

Maruthi and Another Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Feb-22-1990

Reported in : AIR1990Kant356; ILR1990KAR1378; 1990(3)KarLJ614

Judge : K.A. Swami and; D.R. Vithal Rao, JJ.

Acts : [Constitution of India](#) - Articles 226, 227 and 329; [Karnataka Municipalities Act, 1964](#) - Sections 21; Tamil Nadu Panchayats Act, 1958

Appeal No. : Writ Appeals Nos. 314 and 315 of 1990

Appellant : Maruthi and Another

Respondent : State of Karnataka and Others

Advocate for Def. : Chandrasekharaiah, High Court Govt. Advocate

Advocate for Pet/Ap. : I.G. Gachchinamath and ;A.K. Subbaiah, Advs.

Judgement :

1. Writ Appeal No.314/ 1990 is preferred against the order dt. 6-2-1990 passed in W.P. No. 2741/90. The appellant was the petitioner in the writ petition. He sought for quashing the order dt. 2-2-1990 passed by the Assistant Commissioner, Bamako and Returning Officer (Election Officer) City Municipal Council, Bagalkot rejecting his nomination paper. Learned single Judge has declined to entertain the writ petition on the ground that an alternative remedy by way of an election petition

is available.

2. Writ Appeal No. 315/1990 is preferred against the order dt. 8-2-1990 passed in writ petition No. 2888/90. The appellant was the petitioner in the writ petition. He has sought for quashing the order dt. 5-2-1990 passed by the Returning Officer, City Municipal Council, Elections, Ranebennur, Dharwar District rejecting his nomination paper for reserved seat and accepting and treating it as the one for general seat. Learned single Judge has declined to entertain the writ petition on the ground that there is an alternate remedy by way of an election petition, in the light of the decisions of the Supreme Court in *Nanhoo Mal v. Hira Mal*, : [1976]1SCR809 and *S. T. Muthusami v. K. Natarajan*, : [1988]2SCR759 .

3. As common question of law is involved in both the appeals, the same are heard together.

4. The point for consideration is as to whether it is just and appropriate to entertain a petition under Art. 226 of the Constitution against the order of the Returning Officer rejecting a nomination paper or rejecting it in so far as it purported to relate to a reserve seat and accepting the same as the one filed for a general seat.

5. We are not going into the merits of the case of each of the appellants as we are of the view that in the light of the decision of the Supreme Court in *S. T. Muthusami v. K. Natarajan*, : [1988]2SCR759 , it is not the stage at which the jurisdiction under Art. 226 of the Constitution is required to be exercised. It is contended on behalf of the appellant/ petitioners that the remedy by way of an election petition is available only after the election and in that what has to be challenged is the election of a Councillor but at this stage what is challenged is the rejection of the nomination paper and not the election of a Councillor. Therefore, the remedy by way of an election petition provided under the [Karnataka Municipalities Act, 1964](#) (hereinafter referred to as the Act) at this stage, cannot be considered to be an alternative remedy. It is not possible to accept this contention. No doubt, S. 21 of the Act opens with the words 'No election of a Councillor shall be called in question except by an election petition presented to the Election Tribunal within fifteen days from the date of the declaration of the result of the election', but the process of election of a Councillor under the Act and the Rules

commences from the date of publication of Election Calendar. Any illegality committed from that stage is covered by the grounds for declaring election to be void as enumerated in S. 23 of the Act. Therefore, the contention that the remedy available is only to challenge the election of the Councillor and not the rejection of the nomination paper cannot at all be accepted. Acceptance or rejection of the nomination paper takes place after the commencement of election process which commences from the date of publication of election Calendar and ends on the declaration of the results of the election.

6. In Muthusami's Case. MR 1988 SC 616, the Supreme Court considered the following question :

'Whether it is appropriate for the High Court to interfere with an election process at an intermediate stage after the commencement of the election process and before the declaration of the result of the election held for the purpose of filling a vacancy in the Office of the Chairman of a Panchayat Union under the provisions of the Tamil Nadu Panchayats Act, 1958 (Act XXXV of 1958) (hereinafter referred to as the Act) on the ground that there was an error in the matter of allotment of symbols to the candidates contesting at such election.'

In the course of the aforesaid decision, the Supreme Court considered its various other decisions and held with reference to N. P. Ponnusami v. Returning Officer, Namakkal Constituency, : [1952]1SCR218 thus :

'It is thus seen that in the above decision (which was rendered by the Full Court) this Court first laid down as a matter of general principle that interference with an election process between the commencement of such process and the stage of declaration of result by a Court would not ordinarily be proper and next laid down that Art. 329(b) of the Constitution had the effect of taking away the jurisdiction under Art. 226 of the Constitution also in respect of the disputes arising out of election during the said period.'

With reference to Nanhoo Mal's Case, : [1976]1SCR809 which related to an election to the office of the President of a Municipal Board, it held in para 9 of the judgment thus :

'After the decision of this Court in N. P. Ponnuswamy v. Returning Officer, Namakkal Constituency : [1952]1SCR218 there is hardly any room for Courts to entertain applications under Art. 226 of the Constitution in matters relating to elections.'

Thereafter, the Supreme Court considered the Full Bench decision of the High Court of Madhya Pradesh in Malam Singh v. The Collector Sehore, M. P., : AIR 1971 MP195 and approved it. In Malam Singh's case, the Full Bench of the High Court of Madhya Pradesh was concerned with the question whether it was proper that the High Court should exercise its power under Art. 226 of the Constitution in election matters arising under the Madhya Pradesh Panchayats Act, 1962 at intermediate stages that is to interfere with the individual orders passed during the process of election and thus impede the process of election or should it decline to exercise that power and leave the parties to their remedy of an election petition to be presented after the election was over. The Full Bench held that it was desirable to resolve an election dispute speedily through the machinery of election petitions. The High Court in exercise of its discretion should always decline to invoke its writ jurisdiction in an election dispute if the alternative remedy of an election petition is available. In paras 13 and 14 of the judgment in Muthuswamy's case : [1988]2SCR759 the Supreme Court on considering the Full Bench decision in Malam Singh's case, : AIR 1971 MP195 , has observed thus:

'13. In the ultimate analysis, the Full Bench laid down :

12. 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. However, as it is desirable to resolve election disputes speedily through the machinery of election petitions, the Court in the exercise of its discretion should always decline to invoke its writ jurisdiction in an election dispute, if the alternative remedy of an election petition is available. So, their Lordships of the Supreme Court in Sangram Singh v. Election Tribunal, Kotah, : [1955]2SCR1 stated :

'.....though no legislature can impose limitations on these constitutional powers, it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Therefore, writ petitions should not be lightly entertained in this class of cases.'

14. We are inclined to accent this view which lays down a salutary principle.'

Thus we are of the view that as an alternative and effective remedy is available to the appellants and as the law provides for resolution of the dispute relating to election by a special tribunal and as the policy of law is to have the disputes about the special rights created by the enactment decided as speedily as may be by a Special Tribunal, it is not just and appropriate to exercise the jurisdiction under Arts. 226 and 227 of the Constitution and interfere with the election process which has already commenced.

7. In this view of the matter, the decisions Of this Court in Fakirappa Yellappa Kali v. Div Commr. Dharwar, (1979) 1 Kant LJ 153) and W.P. No. 4786 of 1979 D/- 4-5-1979 (Angamuthu v. Tahsildar, Hiriur) (Hem No. 55 of the Short Notes of Cases in, (1979) 2 Kant LJ 15 on which reliance is placed by Sri Gachchinmath, learned Counsel for the appellant in W.A. No. 314/90 are of no avail as we are bound by the decision of the Supreme Court in S.T. Muthusami's case : [1988]2SCR759 . We can only place our observations on record that we have come across several cases in which the nomination papers are rejected on untenable grounds on certain defects which were very formal in nature and which the Returning Officer himself is required to correct while receiving the nomination papers. The cases on hand are no exception as these cases also fall in the same category. Even in such cases also if the parties are to be told that they can seek relief only after election through election petition, it will cause great hardship to all the parties including the successful candidate and it would result in waste of public money and time. This may also give handle to unscrupulous Returning Officers to side with one party or the other and reject the nomination papers on untenable grounds. Therefore, it appears to us that the Supreme Court may consider as to whether the rule laid down in Muthusami's Case requires reconsideration.

8. For the reasons stated above, the writ appeals are dismissed. All the contentions raised by the appellants are left open.

9. Sri Chandrasekharaiah, learned Government Advocate is permitted to file his memo of appearance on behalf of the respondents in six weeks.

10. Appeals dismissed.

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