

Dasappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Aug-09-1994

Reported in : ILR1994KAR2863; 1994(4)KarLJ617

Judge : Krishna Moorthy, J.

Acts : [Karnataka Panchayat Raj Act, 1993](#) - Sections 44(2) and 45(2); [Constitution of India](#) - Articles 226 and 243

Appeal No. : W.P. No. 10585 of 1994

Appellant : Dasappa

Respondent : State of Karnataka

Advocate for Def. : Somayaji, H.C.G.P. for R-1 and R-2, ;V. Gopala Gowda, Adv. for R-3 to R-11 and ;R.S. Ravi, Adv. for R-12 to 15, 17 and 18

Advocate for Pet/Ap. : S. Chennaraya Reddy, Adv.

Judgement :

ORDER

Krishna Moorthy, J

1. The two petitioners in these two Writ Petitions and Respondents 3 to 18 were elected as Members of 'Nelavagilu Grama Panchayath' held on 29-12-1993. By Annexure 'A' notice dated 2-3-1994 the 2nd respondent the Prescribed Officer

(Returning Officer) under the Karnataka Panchayat Raj Act, fixed the election of the President and Vice-president of the Panchayath at 3.00 p.m. on 9-3-1994, By Annexure-'B' order and Annexure-'C' Notification the meeting was postponed to 19-3-1994 at 3.00 p.m. at Nelavagilu Higher Primary School. The 1st petitioner filed nomination to contest the post of President and the 2nd petitioner filed her nomination to contest for the post of the Vice-President in the above Panchayath. The other 2 contestants for the 2 posts were respondents 3 and 4 respectively.

2. The 2nd respondent reached the place of election and except the 11th respondent, all the other 17 members were present. But the 2nd respondent tried to postpone the election meeting on the ground that some miscreants waylaid him on his way to the venue of the election and the nomination papers filed by the contestants were taken away. However since the majority of the members were present and election process had already started there was no impediment in proceeding with the election. Accordingly the 2nd respondent proceeded with the election in which the 1st petitioner was supported by 9 members for the post of President and the same 9 members supported the candidature of 2nd petitioner as Vice-President. Accordingly, petitioners 1 and 2 were declared elected to the post of President and Vice-president respectively. The above proceedings are produced as Annexure- 'E' (the same was produced as Annexure-'R1' along with the objections of Respondents 1 and 2). The results of the election were announced in the news papers also.

3. The Tahsildar, Hoskote Taluk on 21-3-94 published the list of the Presidents and Vice-Presidents who were duly elected in the various Panchayath in his Taluk (Annexure-'F') on 18th and 19th of March 1994. The two petitioners are shown to have been elected for the above 2 offices in the Panchayath in question. Various revenue authorities also have treated the petitioners as President and Vice-President of the Panchayath in various communications.

4. Some of the members of the Panchayath especially the 3rd respondent pressurised Respondents 1 and 2 to ignore the election held on 19-3-1994 and to conduct fresh election for the same posts even though the election was not set aside in accordance with law. Apprehending that a 2nd election meeting may be

held by the 2nd respondent, the petitioners filed a representation Annexure 'H' before the Deputy Commissioner against the proposed 2nd election. But, however ignoring and in violation of all Rules and Regulations has now published an election notice dated 6-4-1994 for holding an election to the post of President and Vice-President on 15-4-1994. The above Notification is produced as Annexure- 'J'.

5. The petitioners are challenging the re-election notice Annexure-'J' as contrary to law on the ground that an election has already been conducted on 19-3-1994 and the petitioners were duly declared as elected. So long as the election is not invalidated by any proceeding under Section 45(2) of the Panchayath Raj Act, Respondents 1 to 2 have no jurisdiction to hold a fresh election. On these allegations the petitioners have filed these Writ Petitions for quashing Annexure-'J' Notification fixing an election for the post of President and Vice-President.

6. On behalf of Respondents 1 and 2 a statement of objections is filed supported by an affidavit filed by the 2nd respondent who himself was the prescribed officer to hold the elections in question. It is stated therein that the post of President in the Panchayath in question is reserved for a candidate belonging to backward classes and the post of Vice-President is reserved for General-Woman. The meeting of election was scheduled to be held at 3.00 p.m. on 19-3-1994. The notice of motion was received in pursuance to the election notice in respect of both the offices. While he was proceeding to the venue of the meeting, on that day at about 2.35 p.m. a scooter hit his motor cycle near Nandagudi village and 4 miscreants snatched all the papers pertaining to the election and disappeared. He immediately filed a police complaint. On arrival at the venue of the election 17 members of the Grama Panchayat were present. The 2nd respondent postponed the meeting since all the papers pertaining to election were snatched by certain miscreants and he had no nomination papers with him. After postponement of the first meeting due to unavoidable circumstances, 8 members have left. But several members coerced the 2nd respondent to hold the meeting. The Police officers present pleaded their inability to protect him and further informed that there will be a law and order problem if the election is not held. Accordingly the 2nd respondent was compelled to proceed with the election. Although the post of President reserved for a candidate belonging to backward classes, the name of the 1st

petitioner who belongs to Scheduled Caste was proposed though he is ineligible to contest. The 2nd petitioner was proposed for the post of Vice-President who is a lady. The prescribed officer did not declare the petitioners as elected to the post of Adyaksha and Upadyaksha, since in his view there is no election in the eye of law. Accordingly the notice Annexure-'J' dated 6-4-1994 fixing the election is valid in law since there was no meeting on 19-3-94; the other averments made in the Writ Petition are also traversed. It was concluded that the remedy of the petitioners if at all, is to file an Election Petition after the election is over in pursuance to Annexure-'J' notice.

7. Respondents 3 to 11 also support 'the stand taken by Respondents 1 and 2 which is reiterated in the application filed by them for vacating the stay granted by this Court.

8. Respondents 12 to 18 are the members who were present and took part in the election held on 19-3-1994. They supported the case of the petitioners that the notice of election Annexure-'J' dated 6-4-1994 is illegal and absolutely without jurisdiction.

9. In the light of the above pleadings the following Points arise for Consideration:

(1) Whether Annexure-'J' Notice of election dated 6-4-1994 is illegal and without jurisdiction for any of the reasons mentioned in the Writ Petition?

(2) If so, what is the relief which the petitioners are entitled to?

10. POINT 1: This is a case where both the contesting parties are relying on Section 45(2) of the Karnataka Panchayath Raj Act, 1993 (hereinafter referred to as the 'Act') to contend for the position that the remedy of the parties is to invoke the provisions contained in the above Section. According to the petitioners when the election was conducted on 19-3-1994 and the petitioners were declared elected, the only mode contemplated under the Act to challenge the same is by invoking the provision of Section 45(2) by approaching the prescribed Judicial Officer who alone is competent to determine the validity of an election. Counsel for the contesting respondents were also equally vehement in their contention that by

Annexure-'J' notice the election process having started, the only remedy of the petitioners is to challenge the same under Section 45(2) before the prescribed authority after the elections are over. The question as to who should resort to the remedy provided under Section 45(2) will depend upon the question as to whether petitioners were elected as President or Vice-President on 19-3-1994. This Court at this stage is not concerned with the validity or invalidity of the election but only as to whether as a matter of fact an election was held on that day. If as a matter of fact an election was held on that day, the invalidity of the same can be decided only by the prescribed Judicial Officer under Section 45(2) of the Act and by no other authority. Article 243(o) of the Constitution read with Section 45(2) of the Panchayath Raj Act makes the position clear, Article 243(o)(b) introduced by the Constitution (Seventythird Amendment) Act, 1992 provides as follows:

(b) no election to any Panchayath shall be called in question except by an election petition presented to such authorities and in such manner as is provided for by or under any law made by the legislature of a State,

Section 45(2) of the Panchayath Raj Act, 1993 provides the mode of challenging the election of an Adyaksha and Upadyaksha in the following manner:

(2) Any dispute relating to the validity of the election of a Adhyaksha or Upadhyaksha of Grama Panchayat under this Act shall be decided by the prescribed judicial officer having jurisdiction over the Panchayat area or the major portion of the Panchayat area, whose decision thereon shall be final.

11. Thus there is a Constitutional mandate that an election to Panchayath shall be called in question only by an Election Petition. The wording of Article 243(o) is negative in form so that there is an absolute prohibition in challenging or invalidating an election otherwise than in any manner provided for by the State Legislature. The provisions in Section 45(2) is all comprehensive, in that any dispute relating to the validity of an election has to be decided by the prescribed Judicial Authority. The grounds on which an election can be challenged is not limited in Section 45(2) unlike Section 15 which mentions the grounds on which an election of a member can be changed. On a combined reading of Article 243(o) read with Section 45(2) it is absolutely clear that when an election of Adyaksha or

Upadyaksha is held as a matter of fact the validity of the same can be questioned only before the prescribed Judicial Officer and no other person has any jurisdiction or authority to set aside or ignore such an election. It is now well recognized that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. (WILES, J., in WOLVERHAMPTON NEW WATER WORKS CO. v. HAWKESFORD (1859) b.c. B.N.S. 336 @ 356). So if an election is held as a matter of fact on 19-3-1994 (the validity or invalidity of which this Court is not concerned at this stage) the 2nd respondent cannot ignore the same and issue a fresh notification Annexure-'J' calling for a second election meeting as is done in this case and it is wholly illegal and without jurisdiction. If Annexure-'J' is wholly without jurisdiction then there is no question of challenging the same by way of an Election Petition and this Court can set aside the same in exercise of its power under Article 226 of the [Constitution of India](#).

12. The only further question to be decided is as to whether there was in fact an election on 19-3-1994 as alleged by the petitioners. The Counsel for the petitioners relied on various communications issued to the petitioners after 19-3-1994, addressed by Designation and in two letters in their individual name and mentioning them as President and Vice-President of the Panchayath. But it is not necessary to refer to them as the question can be decided from the minutes of the meeting prepared by the 2nd respondent on 19-3-1994 on the date of the election. It is produced as Annexure-'R1' and an agreed translation was produced before me. It is seen from the minutes that the election meeting scheduled to be held at 3.00 p.m. could not go on as some miscreants way laid him on his way to the venue of election at a place 2 1/2 K.M. from Nandagudi by hitting his motor cycle and snatched away the register containing the resolutions received by him for the meeting. In the objections he has also stated that he filed a police complaint immediately. It is further stated in the minutes that the election process could not commence at 3.00 p.m. evidently because he could not reach there in time. It is not mentioned as to when he reached the venue but evidently it may be around 3.00 p.m. as the incident itself happened only at 2.35 p.m. as mentioned in the objections. But it is evident from the minutes that when he reached the venue, 17 Grama Panchayath members were present and he informed them that the election

would be held as per the guidance and further orders of the Deputy Commissioner of the District. After recording so much he has signed the minutes.

13. It is to be noted that though 2nd respondent recorded that the election meeting would be held after obtaining further orders from the Deputy Commissioner, there is no mention by him that the election meeting is postponed. The further portion of the minutes recorded by him also supports this view, The minutes proceeds to state that immediately after he read over the above minutes, 9 members pressurised him not to postpone the meeting but to conduct the election. Accordingly he contacted the Deputy Commissioner by wireless, but he was not available at 4.00 p.m. The police officers who were present for security purposes informed him that if election is not conducted as scheduled on that day there will be a law and order problem and accordingly the designated officer is compelled to accede to the request for conducting the election at 4.30 p.m. from among the members of the Grama Panchayath who are present. It is further stated that at that time 8 members out of the 17 members who were originally present were absent and their names are given. The 2nd respondent has further stated that 9 members were present and their names are also given. It is further stated that one of the members proposed the name of the 1st petitioner for the post of President and it was seconded by another member. So also the 2nd petitioner was proposed and seconded by another as Vice-President. It is further stated that all the 9 members present voted in favour of both the petitioners. The minute is concluded by stating as follows :

'As stated herein above, when the register containing the resolution of the first meeting and the prescribed forms are forcibly snatched by some miscreants from my hands i.e., the designated officer, In this adverse background and also in view of the opinion expressed by the police officials that if the election is not held today, it is definite that there will be breakdown of law and order. The election to the post of Adhyaksha and Upadhyaksha of Nelavagilu Grama Panchayath are held.'

14. It is clear from the facts disclosed that the election was fixed at 3 p.m. on 19-3-1994. The notices of motion were received in pursuance to notice dated 9-3-1994 for the two offices as disclosed from the statement of objections. The designated

officer was present at the venue of election around the time fixed for the election. 17 members of the Panchayath were also present at that time. As he lost the nomination papers on his way he wanted to conduct the election after getting orders from the Deputy Commissioner which was recorded in the minutes. The election was not postponed. Immediately thereafter 9 members demanded the election to be conducted, the police officers also were in favour of the election being conducted. Though he contacted the Deputy Commissioner, he was not available. Accordingly he decided to conduct the election but 8 members were absent. It is not clear as to whether they left the venue after the decision was taken to proceed with the election. It is a matter of evidence. So also the question as to what transpired on that day when the parties are not agreed on the same is to be decided by taking evidence in the matter. But it is evident that as a matter of fact an election took place on that day and the petitioners were elected. The question as to whether it is in any way vitiated or invalid can be decided only after a decision is taken in the matters mentioned above in a properly constituted Election Petition. I am not impressed by the argument of the Counsel for the respondents that the 2nd respondent never declared the petitioners as elected after the meeting. Though no doubt there is no such statement in Annexure-'R1', on a reading as a whole of Annexure 'R1' it is clear that the petitioners were elected. There is no particular mode prescribed under the rules as to how a person should be declared as elected. Moreover Annexure-'F' is the list of Presidents and Vice-Presidents elected on 18th and 19th March 1994 in Hoskote Taluk published by Tahsildar which includes the names of the petitioners. It is also not without significance to mention that 9 Panchayath members out of 17 members originally present for meeting supported the candidature of the petitioners for the 2 posts which shows that they had the support of the majority of the members originally present. From the materials available and in the circumstances of the case I have no hesitation to hold that there was as a matter of fact an election to the two offices on 19-3-1994 and the petitioners were elected. If that be so the respondents cannot unilaterally treat the same as invalid and illegal without getting it declared as such by the prescribed Judicial Officer under Section 45(2) of the Act. Accordingly I further hold that Annexure- 'J' is without jurisdiction and ineffective. The point is found in favour of the petitioners.

15. POINT NO. 2 : Though I have found that Annexure- 'J' is without jurisdiction, the further question to be decided is as to whether this Court should exercise its power under Article 226 of the [Constitution of India](#) in the circumstances of the case. It is an admitted fact that the office of the Adyaksha in this Panchayath is reserved in favour of a person who belongs to backward class under Section 44(2)(b) of the Panchayath Raj Act, 1993. There is also no dispute that the 1st petitioner is not a person belonging to backward class but is a member of Scheduled Caste. In that view of the matter the 1st petitioner is not certainly entitled to hold the post of Adyaksha in this Panchayath and his holding the post will be illegal. According to the petitioner even that question has to be agitated before the prescribed Judicial Officer and the 2nd Respondent cannot ignore the election. It may be so, but the question is as to whether this Court should interfere in its discretion and quash Annexure-'J' in so far as the election of Adyaksha is concerned, I think it should not.

16. If Annexure-'J' is quashed in so far it relates to the election of Adyaksha is concerned, the effect of it would be to allow the 1st petitioner to continue as Adyaksha which is not legally permissible and this court by its order should not allow an illegality to continue (See VENKATESWARA RAO v. GOVT. OF ANDHRA PRADESH : [1966]2SCR172 . Accordingly I decline to interfere with Annexure-'J' notice so far as it relates to election of Adyaksha. But so far as the post of Upadyaksha is concerned, it is reserved in favour of a General candidate (woman) which the 2nd petitioner satisfies and she is accordingly qualified to hold the post of Upadyaksha. In that view of the matter, Annexure-'J' notice is liable to be quashed in regard to the post of Upadyaksha. It is made clear that nothing said in this Judgment shall stand in the way of any competent person challenging the validity of the 2nd petitioner's election, Point found accordingly.

17. In the result, Writ Petition No. 10585 of 1994 filed by the 1st petitioner is dismissed and the Respondents are entitled to conduct an election for the post of Adyaksha, Writ Petition No. 10586 of 1994 is allowed and the election notice (Annexure-'J') for the post of Upadyaksha is quashed and the 2nd petitioner will be entitled to be the Upadyaksha of the Nelavagilu Grama Panchayath. There will be no order as to costs.

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