the nominations are filed. (ii) Sri T.R.Sreedhar and Others v. The State of Karnataka and Others reported in 2016 SCC Online Kar 8314. 12 The petitioners place reliance on the abovesaid decision to contend that wherever there has been interruption in the election process and if the said election process is to be continued, it is to be resumed from the stage at which it was stopped. In the facts of the said case, pursuant to notification of calendar of events, candidates had filed their nominations and were declared as elected unopposed on 12.11.2016. On 16.11.2016 the earlier notification as regards the election was rescinded and a fresh calendar of events came to be published which was sought to be extended to all constituencies including those where certain candidates were declared elected unopposed. When such of the candidates who were declared elected challenged the notification dated 16.11.2016, this Court held that the election process ought to continue from the stage at which it was sought to be interrupted by the fresh notification and it could not be construed that 13 fresh elections were to be held to all the posts. In the present case, as the stage for filing nominations itself had not begun on 29.10.2018 when the elections were adjourned, no vested right has accrued as regards any of the proposed candidates so as to insist for holding of elections as per the electoral list as it existed on 29.10.2018. (iii) Prashant P.D. v. State of Karnataka and Others reported in (2009) 5 Kant LJ280 The challenge as regards postponement of elections and issuance of fresh calendar of events being assailed was allowed by holding that once an election process has begun there could be no cancellation of calendar of events so as to set it at naught. The said judgment is of no relevance to the present facts, as the question to be determined herein is different. 14 (iv) K.Channaiah and Others v. State of Karnataka and Others reported in ILR 2000 KAR2572 The petitioners rely on the observations made at para-40 wherein, the Court has held that in the event of postponement of the election after issuance of calendar of events, if it were to be found that the authority had no power to postpone the elections, the election

process ought to revert as per the original calendar of events. Though in the said case, reliance was placed on the judgment of the Apex Court in the case of *Gunjahalli Nagappa v. State of Karnataka* (supra), the present factual matrix is different and the law laid down is not applicable in the present facts of the case. The effect of postponing the election process has the effect of postponing the entire election process as envisaged in calendar of events and as regards such a situation, the logic of resuming the election process from where it was left off as per the original calendar of events cannot be extended.

11. The electoral roll as regards election to the post of Chairman and Vice Chairman would consist of all the members of the Market Committee as provided for under Section 11 of the Act. There being no cut-off date as regards freezing of inclusion and any provision for exclusion to the electoral roll, it could be construed that the electoral roll consisting of eligible voters as on the date of nomination ought to be final. If in law, the members could be appointed to the Committee as per Section 11(1)(ix) of the Act as three members have been nominated on 13.11.2018, their right to vote cannot be curtailed, except by a restriction under the statute.

12. Hence, the petitioners objection to the three nominated Members exercising their right to vote is not legally tenable and deserves to be rejected. There is no vested right to the petitioners to insist on continuation of the electoral roll as would exist on the earlier proposed date of first meeting, as such a right does not have any statutory or legal basis. In light of what has been stated above, the writ petitions are dismissed. Sd/- JUDGE RS/VGR ct:mhp

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com