

Khadarsab Vs. Munasab and Others

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Court : Karnataka

Decided On : Oct-17-1997

Reported in : ILR1997KAR3402; 1998(1)KarLJ269

Judge : C.N. Aswathnarayana Rao, J.

Acts : [Karnataka Panchayat Raj Act, 1993](#) - Sections 15(2) and 17(1); [Code of Civil Procedure \(CPC\), 1908](#) - Order 1, Rule 10 - Order 6, Rule 17; [Limitation Act, 1963](#) - Sections 5; People (Amended) Act, 1966 - Sections 81, 82, 86(5), 87 and 116-A; [People Act, 1951](#) - Sections 83

Appeal No. : Civil Revision Petition No. 656 of 1995

Appellant : Khadarsab

Respondent : Munasab and Others

Advocate for Def. : Sri Ravi G. Sabhahit, Adv.

Advocate for Pet/Ap. : Sri P.G. Mogali, Adv.

Judgement :

ORDER

1. The petitioner (respondent 2 in the Trial Court) has filed this revision petition against an order passed by the learned Munsiff and J.M.F.C., Kundagol, in an election petition E.P. No. 1 of 1994, on LA. No. I, filed by the respondents 1 and 2

(petitioners in the Trial Court) allowing the said application for amendment of the election petition impleading additional parties.

2. The respondents 1 and 2 challenged the election of the petitioner as a successful candidate in the election held on 29-12-1993 for Betadur Grama Panchayat for Ward No. 2 on certain grounds and filed the election petition 1 of 1994. The revision petitioner-respondent 2 in his objections statement took up a plea amongst other grounds that the petitioners have not impleaded all the contesting candidates as respondents in the election petition as required under Section 15, clause (2)(a) of the [Karnataka Panchayat Raj Act, 1993](#) (here in afterwards referred to as 'the Act'), and therefore the election petition is not maintainable. The petitioner (respondent 2 in the lower Court) also contended that the said question has to be heard as a preliminary point and decided. The matter was posted for hearing on that point. At that time the respondents 1 and 2 who were the petitioners in the election petition filed an application LA. No. 1 praying for impleading the remaining contesting candidates as co-respondents. The petitioner objected to the application. After hearing the parties the learned Munsiff allowed the application I.A. No. 1 by an order dated 6-2-1995. Being aggrieved by the said order the petitioner has filed this revision petition.

3. I have heard the learned Counsel for the parties. A perusal of the impugned order goes to show that the learned Munsiff accepted the contention of the petitioner that it was mandatory for the petitioners in the election petition to have impleaded all the contesting candidates. The reasoning of the learned Munsiff is that since the Civil Procedure Code empowers the Court to implead the parties the application has to be allowed. Taking that view the learned Munsiff has allowed the application.

4. The learned Counsel for the petitioner advanced two arguments. Firstly, he contended that Civil Procedure Code has no application to the facts of the case on hand since the matter is exclusively governed by the Act. Secondly, he contended that an amendment if at all ought to have been sought and made within a period of thirty days from the date of declaration of the result that is in this case 30-12-1993, and since the amendment application I.A. No. 1 itself is filed on 26-8-1994 far

beyond the 30 days limitation prescribed under Section 15, clause (1) of the Act, the learned Munsiff could not have allowed the application.

5. With regard to the first argument the learned Counsel for the petitioner relied upon a decision reported in Mohan Raj v Surendra Kumar Taparia and Others . In para 10 of the said decision it has been held as follows:--

'It is argued that the Civil Procedure Code applies and Order 6, Rule 17 and Order 1, Rule 10 enables the High Court respectively to order amendment of a petition and to strike out parties. It is submitted, therefore, that both these powers could be exercised in this case by ordering deletion of references to Periwal. This argument cannot be accepted. No doubt the power of amendment is preserved to the Court and Order 1, Rule 10 enables the Court to strike out parties but the Court cannot use Order 6, Rule 17 or Order 1, Rule 10 to avoid the consequences of non-joinder for which a special provision is to be found in the Act. The Court can order an amendment and even strike out a party who is not necessary. But when the Act makes a person a necessary party and provides that the petition shall be dismissed if such a party is not joined, the power of amendment or to strike out parties cannot be used at all. The Civil Procedure Code applies subject to the provisions of the Representation of the People Act and any rules made thereunder (see Section 87). When the Act enjoins the penalty of dismissal of the petition for non-joinder of a party the provisions of the Civil Procedure Code cannot be used as curative means to save the petition'.

This decision fully supports the arguments of the learned Counsel for the petitioner and goes to show that the provisions under Civil Procedure Code relied upon by the Trial Court are not applicable.

6. With regard to the second contention the learned Counsel for the petitioner relied upon two decisions. In K. Venkateswara Rao and Another v Bekkam Narasimha Reddy and Others, it has been held as follows:--

'(B) Representation of the People Act (1951 as amended in 1966), Sections 81, 82, 86(5), 87, 116A -- Election Petition -- Necessary party not joined within limitation for filing petition -- High Court has no power to allow addition after

limitation --Limitation Act does not apply -- Civil Procedure Code, Order 6, Rule 17 and Order 1, Rule 10 have no application -- Application will be dismissed'.

In Kashinatk u Smt. Kudsia Eegam and Others , it has been held as follows:--

'(A) Representation of the People Act (1951), Section 83 - Amendment of election petition - Rectification of defective petition by way of amendment after expiry of period of limitation for filing it is not permissible'.

These decisions also fully support the argument of the learned Counsel for the petitioner.

7. Thus the legal position arising in the case clearly goes to show that the learned Munsiff has erred in allowing the application under the provisions of Civil Procedure Code and when it is barred by time. The impugned order therefore cannot be supported.

8. For the reasons aforesaid, the revision petition is allowed. The impugned order is hereby set aside and LA. No. I is dismissed. No costs.

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