

R.V. Kumar Vs. S.S. Jayeesha

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Court : Karnataka

Decided On : Jan-03-2003

Reported in : 2003(1)KarLJ461

Judge : D.V. Shylendra Kumar, J.

Acts : [Karnataka Panchayat Raj Act, 1993](#) - Sectins 15, 15(3), 16, 17 and 17(1);
[Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115

Appeal No. : Civil Revision Petition No. 3383 of 2002

Appellant : R.V. Kumar

Respondent : S.S. Jayeesha

Advocate for Def. : A.K. Subbaiah, ;A.B. Kavitha and ;A.S. Ponnanna, Advs.

Advocate for Pet/Ap. : B. Rudra Gowda, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

D.V. Shylendra Kumar, J.

1. This revision petition under Section 115 of the Code of Civil Procedure ('CPC' for short), is by the third respondent in E.P. No. 1 of 2000 before the Court of the

Civil Judge (Junior Division), Somwarpet.

2. The Trial Court having dismissed the application filed by the third respondent/revision petitioner which was under Section 17(1) of the Karnataka Panchayat Raj Act ('the Act' for short) read with Section 151 of the CPC, the third respondent has come up in revision before this Court.

3. The revision petitioner was the successful candidate in the elections held to the Shanivara Santhe Gram Panchayat on 27-2-2000. The election petition had been filed by one of the defeated candidates challenging the election on several grounds.

4. The third respondent (returned candidate) had taken up the stand that the election petitioner had not furnished requisite number of copies of the election petition, duly attested under the signature of the petitioner and having thus failed to comply with the requirements of subsection (3) of Section 15 of the Act, filed an application under Section 17 of the Act for the dismissal of the election petition on the premise that the election petition did not comply with the provisions of Section 15 of the Act. The learned Trial Judge, on an examination of the contents of the application and the affidavit accompanying the same and on perusal of the material on record and on hearing the learned Counsel for the third respondent, found that the election petitioner had signed copies of the petition stating that they were 'True Copies' and had also furnished as many copies as there are respondents. In this view of the matter, the learned Trial Judge held that there was compliance with the requirements of Sub-section (3) of Section 15 of the Act.

5. I have heard Sri B. Rudra Gowda, learned Counsel for the petitioner and Ms. Kavitha, learned Counsel for the respondent. Learned Counsel for the petitioner submits that the said finding is a perverse finding inasmuch as the copies in fact have not been attested under the signature of the petitioner himself. I am unable to accept this submission, particularly as the learned Trial Judge has recorded a categorical finding that on verification of the material on record, it has been found that the copies of the petition had been attested under the signature of the petitioner himself. In this view of the matter, the learned Trial Judge was justified in dismissing the application under Section 17 of the Act.

6. However, Sri B. Rudra Gowda, learned Counsel for the petitioner further submits that the election petitioner had made allegations of corrupt practices and that material particulars had not been furnished in the petition and it had not been asserted as to which amongst the allegations of corrupt practices were within the personal knowledge of the petitioner and which amongst them were based on information etc. Learned Counsel for the petitioner, drawing parallel to the provisions of Sections 81 and 86 of the Representation of People Act and the law that has been developed in the light of the provisions of Sections 81 and 86 of the Representation of People Act, submits that the learned Trial Judge was in error in not allowing the application at least on this ground and particularly as the election petition did not comply with the requirements of Section 16 of the Act.

Section 15 providing the manner of presentation of an election petition which reads as under:

'15. Election petition.--(1) No election to fill a seat or seats in a Grama Panchayat shall be called in question except by an election petition presented on one or more of the grounds specified in Sub-section (1) of Sections 19 and 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 at the election, and if the dates of declaration of the results of their election are different, the last of those dates.

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

(a) where the petitioner, in addition to claiming a declaration that the election of all or 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 a true copy of the petition.

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

Section 17(1) reads as under;

'17. Trial of election petition.--(1) The Civil Judge (Junior Division) shall dismiss an election petition which does not comply with the provisions of Section 15.

Explanation.--An order of the Civil Judge (Junior Division) dismissing an election petition under this sub-section shall be deemed to be an order made under Clause (a) of Sub-section (1) of Section 18'.

7. I notice on a perusal of the order impugned in this revision that the Trial Court has discussed the submissions made on this aspect of the matter. The application itself was one under Section 17(1) of the Act which specifically says that the Civil Court shall dismiss an election petition which does not comply with the provisions of Section 15 of the Act. Compliance or non-compliance with the requirements of Section 16 of the Act is not an aspect which can be looked into in an application under Section 17 of the Act. It was not necessary for the Trial Court to have entertained any submission with regard to compliance or otherwise of the requirements of Section 16 while examining an application under Section 17 of the Act. Therefore, it is not necessary for me to examine the submission of Sri B. Rudra Gowda, learned Counsel for the petitioner that the Trial Court ought to have allowed the application for dismissal of the petition on the ground of non-compliance with the requirements of Section 16 of the Act. It was totally unnecessary for the Trial Court to have examined the submissions regarding compliance or otherwise of the requirements of Section 16 of the Act. Provisions of Section 17 of the Act, enabling the dismissal of an election petition at the threshold

for non-compliance with the requirements of Section 15, is penal in nature and therefore should be strictly construed. There is no scope for reading in the requirements of Section 16 of the Act, while considering an application under Section 17 of the Act. Compliance or non-compliance with the requirements of Section 16 of the Act is not an aspect germane to the consideration of an application under Section 17 of the Act.

8. In any view of the matter, I do not find any error or illegality in the order passed by the Trial Court in dismissing the application under Section 17 of the Act. There is no scope for interference in this revision petition.

9. Accordingly, this revision petition is dismissed.

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