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Court : Karnataka

Decided On : Mar-15-1982

Reported in : AIR1982Kant313

Judge : V.S. Malimath and ;A.K. Laxmeshwar, JJ.

Acts : Karnataka Municipalities Act, 1964 - Sections 25 and 27

Appeal No. : Misc. First Appeal No. 361 of 1982

Appellant : B.M. Munner

Respondent : The Returning Officer and the Tahsildar, Town Municipal Council, Malur, Dist. Kolar and anr.

Advocate for Def. : M.S. Gopal, Adv.

Advocate for Pet/Ap. : G. Gangi Reddy, Adv.

Judgement :

Malimath, J.

1. The appellant has challenged the order of the Civil Judge at K. G. F., passed in Elec. Misc. No. 2 of 1979 dated 15-2-1982 under Section 25 of the Karnataka

Municipalities Act, 1964 (hereinafter referred to as the Act).

2. Respondent 2 has presented the election petition challenging the election of the appellant to the Town Municipal Council of Malur. The learned Civil Judge has directed by the order under appeal that the ballot papers of the constituency in question should be recounted in the presence of the parties and their counsel on any convenient day fixed with the consent of the parties and that suitable directions will be issued in due course.

3. The first question for consideration is whether the present appeal is maintainable. Section 27 of the Act provides that an appeal lies from the order of the election tribunal under Section 25 to the High Court within period of thirty days from the date of the order of the Tribunal excluding the time requisite for obtaining a copy of the order. It is thus clear from S. 27 of the Act that an appeal to this Court lies from an order of the election tribunal made under S. 25 of the Act. Section 21 of the Act provides for presentation of an election petition. Section 22 of the Act speaks of the relief that may be claimed by the petitioner in an election petition. It is clear from the same that the petitioner may claim (a) a declaration that the election of all or any of the returned candidates is void and (b) in addition thereto, a further declaration that he himself or any other candidate has been duly elected. These are the relief 's that the petitioner in an election petition can seek as provided under Section 22 of the Act. Section 23 of the Act enumerates the grounds for declaring elections to be void. Section 24 of the Act prescribes the procedure to be followed by the election tribunal. The relevant section which needs particular attention is Section 25 of the Act, which provides for decision of the election tribunal. It reads as follows :

'25. Decision of the Election Tribunal-, (1) At the conclusion of the trial of an election petition, the Election Tribunal shall make an order-

(a) dismissing the election petition; or

(b)declaring the election of all or any of the returned candidates to be void; or

(c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

(2) If any person who has filed an Election Petition has in addition to calling in question the election of the returned candidate, claimed declaration that he himself or any other candidate has been duly elected and the Election Tribunal is of opinion-

(a) that in fact the petitioner or such other, candidate received a majority of the valid dates, or

(b) that, but for the votes obtained by the returned candidate by corrupt or illegal practices the petitioner or such other candidate would have obtained a majority of the valid votes, the Tribunal shall after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected.'

Section 26 of the Act provides that when there is equality of votes the Tribunal may decide by taking lot. It is clear from the provisions adverted to above that the final orders that may be made by the Election Tribunal are all enumerated in Section 25 of the Act. Any final order that is made as contemplated by Section 25 of the Act is clearly appeal able under Section 27 of the Act. Section 27 does not contemplate an appeal against any finding that may be recorded by the Tribunal during the pendency of an election petition. The clear effect of the finding which has been described by the Election Tribunal as the order is that it has taken a decision to the effect that the election petitioner has made out a prima facie case justifying recounting of the votes. In other words, the Tribunal has recorded a finding on one of the several issues that arise for consideration in the election petition to the effect that a case has been made out for purpose of recounting of the ballot papers. In our opinion this finding cannot be considered to be an order contemplated under Section 25 of the Act. This is not an order falling within Section 25(1)(a) of the Act and it is nobody's case that the order falls under that clause. It is impossible to say that the order falls within Section 25(1)(b) of the Act, because the Election Tribunal has not declared the election of all or any of the returned candidates to be void. This order also does not fall within the scope of

Section 25(1)(c) because the Tribunal, has not, after declaring the election of all or any of the returned candidate to be void, declared that the election petitioner or any other candidate has been duly elected. As the Tribunal has not rendered a final decision as contemplated by Section 25 of the Act and the election petition is still pending before the Election Tribunal, this appeal is not maintainable against the finding recorded by the Tribunal to the effect that the election petitioner has made out a prima facie case requiring recounting . of the ballot papers. The order under appeal cannot be regarded as one falling within the scope of Section 25 of the Act, and therefore, the present appeal is not maintainable. As already stated, what is challenged is one of the findings given by the Election Tribunal during the pendency of the election petition. The final decision of the election petition is yet to be rendered. If, as a result of the recounting of the votes, the appellant gets more number of votes, the election petition itself may be dismissed in which case, the appellant may not have any occasion to challenge the order or the finding of the Tribunal. If, however, the result of the recounting goes against the appellant and he challenges the final order of the Tribunal made under Section 25 of the Act, the appellant would be entitled, in such an appeal to challenge the correctness of the finding recorded by the Tribunal under appeal.

4. With these observations, we reject the appeal as not maintainable.

5. Appeal rejected.

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